

By the Committee on Banking and Insurance; and Senator Burgess

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1                   A bill to be entitled  
2       An act relating to mortgage payoff letters; amending  
3       s. 701.04, F.S.; revising the timeframe within which a  
4       mortgagee or mortgage servicer must send or cause to  
5       be sent an estoppel letter containing specified  
6       information; revising the circumstances under which a  
7       copy of the instrument showing title in the property  
8       or other lawful authorization must be included in a  
9       request for an estoppel letter; requiring notice to  
10      the mortgagor of a request for an estoppel letter  
11      under certain circumstances; revising requirements for  
12      an estoppel letter; prohibiting certain actions by the  
13      mortgagee or mortgage servicer; authorizing the  
14      mortgagee or mortgage servicer to send a corrected  
15      estoppel letter under certain circumstances; providing  
16      that a corrected estoppel letter supersedes any  
17      previous estoppel letter under certain circumstances;  
18      prohibiting the mortgagee or mortgage servicer from  
19      denying the accuracy of certain information provided  
20      in an estoppel letter under certain circumstances;  
21      providing construction; prohibiting payments received  
22      pursuant to an estoppel letter from being returned and  
23      requiring such payments to be promptly applied to any  
24      unpaid balance of the loan properly due under or  
25      secured by a mortgage; providing methods for sending a  
26      written request for an estoppel letter and for sending  
27      an estoppel letter; providing that the mortgagee or  
28      mortgage servicer is not required to pay for a common  
29      carrier delivery service; requiring the mortgagee or

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30 mortgage servicer to take certain actions within a  
31 specified time after the unpaid balance of a loan  
32 properly secured by a mortgage has been fully paid or  
33 paid pursuant to an estoppel letter; authorizing  
34 reasonable attorney fees and costs; providing that  
35 certain persons may still be personally liable after  
36 the recording of a release of a mortgage; amending s.  
37 701.041, F.S.; revising the definition of the term  
38 "estoppel letter"; conforming provisions to changes  
39 made by the act; providing legislative findings;  
40 providing for retroactive applicability; providing an  
41 effective date.

42  
43 Be It Enacted by the Legislature of the State of Florida:

44  
45 Section 1. Section 701.04, Florida Statutes, is amended to  
46 read:

47 701.04 Cancellation of mortgages, liens, and judgments.—

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

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59 the request must include a copy of the instrument showing such  
60 person's title in the property or other lawful authorization,  
61 and the mortgagee or mortgage servicer must notify the mortgagor  
62 of the request.

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

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

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

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

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

80 ~~2. Interest accruing on a per-day basis for the unpaid~~  
81 ~~balance, if applicable.~~

82 ~~(c)1. Except for mortgages for which a notice of lis~~  
83 ~~pendens in a foreclosure action or a suggestion of bankruptcy~~  
84 ~~has been properly filed and recorded, the mortgagee or mortgage~~  
85 ~~servicer may not qualify, reserve the right to change, or~~  
86 ~~condition or disclaim the reliance of others on the information~~  
87 ~~provided in an estoppel letter under paragraph (b), and any~~

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88 attempt to do so is void and unenforceable. However, if the  
89 mortgagee or mortgage servicer determines that any of the  
90 information provided in the estoppel letter under paragraph (b)  
91 was inaccurate, the mortgagee or mortgage servicer may send a  
92 corrected estoppel letter to the person who requested the  
93 estoppel letter.

94 2. If the person who requested the original estoppel letter  
95 under subparagraph (f)1. receives a corrected estoppel letter by  
96 3 p.m. in such person's time zone at least 1 business day before  
97 a payment is issued in reliance on the previous estoppel letter,  
98 the corrected estoppel letter supersedes all prior estoppel  
99 letters.

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

112 (d)3- The mortgagee or mortgage servicer ~~of the mortgagee~~  
113 acting in accordance with a request in substantial compliance  
114 with this subsection ~~paragraph~~ is expressly discharged from any  
115 obligation or liability to any person on account of the release  
116 of the requested information, other than the obligation to

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117 comply with the terms of the estoppel letter.

