

# IOWA TITLE GUARANTY PROGRAM OVERVIEW

## Table of Contents

A.	HISTORY OF TITLE INSURANCE IN IOWA .....	3
1.	The Sale of Title Insurance Prohibited in Iowa .....	3
2.	Out-of-State Title Insurance on Iowa Real Estate .....	3
3.	Title Insurance Charges Prohibited on Owner-Occupied 1-2 Family Dwellings .....	4
B.	THE SECONDARY MARKET AND CREATION OF ITG .....	4
C.	ITG IS SELF-SUSTAINING .....	4
D.	ITG'S MISSION.....	5
	Mission Part 1: Offer Guaranties as an Adjunct to the Abstract-Attorney's Title Opinion System.....	5
	Mission Part 2: Low-Cost Mechanism Facilitating Lenders' Participation in the Secondary Market.....	6
	Mission Part 3: Add to the Integrity of Iowa's Land-Title Transfer System.....	7
	Mission Part 4: Supporting Iowa Homebuyers with Down Payment Assistance .....	7
E.	COMMUNITY IMPACT.....	7
F.	ITG DIRECTOR .....	8
G.	ITG BOARD .....	8
H.	ITG PROPERTY TYPES .....	9
1.	Residential Property .....	9
2.	Mixed-Use Property.....	9
3.	Commercial Property.....	9
I.	ITG TRANSACTION TYPES.....	10
1.	Purchase .....	10
2.	Refinance .....	10
J.	ITG COVERAGE PRODUCTS .....	10
1.	Commitments .....	10
2.	Closing Protection Letters (CPL) .....	17
3.	Endorsements.....	18
4.	Certificates.....	18
K.	ITG PRICING .....	22
L.	THE COVERAGE ISSUANCE PROCESS .....	22
M.	ITG SERVICES.....	24
N.	ABSTRACTING SERVICE .....	24

1. Preliminary Abstract Products.....	25
2. Final Abstract Products.....	26
3. Miscellaneous Abstract Products .....	28
O. TITLE OPINION SERVICE .....	28
1. Preliminary Title Opinion (“PTO”) .....	29
2. Final Title Opinion (“FTO”).....	29
P. FIELD ISSUING SERVICE.....	30
1. General Obligations of the Field Issuer. ....	30
2. Forms.....	30
3. Inclusion of ITG Participant Numbers.....	31
4. Field Issuance Limitations.....	31
5. Commitment Issuance Obligations.....	31
6. Certificate Issuance Obligations. ....	40
Q. CLOSING PROTECTION LETTER SERVICE .....	47
R. ITG PARTICIPANT TYPES.....	47
1. Abstractors .....	47
2. Attorneys .....	51
3. Closers .....	52
S. PARTICIPATION APPLICATION .....	52
T. TERMS OF PARTICIPATION .....	53
U. SERVICE REVOCATION, TERMINATION AND ALTERATION .....	56
V. ITG COMMERCIAL SERVICES.....	58
1. Closing and Settlement Services.....	58
2. Construction Draws and Disbursements .....	58

# IOWA TITLE GUARANTY PROGRAM OVERVIEW

As Iowa's exclusive title coverage provider, Iowa Title Guaranty ("ITG") offers lenders and owners low-cost title coverage for Iowa real property. ITG is the only program of its kind in the nation. Iowa's land-title system is a "guaranty system" rather than an "assumption of risk system". ITG guarantees that lenders and owners will receive clear title, rather than insuring over defects and assuming unnecessary liability for claims. ITG operates as an adjunct to Iowa's attorney-abstract system, which requires attorney examination of title in the form of an abstract and record clearance of all title defects prior to closing. Unlike private title insurance companies, ITG does not operate for profit. All revenue in excess of operating expenses is reinvested in the Iowa Finance Authority's ("IFA") housing fund to support Iowa homebuyers with down payment assistance.

## A. HISTORY OF TITLE INSURANCE IN IOWA

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### 1. THE SALE OF TITLE INSURANCE PROHIBITED IN IOWA

Until the 1940s, the Iowa Code<sup>1</sup> did not expressly permit title insurance, but the Iowa Attorney General found that guaranteeing title was within the power bestowed by statute.<sup>2</sup> Therefore, title insurance companies formed in Iowa. In the mid-1940s, Iowa title insurance companies went bankrupt and were unable to honor claims, leaving Iowans with worthless policies. The Iowa Legislature responded in 1947 by amending Iowa Code § 515.48 to bar "title insurance or insurance against loss or damage by reason of defective title, encumbrance, or otherwise," prohibiting the sale of title insurance in Iowa.<sup>3</sup> In 1977, the Iowa Supreme Court upheld the prohibition as constitutional in *Chicago Title Insurance Company v. Huff*.<sup>4</sup> In this case, a foreign company sought to become authorized to sell title insurance in Iowa.<sup>5</sup> The Court held that § 515.48(10) was constitutional and did not violate the due process or equal protection rights of Chicago Title Insurance Company.<sup>6</sup> The Court held that the prohibition of title insurance is necessary to protect citizens from needless consumer costs and invidious industry practices.<sup>7</sup>

### 2. OUT-OF-STATE TITLE INSURANCE ON IOWA REAL ESTATE

Iowa Code § 515.48(10) does not expressly prohibit an Iowa resident from purchasing title insurance from an out-of-state title insurance company. *Chicago Title* did not address the legality of an Iowa resident purchasing title insurance from a foreign company or the validity of a foreign title insurance policy on Iowa real estate. However, in 1954 the Iowa Attorney General read § 515.48(10) broadly and determined that Iowa's public policy does not permit title insurance as evidence of title.<sup>8</sup> The Attorney General concluded that title insurance issued by a foreign title insurer did not constitute evidence of title and could not be used in lieu of an opinion rendered by an Iowa attorney.<sup>9</sup> The Attorney General stated that the Auditor of the State had a duty to "see that the public policy of the state is not violated and therefore he would exceed his power in approving an act by a building and loan association that violates such policy."<sup>10</sup>

The 1954 Attorney General's opinion is consistent with the Iowa Administrative Code regulating state banks and credit unions, which both require one of the following as evidence of title:

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<sup>1</sup> Iowa Code § 1132 (1873), § 1709 (1897) and § 1709 (1913) were later moved and designated as § 515.48.

<sup>2</sup> H.M. Havner, *Thirteenth Biennial Report of the Attorney General for the Biennial Period Ending December 31, 1920* at 146 (1921); Ben J. Gibson, *Fifteenth Biennial Report of the Attorney General for the Biennial Period Ending December 31, 1924* at 220 (1924).

<sup>3</sup> Iowa Code § 515.48(10) (2021).

<sup>4</sup> *Chi. Title Ins. Co. v. Huff*, 256 N.W.2d 17 (Iowa 1977).

<sup>5</sup> *Id.* at 19.

<sup>6</sup> *Id.* at 27-28.

<sup>7</sup> *Id.* at 27-29.

<sup>8</sup> Iowa Att'y Gen. Op., 1954 WL 77901, at \*2 (May 10, 1954).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

- 1) *A written legal opinion by an attorney* admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the mortgage, deed of trust, or similar instrument is a lien on the real estate.
- 2) *Title insurance* written by an insurance *company licensed to do business in the state* in which the real property is located describing any existing liens and insuring the title to the real property and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a lien on the real property.<sup>11</sup>

Since all insurance companies licensed to do business in Iowa are prohibited from issuing title insurance on Iowa real estate pursuant to § 515.48(10) and *Chicago Title*, title insurance does not satisfy the evidence of title requirement for loans secured by Iowa real estate. While the Attorney General has stated that it is not unlawful for lending institutions to purchase title insurance from an out-of-state title insurance company, title insurance does not satisfy certain statutory requirements such as title evidencing and Iowa methods of title abstracting.<sup>12</sup> Since title insurance does not satisfy the requirements of Iowa Administrative Code r. 187—9.2(4) or Iowa Administrative Code r. 189—9.2 for loans secured by Iowa real estate, Iowa banks and Iowa credit unions must also obtain a written title opinion from an Iowa attorney to satisfy the evidence of title requirement.

### **3. TITLE INSURANCE CHARGES PROHIBITED ON OWNER-OCCUPIED 1-2 FAMILY DWELLINGS**

Iowa Code § 535.8 limits the charges that a lender may charge a borrower for loans secured by a single-family or two-family dwelling occupied or to be occupied by the borrower.<sup>13</sup> Iowa Code § 535.8(4)(b) permits charges associated with Iowa real estate transactions, including but not limited to, abstracting, attorney opinions and Iowa Title Guaranty fees.<sup>14</sup> The code expressly omits title insurance premiums from the list of permissible fees that the lender may charge the borrower.

## **B. THE SECONDARY MARKET AND CREATION OF ITG**

The privatization of Fannie Mae in 1968 and the creation of Freddie Mac in 1970 led to increased national lending. As the secondary market emerged in the 1980s, national lenders began to demand additional protection beyond the attorney title opinion. In other states this protection took the form of title insurance policies. In 1985, the Iowa Legislature enacted Iowa Code § 16.2, establishing the Title Guaranty Division of the Iowa Finance Authority (now known as Iowa Title Guaranty (“ITG”)) to offer guaranties of real property titles as an adjunct to the abstract-attorney’s title opinion and to act as a low-cost mechanism to facilitate mortgage lender’s participation in the secondary market.<sup>15</sup> Not only was ITG created to offer title coverage products to meet the demands of national lenders on the secondary market, but ITG was created to serve a public purpose. ITG’s mission will be discussed in greater detail below. Since inception in 1985, Iowa Title Guaranty remains the only entity authorized to sell title coverage in Iowa.

## **C. ITG IS SELF-SUSTAINING**

ITG is self-sustaining and is not funded with taxpayer dollars.<sup>16</sup> ITG must charge premiums sufficient to cover the program’s operating costs, including payment of administrative costs and the maintenance of an adequate reserve against claims.<sup>17</sup> An Iowa Title Guaranty title certificate, closing protection letter, or gap coverage is an obligation

<sup>11</sup> Iowa Admin. Code r. 187—9.2(4) (2021); Iowa Admin. Code r. 189—9.2. Rule 187—9.2(4), regulating state banks, provides that an Iowa Title Guaranty certificate issued by the Iowa Title Guaranty division of the Iowa Finance Authority satisfies the written legal opinion requirement.

<sup>12</sup> Iowa Att’y Gen. Op. 79-12-5, 1979 WL 21137, at \*2 (Dec. 5, 1979).

<sup>13</sup> Iowa Code § 535.8.

<sup>14</sup> Iowa Code § 535.8(4)(b).

<sup>15</sup> Iowa Admin. Code r. 265—9.3; see Iowa Code § 16.2 (2007). Since amended, the language creating the Title Guaranty division is now found in Iowa Code § 16.2A.

<sup>16</sup> Iowa Code § 16.91(2) (2021).

<sup>17</sup> Iowa Code § 16.91(1).

of ITG only.<sup>18</sup> All ITG Claims are payable solely out of the moneys, assets and revenues of the ITG fund and are not an indebtedness or liability of the state.<sup>19</sup> The state is not liable under any title certificate, closing protection letter or gap coverage.<sup>20</sup> While ITG must consult with the insurance division in developing the guaranty contract, ITG is not otherwise subject to the jurisdiction of the insurance division or regulation by the commissioner of insurance. If title insurance became legal in Iowa, it would presumably be regulated by the Iowa Insurance Division, likely requiring additional staffing funded by tax-payer dollars.

## D. ITG'S MISSION

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Iowa Title Guaranty's mission is comprised of four (4) components:

1. Offer **GUARANTIES** of real property titles as an adjunct to the abstract-attorney's title opinion system;
2. Serve as a **LOW-COST MECHANISM** to facilitate mortgage lender's participation in the secondary market;
3. Add to the **INTEGRITY** of Iowa's land-title transfer system; and
4. **SUPPORT IOWA HOMEBUYERS** by transferring all revenue in excess of operating expenses to IFA's housing assistance fund.<sup>21</sup>

### Mission Part 1: Offer Guaranties as an Adjunct to the Abstract-Attorney's Title Opinion System

Historically in Iowa, titles have been secured by attorney title opinions rendered upon examination of an abstract. The General Assembly has declared that the abstract-attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose.<sup>22</sup> Iowa's title clearing and closing procedures are unique from those in title insurance states. The attorney-abstract system requires that matters be resolved formally and of record. Clearing title in Iowa constitutes the practice of law and may only be completed by attorneys licensed in Iowa. Closers and field issuers (also known as "title agents" in title insurance states) are prohibited from waiving title objections based upon likelihood or on a procedural risk basis. Due to Iowa's title plant abstracting standards, forty (40) year Marketable Title Act<sup>23</sup> and the Iowa Land Title Standards, the attorney-abstract system results in very few defects and produces the cleanest titles in the nation. For this reason, title policies or certificates are not required for the transfer of property in Iowa.

ITG is an adjunct to the abstract-attorney system, providing title coverage based on a participating attorney's title opinion. There are numerous reasons why lenders and owners should obtain an Iowa Title Guaranty certificate in addition to the attorney's title opinion.

- 1) *Human Error*. The first risk associated with relying solely on an abstract and attorney title opinion is human error. ITG works with many excellent abstractors and attorneys, but occasionally mistakes happen. ITG maintains adequate reserves. ITG can provide coverage on any size transaction. This includes transactions with values exceeding the abstractor's or attorney's errors and omissions coverage. Abstractors and attorneys inevitably retire or go out of business. The length of a retiring participant's tail errors and omissions coverage may not be sufficient to cover prior mistakes.
- 2) *Forgery or Fraud*. The abstract and attorney title opinions do not certify the actual owner of record, the actual priority of lienholders, or the absence of all title defects. Abstracts are a summarized history of the various recorded instruments and proceedings affecting the property. Attorneys ultimately provide their

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<sup>18</sup> Iowa Code § 16.91(2).

<sup>19</sup> Iowa Code § 16.91(2).

<sup>20</sup> Iowa Code § 16.91(2).

<sup>21</sup> Iowa Admin. Code r. 265—9.3.

<sup>22</sup> Iowa Code § 16.4C.

<sup>23</sup> Iowa Code § 614.2933.

legal opinion regarding the status of title based solely on the abstract contents. This creates limitations inherent in the traditional abstract and title opinion system. For example, an abstractor or attorney would likely have no liability to a purchaser or lender for a title defect based on forgery or impersonation, yet an ITG certificate would provide coverage.

- 3) *Missing Signatures.* An abstractor or attorney would likely have no liability to a purchaser or lender for a title defect based on a deed or mortgage that was not joined by all necessary parties, unless that defect is apparent on the face of the instrument. An ITG certificate would cover such a loss in most circumstances.
- 4) *Incompetence, Incapacity or Lack of Authority.* An abstractor or attorney would likely have no liability to a purchaser or lender for a title defect based on a lack of competency, capacity or legal authority of a party to execute an instrument, unless that defect is apparent on the face of the instrument. One of the stated covered risks in an ITG Certificate is for loss or damage caused by such incompetence, incapacity, or lack of authority.
- 5) *Parties in Possession, Encroachments, Mechanic's Liens.* ITG may, at its discretion, provide affirmative title coverage to an owner or lender against risks not covered by an abstract or attorney title opinion. Some examples include: (1) coverage against rights of parties in possession (unknown tenants, squatters, etc.), (2) coverage against encroachments or other survey matters, or (3) coverage against hidden mechanic's lien claimants.
- 6) *Legal Defense against Future Claims.* An ITG certificate provides a defense against future claims. The standard form ITG certificate contains provisions for the payment of the legal fees in defense of a claim against the property that is covered under the certificate. While Iowa is known for its clean real estate titles and the risk of a valid title claim is low, not all claims made against a property are valid. An owner may have to defend a claim even if the claim is invalid. Should ITG provide a legal defense against a claim the ITG certificate covers, the savings associated with the cost of that legal defense alone will greatly exceed the one-time premium.

## **Mission Part 2: Low-Cost Mechanism Facilitating Lenders' Participation in the Secondary Market**

Part of ITG's mission is to provide a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market. As discussed above, ITG was created to meet secondary market lenders' title insurance requirement. ITG serves as Iowa's equivalent of title insurance, offering the same coverage products as title insurance (commitments, certificates, endorsements, closing protection letters) issued on American Land Title Association (ALTA) forms.

ITG protects Iowa lenders and owners by providing low-cost title coverage for Iowa real property. Iowa's attorney-abstract system and ITG's clean title standard allows ITG to provide residential coverage for a low, flat rate without exposing ITG to unreasonable liability. ITG charges a flat rate of \$175 for residential purchase or refinance transactions up to \$750,000. Transactions with coverage amounts greater than \$750,000 are charged the base flat fee of \$175 plus \$1 per \$1,000 above \$750,000. This flat fee structure for residential transactions includes closing protection letter coverage and all endorsements except the Modification Endorsement. ITG also offers no-cost owner coverage up to \$750,000 when simultaneously issued with a lender certificate.

The flat rate coverage maximum of \$750,000 streamlines pricing for 99.8% of all residential transactions, including lender and owner certificates. This increased coverage maximum encourages owners purchasing homes valued up to \$750,000 to elect coverage by removing the deterrent of the additional and unexpected cost discovered at the closing table.<sup>24</sup> The increased coverage maximum also accommodates the Federal Housing Finance Agency

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<sup>24</sup> The majority of purchasers elect to obtain owner coverage when offered free in conjunction with the lender certificate. In FY19, 89% of purchasers eligible for free coverage elected to obtain owner coverage. By contrast, only approximately 30% of purchasers with purchase prices

(FHFA) maximum conforming loan limit for single-family property which increased from \$484,350 to \$510,400 in 2020. Accordingly, all Fannie Mae and Freddie Mac conforming loans will be eligible for flat rate premiums in 2021.

Title insurance competitors are unable to provide policy rates this low due to the title insurance “assumption of risk” model in which title companies write over defects instead of clearing them prior to closing. Title insurance typically charges a percentage of the total coverage amount (often 1%). Accordingly, title insurance premiums increase as home values rise. In 2019, many national title insurance companies each earned over \$8 billion in profit. Most homes in Iowa are valued below \$750,000 and thus qualify for ITG’s flat rate premium. While ITG’s flat rate fee structure limits ITG’s ability to realize the same premium growth as title insurance, it furthers ITG’s mission to provide Iowans with low-cost title coverage. In the last 15 years alone, ITG charged a mere \$88.5 million in premiums, while title insurance would have charged \$1.2 billion, saving consumers over \$1.1 billion in premiums.<sup>25</sup>

### Mission Part 3: Add to the Integrity of Iowa’s Land-Title Transfer System

*Guaranty System.* While ITG offers the same title coverage products as offered by privatized title insurance, it is important to remember that ITG is fundamentally different than title insurance. Iowa’s land-title system is a “guaranty system” (guarantying clear title prior to closing) rather than an “assumption of risk system” (insuring over defects). ITG requires title plant abstracting<sup>26</sup> and attorney examination of title, upholding the clear title standard of Iowa’s attorney-abstract system and protecting the integrity of Iowa’s land titles. ITG guarantees that lenders and owners will receive clear title, rather than insuring over defects and assuming liability for claims. Requiring title defects be cleared prior to closing results in few claims, enabling ITG to maintain low premiums.

