



September 9, 2025

Administrative Letter 2025-05

TO: All Title Insurance Companies, Title Insurance Agents, Entities Engaged in the Business of Title Insurance in Virginia and Interested Parties

RE: Title Insurance Alternatives

It has come to the attention of the Virginia Bureau of Insurance (“Bureau”) that products structured like Attorney Opinion Letters (“AOLs”) are being offered to consumers in the Commonwealth as a substitute for title insurance. It is important for consumers to understand the differing protections offered by AOLs and title insurance. Furthermore, it is important that consumers and those offering AOLs understand that AOLs are legally prohibited from providing the same or similar protections as title insurance. As long as the AOL does not offer coverage meeting the definition of “insurance” or “title insurance” found in the Code of Virginia (“Code”), the AOL would not be subject to the Bureau’s regulation. This Administrative Letter explains the applicable law, the differences in protections between AOLs and title insurance, the importance of understanding coverage, and where certain AOL offerings may violate the Code by crossing the line into the unlicensed business of insurance.

Background and Legislative Authority

Through its administration and enforcement of the insurance laws in the Commonwealth, the Bureau has a robust framework in place to regulate the business of insurance and, more specifically, the provision of title insurance.

Section 38.2-100 of the Code defines “insurance” as “the business of transferring risk by contract wherein a person, for a consideration, undertakes (i) to indemnify another person, (ii) to pay or provide a specified or ascertainable amount of money, or (iii) to provide a benefit or service upon the occurrence of a determinable risk contingency.” Section 38.2-100 continues by stating that “insurance” includes each of the classifications of insurance set forth in Article 2 of Chapter 1 of Section 38.2 of the Code which includes title insurance.

Section 38.2-123 of the Code defines “title insurance” as “insurance against loss by reason of liens and encumbrances upon property, defects in the title to property, and other

matters affecting the title to property or the right to the use and enjoyment of property.” Section 38.2-123 also states that title insurance “includes insurance of the condition of the title to property and the status of any lien on property.”

Section 38.2-135 of the Code prohibits a company from writing “any class of insurance unless it has a current annual license from the Commission to do so.” Section 38.2-135 also imposes an additional restriction on title insurers in stating that “[a]n insurer licensed to write title insurance shall not be licensed to write any additional class of insurance,” meaning title insurers are legally required to be monoline insurance companies writing only title insurance. Similarly, Section 38.2-4603 of the Code states that “[n]o company other than an insurance company organized as a stock company and licensed to transact title insurance shall transact title insurance in this Commonwealth.”

Chapter 46 of Title 38.2 also imposes a number of requirements on title insurers and settlement agents. These include requirements on filing forms with the Bureau, rating practices, and establishing loss reserves, among other items. Section 38.2-4616 requires a settlement agent to obtain a statement in writing from a purchaser of residential real property in the Commonwealth that “he has been notified by the settlement agent that the purchaser may wish to obtain owner’s title insurance coverage . . . and that the purchaser does or does not desire such coverage.” Section 38.2-4602 also clarifies that, “[e]xcept as otherwise provided, and except where the context otherwise requires, all provisions of this title relating to insurance and insurers generally shall apply to title insurance and title insurance companies.”

AOLs, traditionally, have avoided being subject to the regulatory framework applicable to insurance, because they fall outside of the scope of “insurance” and “title insurance.” Typically, AOLs are documents prepared by a licensed attorney that provide assurances regarding the status of the title of real property as of the date of the letter. Traditional AOLs avoid being “insurance” or “title insurance” by not transferring the risk of loss related to the condition of the title to property, the status of any lien or encumbrance on property, or other matters affecting the title or right to the use and enjoyment of property. However, it has come to the Bureau’s attention that some entities are offering products structured like AOLs that may meet the definition of “insurance” or “title insurance.”

Understanding Coverage

Many buyers take out a mortgage to purchase a home. Lenders will often require the buyer to purchase a lender’s title insurance policy which protects the lender’s security interest in the property. Buyers may be encouraged to consider an AOL in lieu of title insurance by entities acting as party to the real estate transaction. However, the buyer has

the right to choose to buy title insurance and select their insurance provider. The buyer can also purchase owner's title insurance coverage to protect their interest and has the ability to choose their insurance provider. Additionally, the settlement agent in the Commonwealth is required to provide, under Section 38.2-4616 of the Code, a notice reinforcing the buyer's right to obtain owner's title insurance coverage.

The Bureau advises consumers considering the purchase of an AOL to understand if the AOL provides protection to them. The Bureau also encourages consumers to understand that AOLs, and the third parties that offer them, are not subject to the same consumer protection and regulatory requirements as title insurance.

Avoiding the Unlicensed Business of Insurance

The Bureau advises those entities issuing AOLs in the Commonwealth to exercise caution to ensure that they avoid engaging in the business of insurance. The Bureau takes the same view as its neighbor to the south in finding that “[a]ny product that, in essence, insures against loss by reason of defective title or incorrect title searches is title insurance, regardless of the semantics employed.”¹

The Code is clear that any product insuring “against loss by reason of liens and encumbrances upon property, defects in the title to property, and other matters affecting the title to property or the right to the use and enjoyment of property” is title insurance. Title insurance also “includes insurance of the condition of the title to property and the status of any lien on property.”

The Bureau's regulation of title insurance includes enforcement of the requirements that the entity providing this coverage be licensed to conduct the business of insurance in the Commonwealth and that the licensed insurer be limited to writing only title insurance. An attempt to extend coverage underwritten by a non-title insurer to provide “title insurance” is not legally permissible because only licensed title insurers may provide title insurance and a licensed title insurer cannot offer other lines of insurance.

To the extent that an AOL indemnifies the owner or lender for losses by reason of liens and encumbrances upon property, defects in the title to property, or other matters affecting the title to property or the right to the use and enjoyment of property caused by events outside of the attorney's control or covers losses unrelated to the opinion expressed in the AOL, then the AOL may be “title insurance” and subject to the Bureau's regulation. However, the determination of what is and what is not “title insurance” is fact dependent so the Bureau

¹ North Carolina Department of Insurance, N.C. Bulletin No. 2002-B-3, *Mortgage Impairment Products Determined to be Title Insurance* (Apr. 17, 2002).

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will carefully review the facts of each product and cannot offer an exhaustive list of factors to consider to determine if an AOL is an insurance product.

Conclusion

Consumers should be aware AOLs are being offered as substitutes for title insurance but they do not, and legally cannot, offer the same protection as title insurance. The gap in coverage may leave consumers without protection that they believe they purchased. Entities offering AOLs in the Commonwealth should exercise caution to ensure they are not improperly engaging in the business of insurance.

Questions about this administrative letter may be directed to:

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Cordially,

/s/ Scott A. White
Commissioner of Insurance