

ALTERNATIVE TITLE PRODUCTS AND THE RISK TO LENDERS

Title insurance protects a lender's security interest in a property by ensuring that its lien has priority over others and is enforceable. Unlike alternative products, including attorney opinion letters, title insurance goes beyond a public records search, providing the most comprehensive protection.

ALTERNATIVE PRODUCTS INCREASE LENDER RISK

- » Lenders considering the use of attorney opinion letters or other alternatives must understand the risks they are taking on by not getting title insurance. Attorney opinions, in providing more limited coverage of risks, represent a shifting of risk to the lender, not an elimination of the risk.
- » Title insurance provides an underwriting service to mortgage lenders to ensure the borrower has clear ownership rights to the property, free of any other claims to ownership.
- » Historically, lenders have preferred the protection of a title insurance policy because it provides strong protections and mitigates risk. In fact, the protections afforded by title insurance actually replaced attorney opinion letters as the realities of risks experienced from a static examination of the title records became clear.
- » One sizable risk is related to items not discoverable in a public records search like federal tax liens, mis-indexed items or HOA liens. An attorney opinion letter does not cover items not shown in a public records search.
- » Another important example of the difference in coverage is fraud or forgery of title documents. Title insurance provides coverage when a seller's deed was forged or there was fraud with the previous owner's will. An attorney opinion letter does not.
- » Unlike an attorney opinion letter, title insurance provides lenders with a defense—including all attorneys' fees and costs—in a lien priority dispute or other matter covered by the policy.
- » Critically, unlike title insurance, attorney opinion letter alternatives could push more consumers into foreclosure since that is a condition to make a valid claim under the terms of these alternative products currently in the market.
- » If not proven, a claimant would likely need to pay the legal costs involved to litigate the title matter, posing a financial burden and a significant risk.

LENDERS CAN'T FORGET ABOUT HOMEBUYERS

- » Should a title issue arise on a property covered by an attorney opinion only, the buyer would need to prove negligence on the part of the attorney to pursue the claim with them.
- » If not proven, a claimant would likely need to pay the legal costs involved to litigate the title matter, posing a financial burden and a significant risk.

During the last financial crisis, we unfortunately witnessed several systemic financial problems caused by shortcuts to well-established processes. If that crisis taught us anything, it is that strong underwriting protects lenders and consumers alike—and title insurance provides a key part of this due diligence.