



TITLE GUARANTY UPDATE

**IOWA STATE BAR ASSOCIATION
1999 FALL TRAVELING SEMINAR
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SENATE FILE 335

AN ACT RELATING TO THE TRANSFER OF REAL ESTATE, THE FILING OF A RELEASE OF MORTGAGE, AND PROVIDING A REMEDY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 16.92 REAL ESTATE TRANSFER –
MORTGAGE RELEASE CERTIFICATE.

1. DEFINITIONS. As used in this section, unless the context otherwise requires:

- a. "Division" means the title guaranty division in the Iowa finance authority.
- b. "Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of five hundred thousand dollars or less.
- c. "Mortgagee" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.
- d. "Mortgage servicer" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.
- e. "Mortgagor" means the grantor of a mortgage.
- f. "Payoff statement" means a written statement furnished by the mortgage servicer which sets forth all of the following:
 - (1) The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.
 - (2) Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).
 - (3) The address where payment is to be sent or other specific instructions for making a payment.
 - (4) If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage, and the legal description of the property that will be released from the mortgage.
- g. "Real estate lender or closer" means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

2. EXECUTION OF CERTIFICATE OF RELEASE. A duly authorized officer or employee of the division may execute and record a certificate of release in the real property records of each county in which a mortgage is recorded as provided in this section if all of the following are satisfied:

- a. The real estate lender or closer has certified in writing to the division all of the following:
 - (1) That the payoff statement satisfies one of the following:
 - (a) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.
 - (b) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.
 - (2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:
 - (a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.
 - (b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release.

3. CONTENTS. A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount of five hundred thousand dollars or less. c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage, the legal description of the property that will be released from the mortgage, and the legal description of the property that will continue to be subject to the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph "c", and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfactory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph "c".

4. EXECUTION. A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. EFFECT.

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described

in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. RECORDING. If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. PRIOR MORTGAGES. If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph "c".

8. APPLICATION. This section applies only to a mortgage in an original principal amount of five hundred thousand dollars or less.

Sec. 2. NEW SECTION. 655.3 PENALTY FOR FAILURE TO DISCHARGE.

If a mortgagee, or a mortgagee's personal representative or assignee, upon full performance of the conditions of the mortgage, fails to discharge such mortgage within thirty days after a request for discharge, the mortgagee is liable to the mortgagor and the mortgagor's heirs or assigns, for all actual damages caused by such failure, including reasonable attorney fees. A claim for such damages may be asserted in an action for discharge of the mortgage. If the defendant is not a resident of this state, such action may be maintained upon the expiration of thirty days after the conditions of the mortgage have been performed, without such previous request or tender. Sec. 3. Section 655.2, Code 1999, is repealed.

THE FOLLOWING RULES WERE APPROVED BY THE BOARD OF DIRECTORS OF THE IOWA FINANCE AUTHORITY ON SEPTEMBER 1, 1999, FOR ADOPTION.

THE WRITTEN COMMENT PERIOD ENDS OCTOBER 12, 1999. A PUBLIC HEARING IS SCHEDULED FOR OCTOBER 26, 1999, AT 1:00 P.M. IN THE CONFERENCE ROOM OF THE IOWA FINANCE AUTHORITY, 100 EAST GRAND AVE., DES MOINES, IOWA.

ANY COMMENTS SHOULD BE SENT TO:

**MATT WHITE
TITLE GUARANTY DIVISION
IOWA FINANCE AUTHORITY
200 EAST GRAND AVE.
DES MOINES, IA 50309**

NOTICE: THIS DRAFT HAS NOT BEEN REVIEWED BY THE ADMINISTRATIVE CODE EDITORS AND THE FINAL FORM WHICH IS PUBLISHED MAY DIFFER IN FORMAT.

IOWA FINANCE AUTHORITY [265]

Notice of Intended Action

Pursuant to the authority of Iowa Code paragraph 17A.3(1)"b", Iowa Code Sections 16.5(15) and 16.91(8), the Iowa Finance Authority hereby gives Notice of Intended action to adopt rules in Rule 265, Chapter 9.20 relating to 1999 Iowa Acts Senate File 335, Real Estate Transfer – Mortgage Release Certificate. The purpose of these rules is to satisfy the requirement that the Iowa Finance Authority (Authority) promulgate rules to administer 1999 Iowa Acts Senate File 335 through the Title Guaranty Division (Division).

