

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 Regulated Industries

BILL: SB 736

INTRODUCER: Senators Stargel and Detert

SUBJECT: Residential Properties

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 736 revises the following requirements for estoppel certificates for condominium and homeowners' associations. When an ownership interest in a condominium unit or parcel in a homeowners' association 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 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 days;
- Requires that estoppel certificates must be delivered by mail, hand, or electronic means, dated as of the date it is delivered; and state 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 of the estoppel certificate.
- 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 or entity who in good faith relies upon the certificate, or if the association fails to respond to a written request for a certificate;
- Establishes a maximum fee of \$100 for the preparation and delivery of an estoppel certificate. Authorizes additional supplemental fees of up to \$50 under limited circumstances; and
- Establishes maximum fees for simultaneous request for the estoppel certificate for multiple units owned by the unit or parcel owner.

The bill takes effect July 1, 2015.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.] which is 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 is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

Section 718.103(3), F.S., defines the term “association property” to mean:

that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term “condominium property” to mean:

the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one “who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business” There are two

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.

Condominium – Assessments and Foreclosures

Section 718.103(1), F.S., defines the term “assessment” to mean “a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”

“Special assessment” is defined to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”⁸

A unit 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.⁹ This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.¹⁰

If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee’s liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.¹¹ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.¹² This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.¹³ The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.¹⁴

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.¹⁵ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable attorney’s fees incurred in collection, and then to the delinquent assessment.

⁸ Section 718.103(24), F.S.

⁹ Section 718.116(1)(a), F.S.

¹⁰ *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 (2d pocket ed. 2001).

¹¹ Section 718.116(1)(b), F.S.

¹² *Id.*

¹³ Section 718.116(1)(e), F.S.

¹⁴ Section 718.116(1)(g), F.S.

¹⁵ Section 687.02(2), F.S., prohibits usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

Section 718.111(4), F.S., permits condominium associations to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property. The association may not charge a use fee against a unit owner for the use of common elements or association property. However, the association may charge a fee against the unit owners for use of common elements or association property if:

- The fee is provided for in the declaration of condominium;
- The fee is authorized by a majority vote of the association; and
- The charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

Estoppel Certificates

The association is required to keep accounting records for the association and separate accounting records for each condominium that it operates.¹⁶ All accounting records must be kept for at least 7 years. The accounting records must be accurate, itemized, and detailed records of all receipts and expenditures. They must contain a current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.¹⁷ Within 15 days after receiving a written request from a unit owner or his or her designee, or a unit mortgagee or his or her designee, 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 unit owner with respect to the condominium parcel.¹⁸

The certificate protects any person other than the owner who relies upon it.¹⁹

The authority to charge a fee for the certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. The fee is payable upon the preparation of the certificate.

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.²⁰

The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment.²¹

¹⁶ Section 718.111(12)(a)11., F.S.

¹⁷ *Id.*

¹⁸ Section 718.116(8), F.S.

¹⁹ Section 718.116(8)(a), F.S.

²⁰ Section 718.116(8)(c), F.S.

²¹ Section 718.116(8)(d), F.S.

After a series of public meetings in 2014, the Community Association Living Study Council,²² 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.²³

A unit or parcel owner may compel compliance with the provisions governing the issuance of an estoppel certificate from a homeowners' or condominium association by bringing a summary procedure pursuant to s. 51.011, F.S.²⁴ The prevailing party is entitled to recover reasonable attorney's fees and costs.²⁵

III. Effect of Proposed Changes:

The bill amends ss. 718.116(8) and 720.30851, F.S., to revise the requirements for estoppel certificates for condominium 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 days.

The bill requires that estoppel certificates from condominium and homeowners' associations must:

- Be delivered by mail, hand, or electronic means;
- Be dated as of the date it is delivered; and
- State all assessments and other moneys owed to the association by the unit owner with respect to the unit, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate.

The bill 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 or entity who in good faith relies upon the certificate.

²² 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 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. *See* Ch. 2014-133, L.O.F.

²³ *See* Community Association Living Study Council, *Final Report*, March 31, 2014, available at <http://www.myfloridalicense.com/Dbpr/lsc/documents/2014CALSCReport.pdf> (last visited March 21, 2015).

²⁴ Sections 718.116(8)(b) and 720.30851(2), F.S.; Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery and the procedure also provides for an immediate trial, if requested.

²⁵ *Id.*

The bill provides that the association waives any claim if it fails to deliver an estoppel certificate upon a written request from a unit owner or his or her designee, or a unit mortgagee or his or her designee, or any person who would have in good faith relied upon that certificate had it been so delivered. This waiver includes any claim for its lien against the unit, and any moneys owed to the association by the unit owner with respect to the unit for 40 days after the date of receipt of the request.

The bill provides that when an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the fee and any supplemental fees are due and payable to an association no earlier than the closing and must be paid from the closing settlement proceeds. The bill prohibits the preparation and delivery of the estoppel certificate to be contingent on the payment of any other fees.

Because the fees must be paid from the closing settlement proceeds, the bill repeals the provision authorizing a refund of fees by a homeowners or condominium association to a non-owner payor as no fee will have previously been paid. It also repeals the requirement that, if the sale does not occur within 60 days after the estoppel certificate is delivered, the fee is the obligation of the owner and may be collected by an association in the same manner as an assessment.

Fees

The bill authorizes condominium and homeowners' associations to charge a fee for the delivery as well as the preparation of an estoppel certificate. The association may also collect any reasonable attorney fees and cost in connection with the collection of past due moneys.

The bill establishes a maximum fee of \$100 for the preparation and delivery of an estoppel certificate. An association may charge additional supplemental fees of up to \$50 under each of the following circumstances:

- The owner is delinquent with respect to moneys owed to the association and his or her account has been referred for collection;
- Expedited delivery of an estoppel certificate is requested and made; or
- An additional estoppel certificate is requested within 30 days after the most recently delivered estoppel certificate.

The association may not charge an additional fee if an estoppel certificate is issued to correct an error or omission in a previously issued estoppel certificate.

However, if a unit or parcel owner makes a simultaneous request for the estoppel certificate for multiple units owned by the unit or parcel owner and there are no past due monetary obligations, the association may charge the following maximum fees:

- \$750 for 25 or fewer units;
- \$1,000 for 26 to 50 units;
- \$1,500 for 51 to 100 units; or
- \$2,500 for more than 100 units.

Effective Date

The bill provides an effective date of 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 provides the amount of maximum fees for estoppel certificates from condominium and homeowners' associations. It establishes a maximum fee of \$100 for the preparation and delivery of an estoppel certificate, and authorizes additional supplemental fees of up to \$50 under limited circumstances. It establishes maximum fees for simultaneous requests for the estoppel certificate for multiple units owned by the unit or parcel owner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 718.116 and 720.30851 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
