

OUR MEETING WILL BEGIN SHORTLY

WELCOME TO THE  
TITLE INSURANCE (C) TASK FORCE

August 11, 2022

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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS



# NATIONAL MEETING SUMMER 2022

Date: 8/8/22

*2022 Summer National Meeting  
Portland, Oregon*

## TITLE INSURANCE (C) TASK FORCE

Thursday, August 11, 2022

3:00 – 4:00 p.m.

Oregon Convention Center—Portland Ballroom 254-255—Level 2

## ROLL CALL

Eric Dunning, Chair	Nebraska	Chlora Lindley-Myers	Missouri
Kevin Gaffney, Vice Chair	Vermont	Troy Downing	Montana
Mark Fowler	Alabama	Barbara D. Richardson	Nevada
Peni Itula Sapini Teo	American Samoa	Mike Causey	North Carolina
Michael Conway	Colorado	Judith L. French	Ohio
Karima M. Woods	District of Columbia	Glen Mulready	Oklahoma
David Altmaier	Florida	Michael Humphreys	Pennsylvania
Colin M. Hayashida	Hawaii	Elizabeth Kelleher Dwyer	Rhode Island
Vicki Schmidt	Kansas	Michael Wise	South Carolina
James J. Donelon	Louisiana	Larry D. Deiter	South Dakota
Kathleen A. Birrane	Maryland	Cassie Brown	Texas
Grace Arnold	Minnesota	Scott A. White	Virginia

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

## AGENDA

1. Hear an Educational Roundtable Discussion on the Various Approaches States Use to Regulate Rates—*Joe and Sharon Petrelli (Demotech on Behalf of OH and LA), David Muckerheide (TX); and Barbara W. Rankin (KS)* Attachment One
2. Hear a Presentation on New Title Insurance-Like Alternatives that Use Attorney Opinion Letters Backed by an Enhanced Errors and Omissions Policy Through the Surplus Lines Market—*Chris Morton (American Land Title Association—ALTA) and Tim Kemp (Greenberg Traurig)* Attachment Two

The logo features a large orange circle with a yellow border, set against a background of overlapping orange and yellow curved shapes. The text is centered within the orange circle.

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## Hear an Educational Roundtable Discussion on the Various Approaches States Use to Regulate Rates

*—Joe and Sharon Petrelli (Demotech on  
Behalf of OH and LA);*

*—Tim Johnson (NC);*

*—David Muckerheide (TX); and*

*—Barbara W. Rankin (KS)*

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## Hear a Presentation on New Title Insurance-Like Alternatives —

*—Chris Morton (ALTA) and Tim  
Kemp (Greenberg Traurig)*

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# Title Insurance Alternative Proposals

Chris Morton: American Land Title Association

Tim Kemp: Greenberg Traurig, LLP

# 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

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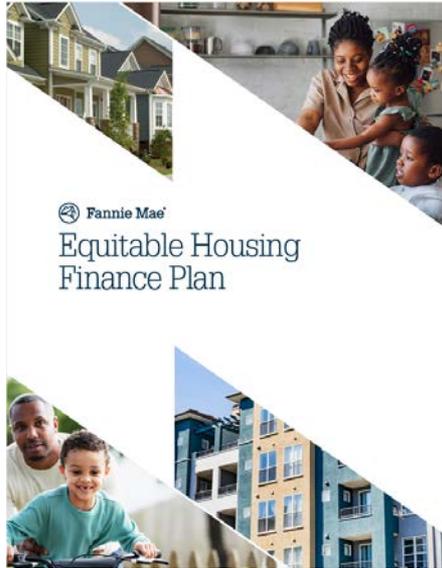
We updated the *Selling Guide* to permit lenders to obtain either a lender's title insurance policy or, in limited circumstances, an attorney title opinion letter. By selling a loan to us the lender must ensure the loan is covered by either a title policy issued by an acceptable insurer (including any 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"> <li>• But no coverage that mortgage will be properly indexed or provide constructive notice (valid, enforceable)</li> <li>• Intentional failure to record is excluded (IV.A.)</li> <li>• Also, no coverage if the mortgage document is not submitted for recording within 15 days (§ 13.F.)</li> </ul>
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)	<b>Not</b> 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)	<b>Not</b> covered
Priority over mechanics liens	Covered (Covered Risks 2, 10, 11)	<b>Not</b> 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)	<b>Not</b> covered - Validity or Enforceability of the lien of insured mortgage  <b>Not</b> 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.)	<b>Not</b> covered
Preferential transfer coverage for non-timely recording or non-constructive notice	Covered (Covered Risk 13.b.)	<b>Not</b> covered
Gap coverage	Covered (Covered Risk 14)	<b>Not</b> 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	<b>Not</b> 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"> <li>• Lender must have foreclosed upon and sold property; OR</li> <li>• Exhaust various efforts to collect mortgage balance.</li> <li>• Comply with stringent claims process.</li> </ul> <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)	<b>No</b> Excludes loss arising out of "any dishonest, intentional, fraudulent, criminal or malicious act" by the insured attorney (IV.A.)  But, lender does have <b>limited recourse</b> , 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.)	<b>No</b> 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.

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#### - Where can I use Voxtur AOL?

