

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/CS/SB 736

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Regulated Industries Committee; and Senators Stargel and Detert

SUBJECT: Residential Properties

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 736 revises requirements for estoppel certificates for condominium, cooperative, and homeowners' associations. When an ownership interest in a condominium unit, cooperative unit, or home is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a condominium or homeowners' association. Unpaid assessments may also become a lien on the property. To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

The bill:

- Reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days;
- Requires that estoppel certificates be delivered by mail, hand, or electronic means, be dated as of the date it is issued, and be valid for 30 days or 35 days if mailed;
- Requires that estoppel certificates contain the date of issuance, and the amount of all assessments and other moneys owed to the association by the unit owner, as reflected in the official records of the association, through at least 30 days after the date the estoppel certificate is issued or 35 days if mailed;

- Requires that estoppel certificates contain the amount of any fee charged for preparing and delivering the certificate as well as the signature of an officer or agent of the association;
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person and his or her successors and assigns who in good faith rely upon the certificate;
- Establishes fee caps for the preparation of estoppel certificates which range from \$250 to \$450; and
- Provides that the fee for an estoppel certificate is the obligation of the unit owner.

The bill requires the fee a cooperative association is allowed to charge for estoppel certificate be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. This provision is comparable to authority provided to condominium and homeowners' associations.

II. Present Situation:

Condominium

A condominium is a form of ownership of real property comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration governs the relationships of the condominium units' owners and the condominium association.³ Condominium associations are administered by a board of administration and can assess costs for common expenses.⁴

Cooperative Associations

A cooperative is a form of ownership of real property wherein legal title is vested in a corporation or other entity.⁵ A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁶

Homeowners' Associations

A homeowners' association is a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof. The membership is a mandatory condition of

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Woodside Village Condominium Assoc. Inc. v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002).

⁴ Section 718.103(1) and (4), F.S.

⁵ Section 719.103(12), F.S.

⁶ See ss. 719.106(1)(g) and 719.107, F.S.

parcel ownership.⁷ Homeowners' associations are administered by a board of directors who are elected and are authorized to impose assessments.⁸

Assessments

An assessment is a share of the funds which are required for the payment of common expenses, and can be assessed against the unit owner.⁹ A special assessment is any assessment levied against a unit owner other than the assessment adopted the annual budget.¹⁰

Assessments that go unpaid may become a lien on the parcel.¹¹ An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.¹² This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.¹³

Estoppel Certificates

To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.¹⁴

Within 15 days after receiving a written request for an estoppel certificate the association is required to provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel.¹⁵

A homeowners' or condominium association may charge a fee for the preparation of the certificate.¹⁶ The authority to charge a fee must be established by a written resolution that is adopted by the board or by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate.¹⁷ A cooperative association may charge a fee for the preparation of the certificate and does not require the fee to be adopted or part of a contract.¹⁸

⁷ Section 720.301(9), F.S.

⁸ Section 720.303(2)(c)2., F.S.

⁹ Sections 718.103(1), 719.103(1), and 720.301(1), F.S.

¹⁰ Sections 718.103(24) and 719.103(23), F.S.

¹¹ Sections 718.116(5), 719.108(4), and 720.3085(1), F.S.

¹² Sections 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.

¹³ *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 10th ed. 2014.

¹⁴ Sections 718.116(8), 719.108(6), and 720.30851, F.S.

¹⁵ *Id.*

¹⁶ Sections 718.116(8)(c) and 720.30851, F.S.

¹⁷ Sections 718.116(8)(d) and 720.30851(3), F.S.

¹⁸ Section 719.108(6), F.S.

Current law also provides no limitation on the amount of the fee that may be charged by an association other than that such amount must be “reasonable.”¹⁹ Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel certificate. This has caused variations in the amount of the fee charged by associations for the preparation of an estoppel certificate.

In a condominium or homeowners’ association, if the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur, the preparer of the certificate must refund the fee to a payor that is not a unit-owner within 30 days after receipt of the request for refund. A written request for a refund must be made no later than 30 days after the closing date for which the certificate was sought and include reasonable documentation that the sale did not occur. The refund is the obligation of the owner, and the association may collect it from that owner in the same manner as an assessment.²⁰

After a series of public meetings in 2014, the Community Association Living Study Council,²¹ by unanimous vote, made the following recommendations to the Legislature:

- That a reasonable cap be established for estoppel certificate fees and that such fees be tiered;
- The amount of the fee should depend on whether or not the owner is current in fees, delinquent in fees, or if it is a bulk purchase.²²

III. Effect of Proposed Changes:

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to revise the requirements for estoppel certificates issued by condominium, cooperative, and homeowners’ associations, respectively.

Form and Delivery of Estoppel Certificates

The bill:

- Reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 *business* days;
- Requires that estoppel certificates be delivered by mail, hand, or electronic means to the requestor on the date of issuance and be valid for 30 days or 35 days if mailed;
- Requires that estoppel certificates contain the date of issuance, an amount of all assessments and other moneys owed to the association by the unit owner, as reflected in the official

¹⁹ Sections 718.116(8)(c) and 719.108(6), F.S. There is no corresponding requirement in ch. 720, F.S., that the fee charged by a homeowners’ association be reasonable.

