



## **2013 Bulletin 2**

### **National Title Insurance Surcharge Deferred Again**

January 18, 2013

As we are continuing to work toward a global resolution of the National Title Insurance Receivership, the Office of Insurance Regulation has graciously extended the time for beginning to collect the 28 cent surcharge until May 6, 2013.

A copy of their letter can be found [Here](#).

We've also reproduced the bulletin regarding the prior extension as it provides some background on the issue and the direction we are attempting to go as a possible solution.

## **2012 Bulletin 24**

### **National Title Insurance Surcharge Deferred**

November 20, 2012

Several months ago, the Receiver of National Title Insurance Company obtained a court order "assessing" all other title insurers a total of \$212,000 to cover expected claims and the receiver's estimated expenses for the next year. Under Florida law, the insurers are required to "recoup" those assessments through a "surcharge" on every title policy issued.

The math worked out that the surcharge should be \$0.28 per policy (yes, that's 28 cents). The law requiring this (F.S. §631.400-.401) was, of course, designed at a time when much larger failures were a distinct possibility, and yes, the costs of collecting 28 cents per policy will likely exceed the value of the recoupment. But that is the law – and many in the industry feel that it is important to keep the policies of even a failed insurer in effect. That's what our customers paid for and we can all imagine the black eye suffered by the industry if those policies had been cancelled and those customers told "Now, you've got to buy a new policy." That may work for auto insurance, where you pay for a new policy every year, but not for title insurance where a single premium covers you as long as you own the property or have any potential liability under warranties of title you may have given.

But the perpetual nature of title insurance means that the receivership must continue until there are no more policy liabilities – basically forever. Even though claims largely stop coming in at some point, the receiver’s expenses go on, and on. So we would be facing these assessments (in changing amounts) for an indefinite period.

So FLTA has been working with the Office of Insurance Regulation and the Receiver on a different solution. We are working with them to gathering the data about policies issued by National Title and working with different insurers to persuade them to “bid” on the price they would have to be paid in order to assume the policy liabilities of National Title. We could then do a single assessment to cover those costs, terminate the receivership, and have a single assessment in an amount worth collecting, which would be over in a year.

While we work through those complex mechanics, we’ve imposed on the good graces of the Office of Insurance Regulation and the Receiver to allow us to defer the imposition of the consumer surcharge until we (hopefully) can come up with a solution that closes out this receivership, keeps the National Title policies in effect and allows for a one-time assessment and related surcharge. They first granted an extension until December 3, and more recently a second one until February 4, 2013. While they have indicated their intent to “hold our feet to the fire” by granting a series of short extensions, they are very encouraging of our efforts to gather the necessary information and make proposals for a complete resolution.

We have gathered the first round of information about the National Title policies, and believe we are well on the way to having a global resolution of this problem. By February 4, we hope to be in a position to announce either another short term extension (because we’ve made substantial progress on a resolution) or a final surcharge in a different amount.

Your insurers will be making payment of their required assessments by December 3. Here are links to the underlying documents:

[Assessment & Surcharge Order](#)

[1st Extension](#)

[2nd Extension](#)

While a surcharge WILL BE coming, it is a bit premature to start worrying about the mechanics of implementing it. FLTA is looking at the issues about how this might affect tolerance violations, whether we can treat this as a miscellaneous expense or a government expense so that it doesn’t appear in the 1100 section of the HUD-1 and the mechanical issues of actually collecting and remitting these funds. More on those questions will follow.

You should also be aware that another Florida Title Insurer, K.E.L. Title Insurance Group was placed into receivership on October 30, 2012 opening the possibility for assessments and surcharges there also.

So stay tuned, more information will follow.