*Mortgage Release Program.* ITG has the statutory authority to release paid, but unreleased mortgages pursuant to the mortgage release program described in Iowa Code § 16.92. If a lender fails to properly file a release pursuant to the requirements of Iowa Code § 655.1, ITG may utilize the mortgage release program to remove the lien from title. Since inception, ITG has released 7,112 mortgages from Iowa property titles. See **Mortgage Release Program Manual** for further information.

### Mission Part 4: Supporting Iowa Homebuyers with Down Payment Assistance

Unlike private title insurance companies, ITG does not retain any profits. After providing for adequate reserves and operating expenses, all surplus funds are transferred to IFA’s housing assistance fund.<sup>27</sup> ITG’s investment into the housing assistance fund supports Iowa homebuyers with down payment assistance. While lacking the profits enjoyed by large national title insurers, ITG still provides roughly \$1,000,000 annually to IFA’s housing assistance fund. In 2019, ITG’s investment assisted 1,494 homebuyers with down payment assistance. Since inception, ITG has reinvested \$60.86 million into IFA’s down payment assistance programs, assisting more than 49,000 Iowans to purchase homes.

## E. COMMUNITY IMPACT

Not only does ITG support Iowans with down payment assistance, but ITG reinvests into communities across the state by partnering with local real estate professionals. While title insurance premiums leave the state and end up in the pockets of large, out-of-state title insurance companies, ITG remits incentive payments to those participating attorneys, abstractors, and closers across Iowa that field issue ITG certificates. In 2020, ITG partnered with 1,137

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over \$500,000 elected coverage when offered in conjunction with the lender certificate, and the percentage has remained unchanged over the years. Iowa purchasers with purchase prices over \$500,000 presumably decline to elect for owner coverage due to the increased \$1 per \$1,000 premium. Most purchasers are not advised of the right to elect owner coverage prior to arriving at the closing table. While the \$1 per \$1,000 often amounts to a mere nominal fee, the thought of having to remit additional payment post-closing deters many purchasers from electing coverage. Increasing the flat rate premium coverage maximum to \$750,000 encourages purchasers to elect owner coverage for no additional charge (if issued in conjunction with a lender certificate). The flat rate premium also encourages purchasers who are not obtaining financing to obtain owner coverage up to \$750,000 for a flat rate of \$175.

<sup>25</sup> Estimated title insurance premiums calculated using 1% of the total coverage amounts. See “2021.03.03\_ITG vs. Title Insurance Premium Comparison”.

<sup>26</sup> Title plant abstracting is required unless the attorney-abstractor is grandfathered or waived pursuant to Iowa Code § 16.91(5)(a)(2) and (b).

<sup>27</sup> Iowa Code § 16.91(1).

Iowa real estate attorneys, 138 Iowa abstractors, and 428 Iowa closers, paying \$3.9 million to field issuers across the state. Since inception, ITG has paid \$31.3 million in incentive payments to ITG field issuers across the state.

## F. ITG DIRECTOR

The ITG Director is appointed by the Executive Director of the IFA.<sup>28</sup> The ITG Director must be an attorney.<sup>29</sup> The ITG Director serves as an ex officio member of the ITG Board.<sup>30</sup> The appointment of and compensation for the ITG Director are exempt from the merit system provisions of chapter 8A, subchapter IV.<sup>31</sup>

## G. ITG BOARD

**Members.** ITG's powers relating to title guaranty issuance are vested in and shall be exercised by a Title Guaranty Division board of five (5) members appointed by the Governor subject to confirmation by the Senate (hereinafter "ITG Board").<sup>32</sup> The membership of the ITG Board must be comprised of the following:

1. An attorney;
2. An abstractor;
3. A real estate broker;
4. A representative of a lending institution that engages in mortgage lending; and
5. A representative of the housing development industry.<sup>33</sup>

Members of the ITG Board shall be appointed by the Governor for staggered terms of six (6) years beginning and ending as provided in § 69.19.<sup>34</sup> A person shall not serve on the ITG Board while serving on the IFA Board.<sup>35</sup> A person appointed to fill a vacancy shall serve only for the unexpired portion of the term.<sup>36</sup> A member is eligible for reappointment.<sup>37</sup> A member of the ITG Board may be removed from office by the Governor for misfeasance, malfeasance, or willful neglect of duty or for other just cause, after notice and hearing, unless notice and hearing is expressly waived in writing.<sup>38</sup>

**Chair.** A chair and vice chair shall be elected annually by the ITG Board at the first quarterly meeting following July 1 of each year, which is the beginning of ITG's fiscal year.<sup>39</sup>

**Secretary.** IFA's Executive Director or the Executive Director's designee shall serve as secretary to the ITG Board.<sup>40</sup>

**Meetings.** ITG Board meetings shall generally be held quarterly on the date and time determined by the ITG Board.<sup>41</sup> ITG Board meetings shall be held at the call of the ITG Board chair or on written request of two members.<sup>42</sup> ITG will give advance public notice of the specific date, time and place of each ITG Board meeting.<sup>43</sup> At least 24 hours before commencement of an ITG Board meeting, ITG will post the tentative agenda at ITG's office and on

<sup>28</sup> Iowa Code § 16.2A(1).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Iowa Code § 16.2A(2).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Iowa Admin. Code r. 265—9.4(2) (2021).

<sup>40</sup> Iowa Code § 16.2A(7).

<sup>41</sup> Iowa Admin. Code r. 265—9.4(3).

<sup>42</sup> Iowa Code § 16.2A(6).

<sup>43</sup> Iowa Admin. Code r. 265—9.4(3).

ITG's website.<sup>44</sup> ITG Board meetings may be conducted by conference call.<sup>45</sup> Any person may attend and observe ITG Board meetings except for any portion of an ITG Board meeting that may be closed pursuant to Iowa Code § 21.5.<sup>46</sup> The minutes of ITG Board meetings are available at ITG's office and on ITG's website.<sup>47</sup> The majority shall not include any division board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.<sup>48</sup>

**Quorum.** Three (3) members of the ITG Board shall constitute a quorum.<sup>49</sup> An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by ITG.<sup>50</sup> Members shall elect a chair and vice chair annually and other officers as they determine.<sup>51</sup>

## H. ITG PROPERTY TYPES

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ITG offers residential and commercial coverage products. Endorsement coverage and the corresponding requirements vary depending on whether the property is deemed residential or commercial.

### 1. RESIDENTIAL PROPERTY

ITG defines “**residential property**” as any single-family dwelling or multi-family dwelling consisting of four (4) units or less, including primary residences, second homes, and investment or rental properties. Residential property includes single family homes, duplexes, 3–4-unit dwellings, condominiums, manufactured homes, mobile homes, and residential lots.

### 2. MIXED-USE PROPERTY

ITG defines “**mixed-use property**” as property with a residential dwelling that is also used for agricultural or commercial activity. In Iowa, many residential homes are situated on property that is also being used for agricultural purposes, falling within the definition of mixed-use property. Therefore, ITG allows for the issuance of residential coverage for mixed-use property if (1) the coverage amount is \$500,000 or less, (2) a residential dwelling (1-4 units) is situated on the property, and (3) full abstracting is required. See **ITG's Mixed-Use Property Policy** for further information. All other mixed-use property is deemed commercial.

In rural Iowa, many residential properties contain pre-existing agricultural or commercial outbuildings that appear to evidence mixed-use but are in fact no longer being used for an agricultural or commercial purpose. ITG has created an **Affidavit of No Agricultural or Commercial Use in Support of Form 900/901 Eligibility** to be completed and signed by all titleholders to be eligible for the use of Form 900/901 in these circumstances.

### 3. COMMERCIAL PROPERTY

“**Commercial property**” for ITG purposes includes all property that does not fall within the definition of residential property, including but not limited to, agricultural land, hotels, industrial facilities, multifamily, office buildings, unimproved land, wetlands, and mixed-use properties with a coverage amount over \$500,000.

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Iowa Code § 16.2A(3); Iowa Admin. Code r. 265—9.4(3).

<sup>50</sup> Iowa Code § 16.2A(3); Iowa Admin. Code r. 265—9.4(3).

<sup>51</sup> Iowa Code § 16.2A(7).

## I. ITG TRANSACTION TYPES

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ITG recognizes two primary transaction types: (1) purchase and (2) refinance.

### 1. PURCHASE

A purchase involves a transfer of interest in real property from a current titleholder to a purchaser for value. The most common types of purchase transactions are as follows:

- a. Cash Transaction
- b. Standard Purchase with Financing
- c. Construction Mortgage
- d. Equitable Title Purchase (Installment Contract Purchase)
- e. Legal Title Purchase (Installment Contract Payoff)
- f. Legal Title Purchase with Third Party Buyer (Installment Contract Payoff)

### 2. REFINANCE

A refinance involves the replacement of an existing debt obligation with a new debt obligation, typically with the intent to obtain better repayment terms, such as lower interest payments or extension of a balloon date. The most common types of refinance transactions are as follows:

- a. Standard Refinance (Full Abstracting)
- b. Construction Loan Payoff (Full Abstracting)
- c. Legal Title Purchase (Installment Contract Payoff) (Full Abstracting)
- d. Non-Purchase Product (Form 900/901)

## J. ITG COVERAGE PRODUCTS

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ITG offers guaranties of Iowa real property titles through the issuance of commitments and certificates.<sup>52</sup> ITG provides four (4) primary coverage products: (1) commitments, (2) closing protection letters, (3) endorsements, and (4) certificates. The terms, conditions, and form of these coverage products shall be approved by the ITG board.<sup>53</sup>

### 1. COMMITMENTS

A title “**commitment**” is an offer to issue one or more final title certificates after closing upon satisfaction of enumerated requirements, subject to terms, conditions, and exclusions that will appear in the final certificate.<sup>54</sup> ITG uses ALTA’s standard commitment form adopted by most title insurance companies across the nation with minor wording changes to reference ITG “coverage” and “certificates” in lieu of the title insurance terms “insurance” and “policies,” respectively.

Prior to the issuance of an ITG commitment, ITG requires:

- 1) a **preliminary abstract continuation** (or Form 900 if applicable) certified by a participating abstractor, AND
- 2) a **preliminary title opinion** (or Form 900 attorney certification if applicable) rendered by a participating attorney. Exception: a participating attorney who is also a field issuer may issue a commitment as the preliminary title opinion.<sup>55</sup>

See **Section R** below for information on participating attorneys and abstractors. See **Sections M, N and O** below for information on abstracting and title opinion services.

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<sup>52</sup> Iowa Admin. Code r. 265—9.5.

<sup>53</sup> Iowa Code § 16.91(1); Iowa Admin. Code r. 265—9.5.

<sup>54</sup> Iowa Admin. Code r. 265—9.1.

<sup>55</sup> Iowa Admin. Code r. 265—9.7(2).

While ITG issues a small number of commitments in-house (known as “division-issued”), the majority of ITG commitments are issued by participants approved to field issue commitments. However, ITG does not permit field issuance of commercial commitments. All commercial commitments are issued in-house by the ITG Commercial Team. ITG participant and service types are discussed in further detail in **Sections M - R** below.

While every commitment contains information unique to the particular transaction, all title commitments contain the following components:

**A. Jacket**

All commitments begin with a uniform jacket. The jacket stipulates the terms, conditions, and exclusions of the commitment. The commitment jacket validates the document with the authorized signature of the Iowa Title Guaranty Director. The jacket must be included with any issued commitment.

The jacket contains three sections: (1) Notice, (2) Commitment to Issue Certificate, and (3) Commitment Conditions.

**1. Notice.** The notice section of the jacket clarifies the following:

- a. ITG’s liability is based solely in contract.
- b. The commitment is not an abstract of title, report of the condition of title, legal opinion, opinion of title, or other representation of the status of title.
- c. ITG’s obligation pursuant to the commitment is to issue a certificate to the proposed guaranteed identified in Schedule A in accordance with the terms and provisions of the commitment.
- d. ITG has no liability or obligation to any person other than the Schedule A proposed guaranteed.

**2. Commitment to Issue Certificate.** The “Commitment to Issue Certificate” section limits the scope of the commitment as follows:

- a. ITG’s commitment to issue a certificate is subject to the following:
  - i. Notice;
  - ii. Schedule B, Part I—Requirements;
  - iii. Schedule B, Part II—Exceptions;
  - iv. Commitment Conditions; and
  - v. Commitment terms and provisions.
- b. The commitment is effective as of the Commitment Date shown in Schedule A for each Certificate described in Schedule A, only if:
  - i. A specified dollar amount is entered into the Proposed Certificate Amount; and
  - ii. The name of the Proposed Guaranteed is entered.
- c. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, the Commitment terminates and Iowa Title Guaranty’s liability and obligation end.

**3. Commitment Conditions.** The “Commitment Conditions” section sets forth the following:

- a. Definitions.
  - i. “Knowledge” or “Known”: Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
  - ii. “Land”: The land described in Schedule A and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the


lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be guaranteed by the Certificate.

- iii. “Mortgage”: A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
  - iv. “Certificate”: Each contract of title guaranty, in a form adopted by the American Land Title Association, issued or to be issued by Iowa Title Guaranty pursuant to the Commitment.
  - v. “Proposed Guaranteed”: Each person identified in Schedule A as the Proposed Guaranteed of each Certificate to be issued pursuant to the Commitment.
  - vi. “Proposed Certificate Amount”: Each dollar amount specified in Schedule A as the Proposed Certificate Amount of each Certificate to be issued pursuant to the Commitment.
  - vii. “Public Records”: Records established under Iowa statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
  - viii. “Title”: The estate or interest described in Schedule A.
- b. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, the Commitment terminates and Iowa Title Guaranty’s liability and obligation end.
  - c. ITG’s liability and obligation is limited by and the Commitment is not valid without:
    - i. the Notice;
    - ii. the Commitment to Issue Certificate;
    - iii. the Commitment Conditions;
    - iv. Schedule A;
    - v. Schedule B, Part I—Requirements;
    - vi. Schedule B, Part II—Exceptions; and
    - vii. a counter-signature by Iowa Title Guaranty or its issuing participant that may be in electronic form.
  - d. ITG’s Right to Amend. ITG may amend the Commitment at any time. If ITG amends the Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of ITG is limited by Commitment Condition 5. ITG shall not be liable for any other amendment to the Commitment.
  - e. Limitations of Liability. See jacket for details.
  - f. ITG Liability Must be Based on the Commitment. See jacket for details.
  - g. Commitment Issued by a Participant. The issuing participant is ITG’s agent only for the limited purpose of issuing title commitments and certificates. The issuing participant is not ITG’s agent for the purpose of providing closing or settlement services.
  - h. Pro-Forma Certificate. ITG may provide, at the request of a Proposed Guaranteed, a pro-forma Certificate illustrating the coverage that ITG may provide. A pro-forma Certificate

neither reflects the status of Title at the time that the pro-forma Certificate is delivered to a Proposed Guaranteed, nor is it a commitment to issue a Certificate.

## B. Schedule A.

Schedule A of the title commitment provides basic transaction level detail, such as the names of the current titleholder(s), the proposed lender coverage amount, the proposed owner coverage amount (typically the purchase price), the proposed guaranteed lender (if applicable), the proposed guaranteed owner (if applicable), the property local address, the property legal description, and a list of endorsements requested.

 <b>Commitment Form Schedule A</b>	
<b>IOWA TITLE GUARANTY</b> A DIVISION OF IOWA FINANCE AUTHORITY	
<b>Transaction Identification Data for reference only:</b>	
Commitment Number: C-210046800	
Issuing Participant: Lindsey Guerrero	
Issuing Office: Iowa Title Guaranty	
Issuing Office File Number:	
Issuing Office's ALTA Registry ID:	
Loan ID Number:	
Property Address: 123 SAMPLE STREET, DES MOINES, IA 50315	
Borrower(s)/Buyer(s): SAMPLE BORROWER/BUYER	
<b>SCHEDULE A</b>	
1. Commitment Date: May 01, 2021 at 05:00:00 PM	
2. <b><u>Certificate to be issued</u></b>	<b><u>Proposed Coverage Amount</u></b>
(a) <b><u>Owner Certificate</u></b>	<b>\$600,000.00</b>
Proposed Guaranteed:	
SAMPLE BORROWER/BUYER	
(b) <b><u>Lender Certificate</u></b>	<b>\$500,000.00</b>
Proposed Guaranteed:	
Iowa Finance Authority its successors and/or assigns, DES MOINES, IA	
3. The estate or interest in the Land described or referred to in this Commitment is:	
Fee Simple	
4. The Title is, at the Commitment Date, vested in:	
SAMPLE TITLEHOLDER	
5. The Land is described as follows:	
SAMPLE LEGAL DESCRIPTION	

## C. Schedule B.

Schedule B of the title commitment is comprised of two parts: Part I—Requirements and Part II—Exceptions.

**PART I – REQUIREMENTS.** Schedule B, Part I sets forth the requirements that must be satisfied before ITG has an obligation to issue a certificate.


Common requirements include, but are not limited to, the following:

- Payment of consideration to convey the estate or interest to be guaranteed.
- Payment of the certificate premium.
- Obtaining the required Composite Mortgage Affidavits (“CMA”).
- Obtaining the required Notice of Availability (“NOA”) on purchase transactions.
- Conducting lien searches or other search updates.
- Executing and recording instruments necessary to clear title (e.g., release, affidavit).
- Executing and recording instruments necessary to convey title (e.g., warranty deed).

- Executing and recording instruments necessary to perfect the guaranteed mortgage.
- Obtaining a Real Property Inspection Report "RPIR" or an ALTA Survey. See **Real Property Inspection Report Manual** for further guidance on when an RPIR or survey is required.

See **ITG Residential Sample Schedule B Requirements** for a list of template requirements that ITG has approved for use.

If Schedule B, Part I—Requirements have not been satisfied prior to closing, ITG has no obligation to issue the final certificate(s). Further, if the Schedule B, Part I – Requirements have not been met within the 6-month period immediately following the Commitment Date, the commitment and ITG's liability and obligation to the proposed guaranteed thereunder automatically terminates.