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

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# 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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**Q&A**

August 11, 2022

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# COVERAGE COMPARISON

ALTA 2021 LOAN POLICY VS. ATTORNEY TITLE OPINION & LIABILITY WRAP



Timothy V. Kemp | Washington, DC  
Lisa Petrovsky | Los Angeles, CA

ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>Scope of Coverage</b>		
<ul style="list-style-type: none"> <li>▪ “Any defect in or lien or encumbrance” (Covered Risk 2) <ul style="list-style-type: none"> <li>▪ Matters only excluded if subject to Exclusion from Coverage or Schedule B exception. (Covered Risks 2.a., 9.a.)</li> </ul> </li> <li>▪ Fraud is <b>covered</b></li> <li>▪ Forgery is <b>covered</b></li> <li>▪ Duress is <b>covered</b></li> <li>▪ Incapacity is <b>covered</b></li> <li>▪ Impersonation is <b>covered</b></li> <li>▪ Improper execution of documents (including remote online notary) is <b>covered</b></li> <li>▪ Improper recording is <b>covered</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Duty only to search “most current public record data available” (§ 2.1(1)) <ul style="list-style-type: none"> <li>▪ Any <i>unrecorded</i> interests, mechanics’ liens, etc. <u>not within scope of coverage</u></li> </ul> </li> <li>▪ Fraud is <b>not</b> covered</li> <li>▪ Forgery is <b>not</b> covered</li> <li>▪ Duress is <b>not</b> covered</li> <li>▪ Incapacity is <b>not</b> covered</li> <li>▪ Impersonation is <b>not</b> covered</li> <li>▪ Improper execution of documents (including remote online notary) is <b>not</b> covered</li> <li>▪ Improper recording <b>is</b> covered, as there is a duty to “correctly” record (§2.1(2)), but there is <u>no coverage that mortgage will be or has been properly indexed or that it is valid and enforceable so as to provide constructive notice.</u> <i>Intentional</i> failure to record is <b>excluded</b> (IV.A.) Also,</li> </ul>	<ul style="list-style-type: none"> <li>▪ Attorney’s Opinion with Liability Wrap provides vested owner information according to public record</li> </ul>

<ul style="list-style-type: none"> <li>▪ Defective judicial proceedings are <b>covered</b></li> <li>▪ Boundary line disputes that would have been disclosed by accurate survey are <b>covered</b></li> <li>▪ Enforceability of PACA/PSA Trust is <b>covered</b></li> <li>▪ Priority over mechanics liens is <b>covered</b></li> <li>▪ Validity of the lien of the insured mortgage is <b>covered</b></li> <li>▪ Enforceability of the lien of the insured mortgage is <b>covered</b></li> <li>▪ The priority of the lien of the insured mortgage is <b>covered</b></li> </ul> <p>(Covered Risks 9, 10, 11)</p> <ul style="list-style-type: none"> <li>▪ Marketability of the subject property is <b>covered</b> (Covered Risk 3)</li> </ul>	<p>there is <b>no coverage</b> if the mortgage document is not submitted for recording within 15 days (§ 13.F.)</p> <ul style="list-style-type: none"> <li>▪ Defective judicial proceedings are <b>not</b> covered</li> <li>▪ Survey matters <b>may be</b> covered by Opinion Letter if either a new survey or a prior survey with an affidavit of no change by owner provided (Opinion Reqs. 9)</li> <li>▪ Enforceability of PACA/PSA Trust is <b>not</b> covered</li> <li>▪ Priority over mechanics liens is <b>not</b> explicitly covered</li> <li>▪ Validity of the lien of the insured mortgage is <b>not</b> covered</li> <li>▪ Enforceability of the lien of the insured mortgage is <b>not</b> covered.</li> <li>▪ The priority of the lien of the insured mortgage is <b>not</b> explicitly covered, but the <u>Attorney’s Opinion with Liability Wrap includes a statement that mortgage “constitutes a lien of the required priority”</u></li> <li>▪ A statement regarding Marketability is made but is <b>not</b> explicitly covered</li> </ul>	
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<ul style="list-style-type: none"> <li>▪ Right of access to the subject property is <b>covered</b> (Covered Risk 4)</li> <li>▪ Back-chain creditors' rights are <b>covered</b> (Covered Risk 13.a.)</li> <li>▪ Preferential transfers for non-timely recording or non-constructive notice (Covered Risk 13.b.)</li> <li>▪ Gap between closing and recording is <b>covered</b> (Covered Risk 14)</li> <li>▪ Any failure to comply with closing instructions relating to the validity, enforceability, or priority of the lien of the insured mortgage is <b>covered</b>. (ALTA CPL-Single Transaction, Requirement 4(a))</li> <li>▪ Risks uniquely associated with the sending of funds by warehouse lenders to individual mortgage lenders to fund the mortgage loans that will ultimately serve as collateral for warehouse financing are <b>covered</b> by the closing protection letter and ALTA Loan Policy.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Right of access is <b>not</b> covered, except as may be included within survey matters above</li> <li>▪ Back-chain creditors' rights are <b>not</b> covered</li> <li>▪ Preferential transfers for non-timely recording or non-constructive notice are <b>not</b> covered</li> <li>▪ Purports to cover gap between closing and recording, but does <b>not</b> explicitly cover</li> <li>▪ There is a duty to follow closing instructions (§ 2.1(3)). See "Improper Recording" coverage notes above.</li> <li>▪ Risks uniquely faced by warehouse lenders are <b>not</b> covered.</li> </ul>	
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ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>HOA CC&amp;R/Lien Coverage</b>		
<ul style="list-style-type: none"> <li>• <b>ALTA 5.1 Endorsement</b> insures against loss or damage arising by reason of:</li> <li>• Present violations of restrictive covenants in Schedule B that restrict use of the land. The covenants do not contain provisions that will cause a forfeiture or reversion of the title.</li> <li>• Any charges or assessment in favor of the homeowners association provided for in any document referred to in Schedule B that may be due and unpaid at Date of Policy.</li> <li>• The enforced removal of any existing structure on the land (other than boundary wall or fence) due to encroachment onto adjoining land or easements.</li> <li>• Failure of title by reason of a right of first refusal that was exercised or could have been exercised at Date of Policy.</li> </ul>	<ul style="list-style-type: none"> <li>• Fannie Mae requires issuer of Attorney's Opinion with Liability Wrap to make representations for any PUD equivalent to ALTA 5.1 coverage</li> <li>• Representations are <i>not part of "obligation"</i> covered by attorney's insurance policy (§ 2.1)</li> <li>• <i>Sole recourse is legal claim against attorney</i> for negligent misrepresentation or potential breach of contract</li> </ul>	

ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>Duty to Defend</b>		
<p><u>ALTA Policy covers defense of covered claims</u></p> <p style="text-align: center;"><b>DEFENSE OF COVERED CLAIMS</b></p> <p>The Company <b>will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy</b>, but only to the extent provided in the Conditions. (emphasis added)</p>	<p><u>Attorney's Opinion with Liability Wrap does not include any defense obligation</u></p> <p><b>Section 4.0. REMEDIES:</b></p> <p>In the event the provider has failed to meet its "obligation" under this "service agreement," "lender" has suffered a "loss," <b><i>and "lender" has satisfied the Conditions and complied with the Claim Process, provider will reimburse the "lender" the least of.</i></b> (emphasis added)</p> <p><b>4.1.</b> The amount of the "loss" directly attributable to the specific item(s) of information inaccurately contained in or missing or omitted from the "report"; or</p> <p><b>4.2.</b> The original loan amount, or</p> <p><b>4.3.</b> The "lender's" "Actual Financial Loss", as determined by:</p> <p style="padding-left: 20px;">A. The sum of:</p> <p style="padding-left: 40px;">1. The mortgagor's unpaid principal mortgage balance; and</p> <p style="padding-left: 40px;">2. Accrued and unpaid interest pursuant to the loan up to</p>	<p>The <u>ALTA Policy</u> provides the lender with a <b>defense (including all attorneys' fees and costs) of any litigation in which a third party asserts a claim potentially covered by the policy adverse to the lender.</b> Payments made by the title insurer for such attorneys' fees and costs do not reduce the Amount of Insurance of the policy.</p> <p>The <u>Attorney's Opinion with Liability Wrap</u> <b>does not provide the lender with a defense for any cases filed against the lender.</b> While the lender may be able to recoup "reasonable" attorney fees incurred during a foreclosure, such fees would be available only if the lender's "Actual Financial Loss" was the appropriate remedy and would not include any costs associated with the foreclosure. Further, the term "reasonable" is not defined nor does the policy indicate who makes such a determination.</p> <p>The fact that the Attorney's Opinion with Liability Wrap includes <b>no duty to defend against various title-related lawsuits</b> that may arise following a property transaction.</p>

<p>Condition 5.a.:</p> <p><b>5. DEFENSE AND PROSECUTION OF ACTIONS</b></p> <p>a. Upon written request by the Insured and subject to the options contained in Condition 7, <b>the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured.</b> This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.</p>	<p>one hundred eighty (180) calendar days; and</p> <p>3. Outstanding escrow advances, if any; and</p> <p>4. <i>Reasonable attorney fees, not including fees or estimates of fees from “lender’s” staff counsel and costs, and not including “lender’s” overhead., incurred during foreclosure.</i> (emphasis added)</p> <p><u>Less:</u></p> <p>B. The sum of:</p> <p>1. The amount collected as a result of the sale of the secured property to a disinterested third party; and</p> <p>2. Proceeds received by the “lender” from any source, to include but not limited to, credit life, accident and health, involuntary unemployment or hazard insurance serving to reduce the unpaid debt; and</p> <p>3. Non-applied escrowed balances; and</p> <p>4. Any other amounts collected or collectible and applied to, or that could be applied to, the repayment of the Eligible Mortgage Loan.</p>	<p>This creates unpredictable and potentially high risk for the lender and should be carefully considered.</p>
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<p>Condition 10.a.:</p> <p><b>10. REDUCTION OR TERMINATION OF INSURANCE</b></p> <p>a. <b>All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment.</b> However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Amount of Insurance afforded under this policy, except to the extent that the payment reduces the Indebtedness. (emphasis added)</p>	<p><b>4.4</b> With respect to "loss" where initial "lender" has a repurchase demand and has satisfied all Conditions, including Condition 3.4 (C), the <b>lesser of:</b> (i) the amount specified in Remedy 4.2; or (ii) 100% of the difference between the repurchase cost (less any fees, penalties, or other administrative charges) of the loan from the transferee who first purchased the loan directly from the initial "lender" and, the proceeds of the subsequent sale of said loan to a disinterested third party.</p>	
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ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>Indemnity vs. Reimbursement and Extent of Liability</b>		
<p><u>ALTA Policy is a contract of indemnity that insures against loss or damage</u></p> <p>Excerpt of Preamble to <b>COVERED RISKS</b>:</p> <p>...[Blank Title Insurance Company], a [Blank] corporation (the "Company"), <b>insures</b> as of the Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after the Date of Policy, <b>against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:...</b> (emphasis added)</p> <p>Excerpt of Condition 8:</p> <p><b>8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY</b></p> <p><b><i>This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.</i></b> This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or</p>	<p><u>Attorney's Opinion with Liability Wrap provides for reimbursement only after meeting several conditions</u></p> <p>Excerpt of <b>Section 2.0. "OBLIGATION" AND "LIABILITY"</b>:</p> <p><b>2.1. "Liability":</b> <i>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, subject to the Conditions set forth below and provided that,</i> (i) provider's total "liability" shall be limited to the least of the Remedies set forth in Section 4.0 below; and (ii) provider shall not have any "liability" for a "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 obtained by the "lender" through a borrower credit report, loan application or other means. (emphasis added)</p> <p><b>Section 3.0. CONDITIONS:</b></p> <p><i>In the event provider fails to meet its "obligation" resulting in "loss" to "lender," "lender" may seek Remedies under this</i></p>	<p>Under the <u>ALTA Policy</u>, <b>the title insurer directly covers a loss</b>, subject to the terms of the policy.</p> <p>Under the <u>Attorney's Opinion with Liability Wrap</u>, the lender must seek reimbursement for any direct financial loss from the provider. But, <b>before it can seek such reimbursement</b>, the lender must meet several detailed conditions. For example, among other things, the <b>lender must have foreclosed</b> upon and sold the property to a disinterested 3<sup>rd</sup> party or shown that it has <b>exhausted all efforts to collect the mortgage balance</b>. The lender must also comply with a <b>stringent claims process</b> to recoup any loss. (See further discussion in section entitled Tendering and Handling a Claim).</p>

