



GOOSE NEWS

“Access-Ability”

The Legal Corner: By Graydon (Gray) V. Olive, III, Esq.



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You are driving home to the house you have owned for 10 years in a small subdivision of 8 houses. The houses are on Evans Road, a gravel road off the main highway that runs beside a church. The county has routinely maintained the road by scraping the ditches and periodically replacing the gravel. As you prepare to turn onto Evans Road, you notice that someone has blocked the entrance to the road with a chain and padlock. You find out later that the chain was put in place by the church elders who claim ownership of the property where the road is located. (You are not a member of that congregation). As you walk home from the church parking lot, your neighbors meet you and ask, “What can we do?”

The neighbors tell you that the church wants to expand its building and plans to use a portion of the roadway for that purpose. The church has offered to provide access over some of its remaining property, but that access is not as convenient as the existing roadway.

A group of you get together and consult a local attorney. He conducts a title exam and advises you that even though the county maintains the road and has placed a street sign at the intersection, the road is private and on church property. There is no record of an easement being granted by the church to the county for the roadway.

The attorney also tells you that since there is no specific grant of easement or recorded subdivision plat showing the roadway, there is a question of access. Access is often difficult to determine, particularly in rural areas where a road has been used for a number of years, but there is no evidence of dedication or grant of easement. He goes on to tell you that since there is no deeded easement, there may be a right to a prescriptive easement since there has apparently been continuous, uninterrupted use of the road for 20 years. One member of the group claims to have used the road for almost 50 years.

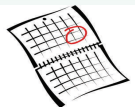
Although prescriptive easements, easements by implication and easements by necessity are recognized as interests in real estate under common law, they are usually disputed and require litigation to determine whether or not they exist. At this point he asks if anyone has a title insurance policy. You vaguely recall being asked if you wanted to purchase an owner’s policy when you bought the house, but cannot recall if you bought one or not. No one else has a policy either. The attorney tells you that even if a policy could be found, there might be an exception for access since title companies are reluctant to insure prescriptive easements absent a court decision affirming the right to use it. Such an exception would look like the following:

E-17 Attention is directed to the fact that the property does not appear to abut a public road or highway nor to be served by any right of way or easement over adjoining or adjacent property to any such public road or highway.

Impressed with the knowledge he gained after 3 hard years of law school, the attorney goes on to give your group a treatise on access and title insurance requirements and exceptions. Since you paid him a flat fee for the title exam and have not agreed to pay him an hourly rate, you decide to listen to the following:

Continued on page 2...

**Be Sure
to Check Out
Page 7 of
Goose News
for our
updated Training
Calendar**



“Access-Ability” continued

“The most common method of providing access to a landlocked parcel is by express grant in a written, recorded document. The grant should describe the dominant or benefitted parcel as well as the servient parcel, and should also express the location, width and limitations, if any, on the use of the access easement. Where access is by way of express easement, title to the land burdened by the easement must be examined to determine if there were any existing liens or mortgages in place at the time the easement was created which could “cut off” the easement.

Once the easement has been expressly created, the owner of the benefitted parcel cannot increase the easement’s burden on the servient parcel without the owner’s consent. Examples of increased burdens are widening the easement or subdividing one’s land so that others are also using the easement.

Sometimes a lender will want a company to insure the parcel has actual access to a publicly maintained road either directly or indirectly. The coverage is done by way of endorsement, usually by using the ALTA 17 or ALTA 17.1 endorsements. The ALTA 17 endorsement insures vehicular and pedestrian access to a named publicly maintained road, with rights to use existing curb cuts, and the ALTA 17.1 insures vehicular and pedestrian access to a publicly maintained road by way of easement through a burdened parcel. The ALTA 17.1 also insures the right to use existing curb cuts.

The following requirement should be made when asked to issue an ALTA 17 or ALTA 17.1 endorsement:

ALTA17 Upon receipt of (i) evidence that the appropriate curb cut permits have been granted; (ii) a survey which favorably reflects the existence of access to the desired publicly-dedicated and accepted right-of-way; or (iii) other acceptable evidence that affirmatively confirms what the title insurance company will be insuring, the ALTA 17 in the form attached hereto, but completed as is appropriate, will be attached to the ^ [loan/owner’s] policy.