 <p>IOWA TITLE GUARANTY A DIVISION OF IOWA FINANCE AUTHORITY</p>	<p><b>Commitment Schedule B - Part I</b></p>
<p><b>Requirements</b></p>	
<p>All of the following Requirements must be met:</p>	
<ol style="list-style-type: none"> <li>1. The Proposed Guaranteed must notify Iowa Title Guaranty in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. Iowa Title Guaranty may then make additional Requirements or Exceptions.</li> <li>2. Pay the agreed amount for the estate or interest to be guaranteed.</li> <li>3. Pay the premiums, fees, and charges for the Certificate to Iowa Title Guaranty.</li> <li>4. The following documents satisfactory to Iowa Title Guaranty that convey the Title or create the Mortgage to be guaranteed, or both, must be properly authorized, executed, delivered, and recorded in the Public Records:             <ol style="list-style-type: none"> <li>(a) Warranty Deed from SAMPLE TITLEHOLDER and spouse(s) if any, conveying the Land to SAMPLE BORROWER/BUYER. NOTE: The marital status of the grantor(s) must be shown on said deed.</li> <li>(b) If the Mechanic's Notice and Lien Registry ("MNLR") reveals any of the following postings, obtain and post the required documentation as shown below:                 <ol style="list-style-type: none"> <li>i. Mechanic's lien: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNLR; and (b) post satisfaction of lien to the MNLR.</li> <li>ii. Commencement of Work: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNLR; and (b) post withdrawal or lien waiver(s) through and including the filing date of the vesting deed and/or Guaranteed Mortgage to the MNLR.</li> <li>iii. Preliminary Notice: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNLR; and (b) post withdrawal or lien waiver(s) through and including the filing date of the vesting deed and/or Guaranteed Mortgage to the MNLR.</li> </ol> </li> <li>(c) Real Estate Mortgage from SAMPLE BORROWER/BUYER and spouse(s), if any, to Iowa Finance Authority, securing a debt in the amount of \$500,000.00. Note: The marital status of the borrower(s) must be shown on the mortgage.</li> <li>(d) Confirmation that the county recorder and courthouse are processing filings and permitting abstractor access to perform necessary final title searches through the date of the vesting deed and/or guaranteed mortgage filing.</li> <li>(e) Release and satisfaction of the mortgage described in Special Exception 8 from Part II.</li> </ol> </li> </ol>	

5. The following additional non-record requirements satisfactory to Iowa Title Guaranty:

- (a) Obtain completed, signed and notarized Composite Mortgage Affidavit ("CMA") from the sellers/titleholders, and spouses, if any, and buyers of the Land, and for purchase transactions, the Notice of Availability of Iowa Title Guaranty Owner Certificate signed by each buyer electing or declining an owner certificate. All unrecorded matters such as leases, contracts, easements, lien waivers, etc., must be attached thereto and provided to the examining Participating Attorney for review prior to closing. The examining Participating Attorney may require disclosed matters be resolved 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 that impair the titleholders' interest or the priority of the guaranteed mortgage to remain as exceptions to title and will require record resolution prior to closing to ensure that the lender's mortgage is in desired lien position. ITG requires that all disclosed matters that impair the titleholders' interest or the priority of the guaranteed mortgage 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.
- (b) Search the Mechanic's Notice and Lien Registry ("MNLR") at the time of closing. Show any postings revealed as exceptions on Schedule B of the commitment.
- (c) Secure final lien waivers and/or satisfactions from any contractors, subcontractors, materialmen or suppliers disclosed on the latest version of the Composite Mortgage Affidavit.
- (d) If a GAP Coverage Endorsement or a Closing Protection Letter is issued in conjunction with this Commitment:
  - i. Obtain from a Participating Abstractor a written pre-closing search certification, also known as a day-of-closing search or gap search, as close to the closing date as possible;
  - ii. Record the proper closing documents (i.e. deed, mortgage, title clearing affidavits, etc.) immediately after execution, and in no event later than the tenth business day following the certification date of the pre-closing search certification;
  - iii. 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;
  - iv. Confirm no new matters are disclosed on the pre-closing search certification before closing and disbursing funds; and
  - v. If the pre-closing search discloses any new matters, except any and all new matters by adding them as exceptions on Schedule B of the commitment and consult with the examining Participating Attorney to satisfactorily resolve matters that impair the titleholders' interest or the priority of the guaranteed mortgage prior to closing.
- (e) Confirm that the Guaranteed Mortgage meets the definition of a purchase money mortgage as defined by Iowa Code Section 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 Section 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 on Schedule B. Consult with an examining participating attorney to satisfactorily resolve matters that impair the titleholders' interest or the priority of the guaranteed mortgage prior to closing.


**PART II – EXCEPTIONS.** Schedule B, Part II sets forth exceptions to coverage or items that will not be covered by the final certificate. In other words, the final certificate will not guaranty against loss or damage arising from any matters disclosed as exceptions.

Exceptions often include, but are not limited to, the following:

- Rights or claims of parties in possession not shown by the Public Records.
- 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.
- Easements, or claims of easements, not shown by the Public Records.

- Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
- Taxes or special assessments which are not shown as existing liens by the Public Records.
- City and county ordinances and regulations.
- Declarations of covenants, conditions and restrictions.
- Homeowner Association declarations.
- Cost-sharing and maintenance agreements.
- Easements and encroachments.
- Subdivision plats or plats of survey.
- Mineral interest reservations.
- Development agreements.

See **ITG Residential Sample Schedule B Exceptions** for a list of template exceptions that ITG has approved for use.



**IOWA TITLE GUARANTY**  
A DIVISION OF IOWA FINANCE AUTHORITY

## Commitment Schedule B - Part II

### Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Certificate will not guaranty against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of Iowa Title Guaranty:

1. Any right or claim of a party in possession not shown by the 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 the 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 the Public Records.
5. Any taxes or special assessments which are not shown as existing liens by the Public Records.
6. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I— Requirements are met.
7. The lien of the taxes for the July 1, 2019 - June 30, 2020, fiscal year and thereafter, with the first half due on September 1, 2020 (delinquent after September 30, 2020) and the second half due on March 1, 2021 (delinquent after March 31, 2021). First installment paid. Second installment paid.
8. Mortgage from {mortgagor(s)} to {mortgagee(s)} dated {execution date}, filed {recording date} at {book/page; inst. no} in the {county} County, Iowa Recorder's Office to secure an indebtedness of {mortgage amount}.
9. Ordinances and regulations for the city and county in which the Land is located.
10. Plat(s) filed with the recorder's office for the county in which the Land is located, including all easements, building setbacks, restrictions, reservations, and notations.

**NOTES AND/OR INSTRUCTIONS.** Schedule B—Part II also contains a “Notes and/or Instructions” section where any endorsements, tax installment amounts, and other information not certified by the abstract may be listed.

**Notes and/or Instructions:**

1. Lender First has been approved for the following endorsement(s):  
Comprehensive 1 - Improved Land
2. Owner has been approved for the following endorsement(s):  
None

## 2. CLOSING PROTECTION LETTERS (CPL)

A **closing protection letter** (“CPL”) is contract between 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>56</sup>

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

*(a) a failure of the ITG Closer to comply with written 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.*

The CPL shall conform to the terms of coverage and form of the instrument as approved by the ITG Board.<sup>57</sup>

A CPL shall only be issued to a proposed guaranteed as reflected on an ITG commitment for which ITG receives premium payment.<sup>58</sup>

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. The total amount of coverage that the CPL provides must not exceed the amount of the commitment to be issued.

ITG provides a Gap Coverage Rider for all transactions in which a CPL is issued. The Gap Coverage Rider allows for disbursement of funds at the closing table and protects the guaranteed(s) against loss incurred during the gap period. The gap period is the period from the certification date of the search conducted on the day of the closing (known as a “pre-closing search”) and continuing for ten business days following the certification date of the pre-closing search.

<sup>56</sup> The Iowa Administrative Code rule 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.

<sup>57</sup> Iowa Code § 16.93(1).

<sup>58</sup> Iowa Code § 16.93(2).

See **CPL Manual** for detailed information on closing protection letters.

### 3. ENDORSEMENTS

A title “**endorsement**” is a product that expands the coverage of a standard title certificate, often by removing exceptions to the standard certificate or adding coverage specific to the property or transaction type.

ITG offers both lender and owner endorsements, including many ALTA adopted endorsements.

See **ITG Residential Endorsements** for a list of all residential endorsements and the **Residential Endorsements Manual** for detailed requirements for each endorsement.

See **ITG Commercial Endorsements** for a list of all commercial endorsements and the **Commercial Endorsements Manual** for detailed requirements for each endorsement.

### 4. CERTIFICATES

A title “**certificate**” means the form used to guarantee title, including any part or schedule thereof or any endorsements thereto.<sup>59</sup> ITG uses ALTA’s standard policy form adopted by most title insurance companies across the nation with minor wording changes to reference ITG “coverage” and “certificates” in lieu of the title insurance terms “insurance” and “policies,” respectively.

ITG offers two types of certificates:

- 1) A “**lender certificate**” is a contract between ITG and the lender in which ITG provides assurance to the guaranteed lender that its lien is valid and in the desired lien position. The coverage amount is usually determined by the loan amount. The lender certificate only protects the lender’s interest in the property should a title issue arise. Coverage is limited to certain enumerated risks, and subject to specified exclusions, exceptions, and conditions.
- 2) An “**owner certificate**” is a contract between ITG and the record titleholder(s) in which ITG provides assurance to the guaranteed owners that title is valid in the owner and free from material defects, liens, and encumbrances. The coverage amount is typically the purchase price. As mentioned above, ITG offers free owner coverage up to \$750,000 when issued in conjunction with a lender certificate. An owner certificate remains valid so long as the titleholder owns the property. Coverage terminates upon sale or other conveyance. Coverage is limited to certain enumerated risks, and subject to specified exclusions, exceptions, and conditions.

Prior to the issuance of an ITG certificate, ITG requires:

- 1) a **final abstract continuation** (or Form 901 if applicable) certified by a participating abstractor, AND
- 2) a **final title opinion** (or Form 901 attorney certification if applicable) rendered by a participating title attorney. Exception: a participating attorney who is also a field issuer may issue a certificate as the final title opinion.<sup>60</sup>

See **Section R** below for information on participating attorneys and abstractors. See **Sections M, N, and O** below for information on abstracting and title opinion services.

While ITG issues a small number of certificates in-house (known as “division-issued”), the majority of ITG certificates are issued by participants approved to field issue certificates. However, ITG does not permit field issuance of commercial certificates. All commercial certificates are issued in-house by the ITG Commercial Team. ITG participant and service types are discussed in further detail in **Sections M – R** below.

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<sup>59</sup> Iowa Admin. Code r. 275—9.1.

<sup>60</sup> Iowa Admin. Code r. 265—(2).

While every certificate contains information unique to the particular transaction, all title certificates contain the following components:

**A. Jacket**


All certificates begin with a uniform jacket. The jacket stipulates the risks, exclusions, and conditions of the certificate. The certificate jacket validates the document with the authorized signature of the Iowa Title Guaranty Director.

The jacket must be included with any issued certificate. The jacket contains three sections: Covered Risks, Exclusions from Coverage, and Conditions. See jacket for details.

**B. Schedule A**

Schedule A of the title certificate provides basic transaction level detail, such as the coverage amount, the name of the guaranteed, title vesting, the property local address, the property legal description, and a list of endorsements.

 IOWA TITLE GUARANTY A DIVISION OF IOWA FINANCE AUTHORITY		Lender Form Schedule A
Certificate No.:	L-210046800	
Address, For Reference Purposes Only:	123 SAMPLE STREET, Des Moines, IA 50315	
Date of Certificate:	May 05, 2021 at 09:31:45 AM	Amount of Coverage: \$500,000.00
<b>1. Name of Guaranteed:</b> Iowa Finance Authority its successors and/or assigns, DES MOINES, IA		
<b>2. The estate or interest in the Land that is encumbered by the Guaranteed Mortgage is a fee simple (if other, specify same):</b> Fee Simple		
<b>3. Title is vested in:</b> SAMPLE BORROWER/BUYER		
<b>4. The Guaranteed Mortgage is described as follows:</b> Mortgage in the amount of \$500,000.00 dated May 5, 2021, filed May 5, 2021, in Book 12345 at Page 12345 of the Polk County, Iowa, Recorder's Office, given by SAMPLE BORROWER/BUYER, a single person, to Iowa Finance Authority.		
<b>5. The Land referred to in this Certificate is described as follows:</b> SAMPLE LEGAL DESCRIPTION		
<b>6. This Certificate incorporates those endorsements listed below:</b> Comprehensive 1 - Improved Land Environmental Protection Lien (ALTA 8.1-06)		
<b>End of Schedule A.</b>		
		<b>IOWA TITLE GUARANTY</b>  By: Lindsey Guerrero, Director Preparer: Lindsey Guerrero Phone: (515) 452-0484



**Owner Form Schedule A**


IOWA TITLE GUARANTY  
A DIVISION OF IOWA FINANCE AUTHORITY

Certificate No.: O-210046800  
 Address, For Reference Purposes Only: 123 SAMPLE STREET, Des Moines, IA 50315  
 Date of Certificate: May 05, 2021 at 09:30:17 AM      Amount of Coverage: \$600,000.00

1. **Name of Guaranteed:**  
SAMPLE BORROWER/BUYER
2. **The estate or interest in the Land that is guaranteed by this Certificate is a fee simple (if other, specify same):**  
Fee Simple
3. **Title is vested in:**  
SAMPLE BORROWER/BUYER
4. **The Land referred to in this Certificate is described as follows:**  
SAMPLE LEGAL DESCRIPTION

**End of Schedule A.**

**IOWA TITLE GUARANTY**




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By: Lindsey Guerrero, Director  
 Preparer: Lindsey Guerrero  
 Phone: (515) 452-0484

### C. Schedule B


Schedule B of the lender certificate is comprised of two parts: Part I - Exceptions and Part II – Subordinate Matters.

**PART I – EXCEPTIONS.** Schedule B, Part I sets forth exceptions that are not covered by the final certificate. In other words, the final certificate will not guarantee against loss or damage arising from any matters disclosed as exceptions.


Exceptions often include, but are not limited to, the following:

- Any defect, lien, encumbrance, adverse claim, or other matter affecting title.
- Real estate taxes not yet due and payable.
- City and county ordinances and regulations.
- Declarations of covenants, conditions and restrictions.
- Homeowner Association declarations.
- Cost-sharing and maintenance agreements.
- Easements and encroachments.
- Subdivision plats or plats of survey.
- Mineral interest reservations.
- Development agreements.
- The Standard Exceptions, which will always appear on a final owner certificate unless a Standard Exception Waiver endorsement is issued, are as follows:
  - Rights or claims of parties in possession not shown by the Public Records.
  - 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.
  - Easements, or claims of easements, not shown by the Public Records.
  - Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
  - Taxes or special assessments which are not shown as existing liens by the Public Records.


See **ITG Residential Sample Schedule B Exceptions** for a list of template exceptions that ITG has approved for use.

 <b>IOWA TITLE GUARANTY</b> <small>A DIVISION OF IOWA FINANCE AUTHORITY</small>	<b>Lender Form Schedule B</b>
<p>Certificate Number: L-210046800</p> <p><b>Exceptions From Coverage</b></p> <p style="text-align: center;"><b>Schedule B - Part I</b></p> <p>This Certificate does not guarantee against loss or damage (and ITG will not pay costs, attorneys' fees or expenses) that arise by reason of:</p> <ol style="list-style-type: none"> <li>1. The lien of the taxes for the July 1, 2019 - June 30, 2020, fiscal year and thereafter, with the first half due on September 1, 2020 (delinquent after September 30, 2020) and the second half due on March 1, 2021 (delinquent after March 31, 2021). First installment paid. Second installment paid.</li> <li>2. Ordinances and regulations for the city and county in which the Land is located.</li> <li>3. Plat(s) filed with the recorder's office for the county in which the Land is located, including all easements, building setbacks, restrictions, reservations, and notations.</li> </ol>	

**PART II – SUBORDINATE MATTERS.** Schedule B, Part II sets forth matters that impact the title to the property but are subordinate to the interest of the guaranteed. For example, on a lender first certificate, a junior mortgage may appear in this section.

<p><b>Schedule B - Part II</b></p> <p>In addition to the matters set forth in Part I of this Schedule, the title is subject to the following matters and ITG guarantees against loss or damage sustained in the event that they are not subordinate to the lien of the Guaranteed Mortgage:</p> <ol style="list-style-type: none"> <li>1. None</li> </ol> <p><b>End of Schedule B.</b></p>	<p><b>IOWA TITLE GUARANTY</b></p>  <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <p>By: Lindsey Guerrero, Director          Preparer: Michael D. Johnson          Phone: (515) 452-0484</p>
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Schedule B on an owner certificate does not contain separate parts for superior and subordinate matters. On the owner certificate, all exceptions appear in the same section on Schedule B because all exceptions are superior to the owner's interest in the Land. The owner certificate does provide headings for standard exceptions versus special exceptions.



**Owner Form Schedule B**

**IOWA TITLE GUARANTY**  
A DIVISION OF IOWA FINANCE AUTHORITY

Certificate Number: O-210046800

**Exceptions From Coverage**

This Certificate does not guarantee against loss or damage (and ITG will not pay costs, attorneys' fees or expenses) that arise by reason of:

**Standard (notwithstanding the guaranteeing clauses of this Guaranty):**


1. Any right or claim of a party in possession not shown by the 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 the 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 the Public Records.
5. Any taxes or special assessments which are not shown as existing liens by the Public Records.

**Special:**

6. The lien of the taxes for the July 1, 2019 - June 30, 2020, fiscal year and thereafter, with the first half due on September 1, 2020 (delinquent after September 30, 2020) and the second half due on March 1, 2021 (delinquent after March 31, 2021). First installment paid. Second installment paid.
7. Ordinances and regulations for the city and county in which the Land is located.
8. Plat(s) filed with the recorder's office for the county in which the Land is located, including all easements, building setbacks, restrictions, reservations, and notations.
9. Mortgage in the amount of \$500,000.00 dated May 5, 2021, filed May 5, 2021, in Book 12345 at Page 12345 of the Polk County, Iowa, Recorder's Office, given by SAMPLE BORROWER/BUYER, a single person, to Iowa Finance Authority.

**End of Schedule B.**

**IOWA TITLE GUARANTY**




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By: Lindsey Guerrero, Director  
Preparer: Lindsey Guerrero  
Phone: (515) 452-0484

## K. ITG PRICING

See **ITG Residential Rate Sheet** for information on residential pricing.

See **ITG Commercial Pricing Sheet** for information on commercial pricing.

## L. THE COVERAGE ISSUANCE PROCESS

The coverage issuance process in Iowa is complex and involves a variety of real estate professionals performing different services to ensure clear title to the property. Below is a high-level overview of the process for (1) a purchase

or refinance requiring an abstract continuation, and (2) a non-purchase transaction qualifying for the use of the short form abstract, known as the Form 900/901.

