

2023 Florida House Bill No. 743, Florida One Hundred Twenty-Fifth Regular Session

FLORIDA BILL TEXT

TITLE: Estoppel Letters

VERSION: Introduced

March 07, 2023

Fabricio

 Image 1 within document in PDF format.

SUMMARY: Revises timeframe for mortgagee or mortgage servicer to send estoppel letter; revises requirements for estoppel letter; prohibits mortgagee or mortgage servicer from denying accuracy of estoppel letter; requires payments be applied to unpaid balance of mortgage; provides methods for sending written request for estoppel letter, estoppel letter, & corrected estoppel letter; requires mortgagee or mortgage servicer to take actions within specified time after unpaid balance of loan secured by mortgage has been fully paid; authorizes attorney fees & costs; provides liability.

TEXT:

A bill to be entitled

An act relating to estoppel letters; amending s. 701.04, F.S.; revising the timeframe within which a mortgagee or mortgage servicer must send or cause to be sent an estoppel letter containing specified information; revising the circumstances under which a copy of the instrument showing title in the property or other lawful authorization must be included in a request for an estoppel letter; requiring notice to the mortgagor of a request for an estoppel letter under certain circumstances; revising requirements for an estoppel letter; prohibiting certain actions by the mortgagee or mortgage servicer; authorizing the mortgagee or mortgage servicer to send a corrected estoppel letter under certain circumstances; requiring a mortgagee or mortgage servicer to provide a copy of a corrected estoppel letter to a mortgagor under certain circumstances; providing that a corrected estoppel letter supersedes any previous estoppel letter under certain circumstances; prohibiting the mortgagee or mortgage servicer from denying the accuracy of certain information provided in an estoppel letter under certain circumstances; providing construction; prohibiting payments received pursuant to an estoppel letter from being returned and requiring such payments to be promptly applied to any unpaid balance of the loan properly due under or secured by a mortgage; providing methods for sending a written request for an estoppel letter and for sending an estoppel letter; providing that the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service; requiring the mortgagee or mortgage servicer to take certain actions within a specified time after the unpaid balance of a loan properly secured by a mortgage has been fully paid or paid pursuant to an estoppel letter; authorizing reasonable attorney fees and costs for specified parties in certain civil actions; providing that certain persons may still be personally liable for a loan or other obligation after the recording of a release of a mortgage; conforming provisions to changes made by the act; amending s. 701.041, F.S.; revising the definition of the term “estoppel letter”; conforming provisions to changes made by the act; providing legislative findings; providing for retroactive applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. **Section 701.04, Florida Statutes**, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.--

(1)(a) Within **10** ~~14~~ days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the **mortgagee** holder of a mortgage shall deliver or **mortgage** cause the servicer **shall send or cause to be sent** ~~of the mortgage to deliver to the person making the request at a place designated in the written request~~ an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage. **If the written**

request is made by a person other than the mortgagor, the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request.

(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.

(b) If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:

1. The request must include a copy of the instrument showing title in the property or lawful authorization.

2. The estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include:

1. The total unpaid balance of the loan due under or secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and

2. Interest accruing on a per-day basis for the unpaid balance from and after the date specified in the estoppel letter, if applicable.

(c)1. Except for mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded, the mortgagee or mortgage servicer may not qualify, reserve the right to change, or condition or disclaim the reliance of others on the information provided in an estoppel letter under paragraph (b), and any attempt to do so is void and unenforceable. However, if the mortgagee or mortgage servicer determines that any of the information provided in the estoppel letter under paragraph (b) was inaccurate, the mortgagee or mortgage servicer may send a corrected estoppel letter to the person who requested the estoppel letter in the same manner as used to respond to the original written request. If the original written request is made by a person other than the mortgagor, the mortgagee or mortgage servicer must also provide a copy of any corrected estoppel letter to the mortgagor.

2. If the person who requested the original estoppel letter under paragraph (a) receives a corrected estoppel letter by 3 p.m. in such person's time zone at least 1 business day before a payment is issued in reliance on the previous estoppel letter, the corrected estoppel letter supersedes all prior estoppel letters.

3. If any of the information provided in the estoppel letter under paragraph (b) was inaccurate, but the person who requested the estoppel letter did not timely receive a corrected estoppel letter as provided in subparagraph 2., the mortgagee or mortgage servicer may not deny the accuracy of such information as against any person who relied on it. This subparagraph does not affect the right of a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for payment of the loan or other obligations secured by the mortgage, nor does it limit any claim or defense to recovery which such person may have at law or in equity on a per-day basis.

