

## CLOSING PROTECTION LETTER (“CPL”) MANUAL

### What is a CPL?

A closing protection letter (“CPL”) is contract between Iowa Title Guaranty (“ITG”) and the guaranteed lender. Pursuant to the terms of the CPL, ITG agrees to indemnify the lender or prospective buyers for actual losses caused by certain types of closing agent misconduct, including the CPL closer’s failure to abide by the lender’s written closing instructions or fraud, theft, dishonesty or misappropriation by the CPL closer.<sup>1</sup>

Subject to specific exceptions and exclusions, the CPL covers loss solely caused by:

(a) *a failure of the ITG Closer to comply with Your writ ten closing instructions that relate to:*

(i) (A) *the disbursement of Funds necessary to establish the status of the Title to the Land; or*

(B) *the validity, enforceability, or priority of the lien of the Guaranteed Mortgage; or*

(ii) *obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land; or*

(b) *fraud, theft, dishonesty, or misappropriation by the ITG Closer in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land.*

A CPL must be issued in conjunction with an associated ITG commitment for lender or owner coverage. ITG does not permit the issuance of a standalone CPL.

### How much does a CPL cost?

The cost for the CPL is included in ITG’s flat rate premium.

### General CPL Rules

A CPL can only be issued if associated with an issued commitment.

A CPL’s effective date is the effective date of the commitment.

A CPL is valid for 1 year from effective date of the letter, meaning that closing must occur within one (1) year of the CPL effective date.

A Gap Coverage Rider is included with the CPL.

A CPL cannot be issued more than six (6) months after the commitment abstract certification date.

Only one CPL may be issued with a commitment.

A CPL cannot be issued post-closing.

A CPL cannot be amended post-closing.

A CPL cannot be issued if a certificate has been issued.

A CPL cannot be added to a certificate.

<sup>1</sup> The Iowa Administrative Code 265-9.1 defines a “closing protection letter” as ITG’s written agreement to indemnify a lender or borrower or both for loss caused by a participating closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

A CPL can be removed any time prior to closing but cannot be removed post-closing unless the CPL closer has obtained written consent from the lender.

All CPL claims must be made within one (1) year of the transmittal of funds.

## Who can issue a CPL?

**Participating Closers.** Only participating closers may issue a CPL.<sup>2</sup> A “*participating closer*” means any of the following authorized by ITG to provide CPL services subject to the terms and conditions of ITG’s participation agreement:

1. an Iowa licensed **attorney** disbursing funds through an interest on lawyer trust account,
2. a **closing agent** licensed by the Iowa Division of Banking (commonly referred to as “*independent closers*”), or
3. a **real estate broker** licensed by the Iowa Real Estate Commission disbursing funds through a real estate trust account.<sup>3</sup>

For purposes of this document, a participating closer shall also be referred to as a “CPL closer.”

**ITG Commercial.** ITG Commercial may issue a CPL when ITG Commercial is acting as settlement agent for a commercial transaction.

CPLs are NOT issued by the following:

1. **ITG Residential.** ITG Residential acts solely as the underwriter. ITG Residential does not conduct closings or issue CPLs. All residential closings must be performed by an ITG participating closer. The CPL must be issued by the participating closer that will conduct closing. ITG can “add” a CPL to a division-issued commitment on behalf of the participating closer, but the closer as defined on the CPL will reflect the name of the participating closer, not ITG. For reference, “division-issued” means a commitment or certificate issued in-house by ITG. “Field-issued” means a commitment or certificate issued by an ITG participant. It is important to note that in Iowa, the CPL closer is often different than commitment/certificate issuer.
2. **Lenders.** The nature of the CPL provides coverage to the guaranteed lender for loss caused by closing errors. Therefore, lenders may not issue CPLs due to the conflict of interest.

## Eligibility Considerations

Due to the increased risk associated with the CPL, ITG performs a careful and thorough vetting process to approve only those participants that have demonstrated significant Iowa closing and title clearing experience, a thorough understanding of lender closing instructions and CPL obligations, and a reputation for fulfilling their fiduciary duties.

**General Eligibility.** In determining whether to approve or deny a participant application, ITG may consider the following:<sup>4</sup>

- 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.

<sup>2</sup> 265 IAC 9.7(4).

<sup>3</sup> 265 IAC 9.1.

<sup>4</sup> 265 IAC 9.6(3).

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- 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 ITG.
- h. Other factors as determined by ITG.

**CPL Service Eligibility.** In determining whether an applicant qualifies to issue CPLs, ITG also considers several factors including, but not limited to, the following:

- a. Number of years conducting Iowa closings
- b. Experience in Iowa closing and title clearing
- c. Number of Iowa closings conducted
- d. Average annual volume of Iowa closings
- e. Pre-closing search practices
- f. Adherence to ALTA Title Insurance and Settlement Best Practices
- g. Compliance disclosures, including but not limited to, criminal, regulatory, civil, licensing, financial, claims, offshore activities, and escrow account management
- h. Escrow account management policies and procedures

**Escrow Account Management.** ITG requires that CPL closers abide by escrow accounting best practices and procedures, including but not limited to the following:

- a. Separate Escrow Account. The CPL closer must maintain a separate escrow account and operating account and prohibit commingling of the two. Best practices advise that the CPL closer should maintain a separate trust account limited only to real estate transactions and closing related activities.
- b. Three Way Reconciliations. Perform three-way reconciliations of all trust or escrow accounts into which CPL funds are deposited. Perform three-way reconciliations of the bank statement, book balance and trial balances on a monthly or more frequent basis.<sup>5</sup>
- c. Background Checks. CPL closers shall perform background and credit checks on employees responsible for handling escrow funds and escrow accounting.<sup>6</sup>
- d. Designated, Trained Staff. CPL closers shall exercise diligence in hiring practices.<sup>7</sup> Limit the number of employees who have access to the escrow account. Only those employees who are appropriately trained and have obtained proper authorization should conduct closings and handle disbursements.<sup>8</sup>
- e. Checks and Balances. CPL closers shall maintain separation of duties to ensure reconciliations are performed by someone other than the individual(s) that authorize disbursements. If the CPL closer is not a participating attorney and the closer's office has less than two employees, the CPL closer must engage an independent CPA firm to perform reconciliations.
- f. Written Policies and Procedures. CPL closers shall maintain written procedures and controls for

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<sup>5</sup> 187 IAC 18.21(3); 193E IAC 13.1(6); ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

<sup>6</sup> 187 IAC 18.23(1); Paragraph 5(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement; ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

<sup>7</sup> 187 IAC 18.23(1); ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

<sup>8</sup> ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

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escrow trust accounts<sup>9</sup>, including but not limited to, procedures for the following:

- a. Significant items procedures, including but not limited to, outstanding mortgage payoffs over 10 day old, deposits in transit over 3 days old and/or transaction shortages<sup>10</sup>;
- b. Outgoing wire transfer procedures including independent verification of instructions from initial communication<sup>11</sup>;
- c. Wire fraud response procedures.<sup>12</sup>

**Professional Liability Insurance (Errors and Omissions) Minimums:** ITG requires all participants maintain professional liability insurance with minimum coverage of \$750,000 per occurrence and \$1,000,000 in the aggregate.

