



IOWA TITLE GUARANTY
A DIVISION OF IOWA FINANCE AUTHORITY

March 30, 2020

Abstract Company Sales: Avoiding Operational Disruptions

Iowa Title Guaranty (ITG) is encountering an increased number of abstract company sales. Pursuant to Section 10(d) of the Additional Terms and Conditions of ITG's Participation Agreement, participants must obtain ITG's written approval prior to the transfer of all, or any part of, an entity's assets or ownership.

However, the parties to the transaction frequently do not notify ITG until after the sale has occurred. This causes headaches for the buyer and seller as it relates to the ability to participate with ITG, especially in the event of an asset sale in which the ITG Number is not transferable to the buyer. Failure to provide advance notice to ITG constitutes a violation of the Participation Agreement that often produces negative, unintended consequences for the purchaser of the abstract company.

The purpose of providing advanced notice to ITG is to ensure the appropriate transfer of liability related to abstracting work being relied upon for ITG coverage. If ITG cannot confirm the proper transfer of liability, ITG may be forced to suspend or inactivate the participant's services. **To prevent any business disruption that would likely result from inactivation, it is imperative that abstract companies to consult with ITG prior to the sale.** Participants must provide ITG with ample notice to allow ITG to review and approve a variety of items, including but not limited to, the following:

1. STOCK OR UNIT SALES

- a. Documentation evidencing the transfer (e.g. stock sale agreement, assignments of stock, resolutions, etc.).
- b. Effective date of the sale.
- c. Names and contact information of the new shareholders (corporations) or members (limited liability companies).
- d. List of any new users that should be added to the CAP system.
- e. List of any users that should be removed from the CAP system.
- f. Updated professional liability insurance, as applicable.
- g. Certificate reflecting the title plant passed a recent ILTA inspection.

2. ASSET SALES

- a. Documentation evidencing the transfer (e.g. asset purchase agreement, bill of sale, resolutions, etc.).
- b. Effective date of the sale.
- c. Buyer(s) and seller(s) names and contact information.
- d. Purchase agreement must evidence the following:
 - Allocation of liability for work in process (both abstracting and field issuing of commitments and certificates, if applicable).
 - If seller is a field issuer, indicate which party will collect premiums for open items and which will store closed files.
 - Indicate which party is entitled to goodwill, including fictitious name(s), as applicable.

e. File-stamped copy of the Fictitious Name Resolution filed with the Secretary of State, as applicable.

f. Renewal or inactivation of seller's CAP account.

- Renewal: If seller will be responsible for completing open items or work in process, seller must maintain (1) current E&O insurance and (2) active status as an ITG participant by submitting annual renewals unless and until all open items are completed. Further, ITG must be provided a copy of title plant lease between buyer and seller authorizing seller to utilize the title plant to complete work in process and open items.
- Inactivation: If seller will not complete any work after the date of the sale, ITG will inactivate seller as a participant upon (1) confirmation that all open items have been appropriately transferred to the buyer, and (2) receipt of seller's three (3) year extended reporting tail insurance as required by Section 7 of the Additional Terms and Conditions of the ITG Participation Agreement.

g. Buyer's submission of an ITG application.

- **Seller's ITG Number is not transferable to another person or entity pursuant to Paragraph 5 of the ITG Participation Agreement.**
- Therefore, the buyer will be required to submit a new application and obtain a new ITG Number.
- ITG recommends that buyer submit an application as soon as possible. ITG can commence review prior to the date of sale to expedite the process and prevent an unnecessary disruption to the buyer's abstracting business.
- ITG will require a copy of Buyer's professional liability insurance evidencing compliance with ITG's minimum requirements.

h. Certificate reflecting the title plant passed a recent ILTA inspection.

Upon review of all transfer documentation, ITG may have additional questions or requirements. Further, ITG strongly advises that the parties consult with independent counsel regarding contractual obligations imposed by the ITG Participation Agreement.

The sale of an abstract company can be a stressful endeavor. Providing ITG with advance notice of an impending transfer will minimize operational disruptions and prevent possible loss of business that may accompany participant inactivation.

Please contact the [Iowa Title Guaranty team](#) with any questions.