



# Attorney Title Opinion Letters in a GSE World

2022 Mortgage Lending Institute

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# ATTORNEY TITLE OPINION LETTERS IN A GSE WORLD

## I. INTRODUCTION

On April 6, 2022, Fannie Mae (Federal National Mortgage Association – FNMA) announced an Update to its Selling Guide, stating in the precursor of the Announcement:

Attorney title opinion letter: allowing for the use of an attorney title opinion letter in lieu of a title insurance policy for certain transactions

Of course, this raises many questions – which this paper will seek to address:

- 1) What is the Selling Guide?
- 2) What are “certain transactions?”
- 3) What is an Attorney Title Opinion Letter (AOL)?
- 4) Who is FNMA (a GSE) and why would it do this?
- 5) Have other GSE’s done this?

Moreover, there are a number of following questions:

- 1) Does this change benefit the borrower?
- 2) Does this change achieve its purpose?
- 3) Can a Texas AOL meet the requirements established by FNMA?
- 4) Are the resulting AOL products really just another approach to title insurance? If so, what are the

requirements of the Texas Insurance Code and the Texas Title Insurance Act?

5) What are the risks to the attorney? To the lender? To the borrower?

Finally, what do we know that we do not know? At least not yet. The optional use of attorney title opinion letters was made immediately effective.

## II. THE FULL ANNOUNCEMENT – ALMOST

The “Selling Guide Announcement” (SEL – 2022-03) included in the body of the announcement the indication that a lender selling a loan to FNMA must provide “a lender’s title insurance policy or, in limited circumstances, an attorney title opinion letter. “(emphasis added). This is a variation from “certain transactions,” but the announcement fails to distinguish the two phrases. In particular the Selling Guide Announcement sets out 7 Requirements, only three of which raise concerns. The first 4 typical requirements are:

- 1) The attorney must be licensed to practice law in the jurisdiction where the property is located;
- 2) The attorney must be insured against malpractice in rendering opinions in an amount commonly prevailing in the jurisdiction;
- 3) The letter must be addressed to the lender and all successors in interest; and

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## Title search: Attorney Title Opinion Letters in a GSE World

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