

ALTA RHETORIC DRAWS CRITICISM AS PROMOTING ANTI-CONSUMER, ANTI-COMPETITION MONOPOLY

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As might be expected of a lobbyist representing the title insurance monopoly, and the trade association fully funded and controlled by the title industry, ALTA has gone to considerable lengths to protect the title insurance monopoly by denigrating consumer choice in the selection of mortgage loan closing services.

Let's start this writer's opinion by stating the fact that the title insurance monopoly, 80% of which is controlled by five corporate conglomerates and their agency networks, generated revenue of \$26 Billion in 2021, and paid less than 3% in consumer claims. Further, let's not overlook that ALTA published in their "Comprehensive Overview of Title Insurance" that 75% of land title searches revealed "clean title", rendering title insurance unnecessary.

Notwithstanding, the monopoly's lobbyist has spent an enormous sum of money compiling rhetoric and propaganda that has been circulating for decades. The old storyline is that there can be no consumer choice...no alternatives... to exalted title insurance. None.

From a humorous perspective, the monopoly's lobbyist would have consumers believe that homeownership, the economy, democracy and the American way of life is at stake without title insurance.

Perhaps a similar monopoly, manufacturing electric vehicles, will create or hire a mouthpiece, claiming and influencing political bodies, that every American be required to buy and drive electric vehicles, consigning gasoline powered cars to the dust bin of society.

There is nothing new to the rhetoric...except the fact that the monopoly is today more threatened by Government Sponsored Enterprises, Freddie Mac's and Fannie Mae's authorization in certain circumstances to provide consumer choice; in the form of a lower cost alternative to title insurance.

Leading mortgage lenders are embracing the Fannie Mae and Freddie Mac authorized Attorney Opinion Letter as an alternative to costly and often unnecessary title insurance. The monopoly would have Americans believe that experienced real estate lawyers are incapable of reviewing, understanding and rendering an opinion of ownership and chain of title, based on professionally prepared land registry searches and examinations.

Lenders should beware of ALTA, title insurance companies, law firms and other "experts" clearly retained by ALTA, that "compare" title insurance to the Attorney Opinion Letter. The comparisons, which read more like title insurance sales pitches, inappropriately compare dozens of title insurance products, endorsements, and services to a "stand-alone" Attorney Opinion Letter. Such comparisons are like comparing Apples to Oranges.

The fact is that the Attorney Opinion Letter was not crafted or intended to "compete" with dozens of title insurance products, endorsements, and services. The Attorney Opinion Letter, issued by a real estate lawyers insured by E&O, Professional Liability and Malpractice insurance, is a valuable resource by which land records and documents are reviewed for the purpose of determining whether a transaction can be validly closed. And, there are new "Enhanced AOLs" that ALTA is either unaware of, or has purposely has disregarded.

ALTA states that the use of a lower-cost Attorney Opinion Letter will require a lawsuit by consumers to enforce errors or omissions. In a classic case of the pot calling the kettle black, the title insurance industry is famous for rejecting consumer claims, thereby requiring lawsuits against the title insurer to enforce coverage.

Let's remember that the title insurance monopoly has tens of thousands of lawyers trained to reject consumer claims based on their "analysis" of pages-upon-pages of title insurance policy "Exceptions and Exclusions". ALTA's suggestion that Attorney Opinion Letters be "regulated" is absurd.

It remains to be seen if ALTA and the monopoly are aware of reports that numerous states are considering enacting a "Torrens" type of state-guaranteed title, as a way of both protecting consumers and in generating significant new revenue. As an example, title insurance is illegal in the state of Iowa, allowing lenders and consumers to rely upon a state guarantee of title...not costly title insurance...which is uncorrelated to risk.

ALTA may also want to consider reports that consumer activists have referred their fear of the monopoly for investigation by state Attorney Generals, American Bar Association, the American Bankers Association, the Justice Department, the Consumer Financial Protection Bureau, Federal National Mortgage Association (FNMA: Fannie Mae), Federal Home Loan Mortgage Corporation (FHLMC: Freddie Mac), the Federal Housing Administration (FHA), FHA's Affordable Housing Program (AHP), the Federal Home Loan Bank (FHLB), the Federal Housing Finance Agency (FHFA), the Federal Department of Housing and Urban Development (HUD), the Federal Trade Commission, the FTC's Bureau of Anti-Competition and the FTC's Bureau of Economics.

Consumer activists reportedly anticipate the title insurance monopoly to be evaluated for inappropriate anti-competition conduct under the Sherman Antitrust Act, The Clayton Act, the Hart-Scott-Rodino Antitrust Act, the Robinson-Patman Act, the Dodd Frank Act and the Fair Housing Act.

Lenders and consumers deserve choice...and Fannie Mae and Freddie Mac are to be congratulated for providing an alternative to costly and often-unnecessary title insurance. The author of this opinion is an experienced senior executive veteran of the title insurance industry. Sprink can be contacted at theodore.sprink@tsprink.com.