

**265—9.22(16) Closing protection letters.**

**9.22(1) Definitions.** The following words and phrases, when used in this rule and in the program requirements, applications and instructions adopted by the division board pursuant thereto, shall have the meanings set forth below unless inconsistent with the manifest intent or the context of the rules:

“*Certificate*” means division certificate, including any part or schedule thereof and any endorsements thereto.

“*Closing protection letter*” means an agreement by the division to indemnify a lender or owner or both for loss caused by a division closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the division closer.

“*Commitment*” means division commitment to guarantee title, including any part or schedule thereof and any endorsements thereto.

“*Division*” means title guaranty division, a division of the Iowa finance authority.

“*Division board*” means the board of the title guaranty division created pursuant to Iowa Code section 16.2(1).

“*Division closer*” means a participating attorney, a participating abstractor, or an independent closer who is currently authorized by the division to close division commitments under protection of a closing protection letter.

“*Division closing*” means a settlement in which a division closer is appointed to finalize a real estate transaction in accordance with general and specific instructions prior to disbursement of the loan proceeds and for which a closing protection letter is issued.

“*Division escrow account*” means, in conjunction with division closings, escrows, settlements, and title indemnities, any checking account utilized for the purpose of handling:

1. Deposits including, but not limited to, the acceptance of incoming funds from the lender or borrower or both; and

2. Disbursements including, but not limited to, sellers’ proceeds, mortgage payoffs, expenses of sale, and professional fees.

However, “division escrow account” shall not include client trust accounts subject to the requirements of chapter 45 of the Iowa Court Rules.

“*Form*” or “*forms*” means printed instruments used in guaranteeing title to Iowa real estate that, when completed and executed, create contractual obligations or rights affecting the division.

“*Independent closer*” means a person or entity, other than a participating attorney or participating abstractor, conducting real estate closings and authorized to close transactions under protection of closing protection letters from the division.

**9.22(2) Issuance of closing protection letters.** Division closers may be authorized to receive a closing protection letter when:

- a. A division closer has completed division forms and procedures training,
- b. The division director has approved the application, and
- c. A division commitment is issued.

**9.22(3) Application.** Application for designation of division closer status shall be on forms provided by the division, and all requested information shall be provided with the application form. The division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the division within 30 days after the division requests the information. The application shall be accompanied by a fee to be set by the division board. The division director shall approve or deny the application within 90 days after the application has been accepted for processing and send written notice thereof to the applicant.

**9.22(4) Additional requirements.** The division board may adopt program guidelines and application requirements such as indemnity agreements, criminal background checks, and bonding and insurance requirements.

**9.22(5) Guidelines.** In determining whether to approve or deny an application for designation of division closer status, the division director may consider the following factors, including but not limited to:

- a.* Needs of the public and existing or potential customers of the applicant to be served by a designation of division closer status.
- b.* A history of operation and management of the applicant's business.
- c.* Character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- d.* Criminal background checks for felony or misdemeanor convictions of the applicant or the applicant's employees involving moral turpitude.
- e.* A record of defaulting by the applicant or the applicant's employees in payment of moneys collected for others in this state or other states.
- f.* A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
- g.* The applicant's credit report, which is to be submitted directly to the division director at the expense of the applicant.
- h.* Other factors as determined by the division director to be relevant.

**9.22(6) *Investigation.*** The division director may conduct an investigation as deemed necessary. The division director may solicit, by whatever manner deemed appropriate, comments from other persons conducting closings, or from any other person or entity which may be affected by or have an interest in the pending application.

**9.22(7) *Revocation.*** The division director has discretion to revoke a division closer's status for reasons including but not limited to the following:

- a.* The financial condition of the division closer deteriorates.
- b.* The division director determines that the division closer's activities are being conducted unlawfully or in an unsafe or unsound manner.

**9.22(8) *Authority of division closer.***

*a.* A division closer is authorized to conduct division closings only for the purposes and in the manner set forth in the division closer's agreement, the Code of Iowa, these rules, manuals, requirements and any other instructions given by the division and in no other manner whatsoever. The authority of the division closer under the preceding sentence is not exclusive and is subject to the rights of the authority, the division and other division closers to transact the business of guaranteeing titles to real estate in Iowa and is further subject to the right of the division to appoint other division closers.

*b.* A division closer shall obtain the written authorization of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this rule is not obtained through the act or omission of the division closer, the division closer shall be strictly liable to the division for any resulting loss or damage.

**9.22(9) *Division escrow accounts.*** The division board shall approve procedures and requirements for the maintenance of division escrow accounts. Division closers shall comply with the rules and requirements set by the division board with respect to the procedures, format, and style for maintaining the division escrow accounts. The division board may require the division closer to provide an irrevocable letter of direction to the institution at which each division escrow account is established, authorizing the division to review and audit the institution's records of such account at any such time that the division, in its discretion, deems necessary.

**9.22(10) *Division forms.*** A division closer shall not change preprinted portions of the division forms without the division's prior written authorization. A division closer shall not use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division, and any attempt to do so shall be ineffective.

**9.22(11) *Title/closing files.*** A division closer shall maintain files in such a manner that information pertaining to closings and issuance of division commitments, certificates, and endorsements is readily available to the division. A division closer shall maintain title files and the title portion of client files for a period of ten years after the effective date of the certificate(s).

**9.22(12) *Training.*** The division director may require a division closer and the division closer staff to attend training sessions or continuing education seminars as deemed necessary by the division director in order to ensure compliance with division procedures.

**9.22(13) *Office audits.***

*a.* In accordance with subrule 9.12(2), the division may, with or without notice to a division closer, audit the division closer at the division closer's office. This audit may include a review of the division closer's division escrow account(s) and closing procedures, including verification of the division closer's compliance with division rules, participation agreements, manuals, and any other written or oral instructions given by the division.

*b.* The division may, with or without notice, audit the division closer's division escrow account(s).

*c.* Procedures for audits shall be conducted pursuant to standards and procedures approved by the division board.