<p>negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.</p> <p>a. <b>The extent of liability of the Company for loss or damage under this policy does not exceed the least of:</b></p> <ol style="list-style-type: none"> <li>i. the Amount of Insurance;</li> <li>ii. the Indebtedness;</li> <li>iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or</li> <li>iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage...</li> </ol> <p>(emphasis added)</p> <p>Condition 11:</p> <p><b>11. PAYMENT OF LOSS</b> When liability and the extent of loss or damage are determined in accordance with the Conditions, <b>the Company will pay the loss or damage</b> within 30 days.(emphasis added)</p>	<p><b><i>“service agreement” if all of the following conditions are met</i></b> (emphasis added)</p> <p><b>3.1.</b> The “lender” has a financial interest in the property pursuant to a loan agreement that is secured by a security instrument which was recorded. Provided however, this condition 3.1 does not apply if Provider has failed to meet its Obligation as set forth in (2) of Section 2.1 by failing to record;</p> <p><b>3.2.</b> The “lender” has documented that the loan is an Eligible Mortgage Loan;</p> <p><b>3.3.</b> The “lender” has timely paid all fees for the “report” to provider;</p> <p><b>3.4.</b> The “lender” has:</p> <ol style="list-style-type: none"> <li>A. <b>Foreclosed</b> upon and sold the secured property to a disinterested third party; or</li> <li>B. <b>Exhausted all efforts to collect</b> any portion of the outstanding mortgage balance owed by the mortgagor on the secured property. “Lender” will be deemed to have exhausted all efforts to collect any portion of the outstanding balance owed by a mortgagor when: <ol style="list-style-type: none"> <li>1. The Eligible Mortgage Loan is in <b>default</b>; and</li> <li>2. The “lender” has made <b>every reasonable attempt to collect</b>, work out, or mitigate the deficiency in a manner consistent</li> </ol> </li> </ol>	
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	<p>with their collection and loss mitigation practices and procedures; and</p> <p>3. The “lender” has presented to the provider a written determination, signed by an authorized representative of the “lender,” that the <b>Eligible Mortgage Loan is commercially uneconomic to foreclose</b> upon, meaning <b>after foreclosure and liquidation</b> of the property a deficiency balance is anticipated; and</p> <p>4. <b>“Lender” has charged-off</b> the Eligible Mortgage Loan; and</p> <p>C. <b>Repurchased a performing loan</b> from the transferee who first purchased the loan directly from the initial “lender,” owing solely to an inaccurate “report,” <u>provided</u> (1) the “lender” has made a <b>reasonable effort to satisfy the purchaser’s issue</b> with the original “report” <u>prior</u> to repurchase and (2) “lender” has <b>received fair market value</b> from a disinterested third party for the resale of the loan.</p> <p>3.5. Neither the “lender” nor any party submitting the claim for “loss” on behalf of the “lender” has committed fraud or misrepresentation with respect to any of the terms or conditions of the “service agreement”; in which event the “service agreement” is void with respect to the</p>	
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loan for which the claim for “loss” is submitted.

**Section 4.0. REMEDIES:**

*In the event the provider has failed to meet its “obligation” under this “service agreement,” “lender” has suffered a “loss,” and “lender” has satisfied the Conditions and complied with the Claim Process, provider will reimburse the “lender” the least of: (emphasis added)*

4.1. The **amount of the “loss”** directly attributable to the specific item(s) of information inaccurately contained in or missing or omitted from the “report”; or

4.3. The original **loan amount**, or

4.3. The “lender’s” **“Actual Financial Loss”**, as determined by:

B. The sum of:

1. ;The mortgagor’s unpaid principal mortgage balance; and
2. Accrued and unpaid interest pursuant to the loan up to one hundred eighty (180) calendar days; and
3. Outstanding escrow advances, if any; and
4. Reasonable attorney fees, not including fees or estimates of fees from “lender’s” staff counsel and ;costs, and not including “lender’s” overhead., incurred during foreclosure.

	<p style="text-align: center;"><u>Less:</u></p> <p>C. The sum of:</p> <ol style="list-style-type: none"> <li>1. The <b>amount collected as a result of the sale</b> of the secured property to a disinterested third party; and</li> <li>2. <b>Proceeds received by the “lender” from any source</b>, to include but not limited to, credit life, accident and health, involuntary unemployment or hazard insurance serving to reduce the unpaid debt; and</li> <li>3. <b>Non-applied escrowed balances</b>; and</li> <li>4. Any <b>other amounts</b> collected or collectible and applied to, or that could be applied to, the repayment of the Eligible Mortgage Loan.</li> </ol> <p><b>4.4</b> With respect to “loss” where initial “lender” has a repurchase demand and has satisfied all Conditions, including Condition 3.4 (C), the lesser of: (i) the amount specified in Remedy 4.2; or (ii) 100% of the difference between the repurchase cost (less any fees, penalties, or other administrative charges) of the loan from the transferee who first purchased the loan directly from the initial “lender” and, the proceeds of the subsequent sale of said loan to a disinterested third party.</p>	
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ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>Trigger and Duration of Coverage</b>		
<ul style="list-style-type: none"> <li>• <b>Claims-made policy</b>, which covers claims made during the policy period, regardless of when the triggering event creating the loss occurred.</li> <li>• <b>One-time premium</b></li> <li>• <b>No cancellation</b> of the policy once issued and no renewal required</li> <li>• Coverage continues “so long as the Insured retains an estate or interest in the Land” and potentially longer (Condition 2)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Occurrence policy</b>, which covers only those claims in which covered events occur during the policy period. Otherwise, there is no coverage. <ul style="list-style-type: none"> <li>• Issuance of attorney opinion “report” (§ I.C.1.)</li> </ul> </li> <li>• Insurer has the <b>right to cancel</b> the policy (§ V.C.)</li> <li>• Policy renewal periods (<i>e.g.</i>, 6 months) – <b>requires regular renewal</b> in order to maintain coverage</li> <li>• “Lender” may lose coverage if the “insured” attorney fails to remit premium to “insurer” within 45 days – which is outside the “lender’s” control (§ I.C.2.)</li> </ul>	<p>Cancellable with 60 days’ notice by either party; potentially impacts coverage already provided</p> <p>It is unclear in the Attorney’s Opinion with Liability Wrap whether the following covered events “relate back” to date of “report” issuance for determination of coverage window:</p> <ul style="list-style-type: none"> <li>▪ Recording of documents</li> <li>▪ Performance of closing services</li> </ul>

ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY’S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>Tendering and Handling a Claim; Delay in Asserting Claim</b>		
<p>Notice of Claim – Condition 3:</p> <p>3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT  <b><i>The Insured must notify the Company promptly in writing if the Insured has Knowledge of:</i></b>  <b><i>a. any litigation or other matter for which the Company may be liable under this policy; or</i></b>  <b><i>b. any rejection of the Title or the lien of the Insured Mortgage as Unmarketable Title.</i></b></p> <p>If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the <u>Company’s liability to the Insured Claimant under this policy is reduced to the extent of the prejudice.</u></p> <p>Proof of Loss – Condition 4:</p> <p>4. PROOF OF LOSS  <b><i>The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must state, to the extent</i></b></p>	<p>Notice of Loss and Cooperation - Excerpts from Section V. General Conditions:</p> <p>A. Notice of Loss and Cooperation</p> <p>1. <i>The “insured” shall, as a condition precedent to the “obligations” of the “insurer” under this policy, give written notice of a claim for “loss” being made under a “service agreement” within thirty (30) calendar days of receiving a written claim for “loss” from its “lender”....</i></p> <p>4. The “insured” shall cooperate with the “insurer” in the defense and adjustment of a claim for “loss” and shall provide the “insurer” with such information, assistance, documents and supporting materials as the “insurer” and its counsel may reasonably request.</p> <p>Excerpts from Section III. Definitions:</p> <p>A. <i>“Client” means a “lender,” or other entity, with whom the “insured” has entered into a “service agreement.”</i>  B. <i>“Insured” means the entity shown in Item 1 of the Declarations Page and</i></p>	<p><u>Under the ALTA Policy:</u></p> <ul style="list-style-type: none"> <li>• The title policies are directly covered by state Unfair Claims Settlement Practices Acts</li> <li>• Title insurance reserves are regulated by state insurance regulators</li> <li>• Lender is the insured and may directly access the coverage under the policy</li> <li>• Lender must provide notice of claim “promptly” (but not within any specific time frame) <ul style="list-style-type: none"> <li>▪ Coverage reduced only “to the extent of the prejudice” if not promptly notified (Condition 3)</li> <li>▪ No automatic voiding of coverage for failure to strictly meet specified timeframes</li> </ul> </li> <li>• Insurer “may” require lender to furnish a proof of loss with facts about loss and calculations for claimed loss. <ul style="list-style-type: none"> <li>▪ Does not require extensive documentary evidence to be submitted</li> </ul> </li> <li>• Lender required to give insurer all reasonable aid in securing evidence, defending action, establishing title, etc. Lender may be required to sit for</li> </ul>

possible, the basis of calculating the amount of the loss or damage.

Insured's cooperation— Excerpts from Condition 6:

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.

**When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:**

- i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and**
- ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter, as insured.**

*the entity shown as provider on the "service agreement."*

- C. "Insurer" means the insurance company named on the Declarations Page.
- D. "Lender" means a "client" whom originates mortgage loans.
- F. "Loss" means loss as described in the applicable "service agreement" and is determined by applying the methodology set forth in the Remedies section of the applicable "service agreement"
- I. "Report(s)" means any of the report(s) that are provided by the "insured" to a "client" under the terms of a "service agreement."
- J. "Service Agreement" means an agreement entered into between the "insured" and a "client," in the form shown in the Coverage Part(s) attached to this policy...

Excerpt from Section 2.0. "OBLIGATION" AND "LIABILITY":

*2.2. "Obligation": The provider shall (1) provide a "report" to the initial "lender" that is materially accurate based on the most current public record 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";*

examination under oath and produce requested information.

- Does not require lender to mitigate or take any action to enforce lien

Under the Attorney's Opinion with Liability Wrap:

- The attorney service agreement is *not* governed by applicable state Unfair Claims Settlement Practices Acts
- The lender is only a third-party beneficiary of the insurance coverage
- If the attorney insured goes out of business, lender has no direct recourse against the insurer
- Lender must assert claim with each closing attorney separately
  - Potential dispute with attorney over whether there was actually breach of an "obligation" in service agreement [e.g., the attorney's report is only required to be "materially accurate" (§ 2.1.1.)]
  - The insurer's incentive is to defend against claim of breach of "obligation"
- Before submitting a claim under the "service agreement," the lender must meet numerous conditions, including:
  - The lender must foreclose upon and sell property (§ 3.4.A.) or exhaust an extensive list of collection efforts; and repurchase the loan (§ 3.4.A., § 3.4.B.)