²⁰ Sections 718.116(8)(d) and 720.30851(3), F.S. There is no corresponding requirement in ch. 719, F.S., that the fee is refunded.

²¹ The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of 7 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. Chapter 2014-133 L.O.F.

²² Final Report Community Association Living Study Council, *Final Report*, March 31, 2014, p. 6, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/2014CALSCReport.pdf> (last visited on April 12, 2015).

records of the association, through at least 30 days after the date the estoppel certificate is issued or 35 days if mailed;

- Requires that estoppel certificates contain the amount of any fee charged for preparing and delivering the certificate as well as the signature of an officer or agent of the association;
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person and his or her successors and assigns who in good faith rely upon the certificate; and
- Provides that payment of the fee for an estoppel certificate is the obligation of the unit owner.

Fee Caps

An association is authorized to charge a fee for preparing an estoppel certificate, but the fee may not exceed its reasonable costs to prepare and deliver the certificate. The fee may not exceed \$250 if no delinquent amounts are owed to the association for the applicable unit on the date the certificate is issued. If delinquent amounts are owed, an additional fee for the certificate may not exceed \$100.

When an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional \$100 fee.

If an estoppel certificate is issued more than 10 business days after an association receives the request for the certificate, the association may not charge a fee for the certificate. The association may not require the payment of any other fees as a condition for preparing or delivering the estoppel certificate.

The bill requires that the maximum allowable fees charged must be adjusted every 3 years an amount equal to the annual increases for that 3-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items.

Allocation of Fees

The bill provides that when an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the certificate fee will be paid to the association from the closing or settlement proceeds. However, if the closing does not occur the fee for the certificate is the obligation of the unit owner. The bill repeals the existing 30-day closing period requirement. The association is then authorized to collect the fee in the same manner that it would collect an assessment against the unit.

The bill repeals the requirement that condominium or homeowners' associations refund the fee to a payor who is not a unit-owner if closing did not occur.

The bill creates s. 719.108(6)(f), F.S., to require the fee a cooperative association is allowed to charge for estoppel certificate be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. This provision is comparable to current authority provided to condominium and homeowners' associations in ss. 718.116(8)(d) and 720.30851(3), F.S., respectively. The bill adds the ability to pursue summary proceeding under s. 51.011, F.S., and attorney fees.

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires the fee a cooperative association is allowed to charge for estoppel certificate be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. The bill also provides more certainty of the fees that can be charged and repeals the requirement for condominium or homeowners' associations refund the fee to a payor if closing does not occur.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.116, 719.108 and 720.30851.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Fiscal Policy on April 15, 2015:

The committee substitute (CS):

- Requires that the maximum allowable fees charged must be adjusted every 3 years an amount equal to the annual increases for that 3-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items.
- Repeals the 30-day closing period that required a unit owner to pay the estoppel certificate fee. The CS requires the unit owner to pay the fee if closing does not occur.

CS/CS by Judiciary on April 7, 2015:

The committee substitute differs from the previous committee substitute by:

- Permitting an electronic request, in addition to a written request, for an estoppel certificate;
- Reducing the time in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days;
- Requiring that the estoppel certificate be dated as of the date it is issued, not delivered;
- Requiring an estoppel certificate to be effective for an additional 5 days if it is mailed;
- Specifying the criteria that must be contained in an estoppel certificate;
- Deleting a provision that would have required an association to waive a claim for a lien or amounts owed to the association by someone who would have relied on the certificate if, upon receiving a written request for an estoppel certificate, the association failed to deliver the certificate; and
- Specifying fee caps that may be charged by an association.

CS by Regulated Industries on March 24, 2015:

The committee substitute (CS):

- Amends s. 719.108(6), F.S., to provide for the issuance of estoppel certificates by cooperative associations in the same manner as provided in the bill for condominium and homeowners' associations;
- Amends ss. 718.116(8) and 720.30851, F.S., to provide that the moneys owed are as reflected in the records maintained pursuant to ss. 718.111(12) and 720.303 (4), F.S., respectively;
- Amends s. 718.116(8)(a) and (b), F.S., and s. 720.30851(1), F.S., to provide that any waiver of claim extends to the successor and assigns of any person who in good faith relied on an estoppel certificate;
- Does not amend ss. 718.116(8)(b) and 720.30851(2), F.S., to provide that the waiver includes any claim for its lien against the unit or parcel, and any moneys owed to the association by the unit owner or parcel owner with respect to the unit or parcel for 40 days after the date of receipt of the request;

- Amends ss. 718.116(8)(c) and 720.30851(3), F.S., to decrease the time from 120 days to 60 days after the delivery of the estoppel certificate for the sale to occur in order for the unit or parcel owner not to be obligated to pay the fee for the estoppel certificate if the sale does not occur;
- Does not amend ss. 718.116(8)(c) and 720.30851(3), F.S., to provide a maximum fee of \$100 for the preparation and delivery of an estoppel certificate, and maximum fees of up to \$50 for specified events;
- Does not create ss. 718.116(8)(d) and 720.30851(4), F.S., to provide maximum fee amounts for simultaneous requests for the estoppel certificate for multiple units owned by the unit or parcel owner when there are no past due monetary obligations; and
- Creates s. 718.108(6)(d), F.S., to authorize the cooperative association to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

B. Amendments:

None.