The purpose of the mortgage release certificate (certificate) is to provide a procedure for the release of mortgages which have been paid in full or which have security which has been released from the lien of the mortgage and which have had no effective release or partial release filed of record by a mortgagee. The objective of the certificate is to preserve the integrity of the real estate records of this state so that they reflect the correct status of title to the real property located in Iowa.

The Authority does not intend to grant waivers under the provisions of this rule. The requirements implemented by these rules are established by 1999 Iowa Acts Senate File 335 and may not be waived by the Authority. The real estate records of the state must be of high integrity and reliability. Waivers would cause a question as to the validity of the certificate of release issued by the Division thereby causing uncertainty as to the validity and enforceability of mortgages purportedly released by the certificate of release. Additionally, the officer or employee of the Division authorized to issue the certificate of release could be subject to undue pressure to grant a waiver of a requirement imposed by law or rule that could imperil the validity of the certificate.

In 265—9.20(1) the Authority sets out definitions for the purposes of the section.

In 265—9.20(2) the Authority establishes the items required to be submitted to the Division to request the issuance of a certificate and provides that the Division may reject the request if it is incomplete or insufficient. This sub-rule also provides that certificates of partial release will only be granted in those cases where the real estate lender or closer pays the mortgage servicer.

In 265—9.20(3) the Authority provides that the Division may develop and issue forms under these rules.

In 265—9.20(4) the Authority describes the information required to be certified to the Division to obtain a certificate of release or partial release for a mortgage which is paid by a mortgage lender or closer and an effective release or satisfaction has not been recorded.

In 265—9.20(5) the Authority sets out the information required to be certified to the Division to obtain a certificate of release for a mortgage which has been paid by someone other than the mortgage lender or closer that is requesting the certificate or if the mortgage was paid by the mortgage lender or closer in a previous transaction and an effective release or satisfaction has not been recorded.

In 265—9.20(6) the Authority describes how the Division may determine to proceed to give notice why a certificate of release should not be recorded.

In 265—9.20(7) the Authority requires a person aggrieved by the Division to file a contested case proceeding and exhaust administrative remedies before the person may file an action in the district court.

In 265—9.20(8) the Authority sets out the notice procedure to give notice to the mortgage servicer, provides for determination of whether a certificate should be filed, and the steps to be taken if the Division determines whether or not to record a certificate of release.

In 265—9.20(9) the Authority establishes the substantial requirements for the certificate to be issued when a mortgage was paid by a mortgage lender or closer and an effective release or satisfaction has not been recorded

In 265—9.20(10) the Authority establishes the substantial requirements for a certificate for a mortgage which has been paid by someone other than the mortgage lender or closer that is requesting the certificate or if the mortgage was paid by the mortgage lender or closer in a previous transaction and an effective release or satisfaction has not been recorded.

In 265—9.20(11) the Authority provides that the board of directors of the Division may authorize Division personnel to sign the certificate of release by resolution.

In 265—9.20(12) the Authority requires the original recorded certificate be returned to the Division.

In 265—9.20(13) the Authority requires the Division to provide a copy of the recorded certificate to the party that requested the certificate.

In 265—9.20(14) the Authority provides that the mortgagor is not relieved of liability if a certificate of release is wrongfully or erroneously recorded.

In 265—9.20(15) the Authority provides that the Division is liable for any damages to any mortgagee or mortgage servicer if a certificate of release is wrongfully or erroneously recorded. This provision indicates that a claim for damages is a tort claim and any claim under these rules and Senate File 335 will be treated as a tort claim.

In 265—9.20(16) the Authority subrogates the Division to the rights a claimant may have against others as a result of payment of damages.

In 265—9.20(17) the Authority establishes record keeping requirements for the certificates of release.

The Authority will post this notice to its web site. The address is <http://www.ifahome.com/>.

The Authority will hold a public hearing on these rules on October 26, 1999 at 1:00 p.m. in the Authority's conference room at 100 E. Grand Avenue, Des Moines, Iowa, to take public comments on these rules.

Consideration will be given to all written data, views, and arguments thereto received by the Iowa Finance Authority, Title Guaranty Division, Attention Matt White, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309, on or before October 12, 1999.