You may encounter reciprocal access easements in connection with commercial property. It is not uncommon for owners of adjacent commercial property to grant each other the right to use portions of their properties for ingress and egress of vehicles and pedestrian traffic. Sometimes easements for parking are also granted. Usually, one of the parcels has direct access to a publicly maintained road, but not always. In either case, the reciprocal easements benefit and burden both owners’ properties. The grant of easements is usually done by way of recorded declaration. The declaration usually details the extent of the easement, sometimes limits the hours of use of the easement, and sets out duties of each owner regarding creation and/or maintenance of the easement areas. Exception should be made in Schedule B to the instrument creating the easements (i.e. Easements as set forth in Declaration recorded in Book ___ at Page ___) and there should also be the following exception:

E2NoCov This policy does not insure against loss or damage which arises from a failure to comply with the terms and conditions of Declaration creating the insured easement as set forth in Schedule C hereof”.

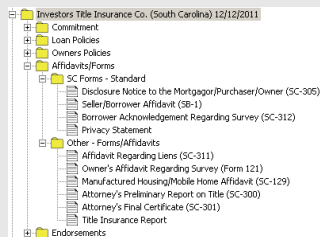
The legal description should include the easement to be insured. This can be done either by “together with” language or setting out the easement as a separate parcel, as follows:

‘Parcel 2: An easement for ingress, egress and access of vehicular and pedestrian traffic as set for in Declaration recorded in Book ___ at Page ____.’”

At the conclusion of the presentation, the group is impressed with the attorney’s knowledge about easements and decides to hire him to file a lawsuit against the church in an effort to seek access by way of prescriptive easement. After 3 years of litigation, a good bit of expense and an appeal by the church from the master-in-equity’s grant of an easement, the Court of Appeals affirmed the Master’s decision granting the easement. The case is entitled *Hartley vs. John Wesley Methodist Church of John’s Island* and can be found as opinion 3642 on the court of appeals web site (www.sccourts.org).

If you have questions about sufficiency of access, please give us a call in order that we may discuss the matter.

Attention SoftPro Users!



Download Investors Title’s ReadyDocs to get updated affidavits at www.softprocorp.com.

Reconciliations

[Click Here to Download](#)



Are you performing a full three-way reconciliation?

Reconciliation Guide includes the three-way reconciliation process for each software.

LIBRARY USER NAME & PASSWORD IS REQUIRED TO OPEN

Welcome 2012!

On behalf of your Investors' team in South Carolina, I would like to wish all of you a very Happy New Year! It is with great pleasure that we enter 2012 with each of you as our Issuing Agents and Approved Attorneys. This year promises to be an exciting year as we continue to focus on providing the best agent and approved attorney support possible.

Thank you for another successful year of growth. While the market continues to challenge each of us, we have held steadfast and found opportunities for business. While the refinance business may slow down somewhat, we are encouraged that purchase business appears to be increasing.

2012 promises to be an exciting year with upcoming RESPA changes, continued focus on technology advancements, increased offerings of CLE and training courses from our iUniversity and our most recent entry into the Georgia market.

Welcome to our new Georgia agents! We are proud to have you join our Investors family and look forward to working with you for years to come.

Please join us in welcoming Justin Gilliam to the Investors Title Insurance Company team in South Carolina. As Marketing Representative for the State of Georgia, Justin will be responsible for establishing and maintaining new agency relationships in Georgia which will be supported by the SC Investors Title Office.



Justin entered the title insurance industry as a staff auditor in 1999, working in the Regional Office of an underwriter in Atlanta, GA. From 1999-2005, he served as a staff auditor, senior auditor, Southeast Audit Manager, and Southeast Regional Quality Assurance Manager. Since 2005, Justin has worked as an Agency Manager, servicing agents and developing new relationships in the Southeast Region. Justin Gilliam is an Atlanta native, currently residing north of Atlanta with his wife, Carrie, and their two sons, Carter and Colby. He earned a BS in Management (emphasis in finance and accounting) from Carson Newman College in Jefferson City, TN.

Wishing you much success in the coming year,

A handwritten signature in cursive script that reads "Kim Wells".

