

# MORTGAGE RELEASE CERTIFICATE PROGRAM (“MRCP”) MANUAL

## HISTORY

Iowa Code § 655.1 requires that a mortgagee acknowledge satisfaction of a mortgage by execution, acknowledgement, and recording of a written instrument within thirty days from receipt of payment in full.<sup>1</sup> If the mortgage secures a revolving line of credit, future advances, or other future obligations, the mortgagee is not required to file a satisfaction upon payment in full unless the mortgagor makes a written request to the mortgagee that the mortgage be released and, if such written request is made, the mortgagee must file the release within thirty days after payment in full or such written request is made, whichever occurs later.

Iowa Code § 655.3 imposes penalties if the mortgagee fails to discharge the mortgage within thirty days as required by Iowa Code § 655.1. The code provides that the mortgagee is liable to the mortgagor and the mortgagor’s heirs or assigns for all actual damages caused by such failure and a penalty of \$500 dollars plus reasonable attorney fees.<sup>2</sup> The mortgagor can make a claim for such damages in an action for discharge of the mortgage.<sup>3</sup>

Despite these code provisions, mortgagees fail to promptly file releases, preventing Iowa consumers from selling and refinancing their homes. A similar issue exists when a mortgagee or improper mortgagee files a defective release.

## THE CREATION OF THE MORTGAGE RELEASE CERTIFICATE PROGRAM

In response to the widespread failure by mortgagees to comply with Iowa Code § 655.1, the Iowa Legislature enacted Iowa Code § 16.92 in 1999, establishing the Mortgage Release Certificate Program (“MRCP”). Through the MRCP, the Legislature granted Iowa Title Guaranty (“ITG”) the authority to execute and record a certificate of release, also known as a mortgage release certificate (“MRC”), after making an unsuccessful demand upon the mortgagee to do so.<sup>4</sup> The MRCP is a simple and inexpensive way to obtain a release of a mortgage that has been paid in full but not properly released of record. An MRC executed pursuant to Iowa Code § 16.92 operates as a release or partial release of the mortgage and may be relied upon by any person who owns or subsequently acquires an interest in the property.<sup>5</sup> In certain instances, the MRCP can also remedy missing assignments or missing powers of attorney.

## MAXIMUM PRINCIPAL AMOUNT OF MORTGAGE

The ITG Board may set a maximum principal amount for mortgages that may be released by an MRC.<sup>6</sup> While the current Iowa Administrative Code does not set principal limits, ITG has not yet experienced a need to revise the limits that the prior rules imposed and, therefore, continues to operate pursuant to the following limits:

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<sup>1</sup> Iowa Code § 655.1 (2021).

<sup>2</sup> Iowa Code § 655.3.

<sup>3</sup> *Id.*

<sup>4</sup> Iowa Code § 16.92(2)–(3).

<sup>5</sup> Iowa Code § 16.92(7).

<sup>6</sup> Iowa Code § 16.92(1)(e); Iowa Admin. Code r. 265—9.9(3) (2021).

1. \$20 million for mortgages paid off by ITG staff within an ITG Commercial closing unless prior written approval is obtained from the ITG Director.
2. \$1 million for all other mortgages.

## FEES

ITG may charge a fee for MRCP services.<sup>7</sup> The application fee shall be set by ITG.<sup>8</sup>

The MRCP application fee is \$200. This fee covers the cost of processing and researching the request, mailing the required notice(s), and recording the MRC with the county recorder. If notice by publication is required, applicants are responsible for paying the publication fees directly to the newspaper. Publication fees are not included in ITG's MRCP fee.

If the unreleased mortgage was paid off by an ITG participant using the Rapid Certificate Program, the MRCP fee is waived. See the **Rapid Certificate Program Manual** for additional information.

## APPLICATION

To file a request for an MRC, a lender, a licensed real estate broker, a licensed attorney, a participating abstractor, or licensed closing agent must complete an online application<sup>9</sup> using the following link: <http://iowaaziis01/CAP/Public/MRCApp.aspx>.

