

**265—9.7 (16) Services offered.**

**9.7(1) Abstracting.** Abstracts utilized for division purposes must be prepared by a participating abstractor.

*a. Title plant.* A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under paragraph 9.7(1)“c” or authorized under paragraph 9.7(1)“d.” Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor’s participation in the title guaranty program. A government-maintained and -controlled database is not considered a title plant for division purposes.

*b. Intent to build title plant.* The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for use by the division, upon review of the following:

- (1) The abstractor’s business plan;
- (2) Evidence that a title plant will be built for a specific county or counties within three years;
- (3) A time line for completion of the title plant; and
- (4) A description of the applicant’s abstracting experience.

*c. Grandfathered attorney.* A participating attorney who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for division purposes, either personally or through persons under the participating attorney’s supervision and control, shall be exempt from the requirements to own or lease a title plant. This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

*d. Title plant waivers.* The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price. Iowa Code section 16.91(5)“b” allows the division board to waive the up-to-date title plant requirements under certain conditions.

(1) General provisions. The division board shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall provide an application form at the office of the division and on the division’s Web site. An applicant must submit an application in writing to the attention of the division director at the office of the division.

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, e-mail address, and telephone number of the applicant;
2. The applicant’s business plan;
3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant’s abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under 9.7(1)“d”(5) and 9.7(1)“d”(6)“4”; and
9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.

2. The division shall publish notice of an application on the division's Web site within 7 calendar days of receipt of a complete application. A copy of the application and supporting documents will be provided to any interested person upon request.

3. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division board to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division board.

4. If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. The division shall receive public comments up to 45 calendar days prior to that division board meeting.

(5) Criteria for title plant waiver. Pursuant to Iowa Code section 16.91(5) "b," the division board may issue a ruling waiving the title plant requirement set forth in Iowa Code section 16.91(5) "a"(2) if the board finds the following:

1. The title plant requirement imposes a hardship to the applicant; and
2. The waiver is:
  - Clearly in the public interest; or
  - Absolutely necessary to ensure availability of certificates throughout the state.

3. For purposes of paragraph 9.7(1) "d," "hardship" means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances.

4. For purposes of paragraph 9.7(1) "d," "public interest" means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of certificates throughout the state, making certificates more competitive than out-of-state title insurance, increasing the division's market share, improving the quality of land titles, and protecting consumers.

(6) Board meeting and ruling.

1. The review of a waiver application is not a contested case proceeding.

2. The division director or designee shall review an application and its supporting documentation. The division director shall present to the division board a proposed written ruling. The division board shall adopt, amend or reject the proposed written ruling. If the proposed written ruling is rejected, the division board shall instruct the division director to prepare an alternative written ruling to be considered at a subsequent division board meeting.

3. The written ruling shall summarize the relevant facts and the basis for granting or denying the waiver. The written ruling may specify the scope and duration of the waiver and any restrictions, conditions, or requirements.

4. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered include, but are not limited to, the division director's proposed written ruling, the facts and circumstances set out in the application, any history of professional disciplinary action against the applicant, adverse claims made against the applicant, prior waiver withdrawal actions against the participating attorney or participating abstractor, public comments, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. The division board shall give considerable weight to an applicant's experience abstracting under the supervision of a participating abstractor or participating attorney with whom the applicant has had a close working relationship or with whom the applicant is a partner or associate. The division board shall also give considerable weight to a recommendation from a participating abstractor or participating attorney who supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract. Consideration

should be afforded to rulings on prior waiver requests, but the division board shall not be bound by such rulings. The division board may limit a waiver as to county, or transaction type, or both.

5. The written ruling shall be mailed to the applicant within 7 days of its issuance.

6. The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(7) **Conditions.** A waiver is unique to the recipient and is nontransferable. A waiver recipient shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. Retention of a waiver is dependent on the applicant's meeting the requirements for a participant in rule 265—9.6(16). If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the division board.

(8) **Withdrawal of a waiver.** A waiver issued by the division board may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division board in granting the waiver; or

2. That the waiver recipient failed to comply with all conditions contained in the written ruling;

or

3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or

4. That the division has revoked the waiver recipient's authorization to provide services on behalf of the division pursuant to subrule 9.6(14).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(9) **Public availability.** Applications for waivers and written rulings are public records under Iowa Code chapter 22. Some applications or written rulings may contain information that the division is authorized or required to keep confidential. The division may redact confidential information from applications or written rulings prior to public inspection or dissemination.

**9.7(2) *Issuing title opinions.***

*a.* All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

*b.* A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

*c.* A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

**9.7(3) *Issuing commitments and certificates.*** Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

**9.7(4) *Issuing closing protection letters.***

*a.* Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

*b.* The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.

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