<b>PURCHASE OR REFINANCE (Abstract Continuation Required)</b>	<b>NON-PURCHASE TRANSACTION (Eligible for Form 900-901)</b>
1. <b>Preliminary Abstract Update</b> – A participating abstractor prepares a preliminary abstract continuation by searching the title plant and public records.	1. <b>Form 900</b> – For eligible transactions, a participating abstractor prepares a short form search product, known as the Form 900.
2. <b>Preliminary Title Examination</b> – A participating attorney examines the abstract and renders a written title opinion. Note: If the participating attorney issues the commitment, the commitment may serve as the preliminary opinion.	2. <b>Preliminary Title Examination</b> – A participating attorney examines the Form 900 and renders a written opinion either in the form of a title opinion or using ITG’s Attorney Certification Form. Note: If the participating attorney issues the commitment, the commitment may serve as the preliminary opinion.
3. <b>ITG Commitment</b> – A participating field issuer prepares an ITG commitment based upon the participating attorney’s opinion.	3. <b>ITG Commitment</b> – A participating field issuer prepares an ITG commitment based upon the participating attorney’s opinion.
4. <b>Title Clearing Prior to Closing</b> – All title defects shown as exceptions on the commitment must be resolved to the participating attorney’s satisfaction and in accordance with the commitment requirements before the parties may proceed to closing.	4. <b>Title Clearing Prior to Closing</b> – All title defects shown as exceptions on the commitment must be resolved to the participating attorney’s satisfaction and in accordance with the commitment requirements before the parties may proceed to closing.
5. <b>Pre-Closing Search Certification</b> – If a CPL or Gap Coverage Endorsement is issued, ITG requires that the 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. 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.	5. <b>Pre-Closing Search Certification</b> – If a CPL or Gap Coverage Endorsement is issued, ITG requires that the 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. 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.
6. <b>Closing and Filing</b>	6. <b>Closing and Filing</b>
7. <b>Final Abstract Update</b> – After closing and filing, the participating abstractor prepares a final abstract continuation to reflect the status of title through the date of the guaranteed deed and/or mortgage.	7. <b>Form 901</b> – After closing and filing, the participating abstractor prepares a short form final search product, known as the Form 901, to reflect the status of title through the date of the guaranteed deed and/or mortgage.
8. <b>Final Title Examination</b> - A participating attorney examines the final abstract and renders a written final title opinion. Note: If the participating attorney issues the certificate, the certificate may serve as the final title opinion.	8. <b>Final Title Examination</b> - A participating attorney examines the Form 901 and renders a written final title opinion in the form of a title opinion or using ITG’s Attorney Certification Form. Note: If the participating attorney issues the certificate, the certificate may serve as the final title opinion.
9. <b>ITG Certificate</b> – A participating field issuer prepares an ITG certificate based upon the participating attorney’s final title opinion.	9. <b>ITG Certificate</b> – A participating field issuer prepares an ITG certificate based upon the participating attorney’s final title opinion.

See also **Iowa's Clear Title Standard Process Flow Flyer** for further information and a visual depiction of the title clearing process. Detailed descriptions of Iowa's abstract products and participant types will be discussed in **Sections N and R** below, respectively.

## M. ITG SERVICES

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ITG recognizes four (4) services.

1. Abstracting
2. Title Opinion
3. Field Issuing Commitments and Certificates ("Field Issuing")
4. Closing Protection Letters

The services are offered by and through ITG's three (3) participant types: abstractors, attorneys, and closers. The three (3) participant types will be discussed in **Section R** below.

Participants must be approved by ITG before offering one or more services. Only attorneys may render title opinions.

While the majority of ITG products are issued by participants in the field, ITG also issues commitments and certificates in-house, known as "division-issued" products. Unlike out-of-state title insurance companies, ITG does not abstract, prepare title opinions, or conduct closings pursuant to closing protection letters. These services are provided exclusively through ITG's participants.

## N. ABSTRACTING SERVICE

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Iowa is an abstract state. In Iowa, the status of title is determined by abstract examination.

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 minimum abstract standards adopted by the division.<sup>61</sup> See **Minimum Abstract Standards Revised May 2020**. See the IFA Board Ruling dated March 1, 2017 for information on the Pottawattamie County Abstract Definition Waiver.<sup>62</sup>

Iowa Code § 16.91(6) provides that prior to the issuance of a title certificate, a participating abstractor must update and certify an abstract of title. Abstracts serving as the basis for an ITG commitment or certificate must be prepared by a participating abstractor.<sup>63</sup> A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under Iowa Administrative Code rule 265—9.7(1)"c" (grandfathered) or authorized under Iowa

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<sup>61</sup> Iowa Admin. Code r. 265—9.1. 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>62</sup> In 2007, IFA granted Clear Title & Abstract, LLC f/k/a Abstract Guaranty Company ("Clear Title") a five-year waiver of the definition of "abstract" as provided in Iowa Administrative Code rule 265—9.1 which requires a summary of "all matters of record", permitting Clear Title to prepare a "Pottawattamie Report of Title" showing matters now affecting the property (emphasis added) in lieu of an abstract provided (i) the guaranteed Land is a 1–4-unit dwelling located in Pottawattamie County, (ii) the abstract is unavailable because it is lost, destroyed, or cannot be located and (iii) the coverage amount is less than \$500,000. This waiver was extended for two additional five-year terms, once in 2012, and again in 2017. The 2012 and 2017 extensions also granted a second company, Council Bluffs Title & Escrow, LLC f/k/a Great Plains Title, LLC f/k/a Iowa Abstract Services, L.L.C. an identical waiver. The Pottawattamie County abstract waivers expire in March 2022. See **IFA Board Ruling dated March 1, 2017**, for further information.

<sup>63</sup> Iowa Admin. Code r. 265—9.7.

Administrative Code rule 265—9.7(1)“d” (waived).<sup>64</sup> See **Section R** below for further information on title plant requirements and waivers.

The ITG Participation Agreement requires participating abstractors to include the assigned ITG participant number on all abstracting products which will be used to obtain ITG coverage. The inclusion of the ITG participant number serves as the preparer’s acknowledgment that the product is prepared in accordance with all ITG rules, guidelines and directives.

ITG participating abstractors offer a variety of preliminary and final abstract products.

## 1. PRELIMINARY ABSTRACT PRODUCTS

Preliminary abstract products are those products prepared by a participating abstractor prior to closing. Participating attorneys rely upon the preliminary abstract to render a preliminary title opinion used as the basis for issuing a commitment. Closers rely upon pre-closing searches to confirm no new matters have been filed of record since the date of the last abstract certification and that they may proceed with closing.

- a. **Root of Title** – A “root of title” abstract is a showing prepared in accordance with ITG’s Minimum Abstract Standards of all documents filed of record within the last forty (40) years affecting the chain of title to the property. Upon completion, the root of title is often referred to as the “base abstract”. A root of title abstract is required if the abstract to the property is lost.
- b. **Preliminary Abstract Continuation** – A preliminary abstract continuation is an addition to the root of title or base abstract. A continuation is the showing of all documents filed of record affecting the chain of title to the property since the last abstract certification date and is prepared in accordance with ITG’s Minimum Abstract Standards. In some counties, abstractors prepare their preliminary abstract update in the form of “pencil notes”. The pencil notes include the abstractor’s search from the last certification date of the base abstract through the current certification date. The pencil notes are separate from the base abstract but delivered with the base abstract for preliminary review. At final continuation, the abstractor incorporates the matters reflected in the pencil notes and all new matters through the date of the vesting deed and/or guaranteed mortgage to the back of the base abstract, creating one final abstract.
- c. **Form 900** – For eligible 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. ITG’s short-form preliminary abstract is known as the “Form 900” and must be prepared in accordance with the **Form 900/901 Manual**. The Form 900 was created as an alternative to an abstract continuation to remain competitive with title insurance search products in eligible refinance transactions. The Form 900 is intended to only be used in refinance transactions where ITG has a high degree of confidence that seller judgments and liens were satisfied and released at the time of the purchase. This level of confidence exists when the current titleholder purchased the property for full value because full value purchases require title examinations based upon an abstract continuation and record clearance of all title defects as a condition of the sale.

As indicated, the Form 900 is not as comprehensive as a preliminary abstract continuation. The Form 900 provides a basic “snapshot” of title. The Form 900 includes all titleholders since the last full value deed, a 10-year lien search against said titleholders, and any liens filed against the property since the recording date of the last full value deed. However, 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. Therefore, an ITG commitment based on a Form 900 contains the following blanket exceptions:

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<sup>64</sup> Iowa Code § 16.91(5)(a)(2); Iowa Admin. Code r. 265—9.7(1)(a).

- i. Declarations, covenants, restrictions, easements, reservations, rights, and options filed of record with the recorder's office for the county in which the property is located; and
- ii. Plat(s) filed with the recorder's office for the county in which the property is located, including all easements, building setbacks, restrictions, reservations, and notations.

Closers and field issuers must alert lenders to the general exceptions that will appear on a Form 900 commitment and obtain the lender's consent prior to issuance.

The Form 900 applies to a narrow scope of transactions. Transactions involving complex title matters such as real estate installment contracts and transactions where the legal description has changed since the last full value deed are not Form 900 eligible. In addition, mixed-use properties are not Form 900 eligible and therefore, ITG participants need to determine whether a property is mixed-use prior to utilizing a Form 900. To assist in making this determination ITG has created an **Affidavit of No Agricultural or Commercial Use in Support of Form 900/901 Eligibility**. See **Section H** above for information on mixed-use. Moreover, if a Form 900 does not provide adequate information to allow the examining attorney to render an opinion, the examining attorney may require an abstract continuation.

Certain endorsements require attorney examination of record matters that will not appear in the Form 900 such as covenants, conditions, and restrictions. The use of the Form 900 does not waive endorsement requirements. However, ITG will permit the use of the Form 900 provided the field issuer confirms all endorsement requirements are satisfied before issuing the final certificate.

Participating abstractors, field issuers and CPL closers each have an obligation to determine if a transaction is Form 900 eligible. **Please refer to the Form 900/901 Manual for eligibility requirements and disqualification criteria. Please be advised that if a transaction does not meet the eligibility criteria for the Form 900, an abstract continuation is required.**

- d. **Pre-Closing Search Certification/Day-of-Closing Search** – If a CPL or Gap Coverage Endorsement is issued, ITG requires that the closer obtain a “**pre-closing search certification**”, also known as the “day of closing search” or “gap search” prepared by an ITG participating abstractor. This search must reveal no new record matters and be conducted immediately prior to closing and disbursement. The pre-closing search must commence from the certification date of the participating abstractor's last preliminary abstract update (or Form 900, if applicable) and continue through a date as close to the time of closing as possible. The written search must show the same information as required in an abstract continuation. If the pre-closing search certification date is more than ten business days prior to recording the deed and/or mortgage, the closer must obtain an updated pre-closing search certification. If the pre-closing search reveals a new matter, the closer must consult with the examining participating attorney to satisfactorily resolve the matter prior to closing and disbursement. 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 any outstanding matters are resolved to the examining attorney's satisfaction. See template Pre-Closing Search Certification.

To determine the appropriate type of preliminary abstracting or title search required prior to closing, please refer to the Abstract and Title Search Requirements for Residential Transactions.

## 2. FINAL ABSTRACT PRODUCTS

Final abstract products are those products prepared by a participating abstractor post-closing. Participating attorneys rely upon the final abstract to render a final title opinion to be used as the basis for issuing a certificate. Final searches must commence from the certification date of the participating abstractor's pre-closing search and continue through the filing date and time of the guaranteed mortgage or filing date and time of the modification of the guaranteed mortgage, as applicable. In a cash transaction, the search must continue through the filing date and

time of the vesting deed. A final search must be conducted against all titleholders and all property to be covered by an ITG certificate.

- a. **Final Abstract Continuation** – A final abstract continuation is similar to the preliminary abstract continuation but prepared post-closing. The final abstract continuation is the showing of all documents filed of record affecting the chain of title to the property since the last abstract certification date and must be prepared in accordance with ITG’s Minimum Abstract Standards. A continuation is an addition to the root of title or base abstract.
- b. **Form 901** – ITG’s short-form final abstract is known as the “Form 901” and must be prepared in accordance with the **Form 900/901 Manual**. The Form 901 is the counterpart to the Form 900. The Form 901 was created as an alternative to a final abstract continuation to remain competitive with title insurance search products in eligible refinance transactions. The Form 901 is intended to only be used in refinance transactions where ITG has a high degree of confidence that seller judgments and liens were satisfied and released at the time of the purchase. This level of confidence exists when the current titleholder purchased the property for full value because full value purchases require title examinations based upon an abstract continuation and record clearance of all title defects as a condition of the sale.

As indicated, the Form 901 is not as comprehensive as a final abstract continuation. The Form 901 provides a basic “snapshot” of title. The Form 900 includes the all titleholders since the last full value deed, a 10-year lien search against said titleholders, and any liens filed against the property since the recording date of the last full value deed. However, the Form 901 will not disclose specific plats, declarations, easements, restrictions, covenants, affidavits or other instruments impacting title nor will the Form 901 alert the examining attorney to spelling errors, missing instruments, improper parties or other discrepancies that may appear in the chain of title. Therefore, the ITG certificate based on a Form 901 will contain the following blanket exceptions:

- i. *Declarations, covenants, restrictions, easements, reservations, rights, and options filed of record with the recorder’s office for the county in which the property is located; and*
- ii. *Plat(s) filed with the recorder’s office for the county in which the property is located, including all easements, building setbacks, restrictions, reservations, and notations.*

Closers and field issuers must alert lenders to the general exceptions that will appear on a Form 901 certificate and obtain consent from the lender prior to issuance.

The Form 901 applies to a narrow scope of transactions. Transactions involving complex title matters such as real estate installment contracts and transactions where the legal description has changed since the last full value deed are not Form 901 eligible. Moreover, if a Form 901 does not provide adequate information to allow the examining attorney to render an opinion, the examining attorney may require an abstract continuation.

Certain endorsements require attorney examination of record matters that will not appear in the Form 901 such as covenants, conditions, and restrictions. The use of the Form 901 does not waive endorsement requirements. However, ITG will permit the use of the Form 901 provided the field issuer confirms all endorsement requirements are satisfied before issuing the final certificate.

Participating abstractors, field issuers and CPL closers each have an obligation to determine if a transaction is Form 901 eligible. **Please refer to the **Form 900/901 Manual** for eligibility requirements and disqualification criteria. Please be advised that if a transaction does not meet the eligibility criteria for the Form 901, a final abstract continuation is required.**

- c. **Post-Closing Search Certification** -- A post-closing search certification is a short form final search product prepared by an ITG participating abstractor, commencing from the certification date of the participating abstractor’s last certification, and continued through the filing date and time of the vesting deed and/or

guaranteed mortgage. A post-closing search certification can only be used if a preliminary abstract continuation was completed prior to closing. If an abstract continuation was not completed prior to closing, the participating abstractor must prepare a final abstract continuation to be examined by a participating attorney (a post-closing search is not permitted). The written search must show the same information as required in a final abstract continuation. The post-closing search must show that there have been no intervening liens or other encumbrances filed prior to the vesting deed and/or guaranteed mortgage. If the post-closing search reveals a new matter, the field issuer must consult with the examining participating attorney to satisfactorily resolve the matter of record prior to issuance of the final certificate. See **Section P(6)** below for more information on how to handle unresolved matters before issuance of the final certificate. While ITG permits the use of the post-closing certification in certain instances, ITG ultimately defers to the discretion of the participating title attorney. The participating title attorney may require a final abstract continuation. See template **Post-Closing Search Certification**.

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**.

### 3. MISCELLANEOUS ABSTRACT PRODUCTS

- a. **Mechanic's Notice and Lien Registry (MNLN) Search** – ITG requires participating abstractors and closers to perform searches of the MNLN for any active postings related to the guaranteed real property ("Land"), including but not limited to, commencement of work notices, preliminary notices, mechanic's liens, satisfactions and withdrawals. MNLN searches must be included in all preliminary and final abstract products. See **MNLN Search Guidelines** for additional information.
- b. **Buyer Searches** – ITG does not require buyer searches if the guaranteed mortgage meets the definition of a purchase money mortgage as defined by Iowa Code Section 654.12B and the guaranteed mortgage includes a recitation that it is a purchase money mortgage. If the guaranteed mortgage does not qualify as a purchase money mortgage or is missing the recitation, ITG requires an abstract continuation or title search which includes a ten-year judgment lien search on all titleholders. A participating abstractor must perform the search.

## O. TITLE OPINION SERVICE

Prior to issuing any ITG coverage product, ITG requires a title opinion rendered by a participating attorney. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion. All title opinions prepared for ITG purposes must be based upon an abstract of title or other approved search product prepared by an ITG participating abstractor.

Only qualified Iowa licensed attorneys are eligible to provide title opinion services. All title opinions shall be prepared by participating attorneys and issued in compliance with ITG procedures as specified in manuals and any other written instructions given by ITG.<sup>65</sup> The participating attorney must examine real estate titles and prepare title opinions in accordance with federal, state and local laws, the most recent version of the ISBA Iowa Land Title Standards, and local standards formally adopted in writing by the bar association situated in the county where the property being searched is located, if applicable.

All title opinions and attorney certifications relied upon as the basis for an ITG product MUST include the attorney's ITG participant number. If the participant number is not reflected on the title opinion or certification, the field issuer may NOT issue an ITG product using the opinion or certification. Iowa attorneys create different variations of title opinions, and the omission of their participant number from a title opinion signals that they *did not* intend that version

<sup>65</sup> Iowa Admin. Code r. 265—9.7(2).

to be used for ITG purposes. The inclusion of the ITG participant number serves as the preparer's acknowledgment that the product is prepared in accordance with all ITG rules, guidelines, and directives.

There are two types of attorney title opinions: (1) preliminary title opinions, and (2) final title opinions.

## 1. PRELIMINARY TITLE OPINION (“PTO”)

- a. Prior to issuing a title commitment, ITG requires that a participating attorney examine the preliminary abstract continuation, including the base abstract going back to the root of title, or the Form 900 (as applicable) and render a title opinion as to the status of title. If the examining attorney is also the field issuer, the commitment may serve as the preliminary title opinion.<sup>66</sup>
- b. The preliminary title opinion is prepared prior to closing and acts as an instruction manual or roadmap for clearing title. The examining attorney reviews the preliminary abstract update, including the base abstract going back to the root of title, to determine the current titleholder(s) and identify any title issues. Any issues, defects, encumbrances, or other matters affecting title or use of the property are noted in the title opinion and commonly referred to as “**objections**” or “**exceptions**”. While all matters must be noted in the title opinion, not all items require resolution. The examining attorney must propose an acceptable method(s) of resolution for each objection or exception that impairs either (1) the titleholders' interest or (2) the priority of the guaranteed mortgage(s). These resolutions or corrective measures are added to the commitment as “**requirements**” and must be completed prior to closing.
- c. ITG does not mandate a uniform title opinion but permits Iowa attorneys to draft title opinions in compliance with ITG requirements. **See sample Attorney Title Opinion for reference only.**
- d. If the transaction qualifies for the use of a Form 900, ITG will permit the use of the short form opinion, known as the “Attorney Certification” in lieu of a standard preliminary title opinion. A copy of the **Attorney Certification** is included in the Form 900/901 Manual.

