

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 743 Estoppel Letters

**SPONSOR(S):** Fabricio

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N	Fletcher	Lloyd
2) Civil Justice Subcommittee	14 Y, 0 N	Mathews	Jones
3) Commerce Committee			

### SUMMARY ANALYSIS

A mortgagor selling collateralized property, refinancing a mortgage, or paying off a mortgage may request an estoppel letter from the mortgagee or mortgage servicer (lender). Florida law currently defines an “estoppel letter” as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges due under or secured by the mortgage, and the interest on a per-day basis for the unpaid balance. Florida law requires that a mortgage lender or servicer deliver an estoppel letter to the requesting party within 14 days after receiving a written request for the same.

In some estoppel letters, lenders expressly reserve the right to change the amounts listed and disclaim the reliance of others on the letter. Further, if after sending an estoppel letter the lender determines the mortgagor owes additional funds beyond those stated in the letter, some lenders return payments made in reliance on the letter. Until the discrepancy in amounts owed is resolved, interest and potential fees continue to accrue and title to the property remains unclear.

HB 743 amends s. 701.04, F.S., to revise the estoppel letter process. The bill:

- Reduces from 14 days to 10 days the timeframe within which a lender must send a requested estoppel letter;
- Prohibits a lender from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on information provided in an estoppel letter;
- Allows a lender to send a corrected estoppel letter to supersede prior estoppel letters if the corrected letter is received by a certain date and time and before any payment is made in reliance on a previous estoppel letter;
- Prohibits a lender from denying the accuracy of an estoppel letter against anyone who relied on it, but permits recovery of the sum owed from the mortgagor;
- Requires a lender to accept payment received in reliance on an estoppel letter and promptly apply such payment to the unpaid balance of the loan;
- Requires a lender to execute and record an instrument confirming release of the mortgage in the official records of the proper county, and send the recorded instrument to the mortgagor, within 60 days of receiving full payment of the loan secured by the mortgage; and
- Revises the definition of “estoppel letter.”

The bill is not likely to have a fiscal impact on state or local governments. However, the bill may have an indeterminate fiscal impact on the private sector.

The bill provides an effective date of October 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Florida law currently defines an “estoppel letter” as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges due under or secured by the mortgage, and the interest on a per-day basis for the unpaid balance.<sup>1</sup> An estoppel letter is often requested when selling property that is collateral for a mortgage, refinancing a mortgage, or paying off a mortgage. The request may be made by the mortgagor,<sup>2</sup> the record title owner of the property, a fiduciary or trustee lawfully acting on behalf of the record title owner, or any other person lawfully authorized to act on behalf of the mortgagor or record title owner.<sup>3</sup>

Depending on who requests the estoppel letter, the following information must be included:

- If the requesting party is the mortgagor or someone lawfully authorized to act on behalf of the mortgagor, the estoppel letter *must* include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.<sup>4</sup>
- If the requesting party is the record title owner of the property or someone lawfully authorized to act on behalf of the record title owner, the estoppel letter may include the itemization of the information required above, but at a minimum must include the total unpaid balance due under or secured by the mortgage on a per-day basis.<sup>5</sup>

Where the amount of money owed on a mortgage loan has been fully paid, the mortgagee or mortgage servicer (lender) must execute in writing an instrument confirming release of the mortgage, have the instrument acknowledged, and record the executed, acknowledged instrument in the official records of the property county.<sup>6</sup> Within 60 days of receiving full payment of the mortgage loan, the lender must send the recorded release to the person who made the full payment.<sup>7</sup> In the case of a civil action arising out of this requirement, the prevailing party is entitled to attorney fees and costs.<sup>8</sup>

Some estoppel letters include language reserving the lender’s right to change the amounts listed in the estoppel letter and disclaiming the reliance of others on the information included in the estoppel letter. If the lender determines after sending the estoppel letter that the mortgagor owes additional money, some lenders return the funds received from the closing which were sent in reliance on the amount stated in the estoppel letter. This results in the continued accrual of interest and potential fees during the time period it takes to resolve the discrepancy in amount owed. Further, prior to resolution of the discrepancy, there is not clear title to the property.

#### Effect of the Bill

HB 743 amends s. 701.04, F.S., to revise the process for requesting and sending an estoppel letter. The bill reduces the timeframe within which a lender must send a requested estoppel letter setting forth the unpaid balance of the mortgage loan. As such, a lender must send a requested estoppel letter within 10 days, rather than 14 days, from the date of the request. If the request for an estoppel letter is made by a person other than the mortgagor, the request must include a copy of the instrument showing such person’s title in the property or other lawful authorization, and the lender must notify the mortgagor of the request.

