



# The Unnecessary Risks Created by Unregulated Alternatives to Title Insurance

The recent introduction of unregulated alternatives to title insurance coverage for homeowners and lenders, such as Attorney Opinion Letters (AOLs) or Title Insurance Waivers, create new and unnecessary legal and financial risks, and threaten the integrity of our nation's system of public records for years to come.

## The *Value* of Title Insurance

Title insurance provides peace of mind and effective protection for homeowners and lenders against unknown title defects that could jeopardize their property rights and their substantial financial investment in a home.

For a **one-time premium**, title insurance provides:

- ✓ A **comprehensive** search and examination of a property's title in the public records
- ✓ Corrective work needed to **prevent and eliminate** identified defects before closing
- ✓ Indemnity and a legal defense **at no additional cost** when the insured title is challenged

**More Coverage. Less Risk.**

**The Clear Choice is Title Insurance.**

## The *Risks* of Unregulated Title Insurance Alternatives

Here's what we know about these risks. Unregulated title insurance alternatives:

- ✗ **Do not offer** the same protections for defects that are hidden or can go undetected from a routine search of the public records, such as the rising risks of fraud or forgery.
- ✗ **Do not provide** the same indemnity and legal defense protections as title insurance policies.
- ✗ May be **subject to artificial caps on litigation expenses and/or time limits** to present a claim.
- ✗ **Do not cure** or eliminate title risks in the public records to help maintain their accuracy and reliability for future transactions.
- ✗ **Do not have the approval** of state insurance regulators or carry the same level of state regulatory supervision (e.g. enhanced reserves) to help protect homeowners and lenders alike.



# Questions to Ask: Attorney Opinion Letters (AOLs)

## Coverage & Experience

- Has the AOL issuer provided examples of the letter, copies of the transactional liability policy or insurance wrapper, and closing protection offerings?
- Does an AOL provide as much protection as title insurance when the insuring language, exceptions, exclusions, and conditions (including definitions) are compared side-by-side?
- Does the AOL issuer provide the same indemnity protections for closing as a Closing Protection Letter (CPL)?
- How does an AOL address hidden risks such as forgery, fraud, or errors that may not be discovered in a simple public records review?
- How does the AOL issuer select the attorney reviewing the opinion and their qualifications to provide opinions on easy-to-complicated title issues?
- Have state insurance regulators approved either and both the AOL issuer's or its insurer's coverage of title risk?
- Does the AOL issuer have a stable, proven executive leadership team and the financial ability to stand behind its product?

## Claims & Reserves

- Title claims routinely arise 5 or more years after issuance of a title policy. If AOLs are based on an attorney's E&O policy, how is the AOL issuer confirming continued and adequate E&O coverage? What if the attorney retires, goes out of business, or fails to renew the policy?
- State laws (statutes of limitation) prevent bringing malpractice claims against attorneys after a certain amount of time that can be as short as 1 year. How does an AOL protect the lender after a statute of limitations has passed?
- What conditions need to be satisfied prior to making a claim for coverage under the AOL?
- If there is a claim under an AOL, how is the borrower or lender protected?
  - Does the AOL issuer have a duty to defend the lender if a third-party challenges the lender's lien?
  - Is there a cap on the cost of defense? If there is, how does this cap affect the borrower or lender?
  - Is the amount of coverage available under the AOL spread among multiple insureds and beneficiaries?
  - How does the AOL issuer establish reserves to meet any claims?
  - What is the data behind statements about claim resolution times?

## The Secondary Market

- How are successors-in-interest covered?
- If a Fannie Mae loan, is the loan in an area that is "commonly acceptable" for AOLs?
- Is the property type listed in the buying guide as acceptable for an AOL product?

## The Borrower

- Have the available discounts for title insurance, closing costs, and other fees the borrower pays been compared?
- In a purchase transaction, does the borrower have to obtain a separate owner's policy to protect their interest?



# Questions to Ask:

## *Title Waiver Program*

### Curative Work & Fraud Protection

- 62% of title files require 4 or more curative actions. Who at my company has the knowledge about this work and can perform the curative work so our loans are first in priority?
- Who ensures there is no fraud during the execution of the new loan documents?
- If there is fraud, how is my company protected? Who will pay for complete title failure?
- Will our company still have to repurchase loans if there is missed curative work but the loan was approved for the title waiver program?

### Claims Handling

- Does the GSE or our company handle the claim?
- What is the process?
- Does the GSE or our company have experienced attorneys (internal or external) that can process and litigate claims?
- Do these processes satisfy state insurance regulators?

### Reserves & Repurchases

- How does my company establish what reserves need to be set in the event a repurchase occurs?
- Or do we rely on FHFA for reserve purposes?
- How will the GSEs be handling repurchases if they are handling the claims?
- Does becoming self-insured violate any state or federal laws regarding our lending practices?

### The Borrower

- Have the closing costs and other fees the borrower pays been compared?
- Do we have the claims handling experience so the borrower is not affected by our choice to use the title waiver program?