

## **TITLE INSURANCE (C) TASK FORCE**

Title Insurance (C) Task Force Dec. 14, 2022, Minutes

Title Insurance (C) Task Force Oct. 24, 2022, Minutes (Attachment One)

2023 Charges (Attachment One-A)

## Draft Pending Adoption

Draft: 12/22/22

Title Insurance (C) Task Force  
Tampa, Florida  
December 14, 2022

The Title Insurance (C) Task Force met in Tampa, FL, Dec. 14, 2022. The following Task Force members participated: Eric Dunning, Chair, and Connie Van Slyke (NE); Kevin Gaffney, Vice Chair (VT); Michael Conway represented by Peg Brown (CO); David Altmaier represented by Anoush Brangaccio (FL); Colin M. Hayashida represented by Samuel Thomsen (HI); Vicki Schmidt represented by Julie Holmes (KS); James J. Donelon represented by Chuck Meyers (LA); Kathleen A. Birrane represented by Mary Kwei (MD); Chlora Lindley-Myers represented by Marjorie Thompson (MO); Mike Causey represented by Angela Hatchell (NC); Judith L. French represented by Maureen Motter (OH); Glen Mulready represented by Holly Mills (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Melissa Manning (SC); and Scott A. White represented by Don Beatty (VA). Also participating was: Tom Zuppan (AZ).

### 1. Adopted its Oct. 24 Minutes

The Task Force conducted an e-vote that concluded on Oct. 24 to adopt its 2023 proposed charges.

Gaffney made a motion, seconded by Smock, to adopt the Task Force's Oct. 24 minutes (Attachment One). The motion passed unanimously.

### 2. Heard a Presentation on New Title Insurance-Like Alternatives that Use AOLs Backed by an Enhanced Errors and Omissions Policy Through the Surplus Lines Market

According to Stacy Mestayer (Voxtur), Voxtur is a licensed title and escrow agent in over 30 states. It has been working in this space for over 20 years. Title insurance costs have doubled in the last 15 years, despite advances in property data collection and technology. The Voxtur Attorney Opinion Letter (AOL) product is not the same AOL of the past. It is a viable alternative to title insurance, as it offers the same basic benefits and protection. The use of standardized letter templates and processes produced in the same manner as title insurance offer consistency that was not available with traditional AOLs. Technology allows these new AOLs to be produced at scale, minimizing attorney time and costs. The Voxtur AOL also offers the same insurance coverage, beyond the traditional professional liability for the attorney. The Voxtur AOL is a viable alternative that has the potential to meaningfully benefit consumers.

According to Mestayer, various comparisons that have been circulated since the Federal National Mortgage Association (FNMA) announced its acceptance of AOLs are based on limited information and do not apply to all versions of the AOL. One version of the AOL alternative product that has been used in comparisons was created by a lender and is being used internally at the lender's business. This product's property restrictions do not apply to all the properties that the Voxtur AOL would apply to and is only available in certain states. It also offers no owner's coverage, has no fraud protection, and is more expensive. In contrast, the Voxtur AOL is available in all 50 states; has a flat fee; offers a closing protection letter (CPL); and offers protection to the lender, investor, and consumer for the life of the loan through an insurance wrapper.

According to Mestayer, an AOL can be used in refinance transactions. Voxtur offers both lender's and owner's coverage in the same way as title insurance with appropriate insurance backing. Unlike some other AOLs, the coverage can follow the loan into the secondary market for the life of the loan. If there is no owner's coverage, it is not likely that a bar will obtain its own insurance coverage, as most do not understand it. This creates a serious risk for homeowners. The attorneys issuing the opinions are regulated by the state bar association, and the

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underlying carriers who are producing the liability coverage are regulated by the insurance department of each state. With the insurance wrapper, there is no gap in coverage between the Voxtur AOL and title insurance, because the Voxtur AOL coverage extends through recording. When an AOL is produced using the same rails as title insurance—i.e., the same data, examination, and processes—the results are the same in that if something is missed, it is covered. Title insurance typically includes exceptions to coverage that exempt matters not shown in the public records from coverage. The claims process for an AOL is quicker and simpler than the title claims process. All Voxtur's carriers are AM Best rated multiline carriers that are accustomed to paying claims. The Greenberg Traurig LLP comparison analysis of Voxtur's AOL and title insurance that has been circulated does not use the Voxtur AOL.