If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter requiring such cooperation

- b. **The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage...**

Payment of Loss – Condition 11:

**11. PAYMENT OF LOSS**

**When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.**

Insurer's Options in Resolving Covered Claims – Excerpts of Condition 7:

*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.*

Prerequisites for lender to submit claim – Excerpts from Section 3.0 Conditions

**Section 3.0. CONDITIONS:**

*In the event provider fails to meet its "obligation" resulting in "loss" to "lender," "lender" may seek Remedies under this "service agreement" if all of the following conditions are met:*

- 3.5. The "lender" has a financial interest in the property pursuant to a loan agreement that is secured by a security instrument which was recorded. Provided however, this condition 3.1 does not apply if Provider has failed to meet its Obligation as set forth in (2) of Section 2.1 by failing to record;
- 3.6. The "lender" has documented that the loan is an Eligible Mortgage Loan;
- 3.7. The "lender" has timely paid all fees for the "report" to provider;

- If lender meets various conditions in Section 3, it is then subject to Strict 60/365-day time period for submitting claim followed by 90-day time period for submitting proof of loss.
  - Claim must be submitted within 60 days of foreclosure sale or sale or within 365 days from last loan payment if lender has proven the property is uneconomic to foreclose upon (§ 5.1.)
  - Within 90 calendar days of the submission of the claim, the lender must submit proof of loss with extensive documentary support (§ 5.2.; § 5.3.)
- Lender's failure to "fully comply" with any of the claim process procedures and conditions renders the claim as "void" (§ 5.0.)
  - Procedures require lender to "make every effort to mitigate its 'loss' to the greatest extent possible"; including "taking actions to enforce its lien and/or correct any inaccuracies" in the report (§ 5.4.)
- Strict 30—day notice window by insured attorney to notify the insurer after receiving claim from lender
  - The lender has no direct control over this notice

<p><b>7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY</b>  In case of a claim under this policy, the Company has the following additional options:</p> <p>a. <i>To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness</i></p> <p>i. <b>To pay or tender payment of the Amount of Insurance under this policy...</b>; or</p> <p>ii. <b>To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase....</b></p> <p>Upon the exercise by the Company of either option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.</p> <p>b. <i>To Pay or Otherwise Settle with Parties other than the Insured or with the Insured Claimant</i></p> <p>i. <b>To pay or otherwise settle with parties other than the Insured for or in the name of the Insured Claimant...</b>; or</p> <p>ii. <b>To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy...</b></p> <p>Upon the exercise by the Company</p>	<p><b>3.8. The "lender" has:</b></p> <p>D. <i><u>Foreclosed upon and sold the secured property to a disinterested third party; or</u></i></p> <p>E. <i><u>Exhausted all efforts to collect any portion of the outstanding mortgage balance owed by the mortgagor on the secured property. "Lender" will be deemed to have exhausted all efforts to collect any portion of the outstanding balance owed by a mortgagor when:</u></i></p> <ol style="list-style-type: none"> <li>1. <i>The Eligible Mortgage Loan is in default; and</i></li> <li>2. <i>The "lender" has made every reasonable attempt to collect, work out, or mitigate the deficiency in a manner consistent with their collection and loss mitigation practices and procedures; and</i></li> <li>3. <i>The "lender" has presented to the provider a written determination, signed by an authorized representative of the "lender," that the Eligible Mortgage Loan is commercially uneconomic to foreclose</i></li> </ol>	<ul style="list-style-type: none"> <li>▪ The insurer is not liable for coverage if notice given outside this window (§ V.A.1.)</li> <li>• Insurer does not have to make payment until claim has been "validated by provider" and lender has executed release documents to conclude claim (§ 6.0.)</li> </ul>
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<p>of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.</p>	<p><i>upon, meaning after foreclosure and liquidation of the property a deficiency balance is anticipated; and</i></p> <p>4. <i>“Lender” has charged-off the Eligible Mortgage Loan; and</i></p> <p>F. <i><u>Repurchased a performing loan from the transferee who first purchased the loan directly from the initial “lender,” owing solely to an inaccurate “report,” provided (1) the “lender” has made a reasonable effort to satisfy the purchaser’s issue with the original “report” prior to repurchase and (2) “lender” has received fair market value from a disinterested third party for the resale of the loan.</u></i></p> <p>3.6. Neither the “lender” nor any party submitting the claim for “loss” on behalf of the “lender” has committed fraud or misrepresentation with respect to any of the terms or conditions of the “service agreement”; in which event the “service agreement” is void with respect to the loan for which the claim for “loss” is submitted.</p>	
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Submission of Claim – Section 5.0. Claim Process:

**Section 5.0. CLAIM PROCESS:**

*In order to submit a claim for “loss” under this “service agreement,” “lender” or its duly authorized representative shall comply with all of the following procedures and conditions. The failure to fully comply shall render the claim for the “loss” void.*

*5.1. Submit a written claim for “loss” to provider within sixty (60) calendar days of foreclosure sale or third-party sale if the “lender” has satisfied the conditions described in Sections 3.4 (A) or 3.4 (C), or within three hundred sixty-five (365) calendar days from the last loan payment if “lender” has satisfied the conditions demonstrating the property is uneconomic to foreclose upon pursuant to 3.4 (B); and*

*5.2. Submit a signed proof of loss to the provider within ninety (90) calendar days of the claim for “loss”; and*

*5.3. Include the following documents and information in the proof of loss:*

- A. Documents and calculations evidencing the “lender’s” Actual Financial Loss; and*

	<p>B. <i>Copy of the original “report”; and</i></p> <p>C. <i>Copy of the borrower credit report(s), application, affidavit, and loan file documents used to underwrite the loan; and</i></p> <p>D. <i>Documents and evidence demonstrating that the “report” contains inaccurate information causing “loss”; and</i></p> <p>E. <i>The amount of the “loss”; and</i></p> <p>F. <i>With respect to “loss” where “lender” has a repurchase demand and has satisfied Condition 3.4 (C) of this agreement, (i) a copy of the document requiring repurchase of the loan from the transferee who first purchased the loan from the “lender” (ii) evidence of said repurchase cost (iii) a copy of the document evidencing sale price of loan subsequent to its repurchase; and</i></p> <p>5.4. Cooperate with provider or its authorized representative in the investigation and settlement of the claim for “loss.” <u>“Lender” shall make every effort to mitigate its “loss” to the greatest extent possible including taking actions to enforce</u></p>	
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*its lien and/or correct any inaccuracies in the information contained in the “report” or in the security instrument recorded by provider.*