## 2. FINAL TITLE OPINION (“FTO”)

- a. Prior to issuing a final certificate, ITG requires that a participating attorney examine the final abstract continuation, post-closing search certification or the Form 901 (as applicable) and render a title opinion as to the status of title, provided however, that if the examining attorney is also the field issuer, the attorney field issuer may issue the certificate as the final title opinion.<sup>67</sup>
- b. Upon receipt of the final search product, the examining participating attorney reviews the record to ensure: (1) all title objections noted in the preliminary title opinion were satisfied at or prior to closing; (2) in a purchase transaction, title was properly conveyed to the proposed titleholder(s); and (3) the guaranteed mortgage (if applicable) is in the desired lien position.
- c. The participating attorney then prepares a final title opinion reflecting the updated status of title.
  - i. *Resolved Matters.* Matters shown in the preliminary title opinion that were satisfactorily resolved of record are omitted from the final title opinion.
  - ii. *Unresolved or Partially Resolved Matters.* If a preliminary title objection remains unresolved or only partially resolved, the participating attorney must show the objection in the final title opinion along with a requirement as to how to clear the encumbrance or defect. The opinion must clearly indicate that the titleholders' interest and/or guaranteed mortgage, as applicable, is/are subject to the defect until record resolution is complete.
  - iii. *New Matters.* The participating attorney must show in the final title opinion any new record matters filed within the certification. The certification date for a cash transaction (or an owner certificate) is

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

the filing date and time of the vesting deed. The certification date for financed transaction (or a lender certificate) is the filing date and time of the guaranteed mortgage. If the examining attorney discovers an error or omission in the new filings, or an intervening lien or encumbrance, the attorney must identify the issue as an objection in the final title opinion and require that it be resolved.

- d. If the transaction qualifies for the use of a Form 901, ITG will permit the use of the short form opinion, known as the “Attorney Certification” in lieu of a final title opinion, unless the examining attorney determines a final title opinion is necessary. A copy of the **Attorney Certification** is included in the Form 900/901 Manual. The attorney may also elect to use the Attorney Certification in lieu of a final title opinion if a post-closing search certification was obtained in lieu of a final abstract continuation.

## P. FIELD ISSUING SERVICE

As described in the services **Section M** above, ITG offers guaranties of Iowa real property titles through the issuance of commitments and certificates.<sup>68</sup>

While ITG issues a small number of commitments and certificates in-house (known as “**division-issued**”), the majority are “**field issued**,” meaning issued by participants approved to issue commitments and certificates on behalf of ITG. Participants approved to issue ITG residential commitments and certificates are known as “**field issuers**”. Pursuant to Iowa Code section 16.91(7), title opinion attorneys shall be authorized to provide field issuing services subject to ITG rules, directives, and guidelines, including but not limited to, the terms and conditions of the ITG participation agreement.<sup>69</sup> Participants may be approved to provide residential field issuing services provided they have demonstrated requisite experience in Iowa title clearing and have completed all required training. A participant’s right to issue commitments and certificates is a privilege for the convenience of ITG and may be terminated pursuant to terms of the participation agreement.<sup>70</sup>

### 1. GENERAL OBLIGATIONS OF THE FIELD ISSUER.

The field issuer’s role is to prepare the legal documents that bind ITG to provide residential title coverage: commitments, certificates, and endorsements. It is important that field issuers understand the significance of their role in a transaction. Field issuance is not merely data entry. The field issuer is creating the legal documents that impose liability upon ITG, and in doing so acts as ITG’s agent. Failure to issue ITG coverage products with meticulous attention to detail and strict compliance with ITG rules, directives and guidelines will likely result in title defects that ITG will be obligated to resolve pursuant to the terms of the commitment, certificate and/or endorsement. If a title defect arises due to a field issuer’s error or omission, ITG will ultimately seek recoupment from the field issuer. Therefore, it is critical that field issuers prepare and issue ITG commitments, certificates and endorsements based on a participating attorney’s title opinion according to ITG rules, directives, and guidelines. The field issuer must have significant experience in reviewing Iowa attorney title opinions and a thorough understanding of Iowa title clearing procedures to be able to properly pull information from the title opinion and input necessary information into the appropriate sections of the commitment, certificate and/or endorsement.

### 2. FORMS.

A field issuer may only issue ITG commitments, certificates, and endorsements on approved ITG forms. A field issuer may not alter any form provided by ITG or use a form supplied by another person to bind ITG.<sup>71</sup> In addition, a field issuer shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by ITG.<sup>72</sup> If a participant fails to abide by ITG’s rules, directives and guidelines, ITG may refuse to allow the participant access to any forms until the participant complies with the

<sup>68</sup> Iowa Admin. Code r. 265—9.5.

<sup>69</sup> Iowa Code § 16.91(7)(2021); Iowa Admin. Code r. 265—9.7(3).

<sup>70</sup> Iowa Admin. Code r. 265—9.7(3).

<sup>71</sup> Iowa Admin. Code r. 265—9.5(1)“a”.

<sup>72</sup> Iowa Admin. Code r. 265—9.5(1)“a”.

requirements to ITG's satisfaction.<sup>73</sup> A participant shall be liable to ITG for loss or damage sustained by ITG by reason of the loss of, misuse of, or inability of the participant to account for any form supplied by ITG, or the failure of the participant to comply with ITG rules.<sup>74</sup> Field issuers have an obligation to carefully read and understand the terms and conditions of all forms, including the jackets, schedules and endorsements.

### 3. INCLUSION OF ITG PARTICIPANT NUMBERS.

ITG requires that ITG participants include their ITG Numbers on all products to be relied upon for the issuance of an ITG commitment, CPL, certificate or endorsement. If the title opinion and/or abstracting product fails to reflect the required ITG Number, the field issuer must inform the examining attorney and/or abstractor that the product(s) will be used for ITG coverage. The participating attorney and/or abstractor must then confirm that the product complies with ITG requirements and add the required ITG Number. The field issuer shall not issue the commitment or certificate unless and until the opinion and/or abstracting product is updated to include the participant's ITG Number.

### 4. FIELD ISSUANCE LIMITATIONS.

Field issuers are only authorized to issue commitments, certificates and endorsements for residential properties defined as a single-family dwelling or multi-family dwelling consisting of four (4) units or less.<sup>75</sup> Field issuers must obtain ITG's prior written authorization to issue coverage on a property that does not fall within this definition.<sup>76</sup> Further, field issuers must obtain prior written approval from ITG before issuing a commitment, certificate or endorsement with coverage exceeding \$750,000.<sup>77</sup> ITG does not permit field issuance of commercial commitments or certificates. All commercial commitments and certificates are issued in-house by the ITG Commercial Team.

### 5. COMMITMENT ISSUANCE OBLIGATIONS.

The field issuer has the following obligations when issuing a commitment:

#### 1) Confirm the Basis for Commitment Issuance.

- a. Iowa Code § 16.91 and the ITG participation agreement provide that a field issuer shall only issue a commitment or endorsement when it is based upon:
  - i. A preliminary title opinion or attorney certification form (as applicable) prepared by a participating attorney containing the participating attorney's name, signature and ITG Number unless the title opinion attorney is also the field issuer, in which case the commitment may serve as the preliminary title opinion;<sup>78</sup> and
  - ii. A preliminary abstract of title or Form 900 (as applicable) prepared by a participating abstractor containing the participating abstractor's name, signature and ITG Number.<sup>79</sup> The field issuer must also confirm that the proper preliminary search product was obtained. To determine the appropriate type of preliminary abstracting or title search required prior to closing, please refer to the **Abstract and Title Search Requirements for Residential Transactions**.

#### 2) Review the Preliminary Title Opinion (or Attorney Certification, if applicable)

- a. **ITG Compliant.** Confirm the title opinion contains the participating attorney's name, signature and ITG number.

<sup>73</sup> Iowa Admin. Code r. 265—9.5(1)"b".

<sup>74</sup> Iowa Admin. Code r. 265—9.5(1)"c".

<sup>75</sup> See Paragraph 1(d)(iii)(1), Iowa Title Guaranty Participation Agreement.

<sup>76</sup> *Id.*

<sup>77</sup> Paragraph 1(d)(iii)(2), Iowa Title Guaranty Participation Agreement.

<sup>78</sup> Iowa Code § 16.91(6)(2021); Iowa Admin. Code r. 265—9.7(2).

<sup>79</sup> Iowa Code § 16.91(6).

Note: If the title opinion attorney is the field issuer, the title opinion attorney is not required to prepare a separate preliminary title opinion – the commitment shall serve as the preliminary title opinion.

- b. **Titleholder(s).** Review the opinion to determine the current titleholder(s).
- c. **Legal Description.** Review the legal description.
- d. **Defects.** Review the opinion for objections or title defects that require resolution prior to closing, including, but not limited to, mortgages, judgments, liens, assessments, UCC financing statements, Mechanic's Notice and Lien Registry (MNLRL) postings, mineral interest reservations, stray interests, etc.

Note: If an objection does not also include a proposed resolution or appears to be open-ended, the field issuer must contact the title opinion attorney and request that a written requirement be added to the opinion.

- e. **Other Matters.** Review the opinion for all other matters appearing in the chain of title, including but not limited to, surveys, plats, associations, agreements, easements, covenants, conditions, restrictions, etc.
- f. **Real Estate Taxes.** Review the opinion to determine the status of real estate taxes.
- g. **Cautions or Exclusions.** Review the opinion for any cautions or exclusions.

Note: If a caution or exclusion appears in the title opinion, the field issuer must show it as an exception on Schedule B, Part II of the title commitment. For example, if the title opinion states that it makes no representation as to whether the property has legal access, the field issuer must except access from coverage.

### 3) Conduct a Search on the County Assessor Site

- a. Prior to issuing the commitment, the field issuer must conduct a search of the property on the county assessor's site to confirm the following:
  - i. **Access.** Review the Assessor's GIS map to confirm that the property appears to have public access. If the property appears landlocked or only has private access, the field issuer must add in an access exception on commitment Schedule B, Part I and alert the lender that ITG cannot provide access coverage unless access is confirmed or established. Below are two common access exceptions, the first to be used when there appears to be no access, and the second to be used when private access appears to exist but the record does not reflect an access agreement and therefore, ITG cannot provide access coverage:
    - 1. **Access (None):** *As the public records do not show any means of ingress or egress to or from the Land, this Commitment and the Certificate, if and when issued, shall not be construed as guaranteeing against any loss or damage by reason of lack of access to and from the Land.*
    - 2. **Access (Private Access Only, Not Guaranteed)** – *This Commitment and the Certificate, if and when issued, shall not be construed as guaranteeing against any loss or damage by reason of lack of access to and from the Land.*

Please be advised, however, that most lender closing instructions require access coverage and will require record resolution prior to closing. ITG will permit the existence of an access exception if the lender has provided written confirmation that the lender waives access coverage and understands that the access exception will remain on Schedule B, Part I of the final certificate.

- ii. **Mixed-Use.** Review the Assessor's page and GIS map to determine whether evidence of mixed-use exists. If evidence of mixed-use exists, the field issuer shall review ITG's Mixed-Use Property Policy to confirm the property qualifies for residential coverage prior to issuance. As mentioned above, mixed-use properties are not Form 900 eligible and therefore, ITG participants therefore need to determine whether a property is mixed-use prior to utilizing a Form 900. In rural Iowa, many residential properties contain pre-existing agricultural or commercial outbuildings that appear to evidence mixed-use but are in fact no longer being used for an agricultural or commercial purpose. ITG has created an Affidavit of No Agricultural or Commercial Use in Support of Form 900/901 Eligibility to be completed and signed by all titleholders to be eligible for the use of Form 900/901 in these circumstances.
- iii. **Existence of a Completed Dwelling.** Review the Assessor's page to confirm the existence of a completed dwelling. If a dwelling does not exist or if the dwelling appears to be incomplete, the field issuer must consult with the lender to determine the type of coverage sought by the lender. ITG does not permit issuance of a commitment with comprehensive or location endorsements if no dwelling exists or if the dwelling is only partially complete. ITG may provide survey, easement, and mechanic's lien coverage on a lot only, but only if the lot closing occurs and the certificate is issued prior to commencement of construction. ITG does not permit issuance of comprehensive, survey, easement, or mechanic's lien coverage on a construction loan or on permanent financing if construction has commenced but has not yet been completed. The field issuer must consult with an ITG underwriter if the field issuer (i) notices partial construction on the assessor's site, or (ii) notices the lender coverage amount greatly exceeds the assessed value of the property. These are all indications of a construction loan. The field issuer should also refer to **ITG's Construction Mortgage Manual**.
- iv. **Encroachments.** Review the Assessor's GIS map showing the boundary lines, the location of any improvements relative to the property lines, easements, building setback lines, property dimensions, and completed dwelling to determine the existence of any obvious encroachments. If an encroachment is noted, the field issuer shall consult with an ITG underwriter to draft proper exception language to be added to Schedule B, Part II of the commitment.

#### 4) Issue the Commitment

- a. Using the information provided in the title opinion, the field issuer shall complete the following sections of the title commitment.
- b. **Schedule A**
  - i. **Property**
    - 1. **Local Address:** Enter the local address exactly as it appears on the title opinion.
    - 2. **Legal Description:** Enter the legal description exactly as it appears on the title opinion. The legal description must be the full and complete legal as provided by the participating abstractor. Field issuers may not use short form legal descriptions, such as those appearing on the assessor website, on a commitment. The legal description shall not reflect any additional information such as parcel numbers or chain of title information. Parcel numbers and chain of title information may be added to the Notes and Information section of the commitment.
  - ii. **General Info**

1. **Abstract Certification Date:** Enter the abstract certification date as it appears on the title opinion.
2. **Abstract Certification Time:** Enter the abstract certification time as it appears on the title opinion.
3. **Abstractor(s):** Select the participating abstractor that prepared the preliminary abstract product.
4. **Title Opinion Attorney:** Select the preliminary title attorney that prepared the preliminary title opinion.
5. **Borrower(s)/Buyer(s):** Enter the name(s) of the borrower(s) or buyer(s) as they appear on the title opinion. The borrower names on the title opinion should match those on the lender's title order. If there is a discrepancy, the field issuer should confirm the correct borrower names before issuance.
6. **Titleholder(s):** Enter the name(s) of the titleholder(s) exactly as they appear on the preliminary title opinion.
7. **Titleholder(s) Tenancy:** Enter the tenancy of the current titleholder(s) exactly as it appears on the preliminary title opinion.
8. **Composite Mortgage Affidavit for Owner/Seller:** Enter the titleholder names as they should appear on the Composite Mortgage Affidavit (CMA).

### iii. Lender Coverage

1. **Loan Number:** Enter the loan number, if applicable.
2. **Coverage Amount:** Enter the coverage amount as it appears on the lender's title order.
3. **Type of Sale:** Select the appropriate estate type.
4. **Lender:** Select the appropriate lender.
5. **Closing Protection Letter:** If a CPL is requested and the field issuer is also the CPL closer, the field issuer should select the appropriate lender. If the field issuer is not the CPL closer, the field issuer should not add the CPL. The CPL closer will add the CPL through the CPL closer's account.
6. **Endorsements:** Select the endorsements requested by the lender on the title order. The field issuer has an obligation to determine if an endorsement is available at the commitment phase. Certain endorsements are not available at commitment. For example, if the commitment is for a construction loan, the comprehensive, location and standard exception waiver endorsements are not available. The field issuer must review the Residential Endorsements Manual prior to issuance of any endorsements. If an endorsement is added, the field issuer must accurately complete all variable fields within the endorsement prior to issuance.

### c. Schedule B

#### i. Part I – Requirements.

1. This section of the commitment itemizes all the requirements that must be met before ITG has an obligation to issue a final certificate. In this section, the field issuer adds all requirements as provided in the attorney's title opinion. As mentioned above, if the title opinion is silent and does not provide a requirement

for any given objection, the field issuer must contact the attorney and request that a requirement be added to the title opinion.

2. The first three (3) requirements are standard requirements that populate on all ITG commitments. Field issuers have an obligation to read these requirements and confirm satisfaction prior to issuance of the certificate:
  - a. **Requirement 1:** *The Proposed Guaranteed must notify ITG in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. ITG may then make additional Requirements or Exceptions.*
  - b. **Requirement 2:** *Pay the agreed amount for the estate or interest to be guaranteed.*
  - c. **Requirement 3:** *Pay the premiums, fees, and charges for the ITG Certificate.*
3. The fourth requirement, known as the “**Record Requirements**”, is the section in which the field issuer must add all requirements that must be filed of record. See **ITG Residential Sample Schedule B Requirements** for a list of approved template requirements. The field issuer must also review the Residential Endorsements Manual and add all endorsement record requirements. Below are some of the most common, but the field issuer has an obligation to add all record requirements in this section.
  - a. **Requirement 4:** *The following documents satisfactory to ITG that convey the Title or create the Mortgage to be guaranteed, or both, must be properly authorized, executed, delivered, and recorded in the Public Records:*
    - i. *Release of any claims or judgments against the Seller(s) (or titleholder(s) in a refinance) that would be liens on the Land.*
    - ii. *If the Mechanic's Notice and Lien Registry ("MNL") reveals any of the following postings, obtain and post the required documentation as follows: (i) Mechanic's lien: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNL; and (b) post satisfaction of lien to the MNL; (ii) Commencement of Work: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNL; and (b) post withdrawal or lien waiver(s) through and including the filing date of the vesting deed and/or Guaranteed Mortgage to the MNL; (iii) Preliminary Notice: (a) obtain final lien waivers from all contractors, subcontractors, materialmen or suppliers that have posted to the MNL; and (b) post withdrawal or lien waiver(s) through and including the filing date of the vesting deed and/or Guaranteed Mortgage to the MNL.*
    - iii. *Warranty Deed from Seller(s), and spouse(s), if any, conveying the Land to Buyer(s). NOTE: The marital status of the grantor(s) must be shown on said deed.*

- iv. *Real Estate Mortgage from Buyer(s) (or titleholder(s) in a refinance), and spouses, if any, to Lender securing a debt in the amount of {lender coverage amount}.*
  - v. *Release and satisfaction of the mortgage described in Special Exception {special exception number} from Part II.*
  - vi. *Release and satisfaction of the judgment described in Special Exception {special exception number} from Part II.*
  - vii. *Payment of delinquent real estate taxes and penalty as described in Special Exception {special exception number} from Part II.*
  - viii. *Confirmation that the county recorder and courthouse are processing filings and permitting abstractor access to perform necessary final title searches through the date of the vesting deed and/or guaranteed mortgage filing.*
4. The fifth requirement, known as the “**Non-Record Requirements**”, is the section in which the field issuer must add all additional requirements. These are requirements that must be completed prior to closing but are not documents that must be filed of record. See **ITG Residential Sample Schedule B Requirements** for a list of approved template requirements. The field issuer must also review the Residential Endorsements Manual and add all endorsement non-record requirements. Below are some of the most common non-record requirements, but the field issuer has an obligation to add all non-record requirements in this section.
- a. **Requirement 5:** The following additional non-record requirements, if any, satisfactory to ITG:
    - i. *Obtain completed, signed and notarized Composite Mortgage Affidavit (“CMA”) from the sellers/titleholders, and spouses, if any, and buyers of the Land, and for purchase transactions, the Notice of Availability of Iowa Title Guaranty Owner Certificate signed by each buyer electing or declining an owner certificate. All unrecorded matters such as leases, contracts, easements, lien waivers, etc., must be attached thereto and provided to the examining Participating Attorney for review prior to closing. The examining Participating Attorney may require disclosed matters be resolved 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 that impair the titleholders’ interest or the priority of the guaranteed mortgage to remain as exceptions to title and will require record resolution prior to closing to ensure that the lender’s mortgage is in desired lien position. ITG requires that all disclosed matters that impair the titleholders’ interest or the priority of the guaranteed mortgage 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.*

- ii. *Search the Mechanic's Notice and Lien Registry ("MNLRL") at the time of closing. Show any postings revealed as exceptions on Schedule B of the commitment.*
  - iii. *Secure final lien waivers and/or satisfactions from any contractors, subcontractors, materialmen or suppliers disclosed on the latest version of the Composite Mortgage Affidavit.*
  - iv. *Confirm that the Guaranteed Mortgage meets the definition of a purchase money mortgage as defined by Iowa Code Section 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 Code Section 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 on Schedule B. Consult with the examining Participating Attorney to satisfactorily resolve matters that impair the titleholders' interest or the priority of the guaranteed mortgage prior to closing.*
  - v. *If a GAP Coverage Endorsement or a Closing Protection Letter is issued in conjunction with this Commitment: (i) Obtain from a Participating Abstractor a written pre-closing search certification, also known as a day-of-closing search or gap search, as close to the closing date as possible; (ii) Record the proper closing documents (i.e. deed, mortgage, title clearing affidavits, etc.) immediately after execution, and in no event later than the tenth business day following the certification date of the pre-closing search certification; (iii) 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; (iv) Confirm no new matters are disclosed on the pre-closing search certification before closing and disbursing funds; and (v) If the pre-closing search discloses any new matters, except any and all new matters by adding them as exceptions on Schedule B of the commitment and consult with the examining Participating Attorney to satisfactorily resolve matters that impair the titleholders' interest or the priority of the guaranteed mortgage prior to closing.*
- ii. **Part II – Exceptions.** This section lists all matters which are excepted from coverage. In this section, the field issuer must input all matters affecting title as provided in the attorney's title opinion, including but not limited to, mortgages, judgments, liens, assessments, UCC financing statements, Mechanic's Notice and Lien Registry (MNLRL) postings, mineral interest reservations, stray interests, surveys, plats, associations, agreements, easements, covenants, conditions, restrictions, etc. All defects or encumbrances which must be cleared prior to closing must have a corresponding requirement in Part I.