## Minimum Requirements by Closer Type

ITG participating closers must maintain compliance with certain minimum requirements based on the specific closer type.

**Attorney Closers.** An attorney closer must comply with the following:

1. Remain an Iowa licensed attorney in good standing with the Iowa Supreme Court.
2. Remain actively engaged in closings while providing closing services covered by an ITG CPL.
3. Maintain a separate escrow account limited only to real estate transactions and closing-related activities that is distinct from any operating accounts and any IOLTA/fiduciary accounts in which non-real estate related client funds are deposited.
4. Reconcile such separate and distinct escrow account on a monthly or more frequent basis in accordance with Iowa Rule of Professional Conduct 32:1.15 and Iowa Court Rule 45.2(3)(a)(9) and provide such reconciliations to ITG upon request.

**Independent Closers.** An independent closer must comply with the following:

1. Remain a licensed closing agent in good standing with the State of Iowa and Iowa Division of Banking.
2. Remain actively engaged in closings while providing closing services covered by an ITG CPL.
3. Maintain a separate escrow account limited only to real estate transactions and closing-related activities that is distinct from any operating accounts and any fiduciary accounts in which non-real estate related client funds are deposited.
4. Reconcile such separate and distinct escrow account on a monthly or more frequent basis in accordance with Iowa Administrative Code rule 187—18.21(3) and provide such reconciliations to ITG upon request.
5. Provide a duly-executed **Irrevocable Letter of Direction to Financial Institution** addressed to each financial institution where participant maintains an escrow account, which authorizes the financial institution to release information to Iowa Title Guaranty regarding the account.

**Real Estate Broker Closers.** A real estate broker closer must comply with the following:

1. Remain a real estate broker licensed by the Iowa Real Estate Commission in good standing.
2. Remain actively engaged in closings while providing closing services covered by an ITG CPL.

<sup>9</sup> ALTA Best Practices Framework: Assessment Procedures Version 3.0, Assessment Procedure 2.03

<sup>10</sup> ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

<sup>11</sup> ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

<sup>12</sup> ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices Version 3.0, Best Practice No. 2.

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3. Maintain a separate escrow account limited only to real estate transactions and closing-related activities that is distinct from any operating accounts and any IOLTA/fiduciary accounts in which non-real estate related client funds are deposited.
4. Reconcile such separate and distinct escrow account on a monthly or more frequent basis in accordance with Iowa Administrative Code rule 193E—13.1(6) and provide such reconciliations to ITG upon request.
5. Provide a duly-executed **Irrevocable Letter of Direction to Financial Institution** addressed to each financial institution where participant maintains an escrow account, which authorizes the financial institution to release information to Iowa Title Guaranty regarding the account.

## Where do I apply to become a participating ITG closer?

Existing ITG participants seeking to add CPL services should add the service through the participant's existing login.

If applicant is not an existing ITG participant, applicant must create a login and submit an application at the following link: <http://iowaaziis01/CAP/Participants/ParticipantInitialApp.aspx>. Applicants should be prepared to upload applicable licensing information, a copy of applicant's professional liability insurance policy compliant with ITG minimums, as well as three professional reference letters (two from mortgage lenders and one from an ITG field issuing attorney).

## General Compliance Requirements

The Iowa Administrative Code and the ITG Participation Agreement require the participant comply and take all reasonable measures to ensure that all of the participant's employees, agents, independent contractors and third-party service providers comply with the following<sup>13</sup>:

1. **ALTA Best Practices.** Participating closers acknowledge American Land Title Association ("ALTA") Best Practices as minimum standards defined for title and settlement service providers.<sup>14</sup> Participants agree to adopt and adhere to the ALTA Best Practices or equivalent practices with regard to any services performed under the ITG Participation Agreement.<sup>15</sup>
2. **Federal Laws and Regulations.** Participating closers agree to comply with all applicable federal laws and regulations, as amended from time to time, including but not limited to:
  - a. Dodd-Frank Act
  - b. Gramm-Leach-Bliley Act
  - c. Truth in Lending Act (TILA)
  - d. Real Estate Settlement Procedures Act (RESPA)
  - e. Regulations promulgated by the Consumer Financial Protection Bureau (CFPB)<sup>16</sup>
3. **State and Local Laws, Regulations and Standards.** Participating closers agree to comply with all state and local laws, regulations, and standards, as amended from time to time, including but not limited to:
  - a. ISBA Iowa Land Title Standards

<sup>13</sup> Paragraph (1)(a)(i), Iowa Title Guaranty Participation Agreement.

<sup>14</sup> Paragraph (1)(a)(iii), Iowa Title Guaranty Participation Agreement.

<sup>15</sup> Paragraph (1)(a)(iii), Iowa Title Guaranty Participation Agreement.

<sup>16</sup> 265 IAC 9.6(13); Paragraph (1)(a)(i), Iowa Title Guaranty Participation Agreement.

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- b. ILTA Abstracting Standards (“Blue Book”)
4. **ITG Guidelines, Directives and Rules.** Participating closers agree to comply with all ITG guidelines, directives and rules, as amended from time to time<sup>17</sup>, including but not limited to:
  - a. ITG Participation Agreement
  - b. Abstracting & Title Search Requirements
  - c. Composite Mortgage Affidavit Manual
  - d. Form 900/901 Manual
  - e. Minimum Abstract Standards
  - f. Mixed-Use Property Policy
  - g. MNL Search Guidelines
  - h. Rapid Certificate Manual
  - i. Residential Endorsements Manual
5. **Lender Closing Instructions.** Participating closers agree to strictly adhere to all lender closing instructions.<sup>18</sup>

## Overview of the CPL Closer Obligations

**Summary.** By issuing a CPL, the participating closer agrees to assume responsibility and liability for all closing obligations. The vast number of applicable Iowa laws, rules and regulations and the complex nature of closing and settlement render it impossible to provide a comprehensive description of all closing process procedures and title clearing requirements. This CPL Manual may be used as a resource but shall not constitute an exhaustive list of a participating closer’s obligations. Closers must consult with the participating title attorney to determine the validity and sufficiency of title clearing processes and procedures. Non-attorney closers must obtain written approval of all title clearing documents prior to closing.

