

Insights

New HOA Estoppel Requirements Signed Into Law

Article

Lowndes

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Related Attorneys

Gary M. Kaleita

Title insurance companies and closing agents handling transactions involving homeowners' and condominium associations have long been frustrated by the timing and cost associated with obtaining estoppel letters from these associations and their management companies. Governor Scott has signed Estoppel Bill SB 398, which addresses these problems and will become effective July 1, 2017. Here is what you need to know:

Fee Cap: A cap is established on the fee for an estoppel certificate of \$250, with an additional \$100 expediting fee (defined as 3 days or less), if applicable. If there is a delinquency, an additional \$150 may be charged.

Waiver of Reimbursement: One of the difficulties title and closing agents regularly faced was the association forcing them to waive the recovery of estoppel fees they paid to an association if the applicable transaction did not close. The law previously provided that a refund was due in that event, but associations were requiring parties requesting estoppels to waive their right to a refund. The new law makes such waivers unenforceable, and provides that the prevailing party in any action to enforce a right of reimbursement shall be awarded damages and all applicable attorneys' fees and costs. If an association has to provide a refund, it can still recover the estoppel fee from the owner whose property was the subject of the transaction that did not close.

Timing: There are several critical timelines built into the new legislation, such as:

- **Response:** Associations must respond to an estoppel request within 10 days of receipt of the request or waive the right to charge any fee for the preparation of the estoppel.
- **Term:** An estoppel that is sent electronically will be good for 30 days, 35 days for those sent by ordinary mail. No longer should an agent be presented with an estoppel good for an unreasonably short period.

Content: The content of an estoppel is now established by statute. This will mean that title and closing agents should receive estoppel letters in a uniform format going forward.

Bulk Unit Purchases: For bulk purchases, there are new maximum estoppel fees.