ITG may execute and record an MRC if an applicant submits the following documentation:

1. **Payoff Statement.** A written payoff statement or other documentation of the amount due, acceptable to ITG, as evidence that the mortgage does not continue to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.<sup>10</sup> The payoff statement must reflect the following:
  - a. **Unpaid Balance:** The unpaid balance of the loan secured by the mortgage or lien, including principal, interest, and any other charges properly due under or secured by the mortgage or lien (e.g., penalty fees, release fees, per diem), or the amount required to be paid in order to release the mortgage or lien.
  - b. **Payment Address:** The address where payment must be sent or other specific instructions for remitting payment.
  - c. **Property Description:** The legal description, street address, or other property description sufficient to identify the Land that will be released from the mortgage or lien.
  - d. **Good through Date:** The date through which the payoff statement is valid.
  - e. **Statement of Release:** An affirmative statement providing that the Land will be released from the mortgage or lien upon payment in full of the amount described in the payoff statement.

<sup>7</sup> Iowa Code § 16.92(8). The Iowa Administrative Code also provides that an applicant may be required to pay a fee to apply for a mortgage release certificate. Iowa Admin. Code r. 265—9.9(2).

<sup>8</sup> *Id.*

<sup>9</sup> Iowa Code § 16.92(1)(a); Iowa Admin. Code r. 256—9.9(1).

<sup>10</sup> Iowa Code § 16.92(2)(a)(1).

2. **Proof of Payment.** Written evidence that payment was made, including, if available, a statement as to the date the payment was received by the mortgagee or mortgage servicer, with supporting documentation, as evidenced by one or more of the following<sup>11</sup>:
  - a. A bank check, certified check, escrow account check, real estate broker trust account check, attorney trust account check, or wire receipt, that was negotiated by the mortgagee or mortgage servicer. Applicant must provide a copy of both sides of the check.
  - b. Other documentary evidence of payment to the mortgagee or mortgage servicer deemed acceptable to ITG. In certain instances, ITG may consider accepting a combination of other documentation such as a credit report showing zero balance, promissory note marked “paid in full”, purported release of the mortgage, and/or paid in full letter from the servicer.
3. **Line of Credit Closed.** If the mortgage secures a revolving line of credit, future advances, or other future obligations, written documentation evidencing the account has been closed. If the account is not closed, ITG requires documentation signed by the borrowers requesting the closing of their account at the time of payoff.
4. **Payment Date.** Written confirmation that more than thirty (30) days have elapsed since the date the payment was sent.<sup>12</sup>
5. **Missing Release.** Written confirmation that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date of payment.<sup>13</sup>

ITG may reject any application that fails to include the required information shown above or require that the applicant supplement the application with additional information.

## PROCEDURE

Upon receipt of the application, fee, and supporting documentation:

1. **Service of Notice.** Prior to execution and filing of a certificate of release, ITG shall notify the lender or servicer in writing of its intent to execute and record an MRC.<sup>14</sup>
  - a. **Method of Service.** ITG shall serve notice in one of the following ways:
    - i. **Certified Mail:** By certified mail or any commercial delivery service, properly addressed with postage or cost of delivery.<sup>15</sup> Certified mail is the default method of service. Notice sent by certified mail or commercial delivery service without overnight delivery is effective three days after the notice is deposited with the United States Postal Service or commercial delivery service.<sup>16</sup> Notice sent by commercial delivery service overnight delivery is effective the day after notice is deposited with the commercial delivery service.<sup>17</sup>

<sup>11</sup> Iowa Code § 16.92(2)(a)(2).

<sup>12</sup> Iowa Code § 16.92(2)(b)(1).

<sup>13</sup> Iowa Code § 16.92(2)(b)(2).

<sup>14</sup> Iowa Code § 16.92(3)(a).

<sup>15</sup> Iowa Code § 16.92(3)(c)(1).

<sup>16</sup> Iowa Code § 16.92(3)(d)(2).

<sup>17</sup> Iowa Code § 16.92(3)(d)(1).