Unlike an attorney title opinion which often provides lengthy explanations describing the objections, the commitment exceptions must be succinct and include only enough information to put the guaranteed lender or owner on notice of the record matter. While most information that will appear in an exception will be pulled from the title opinion, it is

not always appropriate to use the entirety of a title opinion objection as an exception. For example, use of phrases such as “your borrower” or “the abstract” may be appropriate in a title opinion but not in a commitment, as the latter is often directed to multiple audiences who may not be in possession of the abstract. A general rule is to include the title of the document, the name(s) of the parties, case number, the instrument date, the execution date, the filing date, recording information (book/page/instrument no.) and the name of the office in which the document was filed. This provides the lender and other parties sufficient information to pull a copy of the full text instrument without inadvertently limiting coverage by only including partial information in the commitment exception language. It also reduces the probability of human typographical errors. See **ITG Residential Sample Schedule B Exceptions** for a list of approved template exceptions.

Below are the standard exceptions that will automatically populate on all commitments.

*The Certificate will not guaranty against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of Iowa Title Guaranty:*

1. **Standard Exception 1:** *Any right or claim of a party in possession not shown by the Public Records.*
2. **Standard Exception 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. **Standard Exception 3:** *Any easement or claim of easement not shown by the Public Records.*
4. **Standard Exception 4:** *Any lien or right to a lien for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.*
5. **Standard Exception 5:** *Any taxes or special assessments which are not shown as existing liens by the Public Records.*
6. **Standard Exception 6:** *Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I— Requirements are met.*
7. **Standard Exception 7:** *The lien of the taxes for the July 1, {tax year 1} - June 30, {tax year 2}, fiscal year and thereafter, with the first half due on September 1, {tax year 2} (delinquent after September 30, {tax year 2}) and the second half due on March 1, {tax year 3} (delinquent after March 31, {tax year 3}). First installment {first installment status}. Second installment {second installment status}. [Null or Additional Information]*
8. **Standard Exception 8:** *Ordinances and regulations for the city and county in which the Land is located.*
9. **Standard Exception 9:** *Plat(s) filed with the recorder’s office for the county in which the Land is located, including all easements, building setbacks, restrictions, reservations, and notations.*
10. **Form 900/901 (only populates if transaction type is Form 900/901):** *Declarations, covenants, restrictions, easements, reservations, rights, options,*

*assessments, costs, and maintenance obligations filed of record with the recorder's office of the county in which the Land is located.*

- iii. **Notes and Information.** In this section, the field issuer may add any information that is requested by the lender but is not guaranteed by the commitment or certificate. The two most common items are chain of title information and tax parcel numbers and amounts.

1. **Chain of Title Request by Lender:** *Participating Abstractor's title search reveals the following conveyances recorded in the {county recorder} County, Iowa Recorder's Office within the last twenty-four (24) months: (a) {conveyance document} from {grantor(s)} to {grantee(s)} dated {execution date}, filed {recording date} at {book/page; inst. no.}; (b) {conveyance document} from {grantor(s)} to {grantee(s)} dated {execution date}, filed {recording date} at {book/page; inst. no.}. [Null or Additional Information]*
2. **Taxes – Amounts:** *Taxes are payable in two semi-annual installments of {tax installment amount} per installment. This property is referenced as Parcel No. {tax id number}. [Null or Additional Information]*

**d. Composite Mortgage Affidavits.**

- i. **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.
- ii. The CMA is a legal disclosure required to obtain ITG coverage.
- iii. On a purchase transaction, a CMA (Owner/Seller) and a CMA (Buyer) automatically generate with the commitment.
- iv. On a refinance transaction, a CMA (Owner/Seller) automatically generates with the commitment.
- v. The field issuer must deliver the CMAs with the commitment to the lender, closer and attorney(s) to ensure they are executed at the time of closing. ITG strongly advises that the field issuer and/or closer provide copies of the CMAs to the Owner/Seller(s) and Buyer(s) 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 issues that requires additional time to clear.
- vi. See **ITG's CMA Manual** for further information.

**e. Privacy Policy**

- i. ITG's Privacy Policy automatically generates with a commitment. The field issuer shall deliver the Privacy Policy with the commitment to the closer and attorneys(s) to be reviewed by the titleholders and/or buyers.

**f. Notice of Availability (Purchases Only)**

- i. The Notice of Availability (“NOA”) alerts the buyer(s) of their ability to obtain owner coverage at the time of their purchase. ITG offers free owner coverage up to \$750,000 when issued in conjunction with a lender certificate. Coverage over \$750,000 is \$1 per \$1,000 in excess of \$750,000. Even if a buyer's lender is not obtaining coverage or the

buyer is purchasing with cash, the buyer can purchase owner coverage for a flat fee of \$175 plus \$1 per \$1,000 in excess of \$750,000.

- ii. ITG requires all buyers execute the NOA either electing or declining owner coverage.
- iii. The field issuer must deliver the NOA with the commitment to the lender, closer and attorney(s) to ensure it is executed at the time of closing.

#### 5) Deliver the Commitment

- a. The field issuer should issue and deliver the commitment with CMAs, NOA and Privacy Policy to the lender, closer and attorney(s) within 24 hours of receipt of the title opinion.

### 6. CERTIFICATE ISSUANCE OBLIGATIONS.

The field issuer has the following obligations when issuing a certificate:

#### 1) Confirm the Basis for Certificate Issuance.

- a. Iowa Code § 16.91 and the ITG participation agreement provide that a field issuer shall only issue a certificate or endorsement when it is based upon:
  - i. A final title opinion or attorney certification form (as applicable) prepared by a participating attorney containing the participating attorney's name, signature and ITG Number unless the title opinion attorney is also the field issuer, in which case the certificate may serve as the final title opinion;<sup>80</sup> and
  - ii. A final abstract continuation, Form 901, or post-closing search (as applicable) prepared by a participating abstractor containing the participating abstractor's name, signature and ITG Number.<sup>81</sup> The field issuer must also confirm that the proper final search product was obtained. 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**.

#### 2) Review the Final Title Opinion (or Attorney Certification, if applicable)

- a. **ITG Compliant.** Confirm the title opinion contains the participating attorney's name, signature and ITG number.

Note: If the title opinion attorney is the field issuer, the title opinion attorney is not required to prepare a separate final title opinion – the certificate shall serve as the final title opinion.
- b. **Titleholder(s).** Review the final title opinion to determine the new titleholder(s).
- c. **Legal Description.** Review the legal description. Confirm that the legal description matches the legal description on the preliminary title opinion and/or commitment to verify there have been no changes. If the field issuer notices a discrepancy, alert the examining attorney and obtain confirmation that appropriate title searches and conveyances were obtained. If the examining attorney confirms that the legal description on the final title opinion is accurate and appropriate searches and conveyances were obtained but the final legal description does not match the legal description on the title commitment, the field issuer must obtain written approval from the lender evidencing that the lender consents to receiving a final title opinion with the revised legal description. For further guidance on variances in legal descriptions, contact an ITG underwriter.

<sup>80</sup> Iowa Code § 16.91(6); Iowa Admin. Code r. 265—9.7(2).

<sup>81</sup> Iowa Code § 16.91(6).

- d. **Defects.** Review the opinion to confirm that all objections noted on the preliminary title opinion have been satisfactorily resolved and no longer appear in the final opinion.

Note: Any unresolved matters or any new intervening matters 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 has 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. If the lender does not consent to the exception, the field issuer may not issue the final title certificate until the objection has been resolved of record and is removed from the final title opinion. The field issuer must consult with the examining attorney to determine how the defect shall be remediated.

- e. **Other Matters.** Review the opinion for all other matters appearing in the chain of title, including but not limited to, surveys, plats, associations, agreements, easements, covenants, conditions, restrictions, etc. Any new matters filed prior to the guaranteed vesting deed and/or mortgage must be added to the final title certificate.
- f. **Real Estate Taxes.** Review the opinion to determine the updated status of real estate taxes.
- g. **Cautions or Exclusions.** Review the opinion for any new cautions or exclusions.

Note: If a new caution or exclusion appears in the title opinion, the field issuer must show it as an exception on Schedule B, Part I of the final title certificate. 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.

### 3) Review Composite Mortgage Affidavits

- a. Prior to issuance of the final certificate, the field issuer must review the completed, signed and notarized CMAs. The field issuer must confirm the CMAs are accurate, signed by the appropriate parties and spouses, and properly notarized.
- b. If the field issuer notices an affirmative disclosure on a CMA, the field issuer has an obligation to confirm with the title opinion attorney that the matter(s) has satisfactorily been resolved of record and does not constitute a title defect.
- c. The field issuer has an obligation to except any unresolved matters disclosed on the CMA from coverage by adding them as exceptions in Schedule B, Part I of the final certificate(s). The field issuer must 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. Therefore, ITG requires that all disclosed matters that may impair either (1) the titleholders' interest or (2) the priority of the guaranteed mortgage(s) 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.

- d. If the lender does not consent to the exception, the field issuer may not issue the final title certificate until the objection has been resolved of record and is removed from the final title opinion. The field issuer must consult with the examining attorney to determine how the defect shall be remediated.

#### 4) Review the Notice of Availability (Purchases Only)

- a. The field issuer must review the signed copy of the Notice of Availability to determine if the buyer(s) elected coverage. If the buyers elected coverage, the field issuer must issue an owner certificate after completing the remaining steps below.

#### 5) Conduct or Confirm MNLR Search

- a. Prior to issuance of the final certificate, the field issuer must confirm in writing that a search of the Mechanic's Notice and Lien Registry ("MNLR") was performed through the date and time of the vesting deed and/or guaranteed mortgage.
- b. Evidence of a final MNLR search can be provided in many ways, including, but not limited to:
  - i. **Final Search Product.** Final search product prepared by a participating abstractor updated through the date of the vesting deed filing (owner coverage) and/or guaranteed mortgage filing (lender coverage) reflecting that the MNLR was searched for Mechanic's Liens, Commencement of Work and Preliminary Notice postings and either none were found or any postings revealed have been satisfactorily resolved.
  - ii. **Final Title Opinion.** Affirmative language in the final title opinion that the MNLR was searched for Mechanic's Liens, Commencement of Work and Preliminary Notice postings through the filing date and time of the vesting deed and/or guaranteed mortgage and either none were found or any postings revealed have been satisfactorily resolved.
  - iii. **Final Search Documentation.** Search documentation evidencing that the MNLR was searched for Mechanic's Liens, Commencement of Work and Preliminary Notice postings through the filing date and time of the vesting deed and/or guaranteed mortgage and either none were found or any postings revealed have been satisfactorily resolved. Search documentation may be in the form of MNLR search screen prints with visible search parameters for the fields described in the ITG MNLR Search Guidelines.
- OR
- iv. **MNLR Search Affidavit.** MNLR Search Affidavit signed by the examining attorney, closer, or field issuer evidencing that the affiant performed the appropriate final MNLR searches through the filing date and time of the vesting deed and/or guaranteed mortgage and either none were found or any postings revealed have been satisfactorily resolved. This is a new affidavit prepared by ITG in response to participant requests for an easier means to evidence compliance with ITG's MNLR search requirements.
- c. If the field issuer is unable to verify either from the written title opinion or the final abstract search certification that an MNLR search was completed revealing no new postings, then the field issuer must perform an MNLR search in accordance with ITG's **MNLR Search Guidelines** prior to issuance of the final certificate.

#### 6) New Construction and Mechanic's Lien Coverage.

- a. For newly constructed residential dwellings, the field issuer must ensure compliance with ITG's **New Construction and Mechanic's Lien Coverage Manual**.
- b. For all 3-4 unit dwellings or any owner-builder constructed dwelling, the field issuer must:

- i. Obtain or confirm that the closer has obtained final lien waivers from the general contractor and all subcontractors that have furnished labor, materials or equipment on the property in the last 90 days; or
- ii. Directly confirm or verify that the closer has directly confirmed with the general contractor, owner-builder and subcontractors that the date on which the last of the material was furnished or the last of labor was performed was over 90 days ago.
- c. ITG has developed the “**3-4 Unit Dwelling or Owner-Builder Construction Receipt of Final Lien Waivers Confirmation**” to be completed and signed by either the examining attorney, closer, or field issuer on all new construction transactions involving 3-4 unit dwellings or owner-builder construction in which ITG residential coverage is contemplated.

## 7) Confirm ITG Receipt of Payment

- a. Prior to issuance of a certificate, the field issuer must confirm ITG has received premium payment or the field issuer must immediately remit payment upon issuance.

## 8) Issue the Certificate

- a. Using the information provided in the final title opinion, the field issuer shall complete the following sections of the title certificate.

### b. Lender Schedule A

#### i. Property

- 1. **Local Address:** Enter the local address exactly as it appears on the title opinion. If the address has changed since commitment, verify the correct local address with the attorney, lender, and the assessor.
- 2. **Legal Description:** Enter the legal description exactly as it appears on the final title opinion. The legal description must be the full and complete legal as provided by the participating abstractor. Field issuers may not use short form legal descriptions, such as those appearing on the assessor website. The field issuer may not change the legal description from commitment to certificate, nor may the field issuer revise the legal description in Schedule A to reflect any additional information such as parcel numbers or chain of title information. Also, the field issuer must confirm that the legal description on the final title opinion and final title certificate matches the legal description on the preliminary title opinion and/or commitment to verify there have been no changes. If the field issuer notices a discrepancy, alert the examining attorney, and obtain confirmation that appropriate title searches and conveyances were obtained. If the examining attorney confirms that the legal description on the final title opinion is accurate and appropriate searches and conveyances were obtained but the final legal description does not match the legal description on the title commitment, the field issuer must obtain written approval from the lender evidencing that the lender consents to receiving a final title opinion with the revised legal description. For further guidance on variances in legal descriptions, contact an ITG underwriter.

#### ii. General Info

- 1. **Abstractor(s):** Select the participating abstractor that prepared the final abstract product.
- 2. **Title Opinion Attorney:** Select the title attorney that prepared the final title opinion.

3. **Borrower(s)/Buyer(s):** Enter the name(s) of the borrower(s) or buyer(s) as they appear on the guaranteed mortgage. If vesting changed prior to closing in a refinance, the titleholder(s) name(s) on the certificate must be revised to reflect the name(s) of the titleholder(s) as of the certificate date (the date of the guaranteed mortgage filing).
4. **Titleholder(s):** Enter the name(s) of the titleholder(s) exactly as they appear on the vesting deed as noted in the final title opinion.
5. **Titleholder(s) Tenancy:** Enter the tenancy of the current titleholder(s) exactly as it appears on the vesting deed as noted in the final title opinion.

### iii. Coverage

1. **Loan Number:** Verify or enter the loan number, as applicable.
2. **Coverage Amount:** Enter the coverage amount as it appears on the mortgage unless the lender instructions request a lower amount.
3. **Type of Sale:** Select the appropriate estate type.
4. **Originating Lender:** Select the appropriate lender.
5. **Guaranteed Lender:** If the guaranteed lender is the same as the originating lender, check the “same as originating” box. If mortgage reflects Mortgage Electronic Registration Systems, Inc. (MERS) as a nominee for lender, select Mortgage Electronic Registration Systems, Inc. (MERS) as the Guaranteed Lender and check the “Guaranteed Lender is Nominee” box.
6. **Mortgage Signing Date:** Enter the mortgage signing date.
7. **Mortgage Filing Date:** Enter the mortgage filing date. Review to make sure that the mortgage was filed promptly after signing. If the mortgage filing date is more than 10 days after the signing date, immediately alert ITG.
8. **Schedule A Mortgage Phrase:** After entering the above data, click “click here for default text” to generate the Schedule A mortgage phrase. Review the phrase for accuracy and add the marital status recitation exactly as it appears on the mortgage. However, if the marital status recitation is missing or unclear (e.g., “married” does not conclusively evidence to whom the titleholder(s) are married), the field issuer must request a corrected mortgage or affidavit explanatory of title be filed of record prior to issuance of the final certificate. The field issuer must also confirm that all titleholders and spouses, if any, signed the mortgage pursuant to Iowa Code § 561.13 and Iowa Land Title Standard 5.3. If the mortgage does not include the signatures of all titleholders and spouses, the field issuer must require a corrected mortgage including the signatures of all titleholders and spouses be properly acknowledged and filed of record. The field issuer may not issue a final certificate until the proper corrective documents have been recorded with the county recorder.