**Conflict of Interest.** The participating closer cannot perform CPL services for a transaction in which the participating closer, or a related party of the participating closer, has a personal or financial interest in the real estate.<sup>19</sup> ITG may, after full written disclosure by the participating closer, consent to allow the participating closer to perform closing services on any such transaction.<sup>20</sup> Any such consent must be express and in writing.<sup>21</sup> In addition to any remedy available to ITG pursuant to the terms of the ITG Participation Agreement, the participating closer shall be strictly liable to ITG for any and all losses, costs and fees suffered by ITG, including attorney’s fees, resulting from a participating closer’s conflict of interest.<sup>22</sup>

**Delegation of Duties Prohibited.** The participating closer shall not delegate to a third-party any portion of the closing process without the prior written consent of ITG.<sup>23</sup> The participating closer shall not use a third-party to perform any services covered by the CPL when such third-party is owned in whole or in part by a proposed guaranteed or a subsidiary of a proposed guaranteed.<sup>24</sup> Notwithstanding ITG consent, the participating closer shall remain responsible for the performance of the delegated services and liable for

<sup>17</sup> 265 IAC 9.6(13); Paragraph (1)(a)(i)(2), Iowa Title Guaranty Participation Agreement.

<sup>18</sup> Paragraph (1)(a)(i)(3), Iowa Title Guaranty Participation Agreement.

<sup>19</sup> Paragraph 2(a), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Paragraph 2(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>23</sup> Paragraph (1)(a)(vii), Iowa Title Guaranty Participation Agreement.

<sup>24</sup> Paragraph 2(c), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

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any damages arising therefrom.<sup>25</sup> For example, if the CPL closer engages a third party notary to obtain signatures and acknowledge the closing documents, the CPL closer is responsible for the accuracy and validity of the documents just as if the CPL closer obtained signatures and acknowledged the documents. The CPL closer has an obligation to review all closing documentation to ensure accuracy and completeness prior to funding and filing.

Training Obligations. ITG may require a closer and the closer's staff, as a condition of ITG participation, to participate in training sessions or continuing education seminars as deemed necessary by ITG in order to ensure compliance with ITG requirements and procedures.<sup>26</sup> CPL closers agree to attend training, conferences and continuing education as necessary to comply with ALTA Best Practices and as otherwise deemed necessary by ITG.<sup>27</sup> Although ITG may offer or require training to CPL closer and closer's staff, the CPL closer acknowledges that the CPL closer is solely responsible for the training and supervision of the closer's staff.<sup>28</sup>

Audit. Participating closers acknowledge that ITG may audit the participant at any time, with or without notice, to verify compliance with CPL obligations.<sup>29</sup> ITG may examine all documentation and files of the participating closer related to CPL services, including financial records, procedures related to closing and settlement services, and information which may be stored or access in an electronic database.<sup>30</sup> ITG may perform audits by mail, electronic mail or in person.<sup>31</sup> Participating closers agree to fully cooperate with ITG in the performance of quality assurance reviews, audits and other examinations of the closer's files, records and activities.<sup>32</sup> ITG's right to audit the CPL closer and examine files survives termination of the ITG Participation Agreement.<sup>33</sup>

Closing Phases. The subsequent sections will provide a description of the primary obligations imposed upon the CPL closer during each phase of the closing process, provided, however, that the obligations described herein are not exhaustive:

1. Pre-Closing Obligations
2. Closing Obligations
3. Post-Closing Obligations

## Pre-Closing Obligations

To issue a CPL for an ITG transaction, ITG requires the participating closer to serve as the settlement agent and perform all closing services covered under a CPL, including but not limited to, the obligations enumerated below.

### 1. Obtain a Fully Executed Purchase Agreement

- a. The first step as a CPL closer is to obtain a fully executed copy of the purchase agreement. The CPL closer must review the purchase agreement in thorough detail to determine the terms of the agreement such as closing date and financing terms, as well as the parties responsible for payment of closing and other fees associated with the transaction, including but not limited to, commissions, abstracting fees, home warranty fees, transfer tax, property tax proration,

<sup>25</sup> Paragraph (1)(a)(vii), Iowa Title Guaranty Participation Agreement.

<sup>26</sup> 265 IAC 9.6(12).

<sup>27</sup> Paragraph (1)(a)(iv), Iowa Title Guaranty Participation Agreement.

<sup>28</sup> Paragraph (1)(a)(iv), Iowa Title Guaranty Participation Agreement.

<sup>29</sup> Paragraph 6(a), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>30</sup> Paragraph 6(b), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>31</sup> Paragraph 6(c), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>32</sup> Paragraph 6(d), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>33</sup> Paragraph 6(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

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special assessments, attorney fees, closing fees, loan origination fees, etc.

## 2. Order the Preliminary Title Search.

- a. Summary. The second step as a closer is to place an order for the preliminary title search with an ITG participating abstractor or confirm that the proper order has already been placed by another transaction party. Even if an order has already been placed, the closer should confirm that the order included the proper instructions, such as buyer search requirements. Be sure to include the contact information of the ITG participating attorney in the delivery instructions. The preliminary abstract or Form 900 is the initial search product that is examined by the title attorney to render the preliminary title opinion and/or title commitment.
- b. Determining the Appropriate Search Type. In Iowa, the status of title is determined by abstract examination. Iowa Code § 16.91(6) provides that prior to the issuance of a title guaranty (“certificate”), an abstract of title must be brought up-to-date and certified by a participating abstractor in a form approved by ITG. Before placing an order for a preliminary title search, the closer must determine the appropriate search type. ITG recognizes two types of preliminary search products:
  - i. *Preliminary Abstract*. An “abstract” means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by ITG.<sup>34</sup> **See Minimum Abstract Standards Effective January 1, 2021**. A preliminary abstract continuation is required for all purchase transactions and those refinance transactions that do not qualify for the use of the Form 900.
  - ii. *Form 900*. For nonpurchase transactions, “abstract” may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by ITG.<sup>35</sup> ITG’s short-form preliminary abstract is known as the “Form 900”. The use of the Form 900 is only permitted in certain lower-risk refinance transactions because the Form 900 is not as comprehensive as a preliminary abstract continuation. The Form 900 will give a basic “snapshot” of the current title. However, the Form 900 will not reveal certain types of title issues that would be disclosed by an abstract continuation. The Form 900 will not disclose specific plats, declarations, easements, restrictions, covenants, affidavits or other instruments impacting title nor will the Form 900 alert the examining attorney to spelling errors, missing instruments, improper parties or other discrepancies that may appear in the chain of title. Due to the limited nature of the Form 900, transactions involving complex title matters are not eligible for the use of the Form 900. **Please refer to Form 900/901 Manual Updated June 2020 for eligibility requirements and disqualification criteria. Please be advised that if a transaction does not meet the eligibility criteria for the Form 900/901, full abstracting is required.**

## 3. Review Title Commitment

- a. Forward Commitment. Upon receipt of the title commitment from the field issuer, in a purchase transaction, the CPL closer must forward a copy to the seller’s attorney and buyer’s attorney.