- ii. **Electronic Mail.** By electronic mail to an address provided by the mortgage servicer, but only if the mortgage servicer agrees to receive notice in this manner. This method is infrequently utilized as applicants rarely have written authorization from a mortgage servicer to send notice to an email address.<sup>18</sup> Notice sent by email is effective on the day the email is transmitted.<sup>19</sup>
  - iii. **Notice by Publication:** By publication in a newspaper of general circulation published in each county where the mortgage is recorded once each week for three consecutive weeks after receiving an affidavit by the applicant that service by certified mail or electronic mail is not possible because the servicer or lender is no longer in business, or after executing due diligence the applicant was unable to locate an address for the mortgage servicer.<sup>20</sup> ITG shall prepare and provide the applicant with a notice for publication. The applicant is responsible for publishing the notice in a newspaper of general circulation in the county where the mortgage was recorded once per week for three consecutive weeks. Upon completion of service by publication, the applicant must provide ITG with an Affidavit of Publication. The applicant is responsible for all publication costs. Notice by publication is effective on the last day of publication.<sup>21</sup>
  - iv. **Other.** By otherwise causing the notice to be received by the mortgage servicer within the time it would have been received if notice had been served by certified mail or commercial delivery service.<sup>22</sup> Notice is effective on the day the notice is received.<sup>23</sup>
- b. **Notice Contents.** The notice shall contain the following:
- i. The mortgage has not been released.<sup>24</sup>
  - ii. ITG's intent to execute and record an MRC after expiration of the thirty-day period following the sending of the notice.<sup>25</sup>
  - iii. Instructions to notify ITG in writing within thirty days of the effective date of the notice of any reason why the MRC should not be executed and recorded.<sup>26</sup>
2. **30-Day Period for Response.** The lender or servicer must provide a written response within 30 days from the effective date of service. If, prior to executing and recording the MRC, ITG receives a written notification setting forth a reason that is satisfactory to ITG as to why the MRC should not be executed, ITG shall not execute and record the MRC.<sup>27</sup>

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<sup>18</sup> Iowa Code § 16.92(3)(c)(2).

<sup>19</sup> Iowa Code § 16.92(3)(d)(3).

<sup>20</sup> Iowa Code § 16.92(3)(c)(3).

<sup>21</sup> Iowa Code § 16.92(3)(d)(4).

<sup>22</sup> Iowa Code § 16.92(3)(c)(4).

<sup>23</sup> Iowa Code § 16.92(3)(d)(5).

<sup>24</sup> Iowa Code § 16.92(3)(a)(1).

<sup>25</sup> Iowa Code § 16.92(3)(a)(2).

<sup>26</sup> Iowa Code § 16.92(3)(b).

<sup>27</sup> Iowa Code § 16.92(3)(e).

3. **Recording.** If ITG does not receive a response within 30 days, ITG shall proceed with recording the MRC in the appropriate county.<sup>28</sup>
4. **Confirmation.** Upon completion of filing, ITG will provide the applicant with a copy of the recorded MRC.

## MRC CONTENTS

An MRC must contain substantially the following information<sup>29</sup>:

1. The name of the mortgagor.
2. The name of the original mortgagee.
3. The date of the mortgage.
4. The date of recording, including the volume and page or other applicable recording information in the real property records of each county where the mortgage is recorded.
5. A statement that the release was prepared in accordance with Iowa Code § 16.92.

## ITG LIABILITY

If ITG, through an act of negligence wrongfully or erroneously records an MRC, ITG is liable to the mortgagee and the mortgage servicer for actual damages sustained due to the recording of the MRC.<sup>30</sup> Upon payment of a claim relating to the recording of an MRC, ITG is subrogated to the rights of the claimant against all persons relating to the claim.<sup>31</sup>

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<sup>28</sup> Iowa Code § 16.92(6).

<sup>29</sup> Iowa Code § 16.92(4).

<sup>30</sup> Iowa Code § 16.92(7)(c).

<sup>31</sup> Iowa Code § 16.92(8).