According to Mestayer, there is often a disincentive for title insurers to pay claims, which is why the claims are pushed to the agents who get most of the premiums. It is the title agents' errors and omissions insurance that covers them in many cases. In states where title rates are promulgated, the Voxtur AOL can save the consumer 20–70%. In other states with inexpensive title insurance, the Voxtur AOL may not be competitive.

Beatty said if he were to go to his local county courthouse and see that someone else filed a lean on his property and the title company missed it, the title company has a contractual obligation to defend the title. With the Voxtur AOL, there could be a claim against the lawyer, but it will be passed off to an insurance company. The insurance company does not have a contractual relationship with him, but rather a duty to defend the lawyer. With title insurance, a complaint can be filed with the department of insurance (DOI). The company is subject to the *Unfair Claim Settlement Practices Act* (#900), and the issue is often resolved without having to go to court. The AOL insurance wrapper is a surplus lines product, so the DOI cannot help the consumer and does not approve the policy form, which could have provisions of limited liability. Beatty asked about how the Voxtur AOL places the consumer in a better legal position if an issue occurs. He also asked if the attorney would be able to raise its rates for opinion letters in response to title claims.

According to Ms. Mestayer, Voxtur's policies are issued as master policies, where the lender, service provider, and borrower are insured under the policy, so they have the property of contract with the insurer and can file a claim directly. Those policies are subject to review by state insurance departments because the insurers are regulated. However, if the carrier is a surplus lines company, it limits the insurance department's role. The insurer would pay the claims, so it should not affect the attorney's premium, as it is a claims-based policy. Voxtur partners with several title service providers to offer this solution under their own names but using the Voxtur platform. These title service providers license the platform, and Voxtur caps what they can charge. Voxtur partners with several other title service providers to offer this solution. A surplus lines broker places the insurance.

Gaffney said Voxtur's rates are not regulated and filed. He asked for an example of how the flat fee works.

According to Mestayer, Voxtur uses a tiered fee structure. For example, refinance transactions are \$495 in every state and include the insurance wrapper. For purchase transactions, the fee is \$695–\$995 based on the purchase price.

Meyers asked which insurance companies are issuing the coverage and how fraud is protected.

Chris Mallon (Voxtur) replied that Hallmark Insurance is the insurer. According to him, the CPL includes the same protections against fraud that would be seen in a CPL issued with title insurance. Borrower fraud is covered in the master policy that wraps around the letter.

Brangaccio said surplus lines carriers only write in lines where there is no admitted coverage in Florida. He asked what Voxtur's operations are in Florida, given Florida's stipulation that the surplus lines market cannot compete

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with the admitted market if it is available in the admitted market. He also asked if Voxtur's forms have a prominent notice that they do not participate in the guarantee fund.

Mestayer replied she would take this information back to Voxtur's carrier. Voxtur has had discussions with a couple other states that the coverage is positioned as errors and omissions insurance rather than title insurance.

Gaffney said only Texas and Maryland have guarantee funds for title insurance.

Smock said title insurers are subject to statutory oversight in Rhode Island. Copies of forms, insurance policies, and CPLs are filed with the DOI. Title insurers are also expected to notify the insurance department immediately if they or their title agents are subject to any enforcement action. Smock asked what the oversight process is for Voxtur's AOL and if it knows how the carrier is reserving.

According to Mestayer, Voxtur has a network of contracted attorneys that are vetted through an automatic electronic process before being onboarded. Vetting includes annually verifying the attorneys' credentials, standing, resumes, and licensure. Anyone who has an expired license will be temporarily locked out of the system and unable to complete their letters. Only law firms are onboarded, then the firms' attorneys are separately onboarded. This ensures that the law firms are also in good standing. Voxtur is required by all its client contracts to notify any client if their attorney has an enforcement action. The carriers have not shared their reserving methods.

Zuppan said title companies in Arizona are required to provide access to a title plan. He asked how this operates with Voxtur.

According to Mestayer, Voxtur pulls title data from various sources for refinances and produces a decisioning report based on the data. For purchases, it has access to abstracts, pulls property data and voluntary lean data from various sources, and examines it with the same process that would occur to issue a title insurance policy.

