

By Senator Burgess

23-00195B-23

2023708__

1 A bill to be entitled
2 An act relating to estoppel letters; amending s.
3 701.04, 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

23-00195B-23

2023708__

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 for specified
38 parties in certain civil actions; providing that
39 certain persons may still be personally liable for a
40 loan or other obligation after the recording of a
41 release of a mortgage; conforming provisions to
42 changes made by the act; amending s. 701.041, F.S.;
43 revising the definition of the term "estoppel letter";
44 conforming provisions to changes made by the act;
45 providing legislative findings; providing for
46 retroactive applicability; providing an effective
47 date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Section 701.04, Florida Statutes, is amended to
52 read:

53 701.04 Cancellation of mortgages, liens, and judgments.—
54 (1) (a) Within 10 ~~14~~ days after receipt of the written
55 request of a mortgagor, a record title owner of the property, a
56 fiduciary or trustee lawfully acting on behalf of a record title
57 owner, or any other person lawfully authorized to act on behalf
58 of a mortgagor or record title owner of the property, the

23-00195B-23

2023708__

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

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

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

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

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

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

86 ~~2. Interest accruing on a per-day basis for the unpaid~~
87 ~~balance from and after the date specified in the estoppel~~

23-00195B-23

2023708__

88 letter, if applicable.

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

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

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

23-00195B-23

2023708__

117 not affect the right of a mortgagee to recover any sum that it
118 did not include in an estoppel letter from any person liable for
119 payment of the loan or other obligations secured by the
120 mortgage, nor does it limit any claim or defense to recovery
121 which such person may have at law or in equity ~~on a per day~~
122 basis.

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

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

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

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

23-00195B-23

2023708__

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

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

152
153 If any of the days in sub-subparagraph a., sub-subparagraph b.,
154 or sub-subparagraph c. fall on a Saturday, Sunday, or holiday
155 specified in s. 110.117(1) or the laws of the United States, the
156 request for an estoppel letter is considered timely received by
157 the mortgagee or mortgage servicer on the next business day.

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

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

23-00195B-23

2023708__

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

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

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

23-00195B-23

2023708__

204 satisfaction to the person who has made the full payment. ~~In the~~
205 ~~case of a civil action arising out of this section,~~ The
206 prevailing party in a civil action brought against the creditor
207 or assignee, or the attorney of record in the case of a
208 judgment, to enforce the requirements of this subsection is
209 entitled to reasonable attorney fees and costs.

210 ~~(4)~~~~(3)~~ When ~~Whenever~~ a writ of execution has been issued,
211 docketed, and indexed with a sheriff and the judgment upon which
212 it was issued has been fully paid, it is the responsibility of
213 the person party receiving payment to request, in writing,
214 addressed to the sheriff, return of the writ of execution as
215 fully satisfied.

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

218 701.041 Title insurer; mortgage release certificate.—

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

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

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

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

227 (2) CERTIFICATE OF RELEASE.—An officer or duly appointed
228 agent of a title insurer may, on behalf of a mortgagor or a
229 person who acquired from the mortgagor title to all or a part of
230 the property described in a mortgage, execute a certificate of
231 release that complies with the requirements of this section and
232 record the certificate of release in the real property records

23-00195B-23

2023708__

233 of each county in which the mortgage is recorded if a
234 satisfaction or release of the mortgage has not been executed
235 and recorded after the date payment in full of the loan properly
236 due under or secured by the mortgage was made in accordance with
237 an estoppel letter ~~a payoff statement~~ furnished by the mortgagee
238 or ~~the~~ mortgage servicer.

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

23-00195B-23

2023708__

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

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