



ASSOCIATIONS LAW REVIEW

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NEW LEGISLATION REGARDING ESTOPPEL CERTIFICATES AFFECTING CONDOMINIUMS, COOPERATIVES AND HOMEOWNERS' ASSOCIATIONS

On June 14, 2017, the Governor signed Senate Bill 398 into law bearing an effective date of July 1, 2017, relating to the estoppel certificates for condominiums (amending F.S. 718.116[8]), cooperatives (amending F.S. 719.108[6]) and homeowners' associations (amending F.S. 720.30851). The following is a summary of the new legislation:

1. Authority to issue estoppel certificates: The Statute provides that the preparer of the certificate must be authorized to prepare estoppel certificates, in accordance with a written resolution adopted by the board or provided by a written management, bookkeeping or maintenance contract. It is the opinion of this author that the foregoing would not apply to legal counsel preparing the certificate since the preparation is considered attorney's fees.

2. Due date for and delivery of the estoppel certificate: The Association has 10 business days after it receives a written or electronic request to have an estoppel certificate issued. To the extent that the association has a website, the website must disclose a person or entity with a street or e-mail address for estoppel certificate requests. The estoppel certificate could be provided to the requesting party either by hand delivery, regular mail or e-mail, and must be sent on the date of the estoppel certificate.

3. Contents of estoppel certificate: The Statute now dictates the format and information to be provided in the estoppel certificate.

The following general information must be disclosed:

(a) The date that the estoppel certificate has been issued.

(b) The names of the owner(s) reflected on the association's books and records.

(c) The unit designation and unit address.

(d) Reference to any parking or garage space number that may be allocated to the particular unit.

(e) If the account has been turned over to legal counsel, then the name and contact information for legal counsel.

(f) The estoppel fee amount.

The following assessment information must be disclosed:

(a) The frequency upon which assessment payments are due and owing, together with the assessment amount.

(b) The date through which the assessment is paid.

(c) The next assessment installment which is due and owing, and in what amount.

(d) A detail of any other monetary obligations due and owing against the unit.

(e) Any sums which will become due after the certificate is issued, through the effective date of the certificate. This includes, but is not limited to, additional interest (per diem rate) and late fees.

The following are 3 items which must be disclosed that require a legal opinion that should be prepared by legal counsel:

(a) Is there is a capital contribution fee, resale fee, transfer fee or other fee due?

(b) Do the rules and regulations of the association require board approval for the transfer of the unit? The Statute was not artfully drafted on this point since the rules and regulations rarely provide for board approval, as that subject is typically contained in the Declaration or By-Laws. This author would interpret this requirement to also indicate whether the governing documents require board approval for the transfer of the unit.

(c) Is there a right of first refusal provided to the Association or unit owners,

and if yes, have the members exercised that right of first refusal?

The following other information must be included:

(a) There must be a statement whether the board approved of the transfer of the unit. This could be a "catch 22" because boards typically do not approve of transfers at a board meeting. The association should understand that boards should be approving (or disapproving) of proposed transfers of title of units since the governing documents typically require board approval, and board approval is accomplished formally at a board meeting.

(b) If the unit is also governed by another association, such as a master association, then the estoppel certificate must disclose the name(s) of such associations and contact information for each of them.

(c) Contact information must be indicated for any insurance maintained by the association. This includes but is not limited to property damage and directors' and officers' liability insurance.

(d) If there is any open violation of a rule and regulation noticed to the owner, then there must be a description of the open violation. Here again the Statute was not artfully drafted by making reference only to rules and regulations, since many violation notices apply to the governing documents as well. This author submits that open violations of the governing documents should be indicated. Please note that if there is an existing open violation which will basically become moot when the title to the unit is transferred, then in that event, there would not be an open violation requiring disclosure.

(e) The association at its option is authorized to include other information.

(f) The officer or authorized agent must sign.

4. **Effective date of the estoppel certificate:** If the estoppel certificate is hand delivered or sent by electronic means, then the certificate must contain a 30-day

effective period. If instead the estoppel certificate is sent by regular mail, then the effective date period is extended to 35 days. If the estoppel contains a mistake or requires additional information for whatever reason, then the association may prepare an amended estoppel certificate which would become effective so long as the sale or refinancing of the unit has not been completed during the effective period; no fee may be charged for such an amended estoppel certificate. An amended estoppel certificate must be sent on the date indicated for issuance, with the 30 or 35-day effective period beginning on the date of issuance of the amended estoppel certificate.

5. Association waiver:

(a) An association waives the right to collect any sums due and owing in excess of that stated in the estoppel certificate where the recipient of the certificate relies in good faith on the sums indicated in the estoppel certificate.

(b) The Statute creates a penalty should the estoppel not be delivered within the 10-day required response, the penalty being a full waiver of the estoppel fee. Associations and their managing agents are well advised to keep track of the 10 business day timeframe.

6. Fees that may be charged: There are several tiers of charges. If there is no delinquent amount due and owing to the association, then the maximum charge for an estoppel certificate is \$250.00. If instead there is a delinquent amount due and owing to the association, then there may be charged an additional sum of \$150.00. If the certificate is requested on an expedited basis and delivered within 3 business days after

the request, then an additional \$100.00 charge may be added. If an estoppel certificate applies to more than one unit owned by the same owner and it is requested at the same time, then the Statute allows for a greater charge based on the number of units requested for the estoppel certificate. The Statute provides for an increase in the allowable charges every 5 years based on a specified CPI index.

7. Coordination between legal counsel and associations and their managing agents:

Associations and managing agents will typically prepare the estoppel certificate on units which have not been forwarded to association counsel for collection activities. Based on the 3 legal questions presented above, we envision that the managing agent will attach the answers from legal counsel as an addendum to the association or managing agent-prepared estoppel certificate. It is the suggestion of this author that the managing agent not prepare estoppel certificates for matters in collection with counsel. Instead, as legal counsel, the attorney will prepare the certificate attaching specific questions to be filled out by the association or managing agent, which will then be attached as an addendum to the attorney-prepared estoppel certificate.

Because of the strict timeframes for the preparation and delivery of the estoppel certificate, it is more important than ever that there is very diligent coordination and cooperation between legal counsel and associations and their managing agents.

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