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<sup>34</sup> 265 IAC 9.1(16). Iowa Code § 16.91(5)(a)(2) requires each ITG participating abstractor own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the Iowa title guaranty program. However, a participating attorney providing abstract services continuously from November 12, 1986, to the date of application, either personally or through persons under the attorney’s supervision and control is exempt from the requirements of this subparagraph.

<sup>35</sup> 265 IAC 9.1(16).



- The seller's attorney will begin preparation of the transfer and title clearing documents based on the information provided in the title commitment.
- b. Requirements Roadmap (Schedule B, Part I). The CPL closer must thoroughly review Schedule B, Part I of the title commitment to determine all record and non-record requirements which must be satisfied at or prior to closing. Schedule B, Part I will serve as a road map for closing. Upon obtaining all required documentation and reviewing for accuracy, validity, and completeness, the CPL closer may proceed with closing.
  - c. Exceptions Review (Schedule B, Part II). The CPL closer must thoroughly review Schedule B, Part II of the title commitment to determine if there are any exceptions that must be cleared prior to closing to ensure that the guaranteed mortgage will be in first lien position. While the field issuer will likely already have provided a corresponding requirement in Schedule B, Part I, the CPL closer must review the exceptions to confirm that the preparer of the commitment included the appropriate title clearance requirement(s) in compliance with the lender's closing instructions.
  - d. Endorsement Requirements. The CPL closer is responsible for reviewing the closing instructions to determine which, if any, endorsements are requested by the lender. The CPL closer must review the Notes and Information section of the commitment to confirm that all endorsements which have been requested by the lender and/or owner have been added to the commitment, if applicable (certain endorsements may only be added at the certificate phase). If a requested endorsement is missing, the CPL closer must request that the field issuer amend the commitment to add the endorsement. The CPL closer may not proceed with closing unless and until the CPL closer has consulted the ITG Residential Endorsements Manual and confirmed compliance with all requirements for each endorsement requested. The CPL closer must obtain all required endorsement documentation prior to closing. For example, if a lender requests a PUD Endorsement, ITG requires an affidavit executed by the duly authorized individual on behalf of the association certifying there are no unpaid dues, liens or assessments with respect to the Land through and including the filing date of the deed and guaranteed mortgage. **See Residential Endorsements Manual Revised June 2020 for detailed information on endorsement requirements.**

#### 4. Review the Vesting Deed (if applicable).

- a. Summary. The CPL closer must obtain a copy of the vesting deed prior to closing to review for accuracy and to determine the appropriate recording fee to collect on the settlement statement.
- b. Legal Description. The closer must verify that the legal description on the deed matches the legal description appearing on Schedule A of the title commitment. There may be no changes made to the legal description on the title commitment or the deed without first consulting with the title opinion attorney. In the event of a legal description revision, the title opinion attorney would need to confirm that the proper searches were performed and update their title opinion to confirm vesting and the status of title.
- c. Titleholders. The closer must verify that the titleholders on the deed (grantors) match the titleholders' names as they appear on the title commitment. While the deed may reflect aliases in the form of "also known as" or "formerly known as" phrases, there may be no other changes made to the names of the titleholders on the title commitment or the deed without first consulting with the examining attorney. The closer must confirm that the abstractor's search included a search of all name variations. If vesting will change prior to closing due to a quit claim deed, decree or otherwise, the requirements section in Schedule B, Part I of the commitment must reflect the proper conveyance requirement and require the inclusion of the grantor's marital status and signature of spouse, if any. If the commitment does not include the requirement related to the vesting change, the CPL closer must instruct the field issuer to

- amend the commitment to include the proper requirement.
- d. Marital Status Recitation. The closer must confirm that the deed includes a recitation of the grantor(s)' marital status, even if the individual is single. Inclusion of a marital status recitation on all conveyance documents is required by Schedule B, Part I of the commitment, Iowa Code § 561.13, and Iowa Land Title Standard 5.3. The recitation must properly evidence to whom the titleholder(s) are married. For example, "John Doe and Jane Doe, husband and wife" or "John Doe and Jane Doe, a married couple" are satisfactory recitations, while "John Doe and Jane Doe, both married" is unsatisfactory because the examiner is unable to determine if John and Jane are married to each other. There should be no confusion in the granting clause as to whom each of the grantors are married.
  - e. Spouse Signature. The closer must confirm that all titleholders, and spouses, if any, join in the execution of conveyance documents, including but not limited to, deeds and mortgages, as required by Schedule B, Part I of the commitment, Iowa Code § 561.13, and Iowa Land Title Standard 5.3.
  - f. Title Change in a Refinance. If vesting will change prior to closing in a refinance, the participating abstractor must perform a name search on the proposed titleholder(s) and any claims or judgments against the proposed titleholder(s) revealed by the search that will become liens on the Land must be satisfied and released. If the CPL closer learns that vesting will change prior to or at closing, the CPL closer must instruct the field issuer to update the commitment requirements to include the proper conveyance instrument and title searches. Closing cannot proceed until complete.

## 5. Review Title Clearing Documents

- a. The CPL closer must obtain a copy of all title clearing documents prior to closing to obtain approval from the title opinion attorney and to determine the appropriate recording fee to collect on the settlement statement.
- b. Iowa's title clearing and closing procedures are unique from those in title insurance states. The guaranty system requires that matters be resolved formally and of record. Iowa's title clearing constitutes the practice of law and may only be completed by real estate attorneys licensed in Iowa.
- c. All title objections must be cleared in accordance with ITG manuals and any other written instructions given by ITG prior to the issuance of a certificate.<sup>36</sup> ITG provides policy manuals related to ITG programs but in large part, ITG relies on the ITG participating attorney and the title opinion as to appropriate title clearing measures. Notwithstanding the foregoing, the title attorney's opinion and requirements must comply with Iowa law and Iowa Land Title Standards. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by ITG manuals or instructions, shall be approved by ITG in writing.<sup>37</sup>
- d. CPL closers are prohibited from removing items based upon likelihood or on a procedural risk basis. Prior to closing, CPL closers must obtain written approval from the participating title opinion attorney confirming that the conveyance and title-clearing documents properly satisfy the commitment requirements.
- e. Objections and exceptions may NOT be removed from the title commitment unless and until the matter has been satisfied of record. Typically, title clearing documents are filed with the closing documents, so exceptions are not removed from title until post-closing.
- f. Common objections. While it is impossible to provide clearance requirements for every possible

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<sup>36</sup> 265 IAC 9.6(9).

