

Composite Mortgage Affidavit Manual

Updated September 2020



IOWA TITLE GUARANTY

A DIVISION OF IOWA FINANCE AUTHORITY

COMPOSITE MORTGAGE AFFIDAVIT (“CMA”)

I. DEFINITIONS

Composite Mortgage Affidavit (“CMA”): a written statement confirmed by oath or affirmation in which the owner, seller or buyer of real property discloses all matters or claims of ownership which may impact, encumber or otherwise result in a defect on the title to the property.

Non-Record Matter: any matter that is not discoverable by performing a search of the public records. These issues or defects would not be shown in an abstract update or other form of title search. The only way to learn of non-record matters is to obtain a signed affidavit (CMA) from the owners/sellers.

II. PURPOSE

1. The CMA is a legal disclosure required to obtain ITG coverage.
2. Alerts the buyer of any title issues, specifically non-record title issues, prior to closing. Provides the buyer assurance that he/she is taking title to the property free and clear of any non-record matters or claims of ownership.
3. Alerts the examining attorney of any non-record title issue that must be resolved prior to closing.
4. Allows lenders to obtain survey and comprehensive coverage without requiring the buyer to obtain a survey (for lender coverage up to \$750,000 or less).

REMEMBER

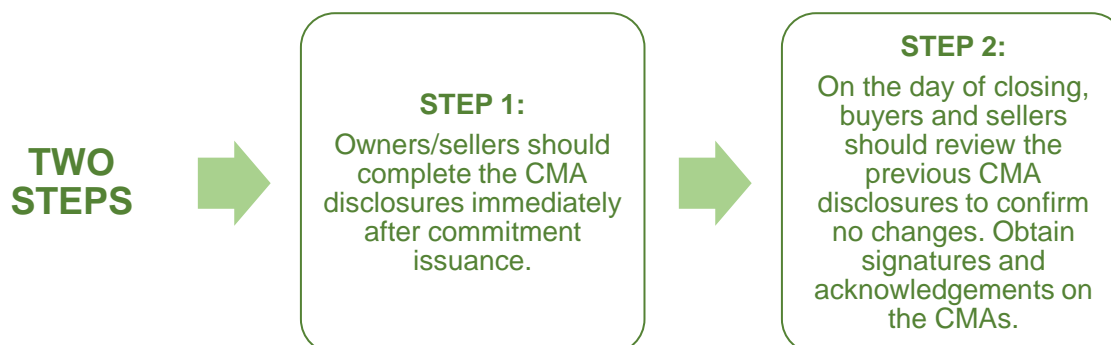
The CMA is the **ONLY** document in a real estate transaction that discloses **NON-RECORD** matters affecting title (i.e. fence dispute with neighbor, covenant violation, unrecorded notice of assessment).

Often, the only person aware of non-record matters is the owner/seller and the only way to discover these matters is to **ASK** the questions on the CMA!

III. WHEN TO OBTAIN SIGNATURES

ITG strongly advises buyers and sellers (or owners in a refinance) to complete the CMAs as soon as the commitment is issued. This allows ample time to clear any matters disclosed on the CMA prior to closing.

If the CMA is not presented to the parties until the day of closing, **CLOSING MAY BE DELAYED** if the seller discloses a title issue that requires additional time to clear.



IV. AGENTS AND POWERS OF ATTORNEY

Often, real estate agents sign the CMA without asking the questions and obtaining accurate responses from the client. By doing so, the agent is indicating that he/she has knowledge and is making accurate disclosures. If a claim arises due to failure to properly disclose a matter, the agent may be personally liable. **Agents are strongly advised NOT to sign the CMA on behalf of the client.**

If the client is physically unable to sign and grants a valid, legally binding power of attorney (“POA”) to an attorney or agent, the POA must:

1. Obtain CMA responses directly from the client; and
2. Provide a copy of the valid POA to ITG.

V. WHAT IF A DISCLOSURE APPEARS?

If a buyer or seller answers “yes” to any of the questions:

1. The buyer/seller will need to provide further detail in the field provided.
2. The examining attorney will review the disclosures to determine if any additional title clearing measures are required prior to closing.
3. The attorney will also instruct the field issuer to add any new matters disclosed as exceptions to Schedule B of the commitment. Often, the examining attorney is also the field issuer.
4. The examining attorney must confirm that any disclosed matters are cleared prior to closing.
5. If a disclosed matter is not cleared at or prior to closing, the matter must appear as an exception to the final certificate. **NOTE: Most lenders’ closing instructions require confirmation of first lien priority and explicitly prohibit outstanding matters to remain as exceptions on the final certificate.**

VI. FAILURE TO OBTAIN SIGNED CMAS

ITG requires completed, signed and notarized CMAs prior to the issuance of a certificate. ITG Commitment Requirement 5(a) requires a signed and notarized CMA from each buyer and seller of the Land. If the closer fails to satisfy this requirement, ITG has no obligation to provide title coverage.

If ITG cannot provide title coverage, the buyer will likely be unable to obtain financing.

In extremely rare circumstances, ITG may agree to provide coverage without a CMA, provided however, the certificate will be issued with ALL standard exceptions included:

1. Any right or claim of a party in possession not shown by Public Records.
2. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any easement or claim of easement not shown by Public Records.
4. Any lien or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by Public Records.
5. Any taxes or special assessments not shown as existing liens by the Public Records.

NOTE: Most lenders require that the standard exceptions be removed from the final certificate. The addition of the standard exceptions to the final certificate is typically unacceptable or deemed a violation of the lender’s closing instructions.

VII. LENDER COVERAGE

Most lenders require: (1) survey and (2) comprehensive coverage. Comprehensive coverage protects the lender's interest against a variety of matters, including but not limited to, loss or damage by reason of:

1. Violations of any covenants, conditions or restrictions which result in loss or impairment of the title or mortgage lien;

Example: Seller violates a covenant, but the HOA is not yet aware of the violation. Post-closing, the HOA files a lien for \$10,000.

2. Damage to existing improvements that locate or encroach upon an easement (damage resulting from right to use the easement for the purpose the easement was granted).

Example: Seller builds a \$20,000 landscaping improvement over an easement. The City tears up the improvement to use its easement.

If the lender coverage amount is \$750,000 or less, ITG permits lenders to obtain survey, easement, encroachment, and comprehensive coverage without a survey provided that the buyers and sellers complete and sign CMAs.

VIII. OWNER/SELLER DISCLOSURES

The titleholder(s) must thoroughly read and accurately complete each line of the CMA, disclosing the following:

1. Any labor, materials, equipment furnished in the last 90 days;
2. Public improvements that cause a special property tax assessment after the date of closing (e.g. sidewalks, curbs, streets, sewer, lawn care, delinquent water bills);
3. Unrecorded contracts, mortgages, options, covenants, conditions, restrictions, leases easements or other agreements or interests (e.g. shared driveways, access easements);
4. Any improvements encroaching into setback lines, easements or beyond the boundary lines;
5. Any neighboring improvements, including but not limited to buildings, fences, walkways, driveways, eaves and drains encroaching onto the property;
6. Neighboring property owners disputing location of the boundary lines;
7. Violations of covenants, conditions and restrictions, including but not limited to, delinquent dues or unpaid special assessments;
8. Persons in actual possession or claiming a right to possession;
9. Mortgages, lines of credit, bridge loans obtained in the last 90 days;
10. Judgments, liens, claims or pending lawsuits against titleholder(s);
11. Bankruptcy proceedings involving titleholders; and
12. Marital status.

IX. BUYER DISCLOSURES

The buyer(s) must thoroughly read and accurately complete each line of the CMA, disclosing the following:

1. Mortgages, lines of credit, bridge loans obtained in the last 90 days;
2. Judgments, liens, claims or pending lawsuits;
3. Pending bankruptcy; and
4. Marital status.