These rules are intended to implement Iowa Code section 16.5(8) and 1999 Iowa Acts Senate File 335.

The following rules are proposed.

9.20(1) Definitions. As used in this section, unless the context otherwise requires:

"Authority" means the Iowa finance authority described in Iowa Code chapter 16.

"Division" means the title guaranty division in the Iowa finance authority.

"Certificate" means the certificate of release or partial release of mortgage issued by the division.

"Claim for damages" means a claim for actual money damages against the division caused by the negligent, wrongful or erroneous filing of a certificate while the staff of the division is acting within the scope of their office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage.

"Effective Release or Satisfaction" means a release or satisfaction of mortgage pursuant to Iowa Code chapter 655.

"Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of five hundred thousand dollars or less. Any future advance supported by the mortgage that exceeds the original principal amount of \$500,000.00 shall not be eligible for release under these rules.

"Mortgagee" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

"Mortgage servicer" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

"Mortgagor" means the grantor of a mortgage.

"Payoff statement" means a written statement furnished by the mortgage servicer which sets forth all of the following:

1. The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

2. Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).

3. The address where payment is to be sent or other specific instructions for making a payment.

4. If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage, and the legal description of the property that will be released from the mortgage.

"Person" shall have the same meaning as in Iowa Code chapter 4.

"Prior mortgage" means a mortgage that has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release or satisfaction has not been filed of record.

"Real estate lender or closer" means a person licensed to regularly lend moneys in Iowa to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

This rule is intended to implement 1999 Iowa Acts Senate File 335.

9.20(2) Request for certificate.

A real estate lender or closer may request a certificate from the division by submitting:

1. A fully and accurately completed request form.

2. All necessary documents and information to support the certifications made on the request form.

3. Check or money order in payment of the filing fee made payable to the filing officer of the county in which the certificate is to be recorded in the amount of the filing fee imposed by the filing officer of the county in which the certificate is to be recorded. If duplicate certificates are to be recorded in more than one county, additional checks or money orders payable to the filing officer of such counties shall be submitted.

4. A certificate which is not a full release and is executed and recorded to release part of the security described in a mortgage shall only be issued when the real estate lender or closer has paid the mortgage servicer for the partial release. A certificate shall not be issued for a partial release if the real estate lender or closer is requesting a release pursuant to 1999 Iowa Acts Senate File 335, subsection 7 Prior Mortgages.

5. In the event a person requesting a certificate fails to complete any of the steps or include any of the required information described in these rules, the division may reject the request for a certificate and require the person to re-file or amend the request so that it conforms to the provisions of the law or these rules.

This rule is intended to implement 1999 Iowa Acts Senate File 335.

9.20(3) Forms. a. The requests for certificates shall be made on forms developed and provided by the division. The forms may be obtained from the division or from the authority's internet web site located at <http://www.ifahome.com>. The real estate lender or closer must use the forms developed and provided by the division; however, it is permissible to use reproductions of the forms which include reproductions placed in a word processing program. A reproduced form must substantially conform to the forms provided by the division. A nonconforming form may be rejected by the division.

b. The forms to request a certificate of release shall contain sufficient information to identify that the requestor is a real estate lender or closer, the mortgage to be released, sufficient information to establish that the time requirements have elapsed, sufficient information to establish the party or parties to receive notice of the request, sufficient information that the debt secured by the mortgage to be released

has been paid and the mortgage is less than \$500,000.00, and that, in the case of requests for partial releases, the legal descriptions.

c. The forms giving notice of the request shall be directed to the last known mortgage servicer, contain sufficient information to identify the mortgage to be released, inform the mortgage servicer what is required to prevent the filing of a certificate of release, establish a time limit for the mortgage servicer to respond, and, in the case of requests for partial releases, the legal descriptions.

d. The certificate of release form shall contain sufficient information to identify the mortgage released, shall recite the authority for the certificate, and shall recite that the substantive and procedural requirements as to the amount of debt, payment, notice, or other requirements of the division have been met, and, in the case of partial releases, the legal descriptions.

e. The notice by publication form shall contain sufficient information to identify the mortgage to be released, inform the mortgage servicer what is required to prevent the filing of a certificate of release, establish a time limit for the mortgage servicer to respond, and, in the case of requests for partial releases, the legal descriptions.

f. All forms may require real estate lenders or closers to provide other information as may be required by law or these rules.

