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Title Insurance Alternative Proposals

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Agenda

- What is the background on topic?
 - GSE selling guidelines; Equitable Housing Finance Plans
- What is this product?
- How does it compare to title insurance?
 - Coverage Similarities
 - Coverage Gaps
 - How would it work for consumers?
- Regulatory Questions

BACKGROUND



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April 2022: Fannie Mae Selling Guidance on Attorney Opinion Letters

Attorney title opinion letter

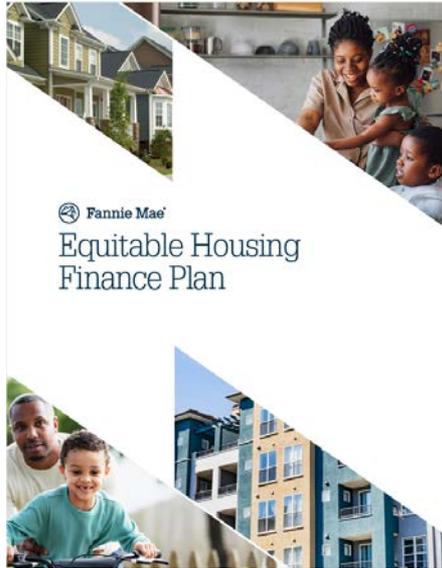
We updated the *Selling Guide* to permit lenders to obtain either a lender's title insurance policy or, in limited circumstances, an attorney title opinion letter. By selling a loan to us the lender must ensure the loan is covered by either a title policy issued by an acceptable insurer (including any required endorsements) or a title opinion letter issued by an attorney. Some of the requirements for using an attorney title opinion letter include:

- The attorney issuing the title opinion letter must be licensed to practice law in the jurisdiction where the subject property is located and must be insured against malpractice in rendering opinions of title in an amount commonly prevailing in the jurisdiction.
- The attorney title opinion letter must:
 - be addressed to the lender and all successors in interest of the lender,
 - be commonly accepted in the area where the subject property is located,
 - provide gap coverage for the duration between the loan closing and recordation of the mortgage,
 - list all other liens and state they are subordinate, and
 - state the title condition of the property is acceptable and the mortgage constitutes a lien of the required priority on a fee simple estate in the property.

The lender must report Special Feature Code 155 when delivering a loan that uses an attorney title opinion letter in lieu of a title insurance policy. See the *Selling Guide* for a complete list of requirements and ineligible transactions.

Effective: Lenders may begin using attorney title opinion letters immediately.

June 2022: GSE Equitable Housing Finance Plans



Federal Housing Finance Agency: Plans are designed to promote the Enterprises' safety and soundness and foster housing finance markets that provide equitable access to affordable and sustainable housing.

Areas of Primary Focus

- Consumer education initiatives for renters and homeowners;
- Credit reporting to help tenants build credit profiles and enable better access to financial services;
- Expanding counseling services to support housing stability;
- Deploying technology to improve access to sustainable credit and fair home appraisals; and
- Special Purpose Credit Programs to address barriers to sustainable homeownership.

How Does Title Fit In?

Attorney Opinion Letter: Update the *Selling Guide* to encourage lenders to allow borrowers the option to utilize an attorney opinion letter in lieu of traditional title insurance more often, which may be cheaper than traditional title options. We believe more common use of attorney opinions could lead to savings for some borrowers. We are looking into how we will be able to utilize internal and/or external data to track usage of this option.

- Freddie Mac requires clean title for all mortgages, which lenders almost always satisfy with a title insurance policy. Title insurance is a significant part of the borrower's cash-to-close.

WHAT IS THIS PROPOSED PRODUCT?



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What's Old Is New

- Proposed Attorney Assurance Opinions product
 - “COMBINE THE COVERAGE OF A LOAN POLICY AND AN OWNER’S POLICY INTO ONE COMPREHENSIVE ALTERNATIVE TO TRADITIONAL TITLE INSURANCE”
- Marketed by Voxtur Analytics
- Combines attorney opinion letter, service agreement and specialty errors and omissions insurance

How They Say It Works

4. How is a Voxtur AOL different from title insurance?

The concept of using legal opinions to confirm marketability of title is not new. In fact, it is older than title insurance. Title opinions have been used to close real estate transactions in the United States for as long as real property transfers have been documented. The Voxtur AOL is simply a new iteration that makes these opinions scalable, affordable, and widely available. Each attorney that issues a Voxtur AOL is acting under the authority of the supreme court of the state in which the subject property is located and with the protection of a comprehensive liability wrapper. With this flexibility and protection, we can provide comparable coverage at a much lower cost to the consumer.