<sup>37</sup> 265 IAC 9.6(9).

objection, ITG has provided guidance on three (3) common objections below because the required resolution(s) vary significantly from those resolutions acceptable in title insurance states.

- i. **Judgments.** Judgments in Iowa remain liens against real estate for 10 years from the date of judgment.<sup>38</sup> Judgments must be resolved as follows:

1. *Payment and Satisfaction.*

- a. Unpaid judgments must be paid and released and satisfied of record.
- b. Paid Prior to Closing. If the judgment is paid by the titleholder prior to closing, confirm that the release is filed and the Clerk of Court record and computer system shows the judgment as satisfied prior to closing. Court costs and interest must also show as paid in full.
- c. Paid at Closing. If the judgment will be paid at closing, the closer must obtain a written payoff demand from the plaintiff or plaintiff's attorney which accurately references the judgment case number, payoff amount with good through date, including per diem as applicable, payment delivery or wire instructions, and statement that upon receipt of full payment, plaintiff will file a release and satisfaction with the Clerk or Court within 30 days pursuant to Iowa Code § 624.37. Court costs and interest must also be paid in full. ITG strongly advises that the closer require that the plaintiff sign a release and satisfaction in exchange for the proceeds at the time of disbursement. This will ensure that the plaintiff executes the release and allows the closer to immediately file the release to avoid a delay in title clearing.
- d. Commitment Requirement: "*Release and satisfaction of the judgment described in Special Exception \_\_\_\_\_ from Part II.*"

2. *Third-Party Affidavit ("Identity Affidavit")*

- a. If a judgment appears in the chain of title but the judgment is against a person with a similar name as the titleholder, ITG will permit the use of a Third Party Affidavit to clear the judgment. ITG will defer to the discretion of the examining attorney as to the third party criteria, but common requirements are as follows: (1) the third party may not be related to or a spouse of any titleholders; (2) the third party may not have an interest in the transaction, financial or otherwise; (3) the third party must have known the titleholder prior to the date of the judgment.
- b. Commitment Requirement: "*Regarding the \_\_\_\_\_ (judgment, liens, etc.) described in Special Exception \_\_\_\_ from Part II, an Affidavit of Identity from a neutral third party with knowledge testifying that the individuals referenced in the \_\_\_\_\_ (judgment/lien) are of similar name only to that of the titleholder(s); and that said \_\_\_\_\_ (judgment/lien) does not constitute a lien against the Land as said \_\_\_\_\_ (judgment/lien) relates to individuals of similar name only to that of the titleholder(s).*"

- ii. **Support Payments.** Child support or other forms of support constitute a continuing judgment lien as each month's support payment becomes a new lien against the owing party. As such, the support lien must be current through the filing date of the

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<sup>38</sup> Iowa Code §§ 624.23–24.



guaranteed mortgage. Support judgement liens may be cleared in one of two ways:

1. *Support Affidavit.* Since a support judgment lien reattaches every month that a payment becomes due, the closer must obtain a support affidavit from the party owed the support stating that the party owed has been paid in full through the filing date of the vesting deed and/or guaranteed mortgage. This affidavit must be filed of record with the closing documents. In certain circumstances, the ex-spouse will refuse to execute an affidavit. If the party owed the support refuses to execute an affidavit, the examining attorney may review a certified support payment record from Child Support Recovery to confirm child support is paid through the filing date of the vesting deed and/or guaranteed mortgage. If the examining attorney determines support is paid current, the attorney prepares an affidavit stating that he/she has examined the record and that the lien of child support is paid current through the filing date of the vesting deed and/or guaranteed mortgage. The affidavit must be filed of record with the certified support payment record attached as an exhibit.
    - a. Commitment Requirement: *“Regarding the \_\_\_\_\_ (dissolution/support proceeding) described in Special Exception \_\_\_\_ from Part II, an affidavit from \_\_\_\_\_ (spouse owed and/or Child Support Recovery and/or State of Iowa) stating that \_\_\_\_\_ (spouse owing) is current in all child support, spousal support or other payment owed to him/her, up through and including the filing date of the deed and guaranteed mortgage. Said affidavit must specifically state that \_\_\_\_\_ (spouse owed) releases any and all liens that he/she may have against the Land. Court costs must be paid in full.”*
  2. *Release and Satisfaction.* A child or other support judgment lien remains a valid lien on the property for 10 years from the date of the last installment due. Frequently, child support ends when a child turns 18. In this example, the child support judgment lien would expire 10 years from the date the child turned 18 unless a release and satisfaction is filed. In performing his/her title examination, the examining attorney will review the record to determine if the support judgment remains a lien on the property.
    - a. Commitment Requirement: *“Release and satisfaction of the support judgment described in Special Exception \_\_\_\_\_ from Part II. Said release shall evidence that all amounts due and payable have been paid current through the filing date of the deed and guaranteed mortgage. Court costs must be paid in full.”*
- iii. **Property Settlements.** Property settlement orders are treated as judgment liens remaining valid against the property for 10 years. Property settlement orders can be cleared in one of two ways:
1. *Release and Satisfaction.* If the property settlement has been paid in full, a release and satisfaction must be filed with the Clerk of Court. If the property settlement remains due and owing, the closer may collect for the property settlement on the closing statement and disburse at closing in exchange for a signed release and satisfaction from the party owed which must be filed with the Clerk of Court.
    - a. Commitment Requirement: *“Release and satisfaction of the property settlement described in Special Exception \_\_\_\_\_ from Part II. Court costs must be paid in full.”*



2. *Property Settlement Affidavit.* The closer may obtain a property settlement affidavit from the party owed as follows:
  - a. Commitment Requirement: “Regarding the \_\_\_\_\_ (dissolution/support proceeding) described in Special Exception \_\_\_\_ from Part II, an affidavit from \_\_\_\_\_ (spouse owed) stating that he/she has received the property settlement payment in full and specifically stating that \_\_\_\_\_ (spouse owed) releases any and all liens that he/she may have against the Land. Court costs must be paid in full.”