Hatchell asked for clarification on whether FNMA and U.S. Department of Veterans Affairs (VA) accept AOLs.

According to Mestayer, that is correct. The FNMA issued a release in April stating that it would accept AOLs as alternatives to title insurance. Voxtur worked closely with the FNMA and the Federal Home Loan Mortgage Corporation (FHLMC) before this to ensure that they were comfortable with its program. Several aggregators have also looked at the program. The Federal Home Loan Bank (FHLB) also approved of it in its guidelines.

Birny Birnbaum (Center for Economic Justice—CEJ) said the title industry has made tremendous progress in data collection and innovative use of technology over the last few decades. However, there has been no reduction in price for consumers. For example, in Texas, the median home has a title insurance policy cost of thousands of dollars. Claims by title insurers about lesser consumer protections should be carefully examined for subdivision homes where the developer has already purchased a title policy. The CEJ also shares concerns about the use of a surplus lines product. However, this should be taken in context with the lesser concern for surplus lines products for things such as private flood, which are far more challenging. It is unclear why the availability of admitted title insurance would bar the use of this surplus lines product because it is not title insurance. Any insurer who issues a policy for any line of insurance should have established reserves since their actuaries must certify the reserves, and they are subject to audit. State insurance regulators can also do an examination of any company if they have concerns. The title industry is most in need of a competitive alternative insurance product.

Director Dunning asked Voxtur to clarify what it means when it says it is licensed in over 30 states. He also asked for feedback on why Voxtur would not comply with a request to supply the Task Force with a copy of their standard letters and policy so it can verify the information provided.

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According to Mestayer, Voftur is in the process of working with a law firm to do a proper comparison of the Voftur AOL and title insurance. The law firm is also a licensed title agent. The insurers that are issuing the policies are regulated, so Voftur is not comfortable supplying copies of its letters and policies, as they are proprietary. They will be issuing a white paper addressing conflicting characterizations.

Director Dunning said Voftur is relying on the regulatory structure built around the policy offered by the surplus lines carrier. He asked how state insurance regulators get access to these documents so they can verify the information provided by Voftur. He also asked if Voftur would use its influence to bring its carriers in to discuss these matters with the Task Force.

According to Mestayer, she is not employed by the insurers and does not have knowledge of the insurance practice in detail. State insurance regulators should be able to go to those carriers directly for the information. Mestayer said Voftur would be happy to have a conversation about bringing in its insurers for conversations with the Task Force in a non-public forum.

Meyers asked if Voftur is moving away from the title insurance industry in its settlement services.

According to Mestayer, Voftur is offering both settlement services in conjunction with the AOL.

Steve Gottheim (American Land Title Association—ALTA) said title costs have only gone up over the last 15 years. However, the cost of title insurance has gone down by 7.8% over the last 10 years due to technology. The high costs of adopting new technology do not reduce costs immediately but over time. The claim that title insurers do not pay claims is false. Title insurers paid almost \$600 million in claims in 2021. The duty to defend makes title insurance different from other lines. Title insurers close about 40% of claims every year. Looking only at total claims paid out is not always the most accurate assessment of how consumers are helped after they have been issued a policy.

### 3. Heard a Presentation on Closing Trends, Including Results from ALTA's Recent Digital Closing Survey

Gottheim said ALTA's 2022 Digital Closing Survey results include about 40,400 companies. The industry continued to show progress towards using less paper in transactions, driven recently from the pandemic. About 93% of closings in 2021 were paper, compared to 100% in 2017. The uptake has started to decelerate in 2022, as the mortgage market has shifted to a more purchase-focused environment, as opposed to a refinance environment. Remote online notarizations (RONs) are increasing, with 5% being done remotely in 2021. Use of in-person electronic notarization (IPEN) peaked at 22% of title companies in 2020, but it decreased to 6% in 2021. This reflects a priority to adopt RON over IPEN.

The biggest barrier to adoption of electronic transactions is lender acceptance. About 80% of title companies and about 20% of lenders are reluctant to do more digital transactions. Most of the volume going through digital channels is driven by title companies or attorneys doing the work. The seller side of the transaction is reluctant because mortgage lenders do not want to digitize their entire operation until every state allows for the use of these electronic notifications. About 29% of title companies have used RON in the last year. Most companies anticipate some increase in usage of this closing method. Usually, once companies try it, they want to find a way to use it as much as possible. There is also a trend toward title companies using fewer platforms and specialized teams to gain processing efficiencies. Most title companies only use one RON platform provider, have one to five RON notaries on staff, and prefer to use in-house notaries. Where electronic document recording (eRecording) is available, there is heavy adoption. Half of title companies use eRecording for most of their transactions. About 88% of title companies have eRecording available in at least some of the jurisdictions where they operate.

