



THE 2015 ESTOPPEL BILL IS BACK Ready to Hurt Florida's Community Associations

By Jeffery Rembaum Esq.

But for the abrupt ending of the 2015 legislative session, Florida's legislature would already have caused another wrinkle in our free market economy by passing a law regulating the cost of goods in the stream of commerce. The worst bill to affect Florida's community associations is back and could become law unless you tell your legislators to "VOTE NO". Florida's House of Representatives and Senate seek to regulate both the cost and process of the issuance of the "association estoppel". There are two bills at play: House Bill 203 and its companion, Senate Bill 722.

The "association estoppel" is a legally binding document that sets out the assessment monies that remain due and owing. There exists tremendous liability for its issuance. The buyer is only responsible for the monies set out as due in the estoppel letter. If completed incorrectly and a lesser amount due is stated, well, too bad. Apparently, lobbyists, title companies and other real estate professionals have just about convinced Florida's legislators, albeit falsely, about the great harm being caused by Florida's community associations, a state wide epidemic of disastrous consequence stemming from an association's otherwise lawful right to create a process of issuance and to charge reasonable fee for providing its estoppel.

This atrocious legislation, that is expected to become law (unless you do something about it), dictates that the estoppel is due within ten business days of the request, no matter what. And, if it is issued after ten business days, no matter what the reason – good cause or otherwise – no fee may be charged! To make matters worse, the request for an estoppel can arrive via email. Based on a plain reading of these bills, rather than having to comply with standard procedures to ensure proper delivery of the request, the person requesting the estoppel can email a board member or

manager at their personal email address to start the ten day clock.

According to the House version of the bill, the fee for the estoppel certificate may not exceed \$200.00 if, on the date the certificate is issued, no delinquent amounts are owed to the association. If an estoppel certificate is requested on an expedited basis and delivered within three business days after the request, the association may charge an additional fee of \$100.00. If delinquent amounts are owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$200.00. The Senate's companion bill only mentions a reasonable fee.

In the past, an estoppel certificate only inured to the benefit of the party requesting it. Now, according to these bills, after issuance of the estoppel it is binding on every Tom, Dick or Harry who can be considered a successor or assign of the person who requested it. That means that Tom, Dick and Harry gets the benefit of the previously issued estoppel, and they do not even have to pay for it!

Pursuant to these bills, an association cannot require the payment of any fees as a condition for the preparation or delivery of an estoppel. Imagine going to the grocery store, loading up your friend's car with your groceries to get them home and not having to pay the store until you eat the food. If you don't eat the food, then you don't have to pay for the groceries. But, your friend, whose car delivered the groceries for you must pay in your stead. This is exactly how the new estoppel legislation works.

No one who requests the estoppel has to pay for it when they receive it. In other words, the person or company who does the work for the association by preparing the estoppel has no lawful right to get paid at the time of per-

forming their service. Rather, this decade's worst association related legislative initiative provides that the fee can only be paid from the proceeds of the closing. If the closing does not occur, the person who requested the estoppel has no liability whatsoever. But, the burden for payment then shifts to the seller. How many months will that take?

It is expected that the estoppel legislation will become the law of the land with an effective date of July 1, 2016. This situation is the perfect example of a series of laws being adopted to fix a problem that only exists in the minds of a select few and even then for an extremely short period of time. Back during the uptick of the prior real estate crisis, there were a few bad apples who charged way too much for the issuance of the estoppel. Rather than going after these bad apples, the bad acts of the very few are being used to create hysteria and to hurt Florida's community associations to the very real benefit of Florida's realtors and title companies. It is shameful how easy our legislators are being deceived to believe that they are fixing a problem that, in reality, doesn't even exist. Once again, our legislature to the rescue. Ugh!

To learn more, visit smashthehometax.com, where myths regarding estoppel certificates are debunked

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