Kim Wells, VP Marketing & Operations Manager
Investors Title Insurance Company



RISKY BUSINESS Claims Corner

The leading **cause** of claims in the 4th quarter of 2011 is prior unsatisfied mortgages.

The leading **cost** of claims for the 4th quarter is improper execution of documents (no witnesses).

Other top causes of claims are as follows:

#2 Prior out conveyance

#3 Errors in legal descriptions

#4 Property line disputes

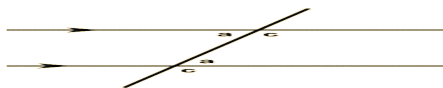
What can you do to eliminate errors?

Underwriting Requirements Amended for the ALTA Homeowner's Policy

The underwriting requirements have been amended for the ALTA 2010 Homeowners Policy. This policy can be issued if the following criteria have been met:

- Completed Improved one to four family residence or condominium unit
- Insured owner is a natural person (No corporations or LLC's)
- Purchase or refinance
- Lot in a platted subdivision or condominium unit **OR lot of 5 acres or less with:**
 - **Survey verifying improvement on the Land**
 - **Verification of actual vehicular access**
 - **Verification of single family zoning and subdivision compliance**

Please contact the SC Office should you have any questions.



The Audit Angle

By: Charles Smith, CFE, Auditor

Does your bank provide you with cancelled checks on your Real Estate IOLTA account?

One of the most common findings of audits conducted relates to the closing attorney not having sufficient access to the cancelled checks on their Real Estate IOLTA account.

*Rule 417 - 1(g) requires that the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of six years after termination of each legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. §5001 et. seq., recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. §5002(16) as a paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. §5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number of years.

Cancelled checks can be used as a tool in the deterrence against check tampering schemes. There are four major types of schemes that fall under this category:

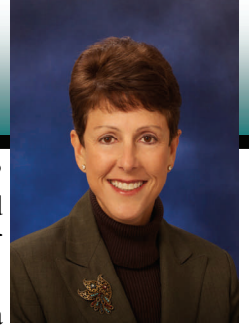
1. Forged maker schemes involve forging an authorized signature on a company check.
2. Forged endorsement schemes consist of forging the signature endorsement of an intended recipient of a company check.
3. Altered payee schemes involve changing the payee designation on the check to the perpetrator or an accomplice.
4. Authorized maker schemes occur when employees with signature authority write fraudulent checks for their own benefit.

It is recommended that all cancelled checks be independently reviewed for alterations and forgeries by someone other than those who have access to issue and/or sign checks. In instances where proper segregation of duties is not plausible (i.e. small firms and sole practitioners), this duty should be performed by the attorney(s) themselves.



New Year's Resolutions!

By: Susan Stewart



Did you make any resolutions for 2012? Now for the more critical inquiry-are you keeping them? Well, one way to help is to keep reminders around as to the goals you wish to achieve. I'd like to add one to your list. Keep RESOLUTIONS (and in general, all artificial entities) in the forefront of your thoughts when handling your real estate transactions.

Why is this important? It is not uncommon when you receive a title report to begin to prepare a commitment and find that title is actually held in the name of a corporation, partnership, church or other artificial entity. And don't forget, the buyer or borrower may be an artificial entity as well and it is equally important to evaluate the requirements necessary to properly issue an owner policy in the name of that entity or to insure the mortgage transaction signed by that owner. Artificial entities are not issued ID cards that can be presented to you at closing so you have to do a little more investigatory work to verify their authority to be involved in the transaction at hand.

So what do you do with these creatures of statute, spawned by the Secretary of State? The requirements vary by type of entity, but generally it will be necessary to inquire as to the state of creation of your seller and buyer or borrower. If a corporation or LLC is selling or purchasing, it will be necessary to contact the Secretary of State's office in the state where they were incorporated. This office will be able to provide you information as to the date the entity came into existence and whether or not they continue to be in compliance with the laws of the state of incorporation so that they may continue to act. It is important that the entity was created prior to taking title to land and that it is in good standing at the time of sale or borrowing.