## 6. Prohibit Title Insurance Forms

- a. ITG prohibits a closer, field issuer, or other party from inserting ITG’s name onto any form that has not been formally approved by ITG in writing. Closers, field issuers, and attorneys may not use forms purporting to be an ITG form or including a statement that the form is given to induce ITG to provide title coverage. Prohibited forms include, but are not limited to:
  - i. *Notice of Availability of Owner Title Insurance.* The Notice of Availability of Owners Title Insurance is not an ITG form and shall not be used in conjunction with ITG transactions. ITG does not provide title insurance. ITG provides a certificate of guaranty. This document inaccurately represents the types of coverage ITG provides to borrowers. ITG requires buyers to sign ITG’s approved Notice of Availability.
  - ii. *Notice of Potential Eligibility for Lower Premium.* The Notice of Potential Eligibility for Lower Premiums is not an ITG form and shall not be used in conjunction with ITG transactions. This form misrepresents ITG’s pricing policies. ITG has flat fee premiums and does not offer the lower pricing product described in this document.
  - iii. *Affidavits.* Title affidavits, self-serving “not-me” affidavits, or other affidavits prepared by a closer, field issuer, attorney or any other party may not purport to be an ITG form or misrepresent that the form is given to induce ITG to provide title coverage.
  - iv. *Tax Indemnity and Hold Harmless Agreement.* The Tax Indemnity and Hold Harmless Agreement makes a variety of false misrepresentations. The form incorrectly states that ITG is the settlement agent. It further states that the settlement agent is unable to obtain proof of payment of taxes. ITG does not allow any CPL closer to close a loan if they are unable to obtain tax payment information. The affidavit makes further statements that are in direct contradiction of ITG’s directives and guidelines.
- b. If ITG coverage in the form of a CPL or certificate is contemplated, the closer has an obligation to ensure that only ITG approved forms are accepted at closing.

## 7. Freeze Notice/Request to Close Line of Credit Mortgages.

- a. ITG requires that borrower(s) execute a letter directing the lender to release the mortgage and close the line of credit pursuant to Iowa Code sections 655.1 and 655.3 upon receipt of payment in full. The closer must send the letter to the lender with the payoff funds, if the closer did not send the letter prior to closing. Please see sample **Payoff Authorization, Freeze Notice and Request to Close and Release** attached. This template combines the initial payoff authorization, freeze notice and request to close and release in one document, which allows the closer to send a single correspondence to the lender prior to closing instead of sending separate correspondence before and after closing. While the freeze notice and request to close line of credit notice are not required for closed-end mortgages, ITG recommends closers implement a uniform policy to send the letter to all lenders as a precautionary measure.

## 8. Maintain Strict Compliance with Lender Closing Instructions.





- a. Closers must maintain strict compliance with all lender closing instructions. Each lender will have a different set of closing instructions and closing instructions often vary depending on the property type and coverage amount.
- b. The closer must ensure that the lender's closing instructions comply with all Iowa laws. Notary instructions must instruct the notary public to obtain signatures of spouses, include the marital status of all signers in the acknowledgement, etc.

## 9. Prepare the Closing Disclosure(s) and/or ALTA Settlement Statement(s)

- a. Summary. The CPL closer has an obligation to prepare all closing disclosures ("CD") and ALTA settlement statements in strict compliance with the purchase agreement, invoices, payoff statement(s), and lender closing instructions.
- b. Invoices. Confirm all invoices are collected on the settlement statement and/or CD.
- c. Payoff Statements. Obtain and strictly abide by written payoff statement instructions and collect for required wire or overnight fees and sufficient per diem.
- d. Settlement Agent. The settlement statement, CD or other closing statement must reflect the CPL closer as the settlement agent. Under no circumstances shall ITG be named as the settlement agent. Misrepresenting ITG as the settlement agent is a violation of TILA-RESPA regulations. CPLs may only be issued for transactions in which the CPL closer is the settlement agent as reflected on the settlement statement, CD or other closing statement.
- e. Settlement Fees. The closer may collect a closing or settlement fee payable to the closer. Under no circumstances may a closer collect a closing or settlement fee and falsely misrepresent ITG as the payee on the settlement statement or CD. ITG is not the settlement agent and does not charge closing fees. ITG's Participation Agreement provides that a participant shall only charge premiums for ITG certificates, endorsements and CPLs in accordance with the rates promulgated by ITG.<sup>39</sup> The participant may not charge any other fee for preparing, issuing, or cancelling an ITG commitment, certificate, endorsement or closing protection letter.<sup>40</sup> The participant may not collect settlement fees by falsely purporting them to be the fees of another entity. This action constitutes fraud in violation of federal TILA-RESPA regulations.
- f. ITG Premiums. ITG premiums must be made payable to ITG pursuant to Paragraphs 3(a) and (b) of the ITG Participation Agreement.
- g. ITG Contact Information. Under no circumstance may the closer or field issuer purport to be an employee of ITG or falsely misrepresent that the closer's phone or email is ITG's contact information. When providing ITG contact information, the closer or field issuer must provide an ITG phone number and email address.

## 10. Obtain a Pre-Closing Search (also known as "Day of Closing Search")

- a. If a CPL is issued, ITG requires that the CPL closer obtain a pre-closing search certification, also known as the "day of closing search" or "gap search" prepared by an ITG participating abstractor, revealing no new record matters, immediately prior to closing and disbursement. The certification date should be as close to the time of closing as possible. For questions as to ITG search requirements, please reference the **Abstract and Title Search Requirements for Residential Transactions** attached.
- b. The deed and mortgage must be recorded immediately after closing but in no instance later than 10 business days following the Pre-Closing Search certification date. The written search must show the same information as required in an abstract continuation.

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<sup>39</sup> Paragraph 3(c), Iowa Title Guaranty Participation Agreement.

<sup>40</sup> *Id.*



- c. If the pre-closing search certification date is more than ten business days prior to recording the deed and/or mortgage, obtain an updated pre-closing search certification.
- d. Confirm no new matters are disclosed on the pre-closing search certification before closing and disbursing funds.
- e. If the pre-closing search reveals a new matter, the closer must consult with the examining attorney to satisfactorily resolve the matter prior to closing. The closer must also instruct the commitment issuer to except any new matters by adding them as exceptions on Schedule B of the commitment. The closer shall not proceed with closing unless and until the matter has been resolved to the examining attorney's satisfaction.

#### **11. Conduct a Mechanic's Notice and Lien Registry ("MNLN") Search**

- a. Iowa has a central mechanic's lien registry maintained by the Secretary of State, called the Mechanic's Notice and Lien Registry ("MNLN"). The closer must search the Mechanic's Notice and Lien Registry ("MNLN") at the time of closing, prior to recording and disbursement of funds.
- b. If the MNLN reveals any of the postings shown in paragraph (c) below, the closer must instruct the commitment issuer to show any postings revealed as exceptions on Schedule B of the commitment.
- c. The closer must consult with the examining attorney as to how to properly clear the posting. Typically, the requirement will be to obtain and post the required documentation as shown below prior to closing:
  - i. *Mechanic's lien*: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNLN; and (b) post a satisfaction of lien to the MNLN.
  - ii. *Commencement of Work*: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNLN; and (b) post withdrawal(s) to the MNLN.
  - iii. *Preliminary Notice*: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNLN; and (b) post withdrawal(s) to the MNLN.
- d. The closer must also secure final lien waivers and/or satisfactions from any contractors, subcontractors, materialmen or suppliers disclosed on the Composite Mortgage Affidavit.