11. How is the underlying insurance structured?

Each Voxtur AOL is backed by a Mortgage Service Providers Errors & Omissions insurance policy that covers the full value of the loan for the life of the loan and is fully transferrable in the secondary market. Our policies are issued by A.M. Best A rated carriers and cover both Voxtur and the issuing law firm as service providers, with the lender named as a third-party beneficiary.

What the GSEs Allow Today

- Both Fannie Mae and Freddie Mac allow the use of attorney's opinion of title in lieu of a title insurance policy
- Requirements
 - Freddie guidelines is limited to areas where AOLs are more common (southern Ohio, KY, Iowa)
 - Include statement: We [I] agree to indemnify you and your successors in interest in the [Mortgage] [deed of trust] opined hereto, to the full extent of any loss attributable to a breach of our [my] duty to exercise reasonable care and skill in the examination of the title and the giving of this opinion.
 - The attorney must have appropriate malpractice insurance



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COVERAGE COMPARISON



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SIMILARITIES IN THE PRODUCTS



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ALTA Loan Policy

1. The Title being vested other than as stated in Schedule A.
3. Unmarketable Title.
4. No right of access to and from the Land.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:
 - a. the amount of the principal disbursed as of the Date of Policy;
 - b. the interest on the obligation secured by the Insured Mortgage;
 - c. the reasonable expense of foreclosure;
 - d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and
 - e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:
 - i. real estate taxes and assessments imposed by a governmental taxing authority; and
 - ii. regular, periodic assessments by a property owners' association.



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Attorney Opinion

TITLE VESTING AND MARKETABILITY

As of the Opinion Effective Date:

1. Title to the Property is vested as set forth in Exhibit A (as more particularly described on Exhibits A and A-1, the "Title") and is subject to the encumbrances and exceptions set forth herein.
2. The Title is Marketable Title, subject only to the Subject Mortgage and any additional encumbrances set forth in Exhibit B (collectively, "Encumbrances"). For purposes of this opinion letter, "Marketable Title" means record title that is free from reasonable doubt such that a prudent person, with actual knowledge of all salient facts and circumstances and their legal significance, would be willing to accept it. To be Marketable Title, title need not be free from every possibility of defect as the mere possibility of a defect that has no probable basis does not create unmarketable title. More specifically, Marketable Title is title that is not affected by an alleged or apparent defect or issue that would permit a prospective purchaser or lessee of the Title or lender on the Title, or prospective purchaser of the Subject Mortgage, to be released from the obligation to purchase, lease, or lend if such transaction were conditioned upon delivery of marketable title.
3. The holder of the Title as set forth in Exhibit A enjoys a right of legal access to and from the Property.

LIEN PRIORITY

As of the Opinion Effective Date:

1. The lien of the Subject Mortgage, including any assignment thereof as reflected in Exhibit A, is a valid and enforceable lien on the Title and has priority over any other liens and encumbrances, except as otherwise expressly set forth in this opinion letter.
2. The lien of the Subject Mortgage on the Title as security for each and every advance of proceeds of the loan secured by the Subject Mortgage has priority over any statutory liens for services, labor, or material arising from construction of an improvement or work related to the Property when such improvement or work is either: (i) contracted for or commenced on or before the Opinion Effective Date; or (ii) contracted for, commenced, or continued after the Opinion Effective Date if such work is financed in any part by proceeds of the loan secured by

Insurance Wrapper: Structured Like a Service Provider Policy

- 2.1. **“Obligation”:** The provider shall (1) provide a “report” to the initial “lender” that is materially accurate based on the most current public data available and that discloses all open mortgages, judgments, liens and encumbrances on the property so that if the “lender’s” security interest in the property is correctly recorded, the security interest will be in the order of priority indicated by the “report”; and (2) if the provider performs the service to record the security interest, it will do so correctly, consistent with the information contained in the “report”; (3) if the provider performs the service of a full loan closing, it will do so consistent with the “lender’s” closing instructions and state requirements.
- 2.2. **“Liability”:** In the event provider fails to meet the “obligation,” provider shall reimburse the “lender” for any direct financial loss (“loss”) incurred by “lender” as a result of such failure; however, (a) provider’s total “liability” shall be limited to the least of the Remedies set forth in Section 4.0 below; and (b) provider shall not have any “liability” for “loss” actually or allegedly arising out of inaccurate information contained in the “report” if “lender” was aware of the inaccuracy of the information based upon information independently developed by the “lender” through such means as a borrower credit report, loan application or other means.



