



Community Advocacy Network Action Alert



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Day two of the 2015 Legislative Session will bring **HB 611 - Residential Properties** sponsored by Representative John Wood (R - Winter Haven) in front of its first committee. This bill makes major changes to the estoppel process which are detrimental to association boards and will be heard in the House Civil Justice Subcommittee at 12:30 pm. [Click here](#) to watch the committee.

Among the many problems with **HB 611**, is the forcible cost-shifting this bill will, in fact, impose on association boards and homeowners through an arbitrary cap on what can be charged for an estoppel certificate when it is requested of an association by a lender. The bill proposes:

1. To cap estoppel fees at \$100, with some provision for "rush fees".
 - a. In many cases, the average cost of an estoppel, especially those which are being requested just hours before a closing is to occur, may need to be well above \$100 in order to gather the necessary information and ensure the estoppel's accuracy within such a tightly compressed period of time. The rationale for the concept of capping estoppel fees seems to focus on the hope that this will reduce what a prospective home buyer must pay at a closing and further expedite closings. If that is the issue, then the bill falls woefully short because:
 - i. the litany of other, much higher priced real estate transactions which must be paid at closing are NOT being capped - or even addressed - under this bill. And
 - ii. If there is no economic incentive



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to expedite an estoppel within a few hours, then in many cases, estoppels will be provided no earlier than the statutorily-required 15 days, or under the bill, 10 days, adding further delay to a closing.

b. The "cost shift" will occur when the actual cost of providing an estoppel certificate above the arbitrary cap will end up being passed on to other homeowners in the association, who by the way, have already paid for an estoppel on their home.

2. Additionally, the bill reduces the amount of time an estoppel must be provided by an association from 15 to 10 days, with no clear definition of when the actual "clock" begins and concludes.

We encourage each of you to email the members of the Civil Justice Subcommittee and ask them to vote "NO" on this bill.

Here is an example of what you may say:

Dear Civil Justice Committee:

On behalf of the condominium and homeowners associations in your District, and the tens of thousands of constituents who reside in these community associations, I urge you to oppose HB 611 being heard in your Civil Justice Subcommittee on Wednesday, March 4, 2015. This legislation will have a negative impact to community associations by drastically changing the way the estoppel process is carried out by thousands of associations throughout the State of Florida. Please consider the following:

- If the association does not respond to a written request within the shortened time frame, they will lose any claim, including the association's statutory and contractual right to secure delinquent assessments by recording a claim of lien against the unit/parcel. This will result in a loss of revenue for the association, will result in higher assessments for the membership, and will result in the membership being forced to pay for the contractual debt owed by members who are delinquent in their assessment obligation.*

- *This bill would severely penalize an association's membership for an inadvertent clerical mistake in the preparation of an estoppel that is routinely demanded either the day before or the day of the closing on the property.*
- *The estoppel fees set into statute by the bill do not take into consideration that fees are generally set by contract with a management company or by agreement with a law firm. The fees charged by both the management company and the attorneys are based on the local market and in consideration of the work needed to meet the demand. Florida courts have consistently held that a new law may not impair an existing contractual right, this proposed legislation would do just that.*
- *The nominal \$50 "standard fee" and \$100 "rush fee" proposed by the HB 611 completely marginalizes the reality that the vast majority of estoppel requests come on the "11-hour" just before, or on the same day as, a closing. Under this bill, failure to provide a last minute estoppel with laser precision sacrifices significant association recourse and remedies to address rampant delinquencies within their community.*

Furthermore, if associations are required to do the work of accurate estoppel preparation before getting paid for their services and then chase after any fee, (which HB 611 artificially predetermines regardless of association agreements), additional collection costs will be incurred by the membership.

*Again, please vote **NO** on HB 611 in the Civil Justice Subcommittee on Wednesday, March 4, 2015.*

Thank you.

[Click here](#) to email the members of the House Civil Justice Subcommittee.

We thank you in advance for your efforts!

Warmest personal regards,

Alan B. Garfinkel, Esq.
Katzman Garfinkel, Founding Partner

and Community Advocacy Network, Chairman

The Community Advocacy Network (CAN) is Florida's leading voice for the interests of more than 60,000 community associations statewide, leading the fight against over-regulation of private residential communities by state and local government. Each year since its inception in 2007, CAN has spearheaded important State legislative reforms designed to protect and enhance Florida Community association living and foster the financial stability and operational integrity of common-interest ownership communities statewide.

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