You need to also ask to see the by-laws of the corporation to verify that the type of transaction is actually contemplated by the creation of the entity. Officers of a corporation are named to transact business on behalf of the entity. With a church or other association you may need to request a copy of the church rules of governance as there may be additional requirements with which to comply in order to affect a valid sale, purchase or security interest. The state office can assist you in determining what each particular denomination may require. Then, you can prepare a RESOLUTION to be executed by the Board of Directors or Corporate Secretary, verifying the authority of a particular individual.

A limited liability company is created upon the filing of Articles of Organization at the Secretary of State's office. It can be run by members or by a manager, as its Articles declare. If a member is to execute documents on behalf of the LLC and such member is also an artificial entity, you must make the same inquiries as to its authority. If the transaction involves all or substantially all of the assets, a majority vote of the members may be required.

If dealing with a partnership, look to the Partnership Agreement for authority, including all amendments. A limited partnership is required to file a certificate of limited partnership at the Secretary of State and also an affidavit in the county records as to the names of the general partners who are authorized to sign documents on its behalf relating to land.

THEREFORE, BE IT RESOLVED that when dealing with artificial entities there is a lot more behind the scenes work to do and the state office is here to help you get through it. Please don't hesitate to call!!

Got a question?

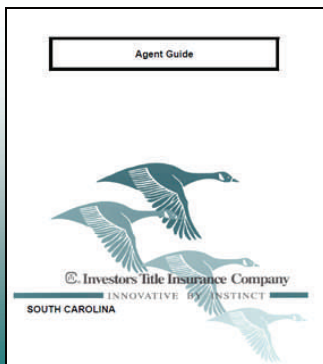


Let the Agent Guide help you!

Library username and password is required to open.

[SC Agent Guide](#)

[GA Agent Guide](#)





Front row: (L to R) Cody Wells, Hillary Erickson, Kim Wells, Susan Stewart, Mindy Cox
 Back row: (L to R) Carol Richardson, Missy Lawhorne, Charlie Smith, Jeanna King, Gray Olive and Justin Gilliam

INVESTORS TITLE INSURANCE COMPANY

Based in Chapel Hill, North Carolina, Investors Title Insurance Company is a publicly held title insurance underwriter that writes policies to protect mortgage lenders and homeowners from unforeseen claims made against title to real property.

What We Do

Parent company, Investors Title Company, and its subsidiaries, specialize in residential and commercial title insurance, §1031 exchanges, reverse exchanges, title agency management services and trust and capital management services. Our title insurance policies are written through two subsidiaries - Investors Title Insurance Company and National Investors Title Insurance Company. We also coordinate searches, title products and closing services for commercial customers, and we are a qualified intermediary in connection with §1031 exchanges of like-kind property.

Focus on Growth

Investors Title Insurance Company is a dynamic company, carefully integrating new products, territories and business partners. Our business philosophy includes choosing agents and business partners based on mutual interest, long-term growth potential, and sound operating principles. In addition, we are committed to providing 100% dedicated support.

Ratings

Investors Title Insurance Company is consistently rated as one of the most financially stable title insurance companies in the United States by a leading title insurance ratings firm, Demotech, Inc. (for more information, visit www.demotech.com).

Demotech, Inc. - A Double Prime Unsurpassed - Financial Stability Rating®





1st Quarter 2012 Training Calendar

Course	CLE/CE Hours	Scheduled Times	Location	Dates Offered
Underwriting: ITIC Style	4	10am to 3pm	State Office	January 10, 2012
SoftPro	5.5	9am to 4pm	State Office	January 12, 2012
Setting the Commercial Bar	4	10am to 3pm	State Office	January 19, 2012
The New Mutual Indemnification Agreement	1	10am to 11am	Webinar	January 24, 2012
Keeping the Trust	3 (Ethics)	9am to Noon	State Office	February 2, 2012
Endorsements	3	10am to 2pm	State Office	February 7, 2012
Behind the Scenes: Real Estate Workflow	4	10am to 3pm	State Office	February 14, 2012
Matters of Survey	2	10am to Noon	State Office	February 16, 2012
SoftPro	5.5	9am to 4pm	State Office	March 7, 2012
Exploring Expanded Coverages	1	10am to 11am	Webinar	March 13, 2012
Underwriting: ITIC Style	4	10am to 3pm	State Office	March 15, 2012

You can also register by visiting Training Registration Page at

<http://events.constantcontact.com/register/event?llr=h45vr4eab&oeidk=a07e4pzny86f03b47ad>.

Title Talks:

Chain of Title-*available until 02-01-2012*:

<https://www1.gotomeeting.com/register/400536192>

Short Form Policy and Addendum-*available until 03-07-2012*:

<https://www1.gotomeeting.com/register/346247680>

Limited Searches – *available until 06-23-2012*

<https://www1.gotomeeting.com/register/397616801>

Endorsements referenced on the '06 Loan Policy
– *available until 04-14-2012*

<https://www1.gotomeeting.com/register/331856153>

SC Bar CLE's - Distance Learning:

Access & Easements: You CAN Get There From Here - 1.0 hrs CLE

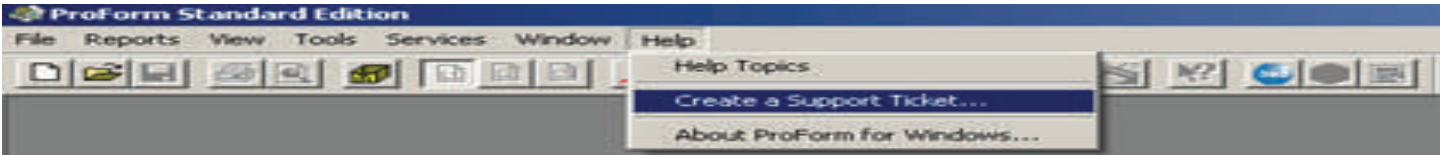
2010 RESPA and Regulatory Update - 1.75 hrs CLE

"Must Haves" for SC Real Estate Documents – 1.5 hrs CLE

Curing Title Problems -2.0 hrs CLE

Title Insurance Ethics – 0.5 hrs CLE (Ethics)

RESPA Reform: What is it and How Will it Impact You? - 1.8 hrs CLE



Need SoftPro help? Create a Support Ticket directly from ProForm.

See step-by-step instructions attached to the newsletter.

iJacket Manager powered by Investors Title Log Out
Help
Return To ITC Rep
Options

Agency Profile New File Reports Specimens

Orders Commitments Policies Remittance Cancelled

Search: Search Reset # Records per page: 10

Agency Profile New File Reports Specimens

Residential (R) Or Non-Residential (NR)

Reminder - Indicate Property Type on your remittance report.

The NAIC's definition of 'Residential' is as follows:

Real property having a house, individual condominium unit, mobile home permanently affixed to real estate, or other dwelling unit intended principally for the occupancy of from one to four (1-4) families, but does not include multifamily structures intended for the use of 5+ families, undeveloped lots, or real estate intended principally for business, commercial, industrial, religious, educational or agricultural purposes even if some portion of the real estate is used for residential purposes.

Agent/Settlement Provider

Select Agent/Settlement Provider: [\(Use Default\)](#)

Click [\(Use Default\)](#) to autofeed Settlement Agent Information

Time Saver Tip

Provider ID
Name
Company/Firm
DBA
Address
City, State, Zip



Agent/Settlement Provider Not Found

**SOUTH CAROLINA
INVESTORS TITLE INSURANCE
COMPANY**

2711 Middleburg Drive
Suite 216
Columbia, SC 29204

Phone: 800-732-8005
Fax: 866-719-3504

E-mail: southcarolina@invtitle.com



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From the Goose's Beak

- Attention TSS users: Integration with iJacket is complete! Contact TSS for the installation and start using the import feature today!
- Are you offering your client the maximum coverage available? If not, please see page 4 for the criteria for issuance of a Homeowner's policy, and offer it when you can.
- iTracs, through Rhyno software, provides daily reconciliation of your trust account and sends you daily reports. For more information, contact the SC office.
- Need to cancel a file in your iJacket workspace that is already showing as remitted? If so, call the SC office and we can cancel the file for you!
- Reminder: ICL's must be generated in your iJacket workspace following the selection of a commitment jacket. The ICL Generator is no longer available.



"Ladies and gentlemen: The story you are about to hear is true. Only the names have been changed to protect the innocent."