DIFFERENCES IN PRODUCTS



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Core Coverages

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Any defect in or lien or encumbrance	Covered Unless subject to Exclusion from Coverage or Schedule B exception (Covered Risks 2, 9.a.)	Duty only to search "most current public record available" (§ 2.1(1)) so any unrecorded interests, mechanics' liens, etc. not within scope of coverage; <i>see above</i>
Fraud, forgery, duress, incapacity, impersonation, and other similar coverages	Covered (Covered Risks 2.a., 9.a.)	Not covered
Improper execution of documents (including remote online notary)	Covered (Covered Risks 2.a.)	Not covered
Improper recording	Covered (Covered Risks 2.a.)	Covered to the extent that there is a duty to "correctly" record (§ 2.1(2)) <ul style="list-style-type: none"> • But no coverage that mortgage will be properly indexed or provide constructive notice (valid, enforceable) • Intentional failure to record is excluded (IV.A.) • Also, no coverage if the mortgage document is not submitted for recording within 15 days (§ 13.F.)
Defective judicial proceedings	Covered (Covered Risks 2.a.)	Not covered
Boundary line disputes that would have been disclosed by accurate survey	Covered (Covered Risks 2.c.)	Not covered; however, Opinion Letter may not except survey matters (Opinion, Exceptions § 3)
Marketability coverage	Covered (Covered Risk 3)	Not explicitly covered but includes a statement of marketability (Opinion, Title Vesting and Marketability § 2)

Undisclosed Matters

LIENS & ENCUMBRANCES	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Undisclosed federal, state and municipal tax, sewer, and nuisance abatement liens	Covered	Not covered
Undisclosed mechanics liens	Covered	Not covered
Undisclosed child and spousal support liens	Covered	Not covered
Undisclosed homeowners' assessment and real property tax liens, lease options, and credit agreements involving personal property secured by the insured mortgage	Covered	Not covered
Encumbrances caused by forgeries or mistakes in form of ownership (e.g., transfer of title to a family trust and the effect of bankruptcy filings)	Covered	Not covered

Other Coverages

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Access coverage	Covered (Covered Risk 4)	Not explicitly covered but includes a statement of access (Opinion, Title Vesting and Marketability § 3); may be included as to survey matters above
Enforceability of PACA/PSA Trust	Covered (Covered Risks 8)	Not covered
Priority over mechanics liens	Covered (Covered Risks 2, 10, 11)	Not explicitly covered but the Attorney's Opinion with Liability Wrap includes a statement that mortgage "has priority" (Opinion, Lien Priority § 1)
Validity, enforceability, and priority of lien of the insured mortgage coverage	Covered (Covered Risks 9, 10, 11)	Not covered - Validity or Enforceability of the lien of insured mortgage Not explicitly covered - Priority of the lien of the insured mortgage; but the Attorney's Opinion with Liability Wrap includes a statement that mortgage "has priority" (Opinion, Lien Priority § 1)
Back-chain creditors' rights	Covered (Covered Risk 13.a.)	Not covered
Preferential transfer coverage for non-timely recording or non-constructive notice	Covered (Covered Risk 13.b.)	Not covered
Gap coverage	Covered (Covered Risk 14)	Not explicitly covered but purports to cover gap between closing and recording
Failure to comply with closing instructions relating to validity, enforceability, or priority	Covered (ALTA CPL-Single Transaction, Requirement 4(a))	Only duty to follow closing instructions (§ 2.1(3)). See "Improper recording" notes above.
Failure of mortgage loan provider or settlement agent to use the funds of the warehouse lender to fund new mortgage	Covered by the CPL and ALTA Loan Policy	Not covered

