

IMPORTANT NEW LAW: ESTOPPEL REQUESTS

This year's legislative session produced several new laws that impact community associations. One of them, Senate Bill 398, requires your immediate attention as the bill was signed into law by the Governor on June 14, 2017, with an effective date of July 1, 2017, and there are certain steps which your Board of Directors should take before, or immediately after, the law becomes effective.

Preparation and issuance of estoppel certificates has drastically changed. The new law affects all three major community association types (condominium, homeowners' and cooperative associations) governed by Chapters 718, 719 and 720 of the Florida Statutes.

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers 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 new law:

- ◆ Revises the period in which an association must respond to a request for an estoppel certificate from fifteen (15) days to **ten (10) business days**. The request may be in either a written or electronic format.
- ◆ Provides that an estoppel certificate delivered by hand delivery or e-mail has a thirty (30) day effective period, and a certificate sent by regular mail has a thirty-five (35) day effective period.
- ◆ Requires designation on the Association's website of the person or entity, with a street or email address, to whom a request for the estoppel certificate on behalf of the board or association is to be sent.
- ◆ Specifies the information that the association must provide in the estoppel certificate, which includes information related to matters in addition to the amount of any outstanding assessments, including the following:
 - Whether there is a capital contribution fee, resale fee, transfer fee, or other fee due, and if yes, the type and amount of the fee.
 - Whether there are any open violations of rules or regulations noticed to the unit owner in the Association's official records.
 - Whether the rules and regulations of the Association require approval by the board of the transfer of the unit, and if yes, whether the board has approved of the transfer.

- Whether there is a right of first refusal provided to the members or the Association, and if yes, whether that right has been exercised.
 - Whether there are other associations of which the unit is a member, and if yes, the contact information for each; and
 - Contact information for all insurance maintained by the Association.
- ◆ Prohibits an association from charging a fee for an amended estoppel certificate, and provides a new effective period of thirty (30) days or thirty-five (35) days, depending on the method used to deliver the amended 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, and his or her successors and assigns, who in good faith relies upon the certificate.
 - ◆ Prohibits an association from charging a fee for preparing and delivering an estoppel certificate that is requested, if it is not delivered within ten (10) business days.
 - ◆ Authorizes the use of a summary proceeding pursuant to § 51.011, F.S., to compel compliance with the estoppel certificate requirements for a cooperative association (existing law already provides such a right for condominium and homeowners' associations).
 - ◆ Permits an association to charge a maximum fee of two hundred and fifty dollars (\$250) for the preparation and delivery of an estoppel certificate, if there are no delinquent amounts owed to the association.
 - ◆ Permits an association to charge an additional one hundred dollar (\$100) fee for an expedited estoppel certificate delivered within three (3) business days after a request for an expedited certificate.
 - ◆ Permits an association to charge an additional maximum fee of one hundred and fifty dollars (\$150), if there is a delinquent amount owed to the association.
 - ◆ Specifies the maximum fee that an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association.
 - ◆ Provides a non-waivable right to certain individuals or entities, other than the unit owner, who pay an estoppel fee, to be reimbursed the fee by the unit owner if the sale or transaction for which it was requested does not close within thirty (30) days under certain circumstances.
 - ◆ Provides that the authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the Board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate.

It is the last provision which may warrant action before July 1, 2017 if the Association has not previously adopted a resolution in connection with a required fee for preparation and delivery of an estoppel certificate, or if the Association is not already under a management, bookkeeping, or maintenance contract which already provides for such a fee. Please contact us if you have any questions relating to this new law, or if you would like assistance preparing the required resolution.

There were other laws which the legislature passed related to community associations which, if signed by the Governor (or if the Governor does not veto them) will become law on July 1, 2017. We will provide you with a summary of those laws, once effective, under separate cover.