



## OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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### First American Lawsuit Attacks the Fund's Joint Venture

IN A COMPLAINT FILED IN THE CIRCUIT COURT IN LEON COUNTY, FLORIDA, FIRST AMERICAN TITLE INSURANCE COMPANY SEEKS DECLARATORY RELIEF AGAINST ATTORNEYS' TITLE FUND SERVICES, LLC; ATTORNEYS' TITLE INSURANCE FUND, INC.; OLD REPUBLIC NATIONAL TITLE HOLDING COMPANY; OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY; DEPARTMENT OF FINANCIAL SERVICES; AND THE OFFICE OF INSURANCE REGULATION.

THE COMPLAINT (1) REQUESTS THE COURT TO DECLARE THAT FUND, INC., IS IMPAIRED OR INSOLVENT AND TO ORDER DFS TO INITIATE DELINQUENCY PROCEEDINGS TO LIQUIDATE OR REHABILITATE IT, AND; (2) REQUESTS THE COURT TO RULE ON THE "RIGHTS, STATUS AND LEGAL RELATIONS OF THE JOINT VENTURE."

IN OIR'S CONSENT ORDER DATED AUGUST 27, 2009, ISSUED AFTER DETAILED ANALYSIS OF THE SUBMISSIONS BY FUND, INC., INDEPENDENT THIRD PARTIES AND ITS OWN STAFF, FUND, INC., AGREED TO CEASE WRITING NEW BUSINESS BUT WAS AUTHORIZED TO CONTINUE TO SERVICE ITS EXISTING POLICYHOLDERS, TO

INCLUDE CLAIMS ADMINISTRATION. OIR DECLINED TO ASK THE COURT TO APPOINT A RECEIVER IN CONSIDERATION OF THE TOTAL FINANCIAL PICTURE OF FUND, INC., AT THE RELEVANT TIME. FUND, INC., HAS CONTINUED TO OPERATE PURSUANT TO THE CONSENT ORDER. WE WILL SEE WHETHER THE COURT WILL WANT TO SUBSTITUTE ITS JUDGMENT OF THE FINANCIAL CONDITION OF FUND, INC., AT THE RELEVANT TIME PERIOD FOR THAT OF OIR.

THE BULK OF THE COMPLAINT CONCERNS THE OPERATION OF THE JOINT VENTURE. MANY CREATIVE ALLEGATIONS ARE MADE, BUT FACTS HAVE A WAY OF DEFLATING THE MOST IMAGINATIVE STORIES; AND SUCH FACTS WILL BE PRESENTED AT THE APPROPRIATE TIME IN THESE PROCEEDINGS.

PLAINTIFF WANTS THE COURT TO INITIATE PROCEEDINGS TO TERMINATE CERTAIN ACTIVITIES AND SERVICES OF THE JOINT VENTURE AND RELATED DEFENDANT PARTIES INCLUDING REPRESENTING ITSELF AS THE FUND.

REST ASSURED WE WILL VIGOROUSLY DEFEND THE RIGHT OF FUND INC., AND THE JOINT VENTURE TO EXIST AND WE



ARE CONFIDENT WE WILL BE SERVING THE NEEDS OF OUR POLICYHOLDERS, FLORIDA LAWYERS AND THEIR CLIENTS FOR AT LEAST ANOTHER 62 YEARS.

NORWOOD GAY  
SENIOR VICE-PRESIDENT/  
CHIEF LEGAL OFFICER  
ATTORNEYS' TITLE FUND SERVICES, LLC  
800-275-6273 (DIRECT)  
NGAY@THEFUND.COM

# Senate Bill 260

■ *By James C. Russick, Vice President,  
Governmental Affairs and Florida State Counsel*

Old Republic Title and Florida Land Title Association are working hard in Tallahassee for you. There has been a lot of talk lately about Senate Bill 260 filed by Senator Michael Bennett from Manatee County. The talk is justified when you consider the severe negative impact it could have on the title insurance industry. Fortunately, it does not appear that the bill has much chance of passing this legislative session. Nevertheless, it is an important piece of legislation because it is affecting our ability to pass a much needed reform bill.

One of the biggest problems with SB 260 is that it would continue the current split between our industry's regulatory departments, wherein OIR would continue to regulate underwriters and the Department of Financial Services would continue to regulate agents. This dual system creates many of the problems facing our industry today. It simply doesn't work.

Additionally, SB 260 would redefine "title insurance premium" to represent only those funds received by the underwriter for the policy. The agent would earn no portion of the premium as defined. This is called a "risk rate only" regulatory scheme. We at Old Republic Title call it anti-agent and anti-consumer. It completely fails to acknowledge the nexus between compensation and the quality of the final title insurance product.

The bill would also do a host of other evils that collectively would cost jobs and destabilize an already tender real estate marketplace. For example, it would require title agents to post their settlement service rates on a regulator run web site. This is the embodiment of their mistaken belief that the public

interest is best served by only the low bidder. Quality and professionalism are not part of that equation.

Further, the bill would create confusion in the marketplace by allowing underwriters to use different policy forms, providing different coverages, at varying rates. It is naïve to believe that consumers can compare and contrast buried differences in coverage.

Lastly, SB 260 would expose the insurer to treble damages for the negligent issuance of the policy, thus assuring that premiums to the consumer would equally skyrocket.

This kind of anti-consumer thinking that is so contrary to the best interests of Floridians cannot go unchallenged. Old Republic Title, the "agent's underwriter," has taken up the fight on behalf of consumers and independent agents throughout the state. It was Old Republic Title, with the assistance of the Fund, which first conceived of the idea of a Title Insurance Study Advisory Council to fairly and objectively study the title insurance industry in Florida and make recommendations to the Legislature.

HB 853, sponsored by Rep. Kevin Ambler, and its companion, SB 1836, sponsored by Senator Carey Baker, is the embodiment of the recommendations of the Study Council. If passed, it will implement a host of reforms beginning with the creation of a separate chapter of the Florida Statutes devoted exclusively to title insurance. The title industry is currently commingled with all other lines of insurance within the general insurance code of Florida. This has caused a host of problems, confusion, and unintended consequences.

HB 853 will also consolidate the



regulation of the industry into a single regulator that has jurisdiction over underwriters and agents alike. This is essential to achieve uniform regulatory enforcement at all retail outlets and assist with other critical industry needs such as a proper, recurring data call upon which to properly promulgate rates.

The bill will implement a host of other positive measures including the maintenance of the promulgated rate system, prohibit improper discriminatory rebating, provide for the continuation of coverage for policies issued by a liquidated underwriter, and it addresses deficiencies to the current regulation of escrow accounts and continuing education requirements. Forms approval and data call issues are addressed as well.

In short, HB 853 creates the necessary foundation on which to build the proper regulatory structure for the title insurance industry. The prospects for its passage can best be pursued by your continued allegiance to Old Republic National Title Insurance Company and the Florida Land Title Association. We thank you for your invaluable support.

# Why Do I Have to Pay That Tax?

## RECENT CHANGES REGARDING FLORIDA'S DOCUMENTARY STAMP TAX

■ *Wilhelmina F. Kightlinger, Florida State Counsel*

Many people who buy and sell real property in Florida are surprised by the cost of the Documentary Stamp Tax on deeds. In Florida, the Documentary Stamp Tax is due on conveyances of real property in the amount of 70 cents for each \$100 of consideration (except in Miami-Dade County, where the Documentary Stamp Tax for the conveyance of a single family residence is 60 cents for each \$100 of consideration and \$1.05 for each \$100 of consideration for any property other than a single family residence). Many think the Documentary Stamp Tax is optional or can be avoided through "drafting." This is a dangerous thought. The Documentary Stamp Tax is the second highest source of revenue for the State of Florida, and the Department of Revenue takes the enforcement of the tax very seriously. Recent legislative changes affect the Documentary Stamp Tax and some of the methods that were widely used to avoid payment of the tax.

A common method employed by some to avoid the Documentary Stamp Tax involved the conveyance of real property to a related entity in a manner so that the conveyance would

be exempt from the Documentary Stamp Tax under the Florida Supreme Court Case Crescent Miami Center v. Department of Revenue, 903 So.2d 913 (Fla. 2005). In such a transaction, the seller would convey the real property to a related entity or wholly-owned subsidiary. Under Crescent, that conveyance would not be subject to the Documentary Stamp Tax if it was to a wholly-owned grantee for no consideration, and the property was not encumbered by a mortgage. Immediately after such conveyance, the Seller would transfer the ownership interest in the new entity to an unaffiliated purchaser. The transfer of ownership interests was not subject to the Documentary Stamp Tax. Thus, parties could sell and purchase real property using this method without paying Documentary Stamp Taxes. By transferring the property to a new entity and then transferring the ownership interest in that entity, the parties hoped to limit the purchaser's exposure for the existing liabilities of the owner-entity which would be greater with a straight purchase of the ownership interest of the existing owner of the real property.



Florida Laws Chapter 2009-131 passed during the last legislative session amended Florida Statutes Chapter 201 to impose the documentary stamp tax on transfers of real property under the Crescent method to a "conduit entity" if the interest in the conduit entity is conveyed within 3 years of the initial conveyance into the conduit entity. A "conduit entity" is defined in the statute as an entity to which real property is conveyed without full consideration by a grantor who owns a direct or indirect interest in the entity. So, if a seller conveys property to a conduit entity for no consideration and does not pay the documentary stamp tax under the Crescent decision, and then conveys its ownership interest in that conduit entity within 3 years after the initial conveyance to the conduit entity, the conveyance of the ownership interest in the conduit entity would trigger the Documentary Stamp Tax now. These revisions are effective for Crescent type conveyances recorded on and after July 1st, 2009. The law exempts a gift of the ownership interest in the conduit entity for no consideration and the transfer of

*Continued on page 4—*

# New Fellowship Program for the Florida Bar Real Property, Probate and Trust Law Section

The Real Property, Probate and Trust Law Section of the Florida Bar is now accepting applications for its Fellowship Program. The Fellowship Program is open to all lawyers who are members of the Florida Bar RPPTL Section and (a) have been admitted to the bar for fewer than 12 years or (b) are younger than 38 years of age. Four slots are presently available. The Fellowship application is available through the RPPTL section website at [www.RPPTL.org](http://www.RPPTL.org). All applications should be submitted to [RPPTLfellowship@gmail.com](mailto:RPPTLfellowship@gmail.com) or by mail to RPPTL Fellowship Program, ATTN: Elizabeth Smith, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

## Why Do I Have to Pay That Tax? Recent Changes Regarding Florida's Documentary Stamp Tax—continued from page 3

shares of a conduit entity that are traded on publically regulated security exchanges or markets. *Fla. Stat. Sec. 201.02(1)(b)(4)*.

The Florida Department of Revenue issued Emergency Rule 12BER09-04 on October 16th, 2009, in connection with Chapter 2009-131. The emergency rule subjects the transfer of the ownership interest in a conduit entity to the documentary stamp tax. Thus, while the statute creates a "look back period," the Emergency Rule does not go back and tax the initial deed into the conduit entity. Instead, the Emergency Rule taxes the transfer of the ownership interest in the conduit entity. The documentary stamp tax is calculated based on the consideration paid or given for the ownership interest, which includes any mortgages that the new owner takes subject to and are not satisfied in connection with the transfer. If the conduit entity owns real property or assets other than the real property that was conveyed into the conduit entity without payment of the tax, the consideration paid for the

conveyance of the ownership interest apportioned between the real property and the other assets, and the documentary stamp tax is paid on that portion of the consideration attributable to the real property. A specific method for the calculation is set forth in the Emergency Rule. Note, if the documentary stamp tax is paid upon

the initial conveyance of the real property to the entity, the subsequent conveyance of the ownership interest in that entity is not subject to the documentary stamp tax.

Please contact the Underwriting Department if you have any questions regarding documentary stamp taxes.

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# Retirement and New Hire

■ *Scott Pierce, Senior Vice President*

It is with regret as well as happiness that I announce the decision by Walt Donovan, ORT's Vice President and Director of Florida Title Operations, Ft. Myers, to retire from Old Republic Title effective Wednesday, March 10th, 2010.

Walt was a graduate of the Albany Law School, and started his title career in Florida in 1986 as an examiner. He joined Old Republic to run our fledgling Ft. Myers office in August of 1998. Walt came to Old Republic from one of the largest independent title agencies in Ft. Myers with multi-county title plant operations.

While with Old Republic, Walt worked tirelessly to help increase and expand our presence in the Lee County market, and also helped expand the coverage of the Ft. Myers office by providing searches for a number of agents on the East Coast. This innovative move allowed us to significantly increase our agency base in South Florida.

Walt, along with our Corporate IT Department, helped develop the OASIS system that we use today to deliver search packages electronically. Walt also worked with Corporate IT to adapt the ezJacket system for Florida, which most of our agents now use. Walt's latest contribution was spearheading the conversion of our entire Florida document preparation system from ORDOCS to Ramquest, which was extremely detailed and was over two years in the making. The Ramquest rollout began in December with the Deerfield Beach office and finished last month in Jacksonville.

In addition to these

accomplishments Walt was also instrumental in the development and continued refinement of our short search procedures in Florida and acting as the liaison with our numerous search and copy vendors in negotiating agreements and testing upgrades.

So it is with regret that we see Walt leave, but happiness in wishing him continued health and success in his retirement. We wish he and his wife, Sandy, *bon voyage* on the many cruises he has planned, and we send our thanks for a job well-done.

With Walt's departure, it is with pleasure that I announce that Tracy Stape Atkinson recently joined Old Republic as Vice President and Agency Operations Manager in the Ft. Myers office. Before coming to Old Republic, Tracy was the West Florida Area Agency Manager and Vice President of a national underwriter. Tracy was formerly Underwriting Counsel for a national title insurance underwriter and Vice President of a national qualified intermediary.

Tracy is a member of the Florida Bar, and received her Bachelor of Science degree in Business Administration, with High Honors, from the University of Florida. Tracy then continued on at the University of Florida and received her Juris Doctorate, with honors, in 1995.

Tracy has 15 years experience in the title insurance industry and is a member of the Real Property, Probate, and Trust Law Section of the Florida Bar. Tracy enjoys speaking to industry professionals on a variety of title-related issues and has been approved as an instructor for the



Florida Bar, the Florida Department of Financial Services, and the Florida Department of Professional Regulation.

We wish Tracy much success in her new position.

## Comments and information

We invite your feedback and welcome your suggestions regarding "In The Title Corner" and the publication of future articles.

Address correspondence to:

### In The Title Corner

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# Ask Your Underwriter

■ *Laura M. Licastro, Associate Florida Underwriting Counsel*

**Question:** I received an HOA estoppel in connection with an REO sale, and when I told the bank how much was owed for past due assessments, I was told that under §720.3085, F.S., the bank was only responsible for the lesser of 12 months or 1% of the principal amount of the mortgage that was foreclosed because the HOA was named in the foreclosure. Can I just pay the HOA what the lender says is owed under §720.3085?

**Answer:** No. The amount shown on an estoppel letter and the amount paid at closing have to match. The lender and the HOA should resolve this dispute between them, and provide you with a new estoppel letter if a different amount is agreed upon.



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