**Section 4.0. REMEDIES:**

*In the event the provider has failed to meet its “obligation” under this “service agreement,” “lender” has suffered a “loss,” and “lender” has satisfied the Conditions and complied with the Claim Process, provider will reimburse the “lender” the least of:*

- 4.1. The amount of the “loss” directly attributable to the specific item(s) of information inaccurately contained in or missing or omitted from the “report”;  
or
- 4.4. The original loan amount, or
- 4.3. The “lender’s” “Actual Financial Loss”, as determined by:
  - C. The sum of:
    - 1. The mortgagor’s unpaid principal mortgage balance; and
    - 2. Accrued and unpaid interest pursuant to the loan up to one hundred eighty (180) calendar days; and
    - 3. Outstanding escrow advances, if any; and

	<p>4. Reasonable attorney fees, not including fees or estimates of fees from “lender’s” staff counsel and costs, and not including “lender’s” overhead, incurred during foreclosure.</p> <p>Less:</p> <p>D. The sum of:</p> <ol style="list-style-type: none"> <li>1. The amount collected as a result of the sale of the secured property to a disinterested third party; and</li> <li>2. Proceeds received by the “lender” from any source, to include but not limited to, credit life, accident and health, involuntary unemployment or hazard insurance serving to reduce the unpaid debt; and</li> <li>3. Non-applied escrowed balances; and</li> <li>4. Any other amounts collected or collectible and applied to, or that could be applied to, the repayment of the Eligible Mortgage Loan.</li> </ol> <p><b>4.4</b> With respect to “loss” where initial “lender” has a repurchase demand and has satisfied all Conditions, including Condition 3.4 (C), the lesser of: (i) the amount specified in Remedy 4.2; or (ii) 100% of the difference between the repurchase cost (less any fees,</p>	
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	<p>penalties, or other administrative charges) of the loan from the transferee who first purchased the loan directly from the initial “lender” and, the proceeds of the subsequent sale of said loan to a disinterested third party.</p> <p><b>Section 6.0. SETTLEMENT AND PAYMENT:</b></p> <p><i><u>Payment due under the terms of this Agreement shall be made within thirty (30) calendar days after (i) the “lender’s” claim for “loss” has been fully submitted in accordance with Section 5 above; (ii) the “lender’s” claim for “loss” has been reviewed and validated by provider or provider’s designee, and (iii) the “lender” has executed release documents appropriate to concluding the claim.</u></i></p>	
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ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY’S OPINION WITH LIABILITY WRAP	GT COMMENTS
<b>Closing Attorney Defalcation</b>		
<ul style="list-style-type: none"> <li>• ALTA standard Closing Protection Letter <b>covers</b>: <ul style="list-style-type: none"> <li>• Fraud</li> <li>• Theft</li> <li>• Dishonesty, or</li> <li>• Misappropriation of Funds</li> </ul> </li> <li>• The above risks can affect the title, as well as the validity, enforceability and/or priority of the Insured Mortgage (ALTA CPL-Single Transaction, Requirement 4)</li> <li>• Coverage of risks under the Closing Protection Letter also extend to <b>warehouse lenders</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• The Attorney’s Opinion with Liability Wrap <b>does not cover</b> “any dishonest, intentional, fraudulent, criminal or malicious act” by the insured attorney (IV.A.)</li> <li>• “Lender” does have <b>limited recourse</b> against attorney for failing to follow closing instructions (§ 2.1(3))</li> <li>• Benefits of the insurance <b>do not include any intentional wrongdoing</b></li> <li>• The “lender” is thus <b>effectively self-insuring</b> against defalcation risk</li> <li>• Risks faced by <b>warehouse lenders are not covered</b> by the Attorney’s Opinion with Liability Wrap.</li> </ul>	<p>By accepting the Attorney’s Opinion with Liability Wrap in lieu of the ALTA Loan Policy, <b>lenders are effectively self-insuring.</b></p> <p>In recent years, state insurance regulators have recognized the risks covered by the ALTA Closing Protection Letter as <b>separate risks</b> from those covered by the ALTA Loan Policy and ALTA Owners Policy that <b>can be underwritten by licensed title insurers only.</b></p> <p>Only licensed title insurers are permitted under state insurance laws to underwrite the specific coverages afforded by the ALTA policies of title insurance and the closing protection letter. <b>Title insurers are monoline insurers, which is why surplus lines insurers are ineligible to cover title risks.</b></p>



# SUMMARY COVERAGE COMPARISON

ALTA 2021 LOAN POLICY vs ATTORNEY TITLE OPINION & LIABILITY WRAP



TIMOTHY V. KEMP | WASHINGTON, DC  
LISA PETROVSKY | LOS ANGELES, CA



## COVERAGE OF UNDISCLOSED LIENS & ENCUMBRANCES

<b>LIENS &amp; ENCUMBRANCES</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>
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 ( <i>e.g.</i> , transfer of title to a family trust and the effect of bankruptcy filings)	Covered	Not covered

## **OTHER COVERAGES**

<b>COVERAGE</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>
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.)	<b>Not</b> covered
Improper execution of documents (including remote online notary)	Covered (Covered Risks 2.a.)	<b>Not</b> 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"> <li>• But no coverage that mortgage will be properly indexed or provide constructive notice (valid, enforceable)</li> <li>• Intentional failure to record is excluded (IV.A.)</li> <li>• Also, no coverage if the mortgage document is not submitted for recording within 15 days (§ 13.F.)</li> </ul>
Defective judicial proceedings	Covered (Covered Risks 2.a.)	<b>Not</b> covered
Boundary line disputes that would have been disclosed by accurate survey	Covered (Covered Risks 2.c.)	<b>Not</b> covered; however, Opinion Letter may not except survey matters (Opinion, Exceptions § 3)