Hey Mr. Landman:

I've encountered an issue while doing a title exam. In 1988, June Reynolds reserved a life estate and conveyed a remainder interest to her daughter, Karen Reynolds. However, Karen took title in the name of Karen R. Watson. In 2010, wanting to correct this ambiguity, Karen Reynolds recorded a corrective deed to June Reynolds wherein she identified herself as Karen Reynolds f/k/a Karen R. Watson. This corrective deed was dated December 22, 2010, and was recorded December 29, 2010. Unfortunately, June Reynolds had previously died on January 23, 2010. Her certificate of death is recorded as an exhibit to a declaration filed by Karen on February 8, 2010. No estate has been opened for June.

Who owns the property, Mrs. Reynolds' heirs, Karen Reynolds or someone else?

Sincerely,

Troubled in Turbeville

Dear Troubled:

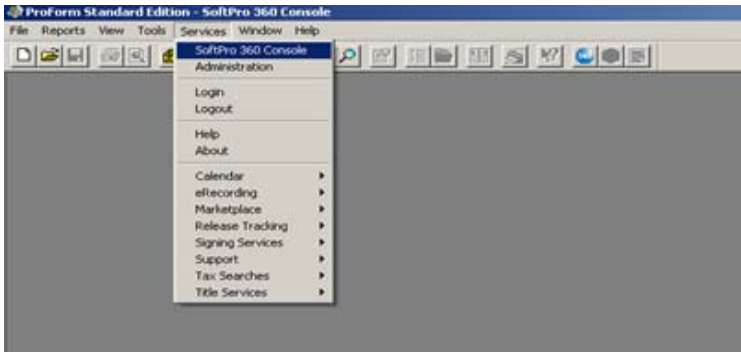
In order for a deed to be effective, it must be signed in the presence of 2 witnesses, and *delivered* to the grantee. Because delivery was presumably not accomplished (absent some unrecorded paranormal activity), the corrective deed fails and Karen Reynolds now owns the property in fee simple.

Sincerely,

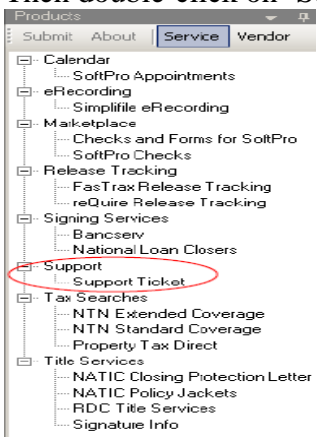
Land

How to Create a Support Ticket using SoftPro 360 or Help

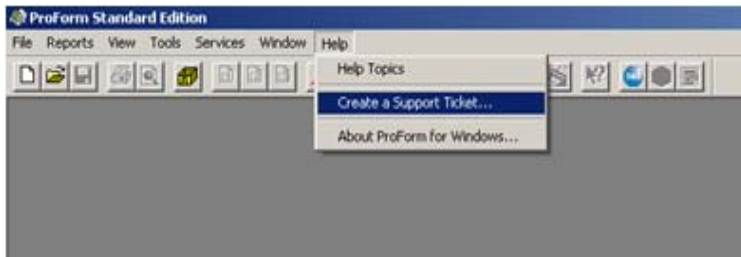
1) Click on the 'Services' tab and then on 'SoftPro 360 Console' or click on 'Help' and then 'Create a Support Ticket'



Then double-click on 'Support Ticket' from the Products Menu



OR

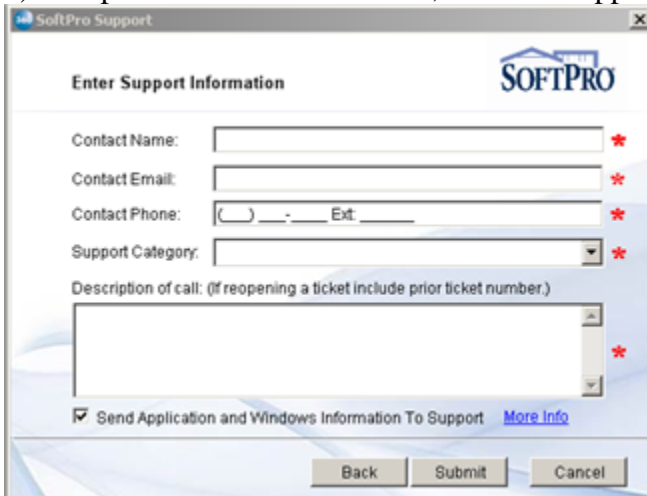


Go to the 'Help' tab and select 'Create a Support Ticket....'

