

Estoppel Letter Requirements for HOAs and Condos

When an owner in a Florida community operated by a homeowner's association or a condominium association desires to sell his parcel or desires to pledge his parcel as security for a loan, the association is often asked to provide what is known as an "estoppel letter." Historically, such a letter was intended to inform the prospective buyer or the lender with information about amounts remaining outstanding from either regular or special assessments owed to the association. Now, both the Homeowners Association Act (Chapter 720) and the Condominium Act (Chapter 718) contain specific requirements for providing estoppel letters and identify the information which associations are required to provide.

In recent years, we have seen lenders and title agents create their own forms which ask associations or their managers to provide explanations, statistics or other information that is not expressly required to be disclosed according to the statutes. Those associations and managers who provide information that goes beyond what is required by the applicable statutes risk exposing their associations to liability that may be avoided by simply providing what the law requires and nothing else. When receiving a request for information which is not required by law, a prudent director or manager may simply decline to provide responses to those inquiries and respond that the association will provide only the information the law requires. Some associations create their own forms based upon the statutory requirements and use those in response to requests for estoppel letters or other information in lieu of the forms which are provided by the prospective purchasers, lenders or their agents. Will that ruffle some feathers? Perhaps. How to respond to inquiries that go beyond what the law requires should be the subject of a discussion with the association's attorney.

The Homeowners Association Act and the Condominium Act are nearly identical concerning the requirements for providing estoppel certificates. Below is the text from the Condominium Act (Section 718.116), but you may find the nearly identical language in the Homeowners Association Act (Section 720.30851).

Within 10 business days after receiving a written or electronic request therefor from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(a) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:
2. Name(s) of the unit owner(s) as reflected in the books and records of the association:
3. Unit designation and address:
4. Parking or garage space number, as reflected in the books and records of the association:
5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.
6. Fee for the preparation and delivery of the estoppel certificate:
7. Name of the requester:
8. Assessment information and other information:

ASSESSMENT INFORMATION:

- a. The regular periodic assessment levied against the unit is \$ per (insert frequency of payment) .
- b. The regular periodic assessment is paid through (insert date paid through) .
- c. The next installment of the regular periodic assessment is due (insert due date) in the amount of \$.
- d. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit owner for a specific unit is provided.
- e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

- f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? (Yes) (No). If yes, specify the type and the amount of the fee.
- g. Is there any open violation of rule or regulation noticed to the unit owner in the association official records? (Yes) (No).
- h. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? (Yes) (No). If yes, has the board approved the transfer of the unit? (Yes) (No).
- i. Is there a right of first refusal provided to the members or the association? (Yes) (No). If yes, have the members or the association exercised that right of first refusal? (Yes) (No).
- j. Provide a list of, and contact information for, all other associations of which the unit is a member.
- k. Provide contact information for all insurance maintained by the association.
- l. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

(f) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(k), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$150.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.
2. For 26 to 50 units, \$1,000.
3. For 51 to 100 units, \$1,500.
4. For more than 100 units, \$2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(i) The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

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