

20221016e1

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; requiring
16 a mortgagee or mortgage servicer to provide a copy of
17 a corrected estoppel letter to a mortgagor under
18 certain circumstances; providing that a corrected
19 estoppel letter supersedes any previous estoppel
20 letter under certain circumstances; prohibiting the
21 mortgagee or mortgage servicer from denying the
22 accuracy of certain information provided in an
23 estoppel letter under certain circumstances; providing
24 construction; prohibiting payments received pursuant
25 to an estoppel letter from being returned and
26 requiring such payments to be promptly applied to any
27 unpaid balance of the loan properly due under or
28 secured by a mortgage; providing methods for sending a
29 written request for an estoppel letter and for sending

20221016e1

30 an estoppel letter; providing that the mortgagee or
31 mortgage servicer is not required to pay for a common
32 carrier delivery service; requiring the mortgagee or
33 mortgage servicer to take certain actions within a
34 specified time after the unpaid balance of a loan
35 properly secured by a mortgage has been fully paid or
36 paid pursuant to an estoppel letter; authorizing
37 reasonable attorney fees and costs; providing that
38 certain persons may still be personally liable after
39 the recording of a release of a mortgage; conforming
40 provisions to changes made by the act; amending s.
41 701.041, F.S.; revising the definition of the term
42 "estoppel letter"; conforming provisions to changes
43 made by the act; providing legislative findings;
44 providing for retroactive applicability; providing an
45 effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Section 701.04, Florida Statutes, is amended to
50 read:

51 701.04 Cancellation of mortgages, liens, and judgments.—

52 (1) (a) Within 10 ~~14~~ days after receipt of the written
53 request of a mortgagor, a record title owner of the property, a
54 fiduciary or trustee lawfully acting on behalf of a record title
55 owner, or any other person lawfully authorized to act on behalf
56 of a mortgagor or record title owner of the property, the
57 mortgagee holder of a mortgage shall deliver or mortgage cause
58 the servicer shall send or cause to be sent of the mortgage to

20221016e1

59 ~~deliver to the person making the request at a place designated~~
60 ~~in the written request an estoppel letter setting forth the~~
61 ~~unpaid balance of the loan secured by the mortgage. If the~~
62 ~~written request is made by a person other than the mortgagor,~~
63 ~~the request must include a copy of the instrument showing such~~
64 ~~person's title in the property or other lawful authorization,~~
65 ~~and the mortgagee or mortgage servicer must notify the mortgagor~~
66 ~~of the request.~~

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

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

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

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

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

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

87 ~~(c)1. Except for mortgages for which a notice of lis~~

20221016e1

88 pendens in a foreclosure action or a suggestion of bankruptcy
89 has been properly filed and recorded, the mortgagee or mortgage
90 servicer may not qualify, reserve the right to change, or
91 condition or disclaim the reliance of others on the information
92 provided in an estoppel letter under paragraph (b), and any
93 attempt to do so is void and unenforceable. However, if the
94 mortgagee or mortgage servicer determines that any of the
95 information provided in the estoppel letter under paragraph (b)
96 was inaccurate, the mortgagee or mortgage servicer may send a
97 corrected estoppel letter to the person who requested the
98 estoppel letter in the same manner as used to respond to the
99 original written request. If the original written request is
100 made by a person other than the mortgagor, the mortgagee or
101 mortgage servicer must also provide a copy of any corrected
102 estoppel letter to the mortgagor.

103 2. If the person who requested the original estoppel letter
104 under subparagraph (f)1. receives a corrected estoppel letter by
105 3 p.m. in such person's time zone at least 1 business day before
106 a payment is issued in reliance on the previous estoppel letter,
107 the corrected estoppel letter supersedes all prior estoppel
108 letters.

109 3. If any of the information provided in the estoppel
110 letter under paragraph (b) was inaccurate, but the person who
111 requested the estoppel letter did not timely receive a corrected
112 estoppel letter as provided in subparagraph 2., the mortgagee or
113 mortgage servicer may not deny the accuracy of such information
114 as against any person who relied on it. This subparagraph does
115 not affect the right of a mortgagee to recover any sum that it
116 did not include in an estoppel letter from any person liable for

20221016e1

117 payment of the loan or other obligations secured by the
118 mortgage, nor does it limit any claim or defense to recovery
119 that such person may have at law or in equity ~~on a per-day~~
120 ~~basis.~~

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

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

133 (f)1. A written request for an estoppel letter under
134 paragraph (a) must be sent to the mortgagee or mortgage servicer
135 by first-class mail, postage prepaid; by common carrier delivery
136 service; or by e-mail, facsimile, or other electronic means at
137 the address made available by the mortgagee or mortgage servicer
138 for such purpose or through an automated system provided by the
139 mortgagee or mortgage servicer for requesting an estoppel
140 letter. The written request is considered received by the
141 mortgagee or mortgage servicer:

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

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

20221016e1

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

150
151 If any of the days in sub-subparagraph a., sub-subparagraph b.,
152 or sub-subparagraph c. falls on a Saturday, Sunday, or legal
153 holiday under the laws of this state or the United States, the
154 request for an estoppel letter is considered timely received by
155 the mortgagee or mortgage servicer on the next business day.

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

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

173 (2) (a) Within 60 days after the unpaid balance of a loan
174 secured by a mortgage has been fully paid or paid pursuant to an

20221016e1

175 estoppel letter under subsection (1), whichever is earlier, the
176 mortgagee or mortgage servicer shall execute in writing an
177 instrument acknowledging release of the mortgage; have the
178 instrument acknowledged, or proven, and send it or cause it to
179 be sent for recording in the official records of the proper
180 county; and send or cause to be sent the recorded release to the
181 mortgagor or record title owner of the property. The prevailing
182 party in a civil action brought against the mortgagee or
183 mortgage servicer to enforce the requirements of this paragraph
184 is entitled to reasonable attorney fees and costs.

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

189 (3)(2) Whenever the amount of money due on a ~~any mortgage~~,
190 lien~~,~~ or judgment has been fully paid to the person or party
191 entitled to the payment thereof, the ~~mortgagee,~~ creditor~~,~~ or
192 assignee, or the attorney of record in the case of a judgment,
193 to whom the payment was made~~,~~ shall execute in writing an
194 instrument acknowledging satisfaction of the ~~mortgage,~~ lien~~,~~ or
195 judgment and have the instrument acknowledged, or proven, and
196 duly entered in the official records of the proper county.
197 Within 60 days after the date of receipt of the full payment of
198 the ~~mortgage,~~ lien~~,~~ or judgment, the person required to
199 acknowledge satisfaction of the ~~mortgage,~~ lien~~,~~ or judgment
200 shall send or cause to be sent the recorded satisfaction to the
201 person who has made the full payment. In the case of a civil
202 action regarding a lien or judgment arising out of this section,
203 the prevailing party is entitled to attorney fees and costs.

20221016e1

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

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

212 701.041 Title insurer; mortgage release certificate.—

213 (1) DEFINITIONS.—For purposes of this section:

214 (a) “Estoppel letter” means a statement containing, at a
215 minimum, the information required in s. 701.04(1)(b) of the
216 amount of:

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

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

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

20221016e1

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

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