

265—9.5(16) Participants.

9.5(1) General provisions. An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

9.5(2) Participant application. Applications for participation and renewal are available on the division's website. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

9.5(3) Eligibility considerations. To determine whether to approve or deny a participant application, factors the division may consider include but are not limited to the following:

- a. The needs of the public and the needs of existing or potential customers of the applicant.
- b. A history of the operation and management of the applicant's business.
- c. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- d. A credit report or criminal background check of the applicant or the applicant's employees.
- e. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.
- f. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
- g. Compliance with the title and settlement best practices adopted by the division.
- h. Other factors as determined by the division.

9.5(4) Participation agreement. The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

9.5(5) Annual fee. A participant may be required to pay an annual fee of \$75, set pursuant to Iowa Code section 16.91(4).

9.5(6) Agent relationship. A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, the Iowa Code, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

9.5(7) Conflict of interest. A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

9.5(8) Clearance of title objections. All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

9.5(9) Commitment and certificate coverage limitations. A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable maximum amount of coverage as determined by the division. If authorization under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment, closing protection letter, or certificate.

9.5(10) Document retention. A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the issued date of the certificate or the issued date of the commitment if a certificate is not issued.

9.5(11) Training. The division may require a participant and the participant's staff to participate in training sessions or continuing education seminars as deemed necessary by the division to ensure compliance with division requirements and procedures.

9.5(12) *Compliance.* Participants shall comply with the Iowa Code, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit the participant, with or without notice, for verification of compliance. An audit may include but not be limited to a review of the participant's abstracts, title opinions, commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details.

9.5(13) *Revocation.* The division may revoke a participant's authorization to provide services on behalf of the division for reasons, including but not limited to the following:

- a.* Failure to comply with the terms and conditions of the participation agreement.
- b.* Failure to submit an annual renewal application.
- c.* Knowingly withholding or misrepresenting material facts relied upon by the division.
- d.* Fraud, theft, dishonesty, or misappropriation of funds or documents.
- e.* Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.
- f.* A finding by the division director of material noncompliance with the Iowa Code, these rules, manuals, and any other written instructions given by the division.
- g.* Other factors as determined by the division.

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