This rule is intended to implement 1999 Iowa Acts Senate File 335.

9.20(4) Certification to the division – mortgages paid by real estate lender or closer. To obtain a certificate for a mortgage which the mortgage lender or closer has paid and an effective release or partial release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

1. That more than thirty days have elapsed since the date the payment was sent.
2. That as of the date of the request for a certificate no effective mortgage release or partial release appears of record.
3. That the payoff statement satisfies one of the following:
 - a. The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee; or
 - b. The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.
4. That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:
 - a. A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.
 - b. Other documentary evidence satisfactory to the division of payment to the mortgagee or mortgage servicer.
5. That the original principal amount of the mortgage was \$500,000.00 or less.
6. The information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.
7. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

This rule is intended to implement 1999 Iowa Acts Senate File 335.

9.20(5) Certification to the division – prior mortgages. To obtain a release of a mortgage that has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or

closer under a previous transaction, and an effective release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

1. That the mortgage was paid in full in accordance with one of the following:
 - a. By someone other than the real estate lender or closer requesting the certificate.
 - b. By the real estate lender or closer under a previous transaction.
2. That as of the date of the request for a certificate no effective mortgage release appears of record.
3. That the original principal amount of the mortgage was \$500,000.00 or less.
4. The information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.
6. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

This rule is intended to implement 1999 Iowa Acts Senate File 335.

9.20(6) Division determination to give notice – reliance on information submitted.

a. Upon receipt of a request for issuance of a certificate, the division shall determine that an effective release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement based upon the information submitted by the person seeking the certificate.

b. The division may use discretion in determining whether an effective release has been executed and recorded and shall rely on the information contained in the request in determining whether further inquiry may be required before giving notice of intent to issue a certificate.

c. The division shall not be required to make a physical search of the real property records in the county or counties where the certificate is to be recorded nor will the division be required to obtain any formal report such as a lien search, abstract opinion, or attorney's opinion. The division may, but is not required to, verify the status of an effective release by contacting the officer responsible for maintaining the real property records of the county in which the certificate is to be recorded; however, if such verification is determined to be necessary the division may rely on information from the filing officer obtained by telephone, facsimile, electronic mail, or other such means.

d. The division shall not be required to individually verify or research the accuracy or status of a title to any legal descriptions which are requested to be partially released. The division shall rely on the descriptions certified to the division in the request for a certificate of partial release.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(7) Contested case proceeding. In the event a person seeking a certificate is aggrieved by the decision of the division not to issue a certificate, that person ~~may~~ wishing to challenge a decision by the division must request a contested case proceeding pursuant to the rules described in Chapter 7. The request for a contested case proceeding must be filed with the division within 10 days from the date of the division's decision not to issue a certificate. An aggrieved person must exhaust all administrative remedies before that person may file a proceeding in any court.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(8) Notice of intent to issue certificate and recording.

a. Upon determination that an effective release or partial release has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement, the division shall send written notice of intent to execute a certificate by certified mail to the last known address of the last mortgage servicer of record.

b. The notice shall be given by certified mail and the thirty day period shall begin on the date the notice is placed in the custody of the United States Postal Service for delivery to the mortgage servicer.

c. The notice shall state that a certificate shall be recorded by the division after thirty days from the date the notice was mailed unless the mortgage servicer notifies the division of any reason why the certificate of release should not be executed and recorded.

d. In the event the notice sent by certified mail to the last known mortgage servicer of record is returned to the division for the reason that the person is no longer at the address or the certificate of receipt is not returned within 30 days of mailing, the division shall attempt to serve the person pursuant to Iowa Rules of Civil Procedure 56.1.

e. In the event the division is unable to serve the person, the division shall prepare a notice for publication and send it to the real estate lender or closer for publication in a newspaper in general circulation in the county in which the mortgage to be released is recorded. Notice by publication shall be once each week for three consecutive weeks and shall provide for a 20 day period following the last publication for the mortgage servicer to respond to the division. A copy of the notice together with a certificate of publication shall be submitted to the division after the last publication date. Upon receipt of the certified notice and expiration of the time to respond the division shall file the certificate of release provided that the mortgage servicer has not notified the Division of any satisfactory reason why the Certificate of Release should not be executed and recorded. The notice shall also be posted to the authority's web page.