## **Closing Obligations**

### **1. Collect Original Seller Documents**

- a. Collect all original conveyance and title-clearing instruments and review for proper execution and acknowledgement. While copies of the documents should be reviewed in advance of closing, the CPL closer must review the signed original documents upon receipt to confirm validity and completeness as described in subsections 4 and 5 above, as well as subsections 3 through 6 below.
- b. Collect the seller-signed CD and/or ALTA settlement statement. Carefully review the closing instructions to determine if wet ink signatures are required on the CD and/or settlement statement.

### **2. Conduct the Closing Ceremony**

- a. The CPL closer is responsible for conducting the closing and obtaining signatures on all documentation required by the lender, ITG and the purchase agreement.

### 3. Review the Guaranteed Mortgage.

- a. Legal Description. The closer must verify that the legal description on the mortgage matches the legal description appearing on Schedule A of the title commitment as well as the legal description that appears on the vesting deed. There may be no changes made to the legal description on the title commitment or the mortgage without first consulting with the examining attorney. In the event of a legal description revision, the examining attorney would need to confirm that the proper searches were performed and update his/her title opinion to confirm vesting and the status of title.
- b. Marital Status Recitation. The closer must confirm that the guaranteed mortgage includes a recitation of the borrower's marital status, even if the individual is single. Inclusion of a marital status recitation on all conveyance documents including, but not limited to, deeds and mortgages is required by Schedule B, Part I of the commitment, Iowa Code § 561.13, and Iowa Land Title Standard 5.3. The recitation must properly evidence to whom the titleholder(s) are married. For example, "John Doe and Jane Doe, husband and wife" or "John Doe and Jane Doe, a married couple" are satisfactory recitations, while "John Doe and Jane Doe, both married" is unsatisfactory because the examiner is unable to determine if John and Jane are married to each other.
- c. Spouse Signature. The closer must confirm that all titleholders, and spouses, if any, join in the execution of the mortgage, as required by Schedule B, Part I of the commitment, Iowa Code § 561.13, and Iowa Land Title Standard 5.3.
- d. Purchase Money Mortgage. The closer must confirm that the Guaranteed Mortgage meets the definition of a purchase money mortgage as defined by Iowa Code § 654.12B and include a statement on the mortgage that it is a purchase money mortgage. If the Guaranteed Mortgage does not qualify as a purchase money mortgage as defined by Iowa § 654.12B, a participating abstractor must perform personal lien searches against all proposed titleholders, except any and all matters revealed by the personal lien searches by adding them as exceptions with their associated requirements, if any, on Schedule B, and consult with an examining participating attorney to satisfactorily resolve such matters prior to closing.

### 4. Obtain Composite Mortgage Affidavit(s)

- a. The Composite Mortgage Affidavit ("CMA") is ITG's version of a title affidavit and is required to obtain residential ITG coverage. The CMA is automatically generated and attached to all residential ITG commitments.
- b. The CPL closer must obtain fully completed, signed and notarized CMAs from the sellers/current titleholders, and spouses, if any, and buyers/proposed titleholders, and spouses, if any, of the Land. All unrecorded matters such as leases, contracts, easements, lien waivers, etc., must be attached thereto and provided to the examining attorney for review prior to closing. The examining attorney may require disclosed matters be resolved prior to closing. If so, the excepted matter and the corresponding requirement must be added to Schedule B of the commitment prior to closing. Any unresolved matters disclosed on the CMA shall be excepted from coverage by adding them as exceptions in Schedule B, Part I of the final certificate(s). Please be advised, however, that most lender closing instructions do not permit matters to remain as exceptions to title and will require record resolution prior to closing to ensure that the lender's mortgage is in first lien priority. ITG requires that all disclosed matters be resolved of record unless the lender has provided written confirmation that the lender consents to the matter remaining an exception on Schedule B, Part I of the final certificate and understands that the lender's interest in the property is subordinate to said matter.



- c. See **Composite Mortgage Affidavit (Owner/Seller)** and **Composite Mortgage Affidavit (Buyer)**. **NOTE: The use of any other form in lieu of ITG's CMA is strictly prohibited.**
  - d. For commercial transactions, use the **ITG Commercial Owner Title Affidavit** and **ITG Commercial Purchaser Title Affidavit**.
- 5. Obtain Buyer Signed Notice of Availability (Purchases Only).**
- a. For purchase transactions, obtain the Notice of Availability of Iowa Title Guaranty Owner Certificate signed by each buyer electing or declining an owner certificate.
  - b. The Notice of Availability is automatically generated and attached to all commitments in a purchase transaction. ITG encourages that the closer present this document to the buyer(s) prior to closing to allow sufficient opportunity to review and elect coverage. If not obtained prior to closing, the closer must present this document to the buyers for completion and signature at closing.
  - c. **See Notice of Availability. NOTE: The use of any other form in lieu of ITG's Notice of Availability is strictly prohibited.**
- 6. Confirm Proper Execution and Acknowledgement; Validity and Completeness.**
- a. Originals. The CPL closer must examine all closing documents to confirm receipt of the original signed transfer documents, title-clearing documents, and ITG documents such as the CMA and Notice of Availability.
  - b. Execution Date. The closer must carefully review all closing documents, including but not limited to, the deed, mortgage and other instruments of record, to confirm that the documents reflect execution dates. If an execution date is missing, the closer must require that the signor(s) complete the execution date prior to filing.
  - c. Required Signatures. The CPL closer must confirm that all required signatures appear on the documents. For example, the spouses of all titleholders must join in the execution of the deeds and mortgages. If a signature is missing, the CPL closer must obtain the missing signature prior to disbursing funds and filing.
  - d. Acknowledgments. The closer must carefully review the notary blocks and acknowledgements on all instruments that include an acknowledgement block and/or will be filed of record including, but not limited to, deeds, mortgages, affidavits and other title clearing documents to verify that the acknowledgment includes the following: (1) state, (2) county, (3) date of acknowledgement, (4) names of individuals who signed the document, and (5) proper signatory capacity, as applicable (for example, if the document is signed by an entity or trust, the acknowledgment must also state in what capacity the individual signed on behalf of the entity).
- 7. Collect Funds**
- a. The CPL closer is responsible for receiving funds from lender and borrower(s)/buyer(s) and depositing into the participating closer's appropriate trust or escrow account.
- 8. Disburse Funds**
- a. The CPL closer is responsible for disbursing funds pursuant to the settlement statement, including all lien payoffs, from the participating closer's trust or escrow account and maintaining a transaction ledger for each file.
  - b. The CPL closer shall make all loan payoffs immediately upon disbursement, but in no event later than the following day after the closing, or within one day after the rescission period ends in the case of a refinance transaction. Initiating the wire transfer(s) or placing the loan payoff(s) with a delivery service for overnight delivery shall meet the requirements of

this rule.