Claims Duties

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Defense of Actions	<p>Included</p> <p>Lender provided with a defense [including all attorneys' fees, costs, and expenses] of any matter insured against by policy; payments for same do not reduce the amount of insurance (Conditions 5.a. and 10.a)</p>	<p>Not included</p> <p>Lender potentially able to recoup only "reasonable" attorneys' fees incurred during a foreclosure if loss under policy suffered (§ 4.0)</p>
Indemnity against loss or damage	<p>Included</p> <p>Policy is contract of indemnity under which insurer pays loss or damage incurred by lender who suffers loss or damage by reasons insured by policy (Preamble to Covered Risks, Conditions 8 and 11)</p>	<p>Not included</p> <p>Only provides reimbursement of direct financial loss incurred by lender as a result of provider's failure – subject to various conditions, including:</p> <ul style="list-style-type: none">• Lender must have foreclosed upon and sold property; OR• Exhaust various efforts to collect mortgage balance.• Comply with stringent claims process. <p>(§§ 2, 3, and 4)</p>

Defalcation

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Protection against issuing agent's or approving attorney's fraud, theft, dishonesty, or misappropriation in connection with the closing	Yes ALTA Standard Closing Protection Letter covers such loss to the extent it adversely affects Title or the validity, enforceability, or priority of the lien of the Insured Mortgage (ALTA CPL-Single Transaction, Requirement 4)	No Excludes loss arising out of "any dishonest, intentional, fraudulent, criminal or malicious act" by the insured attorney (IV.A.) But, lender does have limited recourse , against attorney for failing to follow closing instructions (§ 2.1(3))
Protection for warehouse lender	Yes Coverage under ALTA Standard Closing Protection Letter extends to warehouse lenders (ALTA CPL-Single Transaction, Conditions and Exclusions 2.d.iii.b.)	No Risks faced by warehouse lenders are not covered (II.A. defines lender as the client "who originates mortgage loans")

REGULATORY QUESTIONS & NEXT STEPS



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How is the product regulated?

Where is the product being used?

4. How is a Voxtur AOL different from title insurance?

The concept of using legal opinions to confirm marketability of title is not new. In fact, it is older than title insurance. Title opinions have been used to close real estate transactions in the United States for as long as real property transfers have been documented. The Voxtur AOL is simply a new iteration that makes these opinions scalable, affordable, and widely available. Each attorney that issues a Voxtur AOL is acting under the authority of the supreme court of the state in which the subject property is located and with the protection of a comprehensive liability wrapper. With this flexibility and protection, we can provide comparable coverage at a much lower cost to the consumer.

- Where can I use Voxtur AOL?

Voxtur AOL can be used in purchase and refinance transactions up to \$1M in all 50 states.

How do state laws define Title Insurance?

How does the AOL fit into this definition?

P. "Title insurance business" or "business of title insurance" means:

- (1) Issuing as insurer or offering to issue as insurer a title insurance policy;
- (2) Transacting or proposing to transact by a title insurance agent any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:
 - (a) Soliciting or negotiating the issuance of a title insurance policy;
 - (b) Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;
 - (c) Handling of escrow, settlements or closings;
 - (d) Executing title insurance policies;
 - (e) Effecting contracts of reinsurance; or
 - (f) Abstracting, searching or examining titles;
- (3) Guaranteeing, warranting or insuring searches or examinations of title to real property or any interest in real property;
- (4) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or
- (5) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subsection in a manner designed to evade the provisions of this Act.

Section 6. Limitations on Powers

- A. No insurer that transacts any class, type or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten or issued by any insurer transacting or licensed to transact any other class, type or kind of business.
- B. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

Other regulatory questions

- What type of license does the Mortgage Service Providers Errors & Omissions hold?
- Have they filed their coverages with the state department of insurance?
- What level of reserves for future loss does the insurer hold?
- How are those reserves actuarially determined?

Other Consumer Questions



Has the product been used in the market?

Yes. One GSE ran a pilot for refinance loans.



How will owners coverage work?

Unsure. Letters are addressed to lender and insured party is lender. However, one GSE is considering piloting for purchase market.



How will this product work with consumer choice laws?

Unsure. Under federal and some state laws consumers have the right to choose their title company if they are paying for the coverage.



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QUESTIONS?



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