f. If, prior to executing and recording the certificate of release, the division receives written notification setting forth reasons satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release. The division may use its discretion in determining whether a satisfactory reason to not record the certificate has been given depending upon the facts. A satisfactory reason to not record the certificate includes but is not limited to:

1. Evidence of an unpaid balance under the terms of any loan secured by the mortgage.
2. Evidence that a release or satisfaction of mortgage pursuant to Iowa Code chapter 655, Satisfaction of Mortgages, has been placed of record.
3. Failure of a person seeking a certificate to submit any information requested by the division or required by the law or these rules.

g. In the event the division determines that a certificate should not be recorded, the division shall return the check or money order which is made payable to the county filing officer to the real estate lender or closer that requested the certificate.

h. If the division does not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded, the division shall proceed to execute and record the certificate. The certificate shall be delivered, by regular mail, along with proper recording fees, to the filing officer in the county where the subject property is located.

i. If duplicate certificates were requested, the division will also deliver the duplicate certificates to the filing officer of those counties.

j. If duplicate certificates were not requested the real estate lender or closer may record a certified copy of the certificate in another county with the same effect as the original.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(9) Certificate – mortgages paid by real estate lender or closer. Certificates issued on mortgages paid by the mortgage lender or closer shall contain substantially the following information:

1. That the division sent the thirty day notice required by 1999 Acts, Iowa Senate File 335, subsection 2 paragraph c and that more than 30 days have elapsed since the date the notice was sent.
2. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.
3. A statement indicating one of the following:

a. That the mortgage servicer provided a payoff statement that was used to make payment, and it does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

b. That the mortgage release certificate is a partial release of the mortgage and contains the legal description of the property that will be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

4. That payment was made in accordance with the payoff statement including the date the payment was received by the mortgagee or mortgage servicer as evidenced by a bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer or other documentary evidence of payment to the mortgagee or mortgage servicer.

5. That the original principal amount of the mortgage was \$500,000.00 or less.

6. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

7. That the person executing the certificate is a duly authorized officer or employee of the division.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(10) Certificate – prior mortgages. Certificates issued on mortgages that have been paid in full by someone other than the real estate lender or closer, or were paid by the real estate lender or closer under a previous transaction shall contain substantially the following information:

1. That the division sent the 30 day notice required by 1999 Acts, Iowa Senate File 335, subsection 2 paragraph c and that more than 30 days have elapsed since the date the notice was sent.

2. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

3. A statement indicating the mortgage was paid in full in accordance with one of the following:

a. By someone other than the real estate lender or closer requesting the certificate.

b. By the real estate lender or closer under a previous transaction.

4. That the original principal amount of the mortgage was \$500,000.00 or less.

5. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

6. That the person executing the certificate is a duly authorized officer or employee of the division.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(11) Authority to sign certificate. The board of directors of the division may, by resolution, authorize such personnel within the division as the board should determine to execute and record the certificates pursuant to 1999 Acts, Iowa Senate File 335 and Rule 9.20.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(12) Records - return to the division. The certificate of release shall contain instructions to the filing officer(s) to return the document to the division, once file stamped and entered in the real estate records of the county.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(13) Photocopy. The division shall transmit a copy of the recorded certificate to the real estate lender or closer that requested the certificate.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(14) Effect of wrongful or erroneous recording of a certificate of release. A wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(15) Liability of the division. In addition to any other remedy provided by law, if the division or the authority wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release. A claim for damages is a tort claim as described in Iowa Code Chapter 669 since the claim is for money damages caused by the wrongful or erroneous actions of the staff of the division. The procedures of Iowa code chapter 669 shall apply to any claim for damages arising out of 1999 Acts, Iowa Senate File 335.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(16) Subrogation. Upon payment of a claim relating to the recording of a certificate, the division is subrogated to the rights of the claimant against all persons relating to the claim including, but not limited to, the real estate lender or closer that requested the certificate.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.

9.20(17) Record keeping. The original certificate of release document shall remain in the records of the division or the authority for the minimum period of one year after execution. After this time, records may be stored by electronic or other means. Requests and other documents generated or received under this system shall be indexed in such a manner to allow their retrieval at a future date.

This rule is intended to implement 1999 Acts, Iowa Senate File 335.