(d)3. The mortgagee or mortgage servicer of the mortgagee acting in accordance with a request in substantial compliance with this subsection paragraph is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(e) If a payment is received at the location and in the manner specified by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer must accept and may not return any payment received in reliance on an estoppel letter and must promptly apply such payment to the unpaid balance of the loan properly due under or secured by the mortgage.

(f)1. A written request for an estoppel letter under paragraph (a) must be sent to the mortgagee or mortgage servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic

means at the address made available by the mortgagee or mortgage servicer for such purpose or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter. The written request is considered received by the mortgagee or mortgage servicer:

a. Five business days after the request sent by first-class mail is deposited with the United States Postal Service;

b. The day the request is delivered by a common carrier delivery service; or

c. The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.

If any of the days in sub-subparagraph a., sub-subparagraph b., or sub-subparagraph c. fall on a Saturday, Sunday, or holiday specified in s. 110.117(1) or the laws of the United States, the request for an estoppel letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

2. The mortgagee or mortgage servicer must send an estoppel letter by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgagee or mortgage servicer ends on a Saturday, Sunday, or holiday specified in s. 110.117(1) or the laws of the United States, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

(g)(e) **Notwithstanding s. 655.059**, a mortgagee or mortgage servicer mortgage holder may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information notwithstanding s. 655.059.

(2)(a) **Within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to an estoppel letter under subsection (1), whichever is earlier, the mortgagee or mortgage servicer shall execute in writing an instrument acknowledging release of the mortgage; have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. The prevailing party in a civil action brought against the mortgagee or mortgage servicer to enforce the requirements of this paragraph is entitled to reasonable attorney fees and costs.**

(b) **The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations previously secured by the mortgage.**

(3)(2) **Within 60 days after the unpaid balance** Whenever the amount of money due on a any mortgage, lien, or judgment has been fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the payment was made, shall execute in writing an instrument acknowledging satisfaction of the mortgage, lien, or judgment; and have the instrument acknowledged, or proven, and **send it or cause it to be sent for recording** duly entered in the official records of the proper county; **and** Within 60 days after the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. ~~In the case of a civil action arising out of this section,~~ **The prevailing party in a civil action brought against the creditor or assignee, or the attorney of record in the case of a judgment, to enforce the requirements of this subsection** is entitled to reasonable attorney fees and costs.

(4)(3) **When** Whenever a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is the responsibility of the **person** party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 2. Paragraph (a) of subsection (1) and subsection (2) of section 701.041, Florida Statutes, are amended to read:

701.041 Title insurer; mortgage release certificate.--

(1) DEFINITIONS.--For purposes of this section:

(a) "Estoppel letter" means a statement **containing, at a minimum, the information required in s. 701.04(1)(b)** of the amount of:

~~1. The unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage.~~

~~2. Interest on a per-day basis for the unpaid balance.~~

(2) CERTIFICATE OF RELEASE.--An officer or duly appointed agent of a title insurer may, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan **properly due under or** secured by the mortgage was made in accordance with **an estoppel letter** a payoff statement furnished by the mortgagee or the mortgage servicer.

Section 3. The Legislature finds that the timeliness and accuracy of an estoppel letter is critical because the parties to a real estate transaction must rely on the estoppel letter to establish the loan payoff amount necessary to release the mortgage, which in turn will allow the owner to confer clean title to a buyer or to refinance the property. The Legislature further finds that estoppel letters increasingly contain conditional language disclaiming the ability of an owner to rely on the stated loan payoff amounts, extending even to the return of such payments submitted by owners. These practices create unnecessary delays in the efficient operation of this state's real estate market, which is a vital economic contributor to this state, and impose needless costs and burdens on property owners and buyers. In addition, the Legislature finds that real estate lending, mortgages, real estate transactions, and estoppel letters are extensively regulated under both Florida and federal law. The Legislature finds and determines that this act makes changes to state law which appropriately balance the parties' interests, are reasonable and necessary to serve and achieve an important state interest, are necessary for the prosperity and welfare of the state and its property owners and inhabitants, and must be applied to existing mortgages in order to provide effective relief.

Section 4. This act applies to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2023.

Section 5. This act shall take effect October 1, 2023.

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