

KEEPING CURRENT

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Title Insurance vs Title Opinion

By Zev Zlotnick

Commercial mortgage lenders often prefer a lender's title insurance policy over a solicitor's title opinion for several key reasons:

1. Comprehensive Risk Coverage

- **Title Insurance:** Covers a wide range of potential risks, including unknown title defects, fraud, forgery, encroachments, survey errors, and zoning issues.
- **Solicitor's Opinion:** Limited to the matters the solicitor can reasonably discover through title and off-title due diligence. It typically does not cover risks like fraud after the fact or undetected issues.

2. Post Closing Protection

- **Title Insurance:** Coverage lasts for the duration of the mortgage and protects against certain elements, title fraud and forgery as an example, even if they occur after the closing date and after the mortgage is discharged (in case of fraud).
- **Solicitor's Opinion:** Applies only at the time of closing and does not extend beyond that point.

3. Defense and Indemnity Costs

- **Title Insurance:** Covers the cost of defending the lender's title if a dispute arises, as well as potential losses.
- **Solicitor's Opinion:** Provides no financial backing; the lender would need to sue the solicitor for negligence, which can be costly and uncertain.

4. Efficiency and Speed

- **Title Insurance:** Can be issued quickly, often reducing the closing timeline. This is beneficial in fast-moving commercial transactions.
- **Solicitor's Opinion:** May take longer as it involves more detailed searches and review processes. A rushed opinion may not have all off-title searches returned on time for closing.

5. Cost Predictability

- **Title Insurance:** A one-time premium provides protection for the life of the loan.
- **Solicitor's Opinion:** The lender may incur

additional legal costs for updates or extended searches during refinancing or future transactions.

7. Simplifies Disputes

- **Title Insurance:** If a defect arises, the insurer deals directly with the lender, streamlining the resolution process.
- **Solicitor's Opinion:** The lender must pursue legal action against the solicitor, which can lead to lengthy proceedings.

8. Avoids Human Error

- **Title Insurance:** Protects against errors made by the solicitor during title searches or examinations.
- **Solicitor's Opinion:** Any error or omission by the solicitor could leave the lender vulnerable unless the solicitor is proven negligent.

Notwithstanding the above, in certain circumstances, and most likely when the loan amount is relatively sizeable, borrowers may insist that a title opinion from borrower's counsel be provided as the title insurance premium may be prohibitive. Lenders should balance the foregoing benefits to title insurance versus maintaining their client's satisfaction.

Title insurance is increasingly viewed as the standard practice in commercial lending, giving lenders a sense of security and aligning with industry norms. While a solicitor's title opinion remains valuable, it cannot match the comprehensive protection, efficiency, and risk mitigation offered by a lender's title insurance policy. For commercial mortgage lenders in Ontario, title insurance is often the preferred choice for safeguarding their investments.

For any related questions, please contact the writer. To see my previous 1-Minute Reads for Commercial Mortgage Lenders, please visit the Blog portion of my profile at <https://www.grllp.com/profile/zevzlotnick>

Contact Us

If you are in need of legal advice, please do not hesitate to contact [Zev Zlotnick](mailto:zev.zlotnick@grllp.com), at 416.865.6601 or zzlotnick@grllp.com.

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