



Opinions  
and  
Guaranties  
versus  
Title Insurance

*What's the  
Difference and  
are You Being  
Protected?*



*Ohio Bar Title Insurance Company*

*A First American Company*

As a buyer when you purchase a home – or as a lender when you provide a mortgage on a home – you want to know that the property you've secured belongs to the right people. How can you find out, and how do you protect your interest in the property?

Through various types of title assurance.

Assurances of title are simply statements that inform an owner or other interest holder (for example, a lender) that the title is – or isn't – what it purports to be, based on a search of title records. Some assurances may go further and "cover" the owner or interest holder in the event that the title is later shown to be problematic.

Below are the four most common examples of title assurances:

### 1. Attorney Opinion

A title abstractor or examiner will examine and provide a report of what public records show with regard to a certain title. That report can be used by an attorney to form an opinion as to whether the title is insurable. **This "Attorney Opinion" does not provide any type of title insurance, however.** An aggrieved party must show that the attorney was negligent in order to recover a loss.

(See shaded box on the adjacent page for other limitations.)



### Limits of the attorney opinion

1. It only informs of title defects discoverable from a standard record search.
2. Client bears expense of defending an attack on title. (Note: Unlike Title Insurance, where expense of defending attack on title is paid by title insurer.)
3. Client only recovers if abstractor or attorney was negligent in searching or interpreting recorded instruments.
4. Client bears expense of bringing a lawsuit against abstractor or attorney for negligence.
5. Client recovery is limited by existence and solvency of attorney. (Note: Unlike Title Insurance, where recovery is supported by typically large, solvent insurance underwriters.)
6. Lack of "privity of contract:" If an abstract is prepared at the request of the seller (who also pays all abstracting fees), the buyer may not have a remedy against a negligent abstractor because there is no contractual relationship between the buyer and the abstractor.
7. Unlike Title Insurance, Attorney Opinion does not insure against all unexpected record defects and unexcluded hidden defects in title.
8. The statute of limitations on negligence of rendering title opinions is just one year from point of discovery.
9. For lenders, loans supported only by Attorney Opinions may not be saleable on secondary market. **National lenders require ALTA loan policies for their loans, and may not accept Attorney Opinions as satisfaction of this requirement.**

Portions from Patton and Palomar on Land Titles, 3rd Ed. (2003) §41 "Methods of Title Assurance – Abstracts, Attorney's Title Opinions & Title Insurance Compared"

### 2. Certificate of Title

A Certificate of Title is another form of Attorney Opinion which reflects upon the marketability of title and the liens and encumbrances attaching to the land in question. The same limitations apply to Certificates of Title as apply to Attorney Opinions. (See shaded box above.)

### 3. Title Guaranty

As with Attorney Opinions and Certificates of Title, a Title Guaranty is not insurance but is merely a reflection of the title as it appears in the public records. Despite its name, the Title Guaranty does not guarantee that record is correct. As the Title Guaranty only covers matters of record, there are no affirmative coverages available. It does, however, provide one benefit over an Attorney Opinion or Certificate of Title: an aggrieved party may prevail without having to prove negligence on the part of the guarantor. The other limitations mentioned above still apply. (See shaded box.)

### 4. Title Insurance

Lastly, there is Title Insurance. Title Insurance is by far the broadest of the title assurances. To understand the protection Title Insurance affords, it is important to distinguish the concept of "insurance," itself, from the "opinions" or "records" mentioned before.

"Insurance" is not a guarantee. In fact, insurance theory does just the opposite – it says that – based on certain probability – problems will undoubtedly arise. An insurer, under this theory, acts pragmatically and is willing to accept certain financial risks (i.e. claims), in exchange for certain financial benefits (i.e. premiums paid). An insurer will take on the risk and then try to minimize it by putting certain checks in place to make problems less likely, primarily through a thorough examination of title.

While the cost is slightly more for Title Insurance (e.g. on a \$100,000 loan, a loan policy would cost \$400.00, whereas a Title Guaranty would cost \$350.00), the coverage is much greater than other forms of title assurance, more than offsetting the minor cost differential. (Note: a fair comparison cannot be made between the cost of Attorney Opinions and Title Insurance, as the cost of Attorney Opinions vary from attorney to attorney.) For example, non-record items such as fraud, forgery, or false impersonation are covered by Title Insurance but not Attorney Opinions or Title Guaranties (See graphic for a more detailed list of non-record examples). Furthermore, the title insurer will pay the legal costs of defending a claim on title, even if it is unsuccessful. Perhaps most compelling to lenders is the fact that all national secondary lenders require a Title Insurance policy as their form of title assurance – meaning the secondary lenders won't purchase any loans from a primary lender without a title policy.

### Items Not Covered by an Attorney Opinion

	Attorney Opinion	Title Insurance
Fraud, forgery or duress in document execution.	Not covered	✓
False impersonation of the owner of the land.	Not covered	✓
Deeds that appear to convey title but are really mortgages.	Not covered	✓
Execution by a minor or an insane or incompetent person.	Not covered	✓
Heirs not disclosed in the public records who have an interest in the property.	Not covered	✓
Devisees in wills not discovered at the time of the owner's death.	Not covered	✓
Heirs of prior owner who died before judgment in a foreclosure action who were not included in the action by name and thus not subject to said foreclosure.	Not covered	✓
A grantee receives an interest under one name and conveys it using a different name.	Not covered	✓
Improper notice of judicial proceedings given to those with interests in the real property.	Not covered	✓
Executed deeds with failure of delivery, making deed void.	Not covered	✓
Deeds executed under powers of attorney later declared invalid.	Not covered	✓
Undisclosed marriages and divorces that result in claims of marital property rights.	Not covered	✓
Interests conveyed by a party before or after record ownership. Also, a "wild" instrument purporting to transfer title from a party not in the record chain of title.	Not covered	✓
Copyists' errors	Not covered	✓

From Patton and Palomar on Land Titles, 3rd Ed. (2003) §41 "Methods of Title Assurance – Abstracts, Attorney's Title Opinions & Title Insurance Compared"

“✓” means these items are covered.