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Market trends include competing products, such as the AOL process. United Wholesale Mortgage (UWM) offers an AOL product called [Title Review And Closing \(TRAC\)](#). Additionally, U.S. Rep. Blaine Luetkemeyer (R-MO), top Republican on the Subcommittee on Consumer Protection and Financial Institutions and Congressman Brad Sherman (D-CA), top Democrat on the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, sent a [letter](#) on Oct. 11 to the Federal Housing Finance Agency (FHFA) regarding concerns on the use of title insurance alternatives. Additionally, the Federal Bureau of Investigation (FBI) released its [2022 report](#) on real estate wire fraud. Finally, there has been a growing request for title companies to get involved with helping the federal government in combating money laundering using real estate. The federal government is expected to issue a rule creating a more formalized process for title companies to be part of the anti-money laundering system in the next year.

Having no further business, the Title Insurance (C) Task Force adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/2022/TITLE/12-TitleTF.docx

Draft: 10/26/22

Title Insurance (C) Task Force  
E-Vote  
October 24, 2022

The Title Insurance (C) Task Force conducted an e-vote that concluded Oct. 24, 2022. The following Task Force members participated: Eric Dunning, Chair (NE); Mark Fowler represented by Erick Wright (AL); Colin M. Hayashida represented by Martha Im (HI); Vicki Schmidt represented by Julie Holmes (KS); Kathleen A. Birrane represented by Mary Kwei (MD); Chlora Lindley-Myers represented by Carrie Couch (MO); Troy Downing represented by Ole Olson and Sharon Richetti (MT); Mike Causey represented by Timothy Johnson (NC); Barbara D. Richardson and Erin Summers (NV); Judith L. French represented by Michelle Brugh Rafeld (OH); Michael Humphreys, Mark Lersch, and Michael McKenney (PA); Michael Wise represented by Daniel Morris (SC); and Cassie Brown represented by David Muckerheide (TX).

1. Adopted its 2023 Proposed Charges

The Task Force conducted an e-vote to consider adoption of its 2023 proposed charges (Attachment One-A). The motion passed unanimously.

Having no further business, the Title Insurance (C) Task Force adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/Fall 2022/TITLE/10-TitleTF.docx

*Adopted by the Executive (EX) Committee and Plenary, TBD*  
*Adopted by the Property and Casualty Insurance (C) Committee, TBD*  
*Adopted by the Title Insurance (C) Task Force, Oct. 24, 2022*

## **2023 Proposed Charges**

### **TITLE INSURANCE (C) TASK FORCE**

The mission of the Title Insurance (C) Task Force is to study issues related to title insurers and title insurance producers.

#### **Ongoing Support of NAIC Programs, Products or Services**

1. The **Title Insurance (C) Task Force** will:
  - A. Discuss and/or monitor issues and developments affecting the title insurance industry, and provide support and expertise to other NAIC committees, task forces and/or working groups, or outside entities, as appropriate.
  - B. Review and assist various regulatory bodies in combating fraudulent and/or unfair real estate settlement activities. Such efforts could include working with the Antifraud (D) Task Force and other NAIC committees, task forces and/or working groups to combat mortgage fraud and mitigating title agent defalcations through the promotion of closing protection letters (CPLs) and other remedies.
  - C. Consult with the Consumer Financial Protection Bureau (CFPB) and other agencies responsible for information, education, and disclosure for mortgage lending, closing services, and settlement services about the role of title insurance in the real estate transaction process.
  - D. Update the 2019 *Survey of State Insurance Laws Regarding Title Data and Title Matters*.
  - E. Review Section 15C of the *Title Insurers Model Act* (#628) to determine if a request should be made to remove the requirement for on-site review of underwriting and claims practices.
  - F. Obtain information on consumer complaints submitted to states regarding title insurance to determine if updates are needed to insurance regulatory best practices or standards.

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg