



**OLD REPUBLIC** NATIONAL TITLE INSURANCE COMPANY

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## STOP... In the Name of Title Insurance: Estoppel Letters and Associations

■ *By Laura M. Licastro, Florida State Counsel*

You're all set to close on that file you have been working so hard on, so you go over your closing checklist one more time. Mortgage payoff letter obtained and the good-through date duly noted? Check! Association estoppel letter requirement met? Check! Wait a minute...are you sure? A common source of post-closing problems involves the lack of estoppel letters for all associations having jurisdiction over the property and all types of assessments. Can there be more than one association and more than one source of assessments? Absolutely, and failure to pay all assessments due to all applicable associations can result in a claim.

One example of a situation where the estoppel information may be incomplete would be where one large subdivision or condominium complex is governed by a master association but is also broken down into smaller groups

of parcels, units or limited common elements which are also governed by their own sub-associations. In this case, it is quite possible that the parcel owner is obligated to pay two sets of assessments for the different services provided by each association and these two sets of assessments might even be collected by two different property management companies. The property management company for the sub-association might not even mention the master association in its estoppel certificate.

An agent that suspects there may be more than one association but cannot get this information from the seller or realtor should ask about the existence of another association in its request for an estoppel certificate from the known association. If no information can be obtained that way then the agent should try to contact an officer of the other association



using information provided on Sunbiz.

Another common problem involving associations is disputes involving the amount of assessments shown on the estoppel certificate. This issue is especially common in sales out of holders of Certificates of Title following a foreclosure sale. For condominiums, the statutory provisions regarding the imposition and collection of

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# The 2010 Florida Legislature – Post Session Report

■ By James C. Russick, Esq., Vice President, Governmental Affairs & Florida State Counsel

The 2010 Legislative Session confronted several issues of significant interest to the title insurance industry, but none was more important than HB 853/SB 1836. Sponsored by Representative Kevin Ambler and Senator Cary Baker, this bill was designed to implement the recommendations of the 2009 Title Insurance Study Advisory Council. Further, this was the bill designed to address the core issues before the industry as represented by SB 260.

**SB260:** SB 260, filed by Sen. Michael Bennett on behalf of the Florida Office of Insurance Regulation, would have terminated the promulgated rates designed to promote the public's ready access to competitively priced title insurance and escrow services. The bill, if passed, would have redefined the title insurance premium and prohibit any portion being earned by a title agent. Further, it would require closing agents to post their fees on the internet on a site run by the regulator and fostered both price and product competition between insurers.

SB 260 also included a provision that an insured should be able to be compensated by up to three times the amount of the policy should the policy be issued negligently. The negative impact on rates should be obvious. The bill failed.

**HB 853/ SB 1836:** The Title Insurance Study Advisory Council recommended the continuation of the promulgated rates coupled with a termination of the discriminatory rebates currently found in the marketplace. Further, it recommended a unified regulator for the title insurance industry and a host of other more technical initiatives.

HB 853 would have implemented these study council recommendations. The bill, notwithstanding some favorable committee support in the House, failed to get traction in the Senate. Accordingly, it

did not pass this legislative session.

Nevertheless, a significant staff analysis is ongoing and has been the focus of an enormous amount of work by many members of the Florida Land Title Association, the Real Property Probate and Trust Law Section of the Florida Bar, and others seeking a sound public policy foundation for the title insurance industry.

## **MRTA (HB 435):**

This bill effectuated two changes to the Marketable Record Title Act effective July 1, 2010. It amended Sec. 712.03, which lists items not expunged under the impact of MRTA. Specifically, it added "(9) Any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created under chapter 373, or the United States."

Additionally, this bill provides an alternative notice mechanism for the holder of a real property interest to preserve same under Sec. 712.06, F.S. There is no alteration of the requirement to record the notice, but now you may either send a copy of the notice to the owner or owners affected, or publish the notice once a week for 2 consecutive weeks in a qualified newspaper in the county where the property is located.

The statutory changes to the Marketable Record Title Act should not alter your basic search and exam practices provided that you are including the proper sovereignty lands exception when confronted with impacted properties.

## **Condominium (SBs 1196 & 1222):**

This is a massive 103 page bill that contains a host of matters, but only one is directly relevant to your title agency. The bill amended Sec. 718.116, F.S. effective July 1, 2010 to prioritize the

last 12 months (as opposed to the existing 6 months) of unpaid assessments over the lien of a first mortgagee.

**Timeshares (HB 1411):** This bill provides for the non-judicial foreclosure of liens on timeshare interests. This legislation is an extensive change to the law of timeshares that is of interest to anyone working with these unique real property interests. The act provides for the non-judicial foreclosure as an option only, provided that there is an amendment to the timeshare instrument

adopting such a procedure by majority vote. The property owner may demand a traditional judicial foreclosure. By opting for non-judicial process, the owner is protected from any deficiency judgment. The act calls for the appointment of a "trustee" to handle the non-judicial foreclosure. The trustee must be either an attorney with at least 5 years practice or a title insurance underwriter. ORT will be developing its underwriting guidelines for insuring these titles. Until then, please contact underwriting on specific transactions.

## **Short Sale Doc Stamps (HB 109):**

This codified the earlier guidance we received from the Florida Department of Revenue regarding documentary stamps on short sales. You may recall that there was a time when DOR took the position that the documentary stamps on a short sale had to be for the aggregate amount of the amount paid for the property and the unpaid indebtedness. Old Republic Title disputed this interpretation and worked with DOR to refine its position. This bill defines the term "short sale" and confirms that documentary stamps are due only upon the actual consideration paid for the property.



## *STOP...In the Name of Title Insurance: Estoppel Letters and Associations*

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assessments and the liens which can be created for unpaid assessments are contained in 718.116 F.S. 718.116(1) F.S. makes all unit owners, regardless of how they came into ownership of the unit, responsible for all assessments which become due while that owner is in title. Unit owners are also jointly and severally liable with the previous owner for past-due assessments.

There is a limitation of liability for past-due assessments for first mortgagees only that take title by Certificate of Title or deed-in-lieu of foreclosure and names the association as a defendant in the foreclosure. Effective July 1, 2010, the liability limitation in 718.116, F.S. changed from the lesser of six months or 1 percent of the original mortgage debt to the lesser of 12 months or 1 percent of the original mortgage debt, which is the same as the limitation for past-due HOA assessments.

Notwithstanding any of these limitations, the ORT agent should always collect and remit to the applicable association whatever amount is shown in the estoppel certificate. Any dispute regarding the applicability or inapplicability of the limitation for first mortgagees or regarding the amount shown on the estoppel in any transaction must be resolved prior to closing and any change in the amount due reflected in a new estoppel obtained by the agent directly from the association or its management company.

Sometimes, when a lot or unit is subject to past due assessments, there may be an attorney involved and that attorney may have legal fees that he or she has not yet billed to the association client. Agents have run into

situations where they have received two conflicting letters, one from the association or the management company and another with a different amount from an attorney. Again, discrepancies need to be resolved prior to closing and all affected parties need to agree on one amount to be collected and remitted.

Any questions regarding the collection of assessments and estoppel letters should be directed to the Underwriting Department.

### *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:

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# Ask Your Underwriter

■ By Carolyn Broadwater, Florida State Counsel

**Question:** I heard that there was a Supreme Court case recently that affects the rights of owners of beachfront property. If I'm closing a property on the water, do I need to worry about this?

**Answer:** Last month, the Supreme Court ruled against ownership rights of beachfront property owners to a portion of the shore where sand is deposited in beach restoration projects. The court ruled that that property is owned by the State of Florida. Fortunately, we already have an exception that covers this, and you won't have to do anything differently than you did prior to the ruling. The sovereignty rights exception is sufficient. It reads as follows:

*Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands and lands accreted to such lands.*



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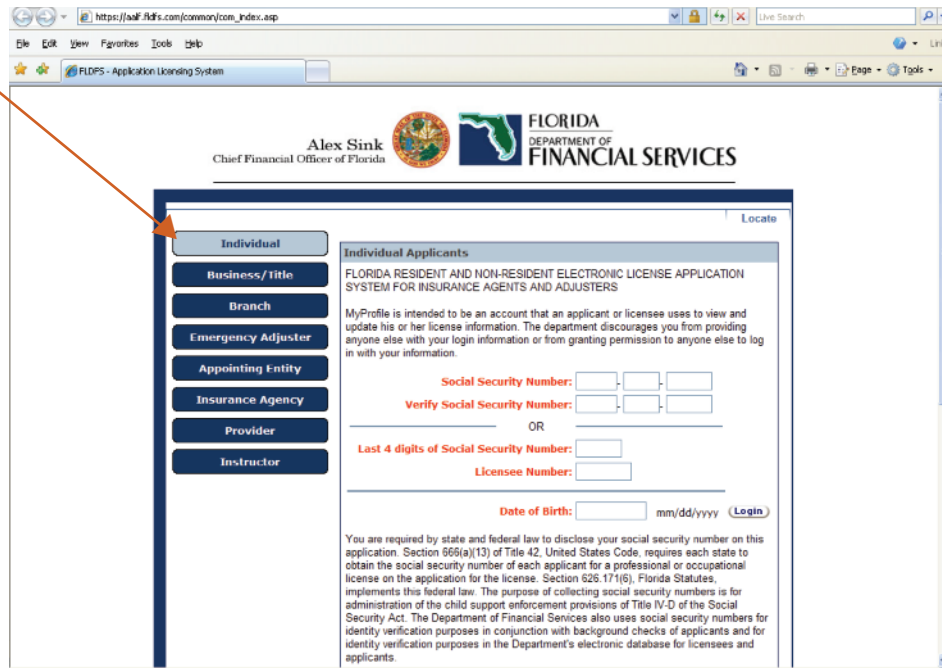
# C.E. Credit- Uncovered

By Tanya Carlson

As all of you probably know, if you are licensed by the State of Florida Department of Financial Services ("DFS"), you are required to have 10 hours of continuing education credit every two years. This 10 hour requirement is broken down as 7 standard hours and 3 ethics hours. Remember, ethics hours can fulfill standard hours, but standard hours CANNOT fulfill ethics requirements. In order to keep track of your hours, you can use the following directions.

When you log on to the DFS website (www.myfloridacfo.com/agents), you will notice a link titled "My Profile Log In" at the bottom of the page.

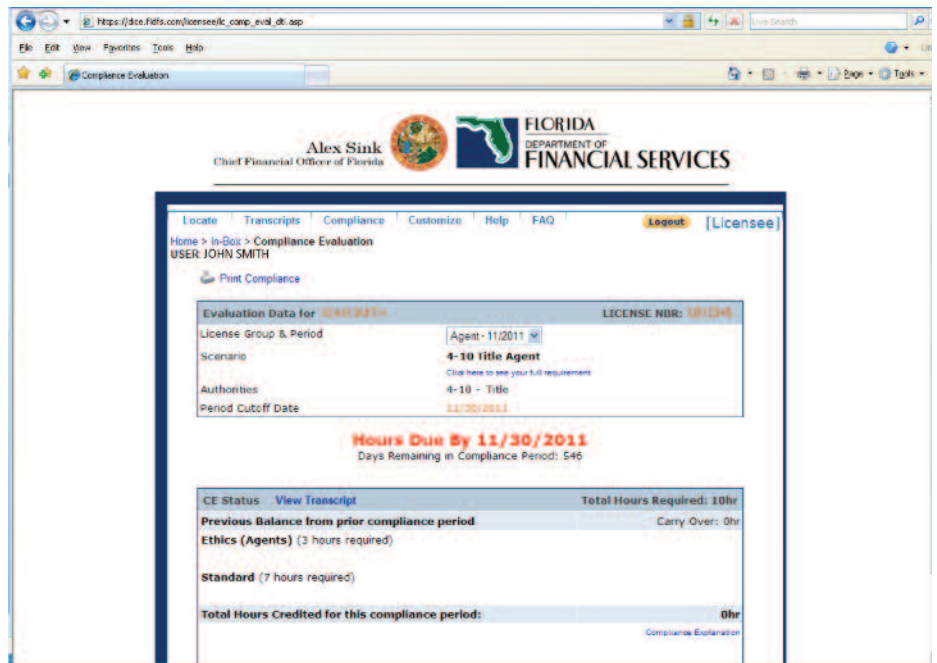
Click on the link, then click on "Individual" on the top of the left hand column, and enter your social security number and date of birth in the required fields. (If you are not comfortable entering your complete social security number, it does allow you to enter only the last four digits of your Social Security number.)



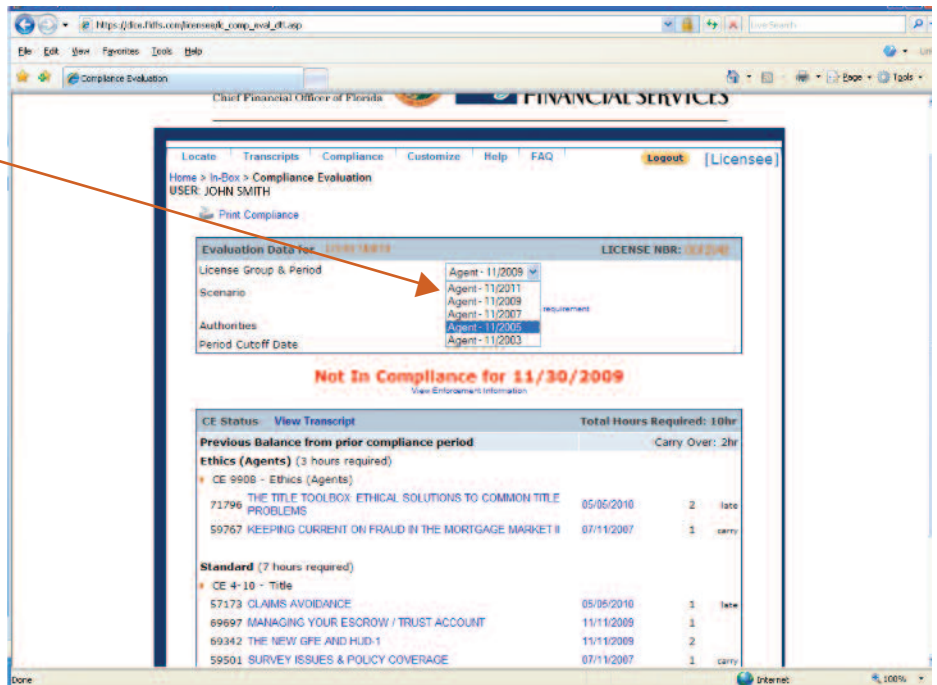
After the information is entered, the site will route you to your inbox, where you normally see messages and other announcements from the DFS. Underneath the heading "Licenses" is a box with the words "CE STATUS" in bold. Click on that box to view your current C.E. credits.



This page shows you the courses you've taken, the dates and the hours awarded. If you had classes that carried over from the previous reporting timeframe, they will also be shown.



What most title agents do not realize is that the amount of hours shown on the C.E. status page is not a summary of the past years. The page shown only shows your current period and the hours of credit due. To view your past hours, you will need to change the date that is located in the drop down box. If the hours due for your last compliance period were not satisfied, you have to change the date to see the non-compliance. THE NON-COMPLIANCE FOR A PREVIOUS PERIOD DOES NOT CARRY FORWARD TO THE NEW COMPLIANCE PERIOD.



If your previous hours were not fulfilled in the allotted timeframe, you will receive notices from the DFS. Their standard of practice is to send out two warning letters (Preliminary Notice and Final Notice) to your email/home. This is designed to alert you that something is wrong with your status. Please do not ignore these letters. The DFS will assess a \$250 fine and you will be required to complete your remaining continuing education hours. If you do not sign the Stipulation Agreement they send you and pay the fine, your appointment with all your underwriters will be cancelled. Old Republic National Title will also have to bill you \$62.10, after you complete the missing classes, to reappoint you with our company. It will take up to 30 days to clear up this delinquency, during which time you will be unable to sign policies for your title agency.

If you have any questions or comments, please do not hesitate to contact me at [tcarlson1@oldrepublictitle.com](mailto:tcarlson1@oldrepublictitle.com). I will be more than happy to assist you with any questions you may have.