

Attorney Opinion Letter Lender Frequently Asked Questions — February 2024

These FAQs relate to Fannie Mae’s April 2022 *Selling Guide* update to permit lenders to obtain either a lender’s title insurance policy or, in limited circumstances, an attorney title opinion letter (AOLs). Additionally, in December 2023, the *Selling Guide* was updated to permit condos and properties subject to restrictive covenants to be eligible for sale with AOLs. Our requirements are intended to address Fannie Mae’s title—related risks, which we manage through a combination of a lender’s representation and warranty that the mortgage consists of a valid first lien on the subject property and a lender’s title policy or AOL. Our *Selling Guide* does not contain requirements regarding owner’s coverage. A borrower always has the option to purchase an owner’s title insurance policy or other title alternative to cover the borrower’s own title-related risks.

Q1. Why is this alternative to lender’s title insurance requirement being offered?

Fannie Mae believes that AOLs can provide an acceptable level of protection to Fannie Mae at a much lower cost to the borrower than a traditional lender’s title policy. In recent years, widespread digitization of real estate records and technological advances have improved the process of confirming marketable title, but that has not translated to lower costs for borrowers. Fannie Mae research shows that low-income and first-time homebuyers pay disproportionately more in closing costs. Since beginning to accept AOLs under the *Selling Guide* in April 2022, savings to borrowers have been significant. On average, borrowers who are refinancing have saved over \$1,000 when an AOL was used instead of a traditional lender’s title insurance policy.

Q2. What transaction types allow the use of the AOL?

AOLs may be used on purchases and refinances. Please see *Selling Guide* [B7-2-06](#), Attorney Title Opinion Letter Requirements for the full list of exclusions.

Q3. Are AOLs new to the housing market?

While the change to our *Selling Guide* is relatively new, AOLs have been used on select mortgage transactions for decades. Our April 2022 change aligned Fannie Mae’s policy with Freddie Mac’s Seller/Servicer Guide, which has permitted the sale of loans with AOLs since at least 2008. Fannie Mae has also purchased more than 10,000 loans with AOLs since 2009 and has not experienced losses from title claims on these loans.

Q4. Is Fannie Mae getting into the insurance business?

No. Our policies are intended to address Fannie Mae’s title-related risks, which we manage through a combination of a lender’s representation and warranty that the mortgage consists of a valid first lien on the subject property, and a lender’s title policy or AOL. The April 2022 update to our *Selling Guide* permitted lenders to obtain either a lender’s title insurance policy or an AOL for certain purchase and refinance loans. This is a minor change to the terms and conditions that are required to be met in order for loans to be eligible for sale to us and is consistent with our Charter. Condos and properties subject to restrictive covenants were removed as eligibility exclusions in the December 2023 guide update.

Q5. Why did you expand the types of properties eligible for AOLs in December 2023?

Based on an internal review of Fannie Mae distressed loans, it was determined that the title defect risk is lower for condos than the overall population of loans. Research also shows that low-income and first-time homebuyers pay disproportionately more in closing costs and that condos can be an affordable option for these homebuyers. Modifying our AOL requirements to allow condos and properties subject to restrictive covenants and agreements could help reduce closing costs for these borrowers. It should be noted that unless a buyer purchases an additional endorsement, title insurance (like AOLs) does not typically provide coverage against restrictive covenant violations. Based on our discussions with various industry stakeholders, we understand that claims based on restrictive covenant violations are relatively rare.

Q6. How does the use of an AOL instead of title insurance impact the lender?

An AOL is not an insurance product. Fannie Mae's *Selling Guide* policies are intended to address Fannie Mae's title-related risks, and lenders are required to make all title-related representations and warranties, including first lien enforceability. Lenders may choose to purchase products, such as an insurance wrapper, to mitigate the lender's title-related risks, but these additional products are not required by Fannie Mae. The *Selling Guide* does not contain requirements regarding owner's title coverage. Buyers have the choice of obtaining an owner's title insurance policy to protect against the owner's title-related risks.

Q7. In what states is this product allowed?

Fannie Mae does not prohibit the use of AOLs in any state. Lenders should consult their counsel to determine whether AOLs are appropriate in a given state.

Q8. Is there a Fannie Mae-approved list of attorneys designated to provide this product?

No. The *Selling Guide* requires that the AOL be issued by an attorney licensed to practice law in the jurisdiction where the subject property is located. The attorney must also be insured against malpractice in rendering opinions of title in an amount commonly prevailing in the jurisdiction, taking into account the volume of opinions rendered by the attorney.

Q9. Are providers of AOLs subject to oversight?

Yes. AOLs are issued by licensed attorneys. In general, state bar associations or other state governmental entities license, regulate and discipline the licensed attorneys in their state. An AOL is not an insurance product, although some AOL offerings include an insurance wrapper, which are regulated by the state insurance regulatory bodies, similar to title insurance.

Q10. Is there a promulgated form for the letter?

No. The letter must contain all the components listed in *Selling Guide* [B7-2-06](#).