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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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



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11 owner, or any other person lawfully authorized to act on behalf
12 of a mortgagor or record title owner of the property, the
13 ~~mortgagee holder of a mortgage shall deliver or mortgage cause~~
14 ~~the servicer shall send or cause to be sent of the mortgage to~~
15 ~~deliver to the person making the request at a place designated~~
16 ~~in the written request~~ an estoppel letter setting forth the
17 unpaid balance of the loan secured by the mortgage. If the
18 written request is made by a person other than the mortgagor,
19 the request must include a copy of the instrument showing such
20 person's title in the property or other lawful authorization,
21 and the mortgagee or mortgage servicer must notify the mortgagor
22 of the request.

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

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

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

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

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



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40 2. Interest accruing on a per-day basis for the unpaid
41 balance, if applicable.

42 (c)1. Except for mortgages for which a notice of lis
43 pendens in a foreclosure action or a suggestion of bankruptcy
44 has been properly filed and recorded, the mortgagee or mortgage
45 servicer may not qualify, reserve the right to change, or
46 condition or disclaim the reliance of others on the information
47 provided in an estoppel letter under paragraph (b), and any
48 attempt to do so is void and unenforceable. However, if the
49 mortgagee or mortgage servicer determines that any of the
50 information provided in the estoppel letter under paragraph (b)
51 was inaccurate, the mortgagee or mortgage servicer may send a
52 corrected estoppel letter to the person who requested the
53 estoppel letter.

54 2. If the person who requested the original estoppel letter
55 under subparagraph (f)1. receives a corrected estoppel letter by
56 3 p.m. in such person's time zone at least 1 business day before
57 a payment is issued in reliance on the previous estoppel letter,
58 the corrected estoppel letter supersedes all prior estoppel
59 letters.

60 3. If any of the information provided in the estoppel
61 letter under paragraph (b) was inaccurate, but the person who
62 requested the estoppel letter did not timely receive a corrected
63 estoppel letter as provided in subparagraph 2., the mortgagee or
64 mortgage servicer may not deny the accuracy of such information
65 as against any person who relied on it. This subparagraph does
66 not affect the right of a mortgagee to recover any sum that it
67 did not include in an estoppel letter from any person liable for
68 payment of the loan or other obligations secured by the



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69 mortgage, nor does it limit any claim or defense to recovery
70 that such person may have at law or in equity ~~on a per-day~~
71 basis.

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

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

84 (f)1. A written request for an estoppel letter under
85 paragraph (a) must be sent to the mortgagee or mortgage servicer
86 by first-class mail, postage prepaid; by common carrier delivery
87 service; or by e-mail, facsimile, or other electronic means at
88 the address made available by the mortgagee or mortgage servicer
89 for such purpose or through an automated system provided by the
90 mortgagee or mortgage servicer for requesting an estoppel
91 letter. The written request is considered received by the
92 mortgagee or mortgage servicer:

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

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

97 c. The day the request is sent by e-mail, facsimile, or



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98 other electronic means or through an automated system provided
99 by the mortgagee or mortgage servicer for requesting an estoppel
100 letter.

101
102 If any of the days in sub-subparagraph a., sub-subparagraph b.,
103 or sub-subparagraph c. falls on a Saturday, Sunday, or legal
104 holiday under the laws of this state or the United States, the
105 request for an estoppel letter is considered timely received by
106 the mortgagee or mortgage servicer on the next business day.

107 2. The mortgagee or mortgage servicer must send an estoppel
108 letter by first-class mail; by common carrier delivery service;
109 or by e-mail, facsimile, or other electronic means, as directed
110 in the written request, or through an automated system provided
111 by the mortgagee or mortgage servicer for this purpose. However,
112 the mortgagee or mortgage servicer is not required to pay for a
113 common carrier delivery service. If the 10-day period after a
114 written request is received by the mortgagee or mortgage
115 servicer ends on a Saturday, Sunday, or legal holiday under the
116 laws of this state or the United States, the estoppel letter is
117 considered timely if it is sent by the close of business on the
118 next business day.