### iv. Endorsements

1. Select the endorsements requested by the lender on the title order. Prior to issuance, the field issuer has an obligation to confirm all endorsement requirements have been met. The field issuer must review the **Residential Endorsements Manual** prior to issuance of any endorsements. If an endorsement

is added, the field issuer must accurately complete all variable fields within the endorsement prior to issuance.

c. **Lender Schedule B**

- i. **Commitment Requirement Review.** The first step in preparing Schedule B is to review the commitment requirements to confirm all requirements have been satisfied. If a commitment requirement has not been satisfied, it will remain as an exception on Schedule B, Part I of the final certificate. For example, if a mortgage is not released and satisfied of record pursuant to a commitment requirement, the mortgage will remain an exception on the final certificate. Please be advised, however, that most lender closing instructions do not permit matters impairing the titleholders' interest or the priority of the guaranteed mortgage to remain as exceptions to title and will require record resolution prior to closing to ensure that the lender's mortgage is in desired lien position. 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.
- ii. **Part I – Exceptions.** In this section, the field issuer will remove those exceptions that appeared on Schedule B, Part II of the commitment that have since been satisfied of record and removed from the attorney's final opinion. The field issuer must also add any new, unresolved matters disclosed in the final title opinion or on the CMAs. The field issuer must be advised, however, that most lender closing instructions do not permit matters impairing the titleholders' interest or the priority of the guaranteed mortgage 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 position. Therefore, ITG requires that all disclosed matters impairing the titleholders' interest or the priority of the guaranteed mortgage 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. If the lender does not consent to the exception, the field issuer may not issue the final title certificate until the objection has been resolved of record and is removed from the final title opinion. The field issuer must consult with the examining attorney to determine how the defect shall be remediated.
- iii. **Part II – Subordinate Matters.** In this section, the field issuer will add any matters that appear in the chain of title after filing date and time of the guaranteed mortgage or are otherwise subordinate. For example, a junior mortgage, a buyer judgment subordinate to a purchase money mortgage, or a prior mortgage that was subordinated to the guaranteed mortgage.

d. **Owner Schedule A**

i. **Property**

1. **Local Address:** Enter the local address exactly as it appears on the title opinion. If the address has changed since commitment, verify the correct local address with the attorney, lender, and the Assessor.
2. **Legal Description:** Enter the legal description exactly as it appears on the final title opinion. The legal description must be the full and complete legal as provided by the participating abstractor. Field issuers may not use short form legal descriptions, such as those appearing on the assessor website. The field issuer

may not change the legal description from commitment to certificate, nor may the field issuer revise the legal description in Schedule A to reflect any additional information such as parcel numbers or chain of title information.

ii. **General Info**

1. **Abstractor(s):** Select the participating abstractor that prepared the final abstract product.
2. **Title Opinion Attorney:** Select the title attorney that prepared the final title opinion.
3. **Titleholder(s):** Enter the name(s) of the titleholder(s) exactly as they appear on the vesting deed as noted in the final title opinion.
4. **Titleholder(s) Tenancy:** Enter the tenancy of the current titleholder(s) exactly as it appears on the vesting deed as noted in the final title opinion.

iii. **Coverage**

1. **Loan Number:** Verify or enter the loan number, if applicable.
2. **Coverage Amount:** Enter the purchase price or reduced coverage amount as reflected on the Notice of Availability.
3. **Type of Sale:** Select the appropriate estate type.
4. **Name of Guaranteed to Appear on Schedule A:** Enter the titleholder(s) names exactly as they appear on the vesting deed as noted in the final title opinion.
5. **Deed Filing Date and Time:** Enter the deed filing date and time.

iv. **Endorsements:**

1. Select the endorsements requested by the owner. Prior to issuance, the field issuer has an obligation to confirm all endorsement requirements have been met. The field issuer must review the **Residential Endorsements Manual** prior to issuing any endorsements. If an endorsement is added, the field issuer must accurately complete all variable fields within the endorsement prior to issuance.

e. **Owner Schedule B**

- i. **Commitment Requirement Review.** The first step in preparing Schedule B is to review the commitment requirements to confirm all requirements have been satisfied. It is imperative that property was conveyed to the buyer in accordance with the commitment requirements. If there was a defective conveyance, the attorney will note it in the final title opinion. The field issuer may not issue a final certificate if the Land did not properly vest with the new buyer. Like lender certificates, if any other commitment requirement has not been satisfied, it will remain as an exception on Schedule B, Part I of the final owner certificate. Please be advised, however, that ITG requires that all disclosed matters impairing the buyer's interest be resolved of record unless the buyer has provided written confirmation that the buyer consents to the matter remaining an exception on Schedule B, Part I of the final certificate and understands that the buyer's interest in the property is subordinate to said matter.
- ii. **Schedule B Exceptions.** Owner certificates do not contain separate parts. On the owner certificate, all exceptions appear in the same section on Schedule B because all exceptions are superior to the owner's interest in the Land. On Schedule B of the owner certificate,

the field issuer will remove those exceptions that appeared on Schedule B, Part II of the commitment that have since been satisfied of record and removed from the attorney's final opinion. The field issuer must also add any new, unresolved matters disclosed in the final title opinion or on the CMAs. However, ITG requires that all disclosed matters impairing the buyer's interest be resolved of record unless the buyer has provided written confirmation that the buyer consents to the matter remaining as an exception on Schedule B, Part I of the final certificate and understands that the buyer's interest in the property is subordinate to said matter. If the buyer does not consent to the exception, the field issuer may not issue the final title certificate until the objection has been resolved of record and is removed from the final title opinion. The field issuer must consult with the examining attorney to determine how the defect shall be remediated. On owner certificates, the field issuer must add all exceptions in Part I, including junior liens and other matters, because the owner's interest is subject to all encumbrances and defects.

#### 9) Deliver the Certificate(s).

- a. Field issuers are required to issue and deliver all ITG 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.<sup>82</sup> In the event the lender's closing instructions require a shorter timeframe to issue and deliver ITG certificates to customers, the participant shall adhere to the lender's requirements.<sup>83</sup>

## Q. CLOSING PROTECTION LETTER SERVICE

Iowa Code § 16.93 authorizes ITG to issue a closing protection letter to a person who is a proposed guaranteed on a commitment.<sup>84</sup> ITG may also authorize a participant to issue a closing protection letter on its behalf.<sup>85</sup> See the **CPL Manual** for detailed information about CPL services and the obligations of a CPL closer.

## R. ITG PARTICIPANT TYPES

ITG is an adjunct to Iowa's attorney-abstract system. ITG partners with three (3) types of local real estate professionals who perform one or more of ITG's services known as "participants":<sup>86</sup>

1. Abstractors
2. Attorneys
3. Closers

### 1. ABSTRACTORS

An "*abstractor*" is a person engaged in the practice of searching public records for the purpose of creating abstracts.<sup>87</sup> A "*participating abstractor*" is an abstractor authorized by ITG to prepare abstracts for ITG purposes.<sup>88</sup> Abstracts are defined and discussed in the ITG Services section above. Abstractors abstracting on behalf of ITG do so pursuant to one of the following authorities:

- 1) 40-year title plant<sup>89</sup>

<sup>82</sup> Paragraph (1)(d)(iv), Iowa Title Guaranty Participation Agreement.

<sup>83</sup> *Id.*

<sup>84</sup> Iowa Code § 16.93(1).

<sup>85</sup> Iowa Admin. Code r. 265—9.7(4).

<sup>86</sup> Iowa Admin. Code r. 265—9.1.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Iowa Code § 16.91(5)(a)(2); Iowa Code §§ 614.29—.33; Iowa Admin. Code r. 265—9.7(1)"a".

- 2) Intent to build title plant<sup>90</sup>
- 3) Grandfathered attorney<sup>91</sup>
- 4) Title plant waiver<sup>92</sup>
  - a. Provisional
  - b. Permanent

**40 Year Title Plant.** A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under Iowa Administrative Code rule 265—9.7(1)“c” (grandfathered) or authorized under Iowa Administrative Code rule 265—9.7(1)“d” (waived).<sup>93</sup> Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate.<sup>94</sup> The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor’s participation in the ITG program.<sup>95</sup> A government-maintained and -controlled database is not considered a title plant for ITG purposes.<sup>96</sup>

**Intent to Build Title Plant.** ITG may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for use by ITG, upon review of the following:

1. The abstractor’s business plan;
2. Evidence that a title plant will be built for a specific county or counties within three years;
3. A timeline for completion of the title plant; and
4. A description of the applicant’s abstracting experience.<sup>97</sup>

**Grandfathered Attorney.** A participating attorney who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for ITG purposes, either personally or through persons under the participating attorney’s supervision and control, shall be exempt from the requirements to own or lease a title plant.<sup>98</sup> This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.<sup>99</sup>

**Title Plant Waivers.** ITG recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates.<sup>100</sup> ITG must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service and a competitive price.<sup>101</sup> Iowa Code section 16.91(5)(b) allows the ITG Board to waive the up-to-date title plant requirements under certain conditions.<sup>102</sup> **\*NOTE: The title plant waiver should not be confused with an abstract definition waiver, which is a waiver permitting a variance from the Iowa Code’s definition of an abstract (allowing the use of a Report of Title), not the 40-year title plant requirement.** The Pottawattamie County abstract definition waiver is discussed in further detail in the abstracting services section above.

<sup>90</sup> Iowa Admin. Code r. 265—9.7(1)“b”.

<sup>91</sup> Iowa Code § 16.91(5)(a)(2); Iowa Admin. Code r. 265—9.7(1)“c”.

<sup>92</sup> Iowa Code § 16.91(5)(b); Iowa Admin. Code r. 265—9.7(1)“d”.

<sup>93</sup> Iowa Code § 16.91(5)(a)(2); Iowa Admin. Code r. 265—9.7(1)“a”.

<sup>94</sup> Iowa Admin. Code r. 265—9.7(1)“a”.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Iowa Admin. Code r. 265—9.7(1)“b”.

<sup>98</sup> Iowa Code § 16.91(5)(a)(2); Iowa Admin. Code r. 265—9.7(1)“c”.

<sup>99</sup> Iowa Code § 16.91(5)(a)(2); Iowa Admin. Code r. 265—9.7(1)“c”.

<sup>100</sup> Iowa Code § 16.91(5)(b); Iowa Admin. Code r. 265—9.7(1)“d”.

<sup>101</sup> Iowa Code § 16.91(5)(b); Iowa Admin. Code r. 265—9.7(1)“d”.

<sup>102</sup> Iowa Code § 16.91(5)(b); Iowa Admin. Code r. 265—9.7(1)“d”.

1. *Criteria for title plant waiver.* Pursuant to Iowa Code section 16.91(5)(b), the ITG Board may issue a ruling waiving the title plant requirement set forth in Iowa Code section 16.91(5)(a)(2) for an attorney or abstractor<sup>103</sup> if the board finds the following:<sup>104</sup>
  - a. The title plant requirement imposes a hardship to the applicant; and  
“**Hardship**” means deprivation, suffering, adversity or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances.<sup>105</sup>
  - b. The waiver is:
    - i. Clearly in the public interest; OR  
“**Public interest**” means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of certificates throughout the state, making certificates more competitive than out-of-state title insurance, increasing the division’s market share, improving the quality of land titles and protecting consumers.<sup>106</sup>
    - ii. Absolutely **necessary to ensure availability of certificates** throughout the state.
2. *Application for Title Plant Waiver.* An abstractor or attorney applying for a title plant waiver must do so on ITG’s website. The applicant must provide, at a minimum, the following information:
  - a. The applicant’s name, business address, e-mail address and telephone number;
  - b. The applicant’s business plan;
  - c. The county or counties in which the applicant intends to abstract;
  - d. A description of the applicant’s abstracting experience;
  - e. Samples of abstracts prepared by the applicant;
  - f. A history of any professional disciplinary action against the applicant;
  - g. Professional references in support of the applicant;
  - h. The relevant facts the applicant believes would justify a waiver under Iowa Administrative Code rules 265—9.7(1)“d”(5) and 265—9.7(1)“d”(6)“4”; and
  - i. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.<sup>107</sup>
3. *Notification and response.* ITG shall:
  - a. Notify the applicant upon receipt of a complete application.
  - b. Publish notice of an application on ITG’s website within 7 calendar days of receipt of a complete application. A copy of the application and supporting documents will be provided to any interested person upon request.
  - c. Provide notice of an application to the Iowa State Bar Association and Iowa Land Title Association. Provision of the notice to the identified associations is not a requirement for the ITG Board to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the ITG Board.

<sup>103</sup> Iowa Code § 16.91(5)(b); Iowa Admin. Code r. 265—9.7(1)“d”(1).

<sup>104</sup> Iowa Admin. Code r. 265—9.7(1)“d”(5).

<sup>105</sup> Iowa Admin. Code r. 265—9.7(1)“d”(5)“3”.

<sup>106</sup> Iowa Admin. Code r. 265—9.7(1)“d”(5)“4”.

<sup>107</sup> Iowa Admin. Code r. 265—9.7(1)“d”(3).

- d. If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. ITG shall receive public comments up to 45 calendar days prior to that ITG Board meeting.<sup>108</sup>
4. *Proposed Written Ruling.* The review of a waiver application is not a contested case proceeding.<sup>109</sup> The ITG Director or designee shall review an application and its supporting documentation.<sup>110</sup> The Director shall present a proposed written ruling to the ITG Board.<sup>111</sup> The ITG Board shall adopt, amend or reject the proposed written ruling.<sup>112</sup> If the proposed written ruling is rejected, the ITG Board shall instruct the ITG Director to prepare an alternative written ruling to be considered at a subsequent ITG Board meeting.<sup>113</sup> The written ruling shall summarize the relevant facts and the basis for granting or denying the waiver.<sup>114</sup> The written ruling may specify the scope and duration of the waiver and any restrictions, conditions, or requirements.<sup>115</sup> The written ruling shall be mailed to the applicant within 7 days of its issuance.<sup>116</sup>
5. *Board Decision.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the ITG Board upon consideration of all relevant factors.<sup>117</sup>
  - a. *Relevant Factors.* Relevant factors shall include, but are not limited to:<sup>118</sup>
    - i. ITG Director's proposed written ruling.
    - ii. Facts and circumstances set out in the application.
    - iii. Any history of professional disciplinary action against the applicant.
    - iv. Adverse claims made against the applicant.
    - v. Prior waiver withdrawal actions against the applicant.
    - vi. Public comments.
    - vii. Professional knowledge and expertise of the ITG Board members and ITG staff.
    - viii. Any other resources available to the ITG Board.
    - ix. Rulings on prior waiver requests, but the ITG Board shall not be bound by such rulings.
  - b. *Considerable Weight.* The ITG Board shall give considerable weight to the following:<sup>119</sup>
    - i. An applicant's experience abstracting under the supervision of a participating abstractor or participating attorney with whom the applicant has had a close working relationship or with whom the applicant is a partner or associate.
    - ii. A recommendation from a participating abstractor or participating attorney who supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract.
  - c. *Waiver Limits.* The ITG Board may limit a waiver by:
    - i. County
    - ii. Transaction Type, or
    - iii. Both<sup>120</sup>

<sup>108</sup> Iowa Admin. Code r. 265—9.7(1)"d"(4).

<sup>109</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"1".

<sup>110</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"2".

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"3".

<sup>115</sup> *Id.*

<sup>116</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"5".

<sup>117</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"4".

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

6. *Appeals.* The ITG Board decision shall be final agency action and all appeals shall be filed with the Iowa District Court for Polk County.<sup>121</sup>
7. *Conditions.*<sup>122</sup>
  - a. A waiver is unique to the recipient and is nontransferable.
  - b. A waiver recipient shall be accountable to ITG for abstracts prepared for ITG purposes.
  - c. ITG may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division.
  - d. ITG may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances.
  - e. Retention of a waiver is dependent on the applicant's meeting the requirements for a participant in Iowa Administrative Code rule 265—9.6.
  - f. If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the ITG Board.
8. *Withdrawal.* A waiver issued by the ITG Board may be withdrawn or modified if, after public notice and ITG Board meeting, the ITG Board issues a written ruling finding any of the following:<sup>123</sup>
  - a. The waiver recipient knowingly withheld or misrepresented material facts relied upon by the ITG Board in granting the waiver; or
  - b. The waiver recipient failed to comply with all conditions contained in the written ruling; or
  - c. The abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by ITG; or
  - d. That ITG has revoked the waiver recipient's authorization to provide services on behalf of ITG pursuant to Iowa Administrative Code rule 265—9.6(14).
9. *Public availability.* Applications for waivers and written rulings are public records under Iowa Code chapter 22.<sup>124</sup> Some applications or written rulings may contain information that ITG is authorized or required to keep confidential.<sup>125</sup> ITG may redact confidential information from applications or written rulings prior to public inspection or dissemination.<sup>126</sup>

There are two types of title plant waivers:

1. **Permanent** – a perpetual waiver with no termination date.
2. **Provisional** – a temporary waiver for a limited period, typically granted to allow the applicant time to bring its title plant into compliance with ITG's title plant requirements.

## 2. ATTORNEYS

A "*participating attorney*" means an attorney licensed to practice law in the state of Iowa who is authorized by ITG to prepare title opinions for ITG purposes, subject to the terms and conditions of ITG's participation agreement.<sup>127</sup> Participating attorneys must remain in good standing with the Iowa Supreme Court at all times.

A participating attorney shall comply with the following:

<sup>121</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"6".

<sup>122</sup> Iowa Admin. Code r. 265—9.7(1)"d"(6)"7".

<sup>123</sup> Iowa Admin. Code r. 265—9.7(1)"d"(8).

<sup>124</sup> Iowa Admin. Code r. 265—9.7(1)"d"(9).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Iowa Admin. Code r. 265—9.1.

- 1) All title opinions prepared for ITG purposes must be based upon an abstract of title or other approved search product prepared by an ITG participating abstractor.
- 2) Examine real estate titles and prepare title opinions in accordance with the most recent version of the following:
  - a. Iowa Land Title Standards of the Iowa State Bar Association; and
  - b. Local standards formally adopted in writing by the bar association situated in the county where the property being searched is located.
- 3) Include his/her ITG participant number on all title opinions which will be used to obtain ITG coverage. The inclusion of the ITG participant number serves as the preparer's acknowledgment that the product is prepared in accordance with all ITG rules, guidelines, and directives.

A participating attorney may also provide abstracting (if grandfathered or waived), field issuing, and/or closing protecting letter services.

### 3. CLOSERS

A real estate closer prepares closing documentation, collects title-clearing instruments, conducts the closing, obtains signatures and acknowledgments, disburses funds, and files conveyance documents (i.e. deed and mortgage) and all other recordables (i.e. affidavits, easements) with the county recorder.

