

# National Mortgage News

[TITLE INSURANCE](#)

## Opinion

### Attorney Opinion Letters are key to providing Consumer Choice

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As might be expected of a lobbyist representing the title insurance industry, 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. The title insurance industry would have Americans believe that experienced real estate lawyers are incapable of reviewing, understanding, and rendering an opinion of ownership and chain of title.

In fact, in an incredible anti-competition development, senior executives of ALTA stated during their October conference in San Diego that they are [lobbying Congress](#) to pressure multiple Federal Agencies to strip Fannie Mae and Freddie Mac of their authorization to accept (AOLs) as an alternative to costly title insurance.

Leading mortgage lenders are embracing the Fannie Mae and Freddie Mac authorized AOLs as an alternative to expensive and often unnecessary title insurance. In fact, the nation's largest wholesale lender, United Wholesale Mortgage, has introduced the proprietary AOL-based "TRAC" program, designed according to CEO Mat Ishbia, to provide consumers the choice to select a lower mortgage loan-closing alternative.

Let's start by stating the fact that the title insurance monopoly, 80% of which is controlled by four corporate conglomerates and their agency networks, generated revenue of \$26 billion in 2021 and paid \$474.4 million in consumer claims, according to ALTA. Further, let's not overlook the ALTA-published "Comprehensive Overview of Title Insurance," which found 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. There is nothing new to the rhetoric; except that leading title insurance executives are now coordinating their pro-monopoly, anti-competition support of ALTA's lobbying Congress to influence the action and authority of Federal Agencies to their monopolistic advantage.

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.

On Nov. 29, Nathan Bossers, president of a large title insurance agency, [wrote an opinion piece](#) that was quite negative on the AOL, a loan closing alternative that provides consumer choice. However, he made no reference that in 2021 the title insurance monopoly, enjoying 100% market share, generated \$26 billion in revenue, and paid an embarrassingly low 3% in claims.

A significant misrepresentation was his excluding the substantial cost of title-controlled escrow from his price example and the numerous costs, fees and charges that significantly inflate the true cost of both title and escrow.

Most disingenuous was the \$250,000 purchase and refinance title insurance cost "examples" cited by Mr. Bossers, clearly understating the actual cost of title insurance. Everyone knows that title insurance refinance rates are substantially lower than purchase rates, and that refinancing has vaporized with an increase in interest rates. The average purchase loan is \$411,000. His "price example" is inaccurate and irrelevant.

The fact is that the AOL was not crafted or intended to "compete" with dozens of costly title insurance products, endorsements, and services. The AOL, issued by a licensed 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 and Mr. Bossers are either unaware of or have purposely disregarded.

ALTA states that the use of a lower-cost AOL 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."

It remains to be seen if ALTA is 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 advocates, many of whom are lawyers and real estate industry executives, are reportedly referring 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, Fannie Mae, Freddie Mac, the Federal Housing Administration, FHA's Affordable Housing Program, the Federal Home Loan Bank System, the Federal Housing Finance Agency, the federal Department of Housing and Urban Development, the Federal Trade Commission, the FTC's Bureau of Anti-Competition and the FTC's Bureau of Economics.

These consumer advocates reportedly anticipate the title insurance monopoly will 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.

Anti-competition, denial of consumer choice and elimination of alternatives are wrong. Shame on those protecting the cash-cow monopoly at the expense of the American consumer. 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.

*iTitleTransfer, LLC* is the nation's first PropTech firm advancing consumer choice by providing a safe, reliable, low cost, life-of-loan, E2E loan closing and home ownership-transfer platform, based on the GSE-compliant AOL, which is one of 15 components of *iTitleTransfer's* proprietary Loan Closing Platform.

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