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<sup>1</sup> S. 701.041(1)(a), F.S.

<sup>2</sup> Mortgagor means “[s]omeone who mortgages property; the mortgage-debtor or borrower.” Black’s Law Dictionary (11th ed. 2019).

<sup>3</sup> S. 701.04(1), F.S.

<sup>4</sup> S. 704.04(1)(a), F.S.

<sup>5</sup> S. 704.04(1)(b), F.S.

<sup>6</sup> S. 704.04(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The bill standardizes the information that must be contained in the estoppel letter, regardless of whether the requestor is the mortgagor, a record title owner, or a person lawfully authorized to act on behalf of the mortgagor or record title owner. The letter must at a minimum include:

- The unpaid balance of the loan secured by the mortgage as of the date specified in the letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and
- Interest accruing on a per-day basis for the unpaid balance, if applicable.

The bill prohibits the lender from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in an estoppel letter, and any attempt to do so is void and unenforceable. However, this prohibition does not apply to mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded.

If the lender determines that any of the information in the estoppel letter was inaccurate, the lender may send a corrected estoppel letter. The corrected estoppel letter will supersede any prior estoppel letter so long as the corrected estoppel is received by 3 p.m. at least one business day before payment is made in reliance on the estoppel letter.

If any of the information in the estoppel letter was inaccurate and a timely corrected estoppel letter was not sent, the bill prohibits the lender from denying the accuracy of the estoppel letter as against any person who relied on it. However, this does not affect the lender's right to recover any sum not included in the estoppel letter, nor does it limit any claim or defense to recovery that the borrower may have.

If a payment is received at the location and in the manner specified by the lender, the lender must accept and may not return any payment received in reliance on the estoppel letter, and the lender must promptly apply such payment to the unpaid balance of the mortgage loan. This will prevent the accrual of interest and potential fees while the lender and the borrower work through any discrepancies as to the amount owed.

The bill specifies the process for requesting an estoppel letter. A written request for a mortgage payoff letter must be sent to the lender by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgage lender or servicer for such purpose, or through an automated system provided by the lender for requesting an estoppel letter. The request is considered received:

- Five days after the request sent by first-class mail is deposited with the United States Postal Service;
- The day the request is delivered by a common carrier delivery service; or
- The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the lender for requesting an estoppel letter.

If any of the foregoing days fall on a Saturday, Sunday, or holiday, the request for an estoppel letter is considered timely received by the lender on the next business day.

The bill also specifies the process by which an estoppel letter may be sent. The lender or servicer must send an estoppel letter by first-class mail; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the lender for this purpose. However, the lender is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the lender ends on a Saturday, Sunday, or holiday, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

The bill requires the lender, within 60 days after the mortgage loan has been fully paid or paid pursuant to the estoppel letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging release of the mortgage (i.e., a satisfaction of mortgage or a release of mortgage). The prevailing party in a civil action brought against the mortgage lender or servicer to enforce this requirement is entitled to reasonable attorney fees and costs.

The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or

assigns, from any personal liability on the mortgage loan. In the event of a discrepancy in the amount owed on the mortgage loan, this provision will ensure clear title to the property while maintaining the mortgage lender's or servicer's ability to recover sums properly owed under the mortgage loan.

The bill conforms the definition of "estoppel letter" in s. 701.041, F.S., to the estoppel letter requirements in s. 701.04, F.S.

The bill provides legislative findings relating to the importance of the timeliness and accuracy of an estoppel letter to both the consumer and the lender.

The provisions of the bill will apply to all mortgages, and all loans secured by such mortgages, existing as or entered into on or after October 1, 2023.

The bill provides an effective date of October 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 701.04, F.S., relating to cancellation of mortgages, liens, and judgments.

**Section 2.** Amends s. 701.041, F.S., relating to title insurer; mortgage release certificate.

**Section 3.** Provides legislative findings.

**Section 4.** Provides the bill applies to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2023.

**Section 5.** Provides an effective date of October 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector. The bill may lead to smoother real estate closings to the extent that lenders provide more accurate information in estoppel letters. In the event of a discrepancy in the amount owed on the mortgage loan, the bill will prevent accrual of interest and potential fees while the lender and the borrower work through the issue.

Additionally, the bill will ensure clear title to the property while maintaining the lender's ability to recover sums properly owed under the mortgage loan.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**