2) Click 'Next'



3) Complete Contact Information, select a 'Support Category' & enter 'Description of call', click 'submit'.

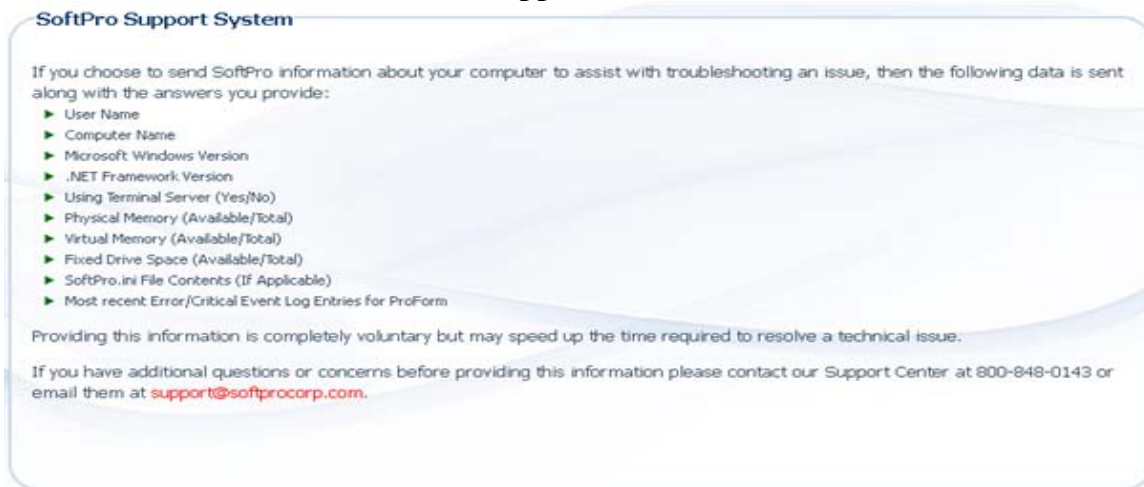


The screenshot shows a dialog box titled "SoftPro Support" with the "SOFTPRO" logo. The main heading is "Enter Support Information". It contains several input fields, each with a red asterisk indicating it is required:

- Contact Name: [Text Input]
- Contact Email: [Text Input]
- Contact Phone: [Text Input with format () - - Ext]
- Support Category: [Dropdown Menu]
- Description of call: (if reopening a ticket include prior ticket number.) [Text Area]

At the bottom, there is a checked checkbox labeled "Send Application and Windows Information To Support" with a link to "More Info". Below the checkbox are three buttons: "Back", "Submit", and "Cancel".

Note: If you leave 'Send Application and Windows Information to Support' checked then the following information will be sent to SoftPro Support:



SoftPro Support System

If you choose to send SoftPro information about your computer to assist with troubleshooting an issue, then the following data is sent along with the answers you provide:

- ▶ User Name
- ▶ Computer Name
- ▶ Microsoft Windows Version
- ▶ .NET Framework Version
- ▶ Using Terminal Server (Yes/No)
- ▶ Physical Memory (Available/Total)
- ▶ Virtual Memory (Available/Total)
- ▶ Fixed Drive Space (Available/Total)
- ▶ SoftPro.ini File Contents (If Applicable)
- ▶ Most recent Error/Critical Event Log Entries for ProForm

Providing this information is completely voluntary but may speed up the time required to resolve a technical issue.

If you have additional questions or concerns before providing this information please contact our Support Center at 800-848-0143 or email them at support@softprocorp.com.

5) The following message will appear to confirm your ticket has been sent to SoftPro:



The screenshot shows a dialog box titled "SoftPro Support" with the "SOFTPRO" logo. The main heading is "Support Request Completed". The text inside reads:

Your SoftPro support ticket request has been submitted. A support ticket number will be emailed to you once it has been created. A SoftPro support representative will contact you at the number provided.

Thank you for your request.

At the bottom right, there is a "Finish" button.