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

124 (2) (a) Within 60 days after the unpaid balance of a loan
125 secured by a mortgage has been fully paid or paid pursuant to an
126 estoppel letter under subsection (1), whichever is earlier, the



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127 mortgagee or mortgage servicer shall execute in writing an
128 instrument acknowledging release of the mortgage; have the
129 instrument acknowledged, or proven, and send it or cause it to
130 be sent for recording in the official records of the proper
131 county; and send or cause to be sent the recorded release to the
132 mortgagor or record title owner of the property. The prevailing
133 party in a civil action brought against the mortgagee or
134 mortgage servicer to enforce the requirements of this paragraph
135 is entitled to reasonable attorney fees and costs.

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

140 (3)-(2) Within 60 days after the unpaid balance ~~Whenever the~~
141 ~~amount of money due on a any mortgage, lien, or judgment has~~
142 ~~been fully paid to the person or party entitled to the payment~~
143 ~~thereof, the mortgagee, creditor, or assignee, or the attorney~~
144 ~~of record in the case of a judgment, to whom the payment was~~
145 ~~made, shall execute in writing an instrument acknowledging~~
146 ~~satisfaction of the mortgage, lien, or judgment; and have the~~
147 ~~instrument acknowledged, or proven, and duly entered in the~~
148 ~~official records of the proper county; and. Within 60 days after~~
149 ~~the date of receipt of the full payment of the mortgage, lien,~~
150 ~~or judgment, the person required to acknowledge satisfaction of~~
151 ~~the mortgage, lien, or judgment shall send or cause to be sent~~
152 ~~the recorded satisfaction to the person who has made the full~~
153 ~~payment. In the case of a civil action arising out of this~~
154 ~~section, The prevailing party in a civil action brought against~~
155 ~~the creditor or assignee, or the attorney of record in the case~~



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156 of a judgment, to enforce the requirements of this subsection is
157 entitled to reasonable attorney fees and costs.

158 (4) (3) When Whenever a writ of execution has been issued,
159 docketed, and indexed with a sheriff and the judgment upon which
160 it was issued has been fully paid, it is the responsibility of
161 the person party receiving payment to request, in writing,
162 addressed to the sheriff, return of the writ of execution as
163 fully satisfied.

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

166 701.041 Title insurer; mortgage release certificate.-

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

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

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

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

175 (2) CERTIFICATE OF RELEASE.-An officer or duly appointed
176 agent of a title insurer may, on behalf of a mortgagor or a
177 person who acquired from the mortgagor title to all or a part of
178 the property described in a mortgage, execute a certificate of
179 release that complies with the requirements of this section and
180 record the certificate of release in the real property records
181 of each county in which the mortgage is recorded if a
182 satisfaction or release of the mortgage has not been executed
183 and recorded after the date payment in full of the loan properly
184 due under or secured by the mortgage was made in accordance with



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185 an estoppel letter ~~a payoff statement~~ furnished by the mortgagee
186 or ~~the~~ mortgage servicer.

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

210 Section 4. This act shall take effect October 1, 2022, and
211 applies to all mortgages existing as of that date and entered
212 into on or after that date, as well as to all loans secured by
213 such mortgages.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to mortgage payoff 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; 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



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243 secured by a mortgage; providing methods for sending a
244 written request for an estoppel letter and for sending
245 an estoppel letter; providing that the mortgagee or
246 mortgage servicer is not required to pay for a common
247 carrier delivery service; requiring the mortgagee or
248 mortgage servicer to take certain actions within a
249 specified time after the unpaid balance of a loan
250 properly secured by a mortgage has been fully paid or
251 paid pursuant to an estoppel letter; authorizing
252 reasonable attorney fees and costs; providing that
253 certain persons may still be personally liable after
254 the recording of a release of a mortgage; amending s.
255 701.041, F.S.; revising the definition of the term
256 "estoppel letter"; conforming provisions to changes
257 made by the act; providing legislative findings;
258 providing for retroactive applicability; providing an
259 effective date.