



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
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## BULLETIN 25-02

To: All Title Insurance Companies, Title Insurance Agents, Title Insurance Agencies, Producers of Title Insurance Business, and other Entities Engaged in the Business of Title Insurance in Tennessee

From: Carter Lawrence, Commissioner   
Carter Lawrence (Apr 1, 2025 13:29 CDT)

Date: March 27, 2025

RE: Attorney Opinion Letters

It has come to the attention of the Tennessee Department of Commerce and Insurance (the “Department”) that attorney opinion letters (“AOLs”) are being offered to consumers as a substitute for traditional title insurance. However, AOLs are inherently different from traditional title insurance and do not – and under state law, cannot – offer the same types of protections as a policy of title insurance. This bulletin is issued to outline the Department’s position regarding the use of AOLs and other similar documents as a substitute for traditional title insurance. It is the Department’s position that some AOLs may be permissible and not subject to regulation as insurance. However, the question as to whether a specific AOL constitutes insurance is a fact-intensive analysis that must be made on a case-by-case basis. As such, those issuing AOLs in Tennessee are encouraged to exercise caution and discretion to ensure that they do not engage in the unauthorized business of insurance.

### I. Background

As used in this bulletin, an AOL is a legal document prepared by a licensed attorney that provides certain assurances regarding the status of the title to a parcel of real property based on a search of publicly available real-property records conducted by the issuing attorney.<sup>1</sup> Losses attributable to

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<sup>1</sup> These assurances generally include, but are not limited to, a certification that (1) title is vested as stated in the AOL; (2) title to the parcel is marketable, subject to listed encumbrances and exceptions; (3) the owner has legal access to the property; and (4) the lender’s lien has, or would have, priority over other liens and encumbrances except as outlined in the AOL. Typically excluded from the certification is (1) any lien, lease, deed, security interest, or other document or matter affecting title that is not part of the publicly available real-property records and (2) any event occurring outside the dates of examination specifically covered by the AOL.

errors in an AOL and the underlying title search may be covered by the issuing attorney's errors-and-omissions insurance policy, and AOLs are sometimes issued in combination with a closing protection letter, also known as a closing indemnity letter, where the issuer contractually agrees to indemnify the beneficiary against losses resulting from the closing process. It is the Department's understanding that AOLs are being issued in some closing transactions in lieu of traditional title insurance, and this bulletin is issued to clarify the Department's position as to when AOLs may be subject to regulation as insurance.

## II. Tennessee Law

Under Tennessee law, a contract of insurance is defined as “an agreement by which one party, for a consideration, promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury, loss or damage of something in which the other party has an insurable interest.” Tenn. Code Ann. § 56-7-101(a). However, companies “making abstracts of title, certifying to the correctness of abstracts of title, issuing certificates as to the record title to real estate, or furnishing information regarding title to real estate, [are exempted from] comply[ing] with [Tennessee title insurance laws found in Tenn. Code Ann. Title 56, Chapter 35], *when the information does not take the form of, and is not, in fact, an insurance of the title to real estate, or interest in real estate, or of the liens or other encumbrances.*” Tenn. Code Ann. § 56-35-102 (emphasis added).

Additionally, the Tennessee Court of Appeals has determined that certain contracts do not constitute insurance if the primary basis of the contract is service and not indemnity. H & R Block E. Tax Servs., Inc. v. State, Dep't of Com. & Ins., Div. of Ins., 267 S.W.3d 848 (Tenn. Ct. App. 2008). When making this determination, the court has applied a service-indemnity test and looked to the “core essence” of the program or contract at issue and whether it is for a service or for indemnity. Id. at 863.

## III. When an AOL is Properly Considered Insurance

When issuing an AOL in Tennessee, the Department cautions issuers to ensure that the AOL “does not take the form of, and is not, in fact, an insurance of the title to real estate” as prohibited by Tenn. Code Ann. § 56-35-102. While AOLs, as described in this bulletin, generally meet the definition of “insurance” under Tenn. Code Ann. § 56-7-101(a), the Department recognizes that an AOL may constitute a service contract under the H&R Block service-indemnity test if the core essence of the AOL is service, not indemnity.

AOLs that are limited as described above and stay within the boundaries of the exemption in Tenn. Code Ann. § 56-35-102 may, in the Department's view, be properly characterized as a contract of service and therefore not regulated as insurance. However, to the extent an AOL or any additional

document issued by an attorney in connection with a closing (1) indemnifies the lender or beneficiary for losses caused by events outside the attorney's control (e.g., recordation of a deed by a third party after closing but before the legitimate deed is recorded), (2) is not an ancillary service offered as part of a broader service or transaction, (3) does not have service as its "core essence," or (4) covers losses not related to the service(s) provided,<sup>2</sup> this would, in the Department's view, cause the AOL to be more likely properly characterized as "an insurance of the title to real estate" and therefore subject to regulation as insurance and the Tennessee title insurance laws found in Tenn. Code Ann. Title 56, Chapter 35. As stated above, the determination as to whether a specific AOL is insurance is a fact-intensive analysis and those issuing AOLs are cautioned to carefully review the letters to ensure that they do not constitute the issuance of insurance subject to regulation by the Department.

Please address questions about this bulletin to Emily Marsh, Senior Policy Advisor, at [Emily.Marsh@tn.gov](mailto:Emily.Marsh@tn.gov).

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<sup>2</sup> These factors should not be construed as an exhaustive list of requirements that must be met before an AOL is properly considered an insurance product, nor should the absence of any of the factors be taken as proof an AOL is not an insurance product.