#### 9. Record Documents

- a. The CPL closer shall record the proper closing documents, including but not limited to, the title clearing documents, vesting deed and guaranteed mortgage, with the appropriate county office immediately after disbursement and pursuant to the lender's closing instructions. Additionally, the CPL closer must confirm that the documents are filed no later than the tenth (10<sup>th</sup>) day following the certification date of the participating abstractor's pre-closing search certification.
- b. If the certification date of the written pre-closing search is more than 10 days prior to the filing date, the CPL closer must obtain an updated written pre-closing search certification from an ITG participating abstractor reflecting no new matters.
- c. The CPL closer must ensure the vesting deed, guaranteed mortgage and all other required title clearing documents are filed with the appropriate county office in the proper order pursuant to the lender's closing instructions to obtain desired lien priority.

#### 10. Maintain Transaction Ledger and Perform Escrow Account Reconciliation.

- a. Transaction Ledger or Disbursement Sheet. The CPL closer shall maintain a transaction ledger or disbursement sheet for every CPL closing file. The ledger or disbursement sheet shall detail all receipts and disbursements with date, transaction type, check number or wire designation, payee, amount, and file's ending balance.
- b. Zero Balance. All ledger or disbursement sheets shall balance zero after the transaction is completed. If any balance remains, the date, the reason for the balance, and to whom the balance belongs shall be clearly documented in the file. The ledger or disbursement sheet must match the settlement statement and supporting invoices.

## POST-CLOSING OBLIGATIONS

### 1. Order the Final Title Search.

- a. Field issuers shall issue and deliver all Iowa Title Guaranty certificates and endorsements to customers within thirty (30) days of the later of (i) the date of settlement, or (ii) the date that the terms and conditions of the title commitment are satisfied. In the event the lender's closing instructions require a shorter timeframe to issue and deliver Iowa Title Guaranty certificates to customers, field issuers shall adhere to the lender's requirements.
- b. CPL closers also have an obligation to ensure certificates are timely issued. If the CPL closer is unable to timely obtain certificates from the field issuer, the CPL closer must contact ITG to report the field issuer's compliance violation. Failure to follow-up on certificates shall constitute a compliance violation of the CPL closer.
- c. It is imperative that, upon completion of closing, the closer promptly order the final title search to enable expedient certificate issuance. If a closer does not alert the abstractor that the transaction has closed, the final title search will not be prepared and certificate issuance will be delayed.
- d. To determine the appropriate type of final abstracting or title search required post-closing, please refer to the **Abstract and Title Search Requirements for Residential Transactions**. While ITG permits the use of the post-closing certification in certain instances, ITG ultimately defers to the discretion of the examining attorney. The examining attorney may require a final abstract continuation.
  - i. Final Abstract Continuation. In a purchase transaction or in a refinance transaction

in which a preliminary abstract continuation was completed prior to closing, the closer must order from a participating abstractor either (1) a final abstract continuation or a (2) post-closing search. If an abstract continuation was not completed prior to closing, the abstract continuation must be completed and examined by an ITG attorney (a post-closing search is not permitted).

- ii. Form 901. In a refinance transaction eligible for the Form 900/901 Program, the closer may order a Form 901 in lieu of a final abstract continuation. Please reference the **Form 900/901 Manual Updated June 2020** for further information.

## 2. Document Retention.

- a. Participating closers shall maintain a closing file for each real estate transaction for which the closing agent performed real estate closing services pursuant to a CPL.
- b. The closing file shall include, at a minimum, the following records:
  - i. Pre-Closing Records
    1. A copy of the signed purchase agreement and/or real estate contract, as applicable.
    2. Copies of title search order forms, including but not limited to, orders for preliminary, pre-closing and final searches.
    3. A copy of the preliminary title opinion, as applicable, and the ITG commitment.
    4. Copies of all invoices and payoffs to be collected and paid at closing.
    5. Copies of freeze notices for open-end mortgages.
    6. A copy of the pre-closing search results.
    7. Evidence of the MNLR search performed on the day of closing.
  - ii. Closing Records
    1. A copy of the closing instructions from the lender and other parties to the transaction.
    2. Payoff documentation, including requests to close line of credit mortgages.
    3. Copies of fully signed settlement statement(s) and/or closing disclosure(s) that total properly and are supported by written instructions for all amounts (such as closing instructions, invoices, or written payoffs). If the settlement requires changes, a copy of the new settlement statement with changes clearly documented shall be maintained in the file.
    4. Copies of all fully executed conveyance and title clearing documents.
    5. Copies of any surveys, plats, easements, or other documents filed with the closing documents.
    6. Original signed and notarized Composite Mortgage Affidavit(s) (Owner/Seller) for residential transactions or Owner Title Affidavit for commercial transactions.
    7. On purchase transactions, the original signed and notarized Composite Mortgage Affidavit (Buyer) and Notice(s) of Availability for residential transactions or Purchaser Title Affidavit for commercial transactions.
    8. A copy of the signed loan package, as applicable.
    9. Detailed records of the individuals present at each closing, including copies of photo identification, and specifying where and when each closing is held.



10. A transaction ledger or disbursement sheet detailing all receipts and disbursements with date, transaction type, check number or wire designation, payee, amount, and file's ending balance.
  11. All transaction ledger or disbursement sheets shall balance zero after the transaction is completed. If any balance remains, the date, the reason for the balance, and to whom the balance belongs shall be clearly documented in the file. The ledger or disbursement sheet must match the settlement statement and supporting invoices.
- iii. Post-Closing Records
1. Evidence that the real estate transaction documents were filed with the proper county recorder in the correct order of priority.
  2. Copy of the final title opinion, as applicable, and ITG certificate(s).
- c. Closers shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to ITG while protecting confidential client information.
- d. Closers shall retain files for a period of ten (10) years after the effective date of the certificate or the effective date of the commitment if a certificate is not issued.
- Closers shall provide a copy of any documents to ITG upon request at no charge no later than seven (7) days following receipt of such notice.