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Marketability coverage	Covered (Covered Risk 3)	<b>Not</b> explicitly covered but includes a statement of marketability (Opinion, Title Vesting and Marketability § 2)
Access coverage	Covered (Covered Risk 4)	<b>Not</b> 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)	<b>Not</b> covered
Priority over mechanics liens	Covered (Covered Risks 2, 10, 11)	<b>Not</b> 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)	<b>Not</b> covered - Validity or Enforceability of the lien of insured mortgage  <b>Not</b> 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.)	<b>Not</b> covered
Preferential transfer coverage for non-timely recording or non-constructive notice	Covered (Covered Risk 13.b.)	<b>Not</b> covered
Gap coverage	Covered (Covered Risk 14)	<b>Not</b> explicitly covered but purports to cover gap between closing and recording

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
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 intended to be used as collateral for warehouse funding.	Covered by the CPL and ALTA Loan Policy	Not covered
HOA CC&R Lien Coverage	<p>Covered if ALTA Endorsement 5.1 incorporated which insures against loss or damage arising by reason of:</p> <ul style="list-style-type: none"> <li>• Present violations of restrictive covenants in Schedule B that restrict use of the land. The covenants do not contain provisions that will cause a forfeiture or reversion of the title.</li> <li>• Any charges or assessment in favor of the HOA provided for in any document referred to in Schedule B that may be due and unpaid at Date of Policy.</li> <li>• The enforced removal of any existing structure on the land (other than boundary wall or fence) due to encroachment onto adjoining land or easements.</li> <li>• Failure of title by reason of a right of first refusal that was exercised or could have been exercised at Date of Policy.</li> </ul>	<p>Not covered.</p> <p>Fannie Mae requires issuer of to make representations for any PUD equivalent to ALTA 5.1 coverage, but these representations are not part of "obligation" covered by attorney's insurance policy (§ 2.1).</p>

<b>COVERAGE</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>

## **DUTY TO DEFEND / INDEMNIFY**

<b>COVERAGE</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>
Defense of Actions	Included 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)	<b>Not</b> included Lender potentially able to recoup only "reasonable" attorneys' fees incurred during a foreclosure if loss under policy suffered (§ 4.0)
Indemnity against loss or damage	Included 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)	<b>Not</b> included Only provides reimbursement of direct financial loss incurred by lender as a result of provider's failure – subject to various conditions, including: <ul style="list-style-type: none"> <li>• Lender must have foreclosed upon and sold property; OR</li> <li>• Exhaust various efforts to collect mortgage balance.</li> <li>• Comply with stringent claims process.</li> </ul> (§§ 2, 3, and 4)

## TRIGGER/DURATION OF COVERAGE

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Covers claims made during policy period regardless of when triggering event creating the loss occurred	Yes	<b>No</b> Policy is occurrence policy; coverage only applies to "report" made within policy period (I.C.1.)
One-time premium	Yes	<b>No</b> Requires regular renewals ( <i>e.g.</i> 6 months) to maintain coverage; lender may lose coverage if insured attorney fails to remit premium within 45 days (I.C.2.)
Potential cancellation of policy once issued	No Policy cannot be cancelled once issued	<b>Yes</b> Insurer has right to cancel for any reason (V.C.)
Continued coverage after policy period	Yes Coverage continues "so long as the Insured retains an estate or interest in the Land" and potentially longer (Condition 2)	Not necessarily as policy is cancellable and if cancelled, policy only provides coverage for reports that meet requirements of Section I.C. (V.C.)

## TENDERING / HANDLING A CLAIM

ITEM	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Conditions prior to submitting claim	None	<p>Before submitting a claim for loss under the "service agreement," the lender must meet numerous conditions, including:</p> <ul style="list-style-type: none"> <li>• Foreclose upon and sell property (§ 3.4.A.) or exhaust an extensive list of collection efforts; AND repurchase the loan (§ 3.4.A., § 3.4.B.)</li> </ul>
Notice of Claim	Lender must directly notify insurer of claim "promptly" (Condition 3)	<p>Lender (after meeting conditions) must submit claim for loss <i>to provider</i> within 60 days of foreclosure sale or sale; or within 365 days from last loan payment if lender has proven the property is uneconomic to foreclose upon (§ 5.1.)</p> <p>Then, insured (provider attorney) must give written notice of claim for loss being made under service agreement within 30 calendar days of receiving claim from its lender (V.A.1.)</p>
Consequence of Delay in Asserting Claim	Coverage can be reduced only to "extent of prejudice" if not promptly notified (Condition 3)	<p>Lender's failure to "fully comply" with any of the claim process procedures/conditions renders the claim as "void" (§ 5.0)</p> <p>Insurer not liable for coverage if notice from insured attorney given outside the 30-day notice window (V.A.1.); lender has no direct control over this notice.</p>

Proof of Loss	Insurer "may" require lender to furnish a proof of loss with facts about loss and calculations for claimed loss (Condition 4)	Within 90 calendar days of the submission of claim for loss, lender must submit proof of loss <i>to provider</i> with extensive documentary support (§ 5.2.; § 5.3.)
Duties of Insured	Lender (at insurer's expense) must give insurer reasonable aid in defending proceeding or any act necessary to establish title or lien of the insured mortgage. Lender may be required to submit for examination under oath and/or produce requested information. (Condition 6)	Lender must "make every effort to mitigate its 'loss' to the greatest extent possible"; including "taking actions to enforce its lien and/or correct any inaccuracies" in the report (§ 5.4.)
Payment of Loss	When liability and the extent of loss or damage are determined in accordance with the Conditions, the insurer will pay the loss or damage within 30 days (Condition 11)	Insurer's payment due within 30 days after: (i) lender's claim for loss fully submitted; (ii) claim has been "validated by provider"; and (iii) lender has executed release documents to conclude claim (§ 6.0)

## CLOSING ATTORNEY 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)	<b>No</b> Excludes loss arising out of "any dishonest, intentional, fraudulent, criminal or malicious act" by the insured attorney (IV.A.)  But, lender does have <b>limited recourse</b> , 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.)	<b>No</b> Risks faced by warehouse lenders are not covered (II.A. defines lender as the client "who originates mortgage loans")