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

124 (f)1. A written request for an estoppel letter under  
125 paragraph (a) must be sent to the mortgagee or mortgage servicer  
126 by first-class mail, postage prepaid; by common carrier delivery  
127 service; or by e-mail, facsimile, or other electronic means at  
128 the address made available by the mortgagee or mortgage servicer  
129 for such purpose or through an automated system provided by the  
130 mortgagee or mortgage servicer for requesting an estoppel  
131 letter. The written request is considered received by the  
132 mortgagee or mortgage servicer:

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

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

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

141  
142 If any of the days in sub-subparagraph a., sub-subparagraph b.,  
143 or sub-subparagraph c. falls on a Saturday, Sunday, or legal  
144 holiday under the laws of this state or the United States, the  
145 request for an estoppel letter is considered timely received by

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146 the mortgagee or mortgage servicer on the next business day.

147 2. The mortgagee or mortgage servicer must send an estoppel  
148 letter by first-class mail; by common carrier delivery service;  
149 or by e-mail, facsimile, or other electronic means, as directed  
150 in the written request, or through an automated system provided  
151 by the mortgagee or mortgage servicer for this purpose. However,  
152 the mortgagee or mortgage servicer is not required to pay for a  
153 common carrier delivery service. If the 10-day period after a  
154 written request is received by the mortgagee or mortgage  
155 servicer ends on a Saturday, Sunday, or legal holiday under the  
156 laws of this state or the United States, the estoppel letter is  
157 considered timely if it is sent by the close of business on the  
158 next business day.

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

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

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175 is entitled to reasonable attorney fees and costs.

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

180 (3) ~~(2)~~ Within 60 days after the unpaid balance ~~Whenever the~~  
181 ~~amount of money due on a any mortgage, lien, or judgment has~~  
182 ~~been fully paid to the person or party entitled to the payment~~  
183 ~~thereof, the mortgagee, creditor, or assignee, or the attorney~~  
184 ~~of record in the case of a judgment, to whom the payment was~~  
185 ~~made, shall execute in writing an instrument acknowledging~~  
186 ~~satisfaction of the mortgage, lien, or judgment; and have the~~  
187 ~~instrument acknowledged, or proven, and duly entered in the~~  
188 ~~official records of the proper county; and. Within 60 days after~~  
189 ~~the date of receipt of the full payment of the mortgage, lien,~~  
190 ~~or judgment, the person required to acknowledge satisfaction of~~  
191 ~~the mortgage, lien, or judgment shall send or cause to be sent~~  
192 ~~the recorded satisfaction to the person who has made the full~~  
193 ~~payment. In the case of a civil action arising out of this~~  
194 ~~section, The prevailing party in a civil action brought against~~  
195 the creditor or assignee, or the attorney of record in the case  
196 of a judgment, to enforce the requirements of this subsection is  
197 entitled to reasonable attorney fees and costs.

198 (4) ~~(3)~~ When ~~Whenever~~ a writ of execution has been issued,  
199 docketed, and indexed with a sheriff and the judgment upon which  
200 it was issued has been fully paid, it is the responsibility of  
201 the person ~~party~~ receiving payment to request, in writing,  
202 addressed to the sheriff, return of the writ of execution as  
203 fully satisfied.

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

206 701.041 Title insurer; mortgage release certificate.-

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

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

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

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

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

227 Section 3. The Legislature finds that the timeliness and  
228 accuracy of an estoppel letter is critical because the parties  
229 to a real estate transaction must rely on the estoppel letter to  
230 establish the loan payoff amount necessary to release the  
231 mortgage, which in turn will allow the owner to confer clean  
232 title to a buyer or to refinance the property. The Legislature



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233 further finds that estoppel letters increasingly contain  
234 conditional language disclaiming the ability of an owner to rely  
235 on the stated loan payoff amounts, extending even to the return  
236 of such payments submitted by owners, creating unnecessary  
237 delays in the efficient operation of this state's real estate  
238 market, which is a vital economic contributor to this state, and  
239 imposing needless costs and burdens on property owners and  
240 buyers. In addition, the Legislature finds that real estate  
241 lending, mortgages, real estate transactions, and estoppel  
242 letters are extensively regulated under both Florida and federal  
243 law. The Legislature finds and determines that this act makes  
244 changes to state law that appropriately balance the parties'  
245 interests, are reasonable and necessary to serve and achieve an  
246 important state interest, are necessary for the prosperity and  
247 welfare of the state and its property owners and inhabitants,  
248 and must be applied to existing mortgages in order to provide  
249 effective relief.

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