

# Client Alert

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Shumaker, Loop & Kendrick, LLP

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## Community Associations' Estoppel Certificates

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On June 14, 2017, Governor Scott signed Senate Bill 398, enacting it into law. The law, which goes into effect on July 1, 2017, amends sections 718.116, 720.30851, and 719.108, Florida Statutes, regarding condominium, homeowners and cooperative association estoppel certificates. The amendments provide the following changes to the statutes:

- Associations have 10 business days (previously 15 days) to issue an estoppel certificate after receiving a written or electronic request from an owner or mortgagee, or an owner's or mortgagee's designee. If not delivered within 10 business days, a fee may not be charged for the preparation and delivery of the estoppel certificate.
- Associations must designate on their website a person or entity with a street or e-mail address for receipt of an estoppel request.
- Estoppel certificates must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the certificate.
- Estoppel certificates must be completed by a board member, authorized agent or representative of the association, or the management company.
- Estoppel certificates that are hand delivered or sent by electronic mail have a 30-day effective period; estoppel certificates sent by regular mail have a 35-day effective period.
- Associations can amend estoppel certificates within the 30- or 35-day period and, upon issuance of an amended estoppel certificate, a new 30- or 35-day effective period starts. Associations may not charge a fee for amended estoppel certificates.
- Associations waive the right to collect any money owed in excess of the amount specified in an estoppel certificate from any person who in good faith relies upon the estoppel certificate.
- Associations may not charge more than \$250 for the preparation and delivery of an estoppel certificate if, on the date of issuance, no delinquent amounts are owed to the association; if delinquent amounts are owed, an additional fee of up to \$150 may be charged.
- An expedited fee of up to \$100 may be charged if an estoppel requestor asks for an estoppel certificate to be delivered within 3 business days.
- If a request is for multiple units/parcels owned by the same owner and there are no past due monetary obligations owed to the association, the total fee for the estoppel certificate is based upon the number of units/parcels and cannot exceed the following:
  - For 25 or fewer units/parcels, \$750.
  - For 26 to 50 units/parcels, \$1,000.
  - For 51 to 100 units/parcels, \$1,500.
  - For more than 100 units/parcels, \$2,500.
- If a title agent prepays an estoppel fee and the closing does not occur, the association must refund the estoppel fee to the title agent upon written request made within 30 days after the planned closing date and reasonable documentation that the closing did not occur. The association has 30 days after receipt of the refund request to reimburse the title agent. The right to reimbursement may not be waived or modified by any agreement.
- Every 5 years, the fees specified above will be adjusted by the Department of Business and Professional Regulation and posted on its website.

It is to be noted that the amendments do not prohibit an association from requiring the fee for an estoppel certificate to be paid prior to the closing of the real estate transaction.

The amendments also outline the information that must be included on estoppel certificates, in substantially the following form:

- date of issuance;
- name(s) of unit/parcel owner(s);
- unit/parcel designation and address;
- parking or garage space number;
- attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection;
- the fee for preparation and delivery of the estoppel certificate;
- name of the requestor; and
- assessment information and other information, including:
  - regular periodic assessment amount and frequency;
  - date for which the regular periodic assessment is paid through;
  - next installment due date and amount;
  - itemized list of all assessments, special assessments, and other money currently owed or to become due after issuance of the estoppel certificate;
  - other fees, such as capital contribution fees, resale fees, transfer fees, etc.;
  - whether there are any open violations of rules or regulations;
- whether association approval of transfer of the unit/parcel is required and, if so, whether the board has approved the transfer;
- whether there is a right of first refusal and, if so, has the right been exercised;
- list and contact information for any other associations of which the unit/parcel is a member;
- contact information for all insurance maintained by the association; and
- signature of an officer or authorized agent of the association.

*If you have any questions regarding these statutory revisions, please do not hesitate to contact a member of the Community Associations practice group at Shumaker, Loop & Kendrick, LLP, 813.229.7600.*

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