A “*participating closer*” means any of the following authorized by ITG to issue a closing protection letter (“CPL”) 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>128</sup>

A CPL may only be issued to prospective buyers or lenders to whom ITG has committed to issue an owner or lender certificate.<sup>129</sup>

See ITG’s **CPL Manual** for detailed information regarding closer eligibility requirements, minimum requirements by closer type, general compliance requirements, and CPL closer obligations.

Closing protection letters are defined and further described in the ITG Services section above.

## S. PARTICIPATION APPLICATION

An applicant shall submit a participant application and an annual fee and sign a participation agreement to be authorized to provide one or more services on behalf of ITG.<sup>130</sup> If the applicant is approved as a participant, the participant is required to submit a renewal application annually.<sup>131</sup> Each participant shall, at all times, maintain liability coverage in amounts approved by ITG and upload a copy of the current errors and omissions policy upon annual renewal.<sup>132</sup> Effective January 1, 2021, all participants shall be required to maintain professional liability insurance in the amount of at least \$750,000 per occurrence and \$1 million in the aggregate. Effective January 1, 2021, all participants shall remit a flat \$75 annual participation fee regardless of the number of services requested.

<sup>128</sup> *Id.*

<sup>129</sup> Iowa Code § 16.93(2) (2021).

<sup>130</sup> Iowa Admin. Code r. 265—9.6(1), (5).

<sup>131</sup> Iowa Admin. Code r. 265—9.6(2).

<sup>132</sup> Iowa Code § 16.91(5)(a)(1).

**Eligibility Considerations.** In determining whether to approve or deny a participant application, ITG may consider the following, including but not limited to:<sup>133</sup>

1. The needs of the public and the needs of existing or potential customers of the applicant.
2. A history of the operation and management of the applicant's business.
3. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
4. A credit report or criminal background check of the applicant or the applicant's employees.
5. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.
6. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
7. Compliance with the title and settlement best practices adopted by ITG.
8. Other factors as determined by ITG.

## T. TERMS OF PARTICIPATION

**Participation Agreement.** The participation agreement sets forth the contractual relationship between the participant and ITG and incorporates many of the provisions set forth by the Iowa Administrative Code.<sup>134</sup> The participant must execute a new participation agreement annually and when otherwise required by ITG.<sup>135</sup> Please see a copy of the Iowa Title Guaranty Participation Agreement for further details.

**Agent Relationship.** A participant is only authorized to act as an agent of ITG for the purposes and in the manner set forth in the participation agreement, the Code of Iowa, the Iowa Administrative Code, manuals and any other written ITG instructions.<sup>136</sup> The authority of a participant to act as an agent of ITG is not exclusive and is subject to the rights of the IFA, ITG and other participants, agents, or representatives of ITG.<sup>137</sup> A participant is not ITG's agent for the purpose of providing closing or settlement services, and ITG's liability for losses arising from closing or settlement services is strictly limited to the protections expressly provided for in a closing protection letter if issued by ITG for that transaction.<sup>138</sup>

**Delegation to Third Parties.** A participant shall not delegate to a third-party any portion of the services authorized by the participation agreement without the prior written consent of ITG.<sup>139</sup> Notwithstanding such consent, a participant shall remain responsible to ITG under the participation agreement for the performance of such services and liable for any damages arising therefrom.<sup>140</sup>

**Conflict of Interest.** A participant shall not, without prior authorization of ITG, 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.<sup>141</sup> The additional terms and conditions of the participation agreement provide.<sup>142</sup>

A participant shall not perform any service for a transaction in which the participant, or a related party, has a personal or financial interest in the real estate that is the subject of that transaction without the express written consent of ITG after full written disclosure by participant.

<sup>133</sup> Iowa Admin. Code r. 265—9.6(3).

<sup>134</sup> Iowa Admin. Code r. 265—9.6(4).

<sup>135</sup> *Id.*

<sup>136</sup> Iowa Admin. Code r. 265—9.6(7).

<sup>137</sup> *Id.*

<sup>138</sup> Iowa Admin. Code r. 265—9.6(8).

<sup>139</sup> Section 1(b), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>140</sup> Paragraph (1)(a)(vii), Iowa Title Guaranty Participation Agreement.

<sup>141</sup> Paragraph (1)(a)(vii), Iowa Title Guaranty Participation Agreement.

<sup>142</sup> Iowa Admin. Code r. 265—9.6(8).

<sup>143</sup> Section 2, Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

1. A “related party” is any of the following:
  - a. The participant’s spouse, child, parent, sibling or grandchild;
  - b. a partner of the participant;
  - c. an entity controlled by the participant;
  - d. a stockholder who owns twenty (20%) percent or more of such entity; or
  - e. the spouse, child, parent, sibling or grandchild of such stockholder.
2. A participant shall not provide anything of value to any third-party for the referral of business involving any ITG service.
3. A participant shall not use a third-party to perform any ITG service when such third-party is owned in whole or in part by a proposed guaranteed or a subsidiary of a proposed guaranteed.
4. A participant is prohibited from being owned in whole or in part by a proposed guaranteed or a subsidiary of a proposed guaranteed.
5. In addition to any other remedy available to ITG hereunder, a participant shall be strictly liable to ITG for any and all losses, costs and fees suffered by ITG, including attorney’s fees, as a result of a breach of this provision by a participant.

**Background Investigations.** The ITG participation agreement requires that the participant authorize ITG to investigate the participant’s financial condition and criminal record as deemed necessary by ITG.<sup>143</sup> No later than seven (7) calendar days following receipt of a written request from ITG, the participant shall execute and deliver to ITG any and all written consents, waivers and authorizations in favor of ITG necessary to perform such investigations.<sup>144</sup> Upon receipt of a written request from ITG, participant shall provide financial information, documentation and records that demonstrate the participant’s financial condition, including but not limited to credit reports, tax returns and bank statements.<sup>145</sup> The participants authorize the Iowa Division of Banking to provide access to ITG personnel all of participant’s information and records in the possession of the Iowa Division of Banking.<sup>146</sup>

The terms of the participation agreement provide that participants shall use the services of a third-party background check provider to ensure that “Key Personnel” who have either been convicted of or who have entered into a pre-trial diversion or similar program in connection with a prosecution for a “Dishonesty Offense,” or convicted of a “Violence Offense,” do not provide or perform all or any portion of any product or service authorized by this Agreement.<sup>147</sup>

- “**Key Personnel**” are any of the following: 1) a partner, shareholder or member of Participant; 2) an entity controlled by Participant; 3) an employee or officer of Participant who is required or reasonably permitted access to (i) confidential, non-public personal information of any borrower or lender, or (ii) Participant’s computer networks, information systems, databases or secure applications under circumstances that would permit modifications thereto.<sup>148</sup>
- A “**Dishonesty Offense**” is any criminal offense involving dishonesty, a breach of trust, or money laundering.<sup>149</sup>
- A “**Violence Offense**” is a felony (or its equivalent) or multiple misdemeanors (or their equivalents) principally involving violence or harassment.<sup>150</sup>

<sup>143</sup> Section 5(a), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>144</sup> Section 5(b), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>145</sup> Section 5(c), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>146</sup> Section 5(d), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>147</sup> Section 5(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>148</sup> Section 5(e), FN2, Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>149</sup> Section 5(e), FN3, Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>150</sup> Section 5(e), FN4, Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

**Professional Liability Insurance.** Participants are required to maintain, at the participants' expense, professional liability insurance from a company licensed by the Iowa Insurance Division with minimum coverage amounts of \$750,000 per occurrence and \$1 million in the aggregate.

Participant shall provide proof of such insurance along with the annual renewal, and at any other time requested by ITG. Participant shall maintain such insurance coverage for the duration of the participant's participation agreement, and for a period of three (3) years following the termination, cancellation, or expiration of this Agreement. Participant shall give notice of cancellation or discontinuance of such coverage to ITG immediately upon such cancellation or discontinuance. These provisions survive the termination, cancellation and expiration of the participation agreement.

**Compliance.** 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>151</sup>

1. All applicable federal, state and local laws and regulations, as amended from time to time, as they relate to real estate transactions and protecting nonpublic personal information, including but not limited to the Dodd-Frank Act, Gramm-Leach-Bliley Act, RESPA, those promulgated by the Consumer Financial Protection Bureau (CFPB);<sup>152</sup>
2. All ITG guidelines, directives and rules, as amended from time to time;<sup>153</sup> and
3. All lender closing instructions to participant.<sup>154</sup>

**ALTA Best Practices.** The terms of the participation agreement provide that the participant acknowledges the ALTA Best Practices as minimum standards defined for title and settlement service providers.<sup>155</sup> The participant agrees to adopt and adhere to the ALTA Best Practices or equivalent practices with regard to any services performed under the agreement.<sup>156</sup> The participant agrees to provide evidence of the participant's compliance with ALTA Best Practices upon the request of ITG.<sup>157</sup>

**Training.** ITG may require a participant and the participant's staff, as a condition of 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>158</sup> The participant agrees to attend training, conferences and continuing education as necessary to comply with ALTA Best Practices and as otherwise deemed necessary by ITG.<sup>159</sup> Although ITG may offer or require training to the participant and the participant's staff, the participant acknowledges that the participant is solely responsible for the training and supervision of the participant's staff.<sup>160</sup>

**Audit.** ITG may audit the participant, with or without notice, for verification of compliance.<sup>161</sup> An audit may include, but not be limited to, a review of the participant's 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.<sup>162</sup> ITG may examine all of the participant's documentation and files related to the business authorized by the ITG participation agreement, including financial records and procedures relating to closing and settlement services, and information which may be stored or accessed in an electronic database.<sup>163</sup> An inspection of a title plant may be performed by ITG or its designee to determine if the title plant meets the criteria set forth in Iowa Administrative Code rule 265—

<sup>151</sup> Paragraph (1)(a)(i), Iowa Title Guaranty Participation Agreement.

<sup>152</sup> Iowa Admin. Code r. 265—9.6(13); Paragraph (1)(a)(i), Iowa Title Guaranty Participation Agreement.

<sup>153</sup> Iowa Admin. Code r. 265—9.6(13); Paragraph (1)(a)(i)(2), Iowa Title Guaranty Participation Agreement.

<sup>154</sup> Paragraph (1)(a)(i)(3), Iowa Title Guaranty Participation Agreement.

<sup>155</sup> Paragraph (1)(a)(iii), Iowa Title Guaranty Participation Agreement.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Iowa Admin. Code r. 265—9.6(12).

<sup>159</sup> Paragraph (1)(a)(iv), Iowa Title Guaranty Participation Agreement.

<sup>160</sup> *Id.*

<sup>161</sup> Iowa Admin. Code r. 265—9.6(13); Section 6(a), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>162</sup> Iowa Admin. Code r. 265—9.6(13).

<sup>163</sup> Iowa Admin. Code r. 265—9.6(13); Section 6(b), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

9.7(1)"a."<sup>164</sup> ITG may conduct an audit by mail, electronic mail or in person at the site(s) of the records in the sole discretion of ITG.<sup>165</sup> The participation agreement provides that participants shall cooperate fully with ITG in the performance of quality assurance reviews, audits and other examinations of the participant's files, records and activities.<sup>166</sup> ITG's audit and examination rights survive the termination of the participation agreement.<sup>167</sup>

**Clearance of title objections.** All title objections must be cleared in accordance with applicable ITG manuals and any other written instructions given by ITG prior to the issuance of a certificate.<sup>168</sup> 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>169</sup>

**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.<sup>170</sup> ITG's participation agreement provides that participant shall obtain Iowa Title Guaranty's written authorization prior to issuing the following: (1) a commitment, certificate or endorsement covering property other than residential housing having four (4) units or less; and/or (2) commitments, certificates, or endorsements with coverage exceeding \$750,000.00.<sup>171</sup> If the required authorization is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to ITG for any loss or damage resulting from issuance of the commitment or certificate.<sup>172</sup>

**Document Retention.** A participant 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.<sup>173</sup> A participant 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.<sup>174</sup> A participating abstractor shall retain a written or electronic copy of each abstract prepared for ITG purposes and shall provide a copy to ITG upon request at no charge no later than seven (7) days following receipt of such notice.<sup>175</sup>

**Electronic Mail.** Participant agrees to receive and accept delivery of any and all ITG correspondence, including all notices and demands, by electronic mail.<sup>176</sup>

## U. SERVICE REVOCATION, TERMINATION AND ALTERATION

**Revocation.** ITG has discretion to revoke or suspend a participant's authorization to provide services on behalf of ITG for reasons including, but not limited to, the following:

1. Failure to comply with the terms and conditions of the participation agreement.
2. Failure to submit an annual renewal application.
3. Knowingly withholding or misrepresenting material facts relied upon by ITG.
4. Fraud, theft, dishonesty or misappropriation of funds or documents.
5. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of ITG.
6. A finding by ITG's director of material noncompliance with the Code of Iowa, the Iowa Administrative Code, manuals, and any other written instructions given by ITG.

<sup>164</sup> Iowa Admin. Code r. 265—9.6(13).

<sup>165</sup> Section 6(c), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>166</sup> Section 6(d), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>167</sup> Section 6(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>168</sup> Iowa Admin. Code r. 265—9.6(9).

<sup>169</sup> *Id.*

<sup>170</sup> Iowa Admin. Code r. 265—9.6(10).

<sup>171</sup> Paragraph 1(d)(iii), Iowa Title Guaranty Participation Agreement.

<sup>172</sup> Iowa Admin. Code r. 265—9.6(10).

<sup>173</sup> Iowa Admin. Code r. 265—9.6(11); Paragraph 1(a)(vi), Iowa Title Guaranty Participation Agreement.

<sup>174</sup> Iowa Admin. Code r. 265—9.6(11); Paragraph 1(a)(vi), Iowa Title Guaranty Participation Agreement.

<sup>175</sup> Iowa Admin. Code r. 265—9.6(11); Paragraph 1(a)(vi), Iowa Title Guaranty Participation Agreement.

<sup>176</sup> Paragraph 1(a)(v), Iowa Title Guaranty Participation Agreement.

7. Other factors as determined by ITG.<sup>177</sup>

In the event of revocation, the participant shall account for and immediately pay to ITG all premiums (including but not limited to any premiums which participant has collected pursuant to certificates and endorsements not yet issued), and all other outstanding indebtedness the participant owes ITG.<sup>178</sup> Further, the participant shall advise and cooperate fully as directed by ITG in the completion of all such undertakings and transactions including but not limited to the processing to completion, at ITG's sole discretion and direction, any pending orders according to the provisions of the participation agreement.<sup>179</sup> Revocation shall not discharge any liability or obligation of participant that existed prior thereto.<sup>180</sup>

In the event of revocation, the participant must provide to ITG a written plan which details how participant's ITG-related business matters will be responsibly transitioned and/or concluded.<sup>181</sup>

**Termination.** A participant may cease providing any one or more services at any time upon written notice to ITG.<sup>182</sup> In the event of termination, the participant shall account for and immediately pay to ITG all premiums (including but not limited to any premiums which participant has collected pursuant to certificates and endorsements not yet issued), and all other outstanding indebtedness the participant owes ITG.<sup>183</sup> Further, the participant shall advise and cooperate fully as directed by ITG in the completion of all such undertakings and transactions including but not limited to the processing to completion, at ITG's sole discretion and direction, any pending orders according to the provisions of the participation agreement.<sup>184</sup> Termination shall not discharge any liability or obligation of participant that existed prior thereto.<sup>185</sup>

In the event of termination, the participant must provide to ITG a written plan which details how participant's ITG-related business matters will be responsibly transitioned and/or concluded.<sup>186</sup>

**Change in Firm.** If the participant is an individual, the participant must notify ITG of any change to a new firm or employer.<sup>187</sup> In the event of a firm or employer change, the participant shall account for and immediately pay to ITG all premiums (including but not limited to any premiums which participant has collected pursuant to certificates and endorsements not yet issued), and all other outstanding indebtedness participant owes ITG.<sup>188</sup> Further, the participant shall advise and cooperate fully as directed by ITG in the completion of all such undertakings and transactions including but not limited to the processing to completion, at ITG's sole discretion and direction, any pending orders according to the provisions of the participation agreement.<sup>189</sup> A firm or employer change shall not discharge any liability or obligation of participant that existed prior thereto.<sup>190</sup>

In the event of a firm or employer change, the participant must provide to ITG a written plan which details how participant's ITG-related business matters will be responsibly transitioned and/or concluded.<sup>191</sup>

**Transfer of Assets/Ownership.** If the participant is an entity, the participant must obtain ITG's written approval prior to any transfer of all or a part of the participant's assets or ownership.<sup>192</sup> In the event of a transfer, the participant shall account for and immediately pay to ITG all premiums (including but not limited to any premiums which participant has collected pursuant to certificates and endorsements not yet issued), and all other outstanding

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<sup>177</sup> Iowa Admin. Code r. 265—9.6(14); Section 10(a), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>178</sup> Section 10(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Section 10(f), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>182</sup> Section 10(b), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>183</sup> Section 10(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Section 10(f), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>187</sup> Section 10(c), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>188</sup> Section 10(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Section 10(f), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>192</sup> Section 10(d), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

indebtedness the participant owes ITG.<sup>193</sup> Further, the participant shall advise and cooperate fully as directed by ITG in the completion of all such undertakings and transactions including but not limited to the processing to completion, at ITG's sole discretion and direction, any pending orders according to the provisions of the participation agreement.<sup>194</sup> A transfer shall not discharge any liability or obligation of participant that existed prior thereto.<sup>195</sup>

In the event of a transfer, the participant must provide to ITG a written plan which details how participant's ITG-related business matters will be responsibly transitioned and/or concluded.<sup>196</sup>

## V. ITG COMMERCIAL SERVICES

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### 1. CLOSING AND SETTLEMENT SERVICES

If there is an existing ITG title commitment, ITG Commercial offers closing and settlement services on non-residential properties when either (1) requested by one or more of the parties involved in the transaction, or (2) required to approve certain title coverage that has been requested by the lender or buyer/investor.

As a neutral third-party, ITG Commercial prepares a settlement statement for each closing that reflects the intentions of the seller, buyer, and lenders for payments and reimbursements to vendors.

### 2. CONSTRUCTION DRAWS AND DISBURSEMENTS

Construction financing is a complex process involving numerous parties and various moving parts, and typically construction financing is handled in phases, known as draws. ITG offers construction draw services on non-residential properties when either (1) requested by one or more of the parties involved in the transaction, or (2) required to approve certain mechanic lien coverage that has been requested by the lender.

ITG Commercial manages the construction draws and disbursements to ensure no unexpected liens appear on title to the property during the construction project. During the construction loan disbursement process, ITG Commercial coordinates funding with the lender and disburses funds to the interested contractors, materialmen and suppliers in exchange for signed documentation evidencing no mechanic's liens will be filed against the property. ITG reviews the required documentation, including but not limited to, the General Contractor's Sworn Statement and lien waivers, and obtains an updated title report evidencing clear title prior to approving and disbursing each draw.

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<sup>193</sup> Section 10(e), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> Section 10(f), Additional Terms and Conditions, Iowa Title Guaranty Participation Agreement.