

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 979 Estoppel Certificates

**SPONSOR(S):** Persons-Mulicka

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Department of Business and Professional Regulation (“DBPR”) regulates certain community associations in the state, including condominium (“condo”) associations; cooperative (“co-op”) associations; and, to a limited degree, homeowners’ associations (“HOAs”). A condo association is a form of real property ownership created under ch. 718, F.S., in which persons own condo units along with an undivided right of access to the condo’s common elements. A co-op association is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the association and individual units are leased to the residents, who own shares in the association. Meanwhile, an HOA, created under ch. 720, F.S. is a form of property ownership in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership.

A community association manager (“CAM”) is a person hired to manage a community association with more than ten units or parcels or with an annual budget exceeding \$100,000. The community association is not required to hire a CAM, but where it has done so, the CAM is generally responsible for the association’s day-to-day operation and management, including “estoppel certificate” calculation and preparation. Such a certificate helps to facilitate the closing of the sale of a unit in a condo or co-op, or a parcel in an HOA, by giving the parties thereto a summary of the fees, fines, and assessments which the seller may owe to the community association. In most instances, the seller does not have any outstanding monetary obligations to the association. However, where the seller does owe money to the association, the amount owed must generally be collected from the seller and applied at closing; otherwise, under Florida law, the buyer of the unit or parcel becomes jointly and severally liable with the previous owner for any money due to the association at the time of the sale. Further, an association waives the right to collect any moneys owed in excess of the amounts listed in the estoppel certificate from any person who in good faith relies upon the certificate.

Florida law gives an association ten business days after receiving a written or electronic request for an estoppel certificate from a unit or parcel owner to issue the estoppel certificate, which certificate must contain specified information. Any board member, authorized agent, or authorized representative of the association may complete the estoppel certificate, including any CAM, and such certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance. Fees for estoppel certificate preparation and delivery are capped in Florida law, and currently may not exceed, for one unit or parcel:

- \$299 for certificate preparation and delivery if, on the date of the certificate’s issuance, the seller does not owe any money to the association;
- A \$179 additional fee if the seller owes money to the association for the unit or parcel; and
- A \$119 additional fee if the certificate is requested on an expedited basis.

HB 979 prohibits a community association from charging any fee for estoppel certificate preparation or delivery.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (“Division”), within the Department of Business and Professional Regulation (“DBPR”), provides consumer protection for Florida residents living in certain regulated communities through board of director educational programs, complaint resolution, alternative dispute resolution, and developer disclosure.<sup>1</sup> These regulated communities include:

- Condominium associations;
- Cooperative associations; and
- Homeowners' associations (limited to the arbitration of election and recall disputes).<sup>2</sup>

##### *Condominiums*

A condominium (“condo”) is a form of real property ownership created under ch. 718, F.S.; specifically, persons own condo units along with an undivided right of access to the condo’s common elements. A condo is created by recording a declaration of condominium, governing the relationship between condo unit owners and the condo association, in the public records of the county where the condo is located. All unit owners are members of the condo association, and the association is responsible for common elements operation and maintenance and may impose assessments against a member which, if unpaid, may become a lien on the member’s unit.

##### *Cooperatives*

A cooperative (“co-op”) is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the co-op association and individual units are leased to the residents, who own shares in the association. The lease payment amount is the pro-rata share of the co-op’s operational expenses, and the association is authorized to impose assessments against any member of the co-op, which, if unpaid, may become a lien on the member’s unit. Co-ops operate similarly to condos, and the laws regulating co-ops are largely identical to those regulating condos.

##### *Homeowners’ Associations*

A homeowners’ association (“HOA”) is a form of real property ownership, created under ch. 720, F.S., in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments against any member which, if unpaid, may become a lien on the member’s parcel. An HOA’s powers and duties include those powers and duties provided by law and in the governing documents. Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes; but no state agency directly regulates HOAs.

##### Community Association Board of Directors

Each condo, co-op, and HOA (“community association”) is governed by a board of directors (“board”) elected by the association’s members or appointed by a developer prior to turnover to the association. The board has those duties described in statute and in the association’s governing documents,

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<sup>1</sup> See generally chapters 718, 719, and 720, F.S., regulating condos, co-ops, and HOAs, respectively.

<sup>2</sup> *Id.*

including association administration, policy development, and property maintenance.<sup>3</sup> A board director also has a fiduciary responsibility to the association's members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.<sup>4</sup>

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a Division-approved<sup>5</sup> education provider within one year before or 90 days after his or her election or appointment date.<sup>6</sup>

A director who fails to comply with such requirements is suspended from serving on the board until he or she complies, and the board may temporarily fill the vacancy during the suspension period.<sup>7</sup> However, the written certification or educational certificate is valid and does not have to be resubmitted if the director serves on the board without interruption.<sup>8</sup>

### Community Association Managers

A community association manager ("CAM") is a person hired to manage a community association with more than ten units or parcels or with an annual budget exceeding \$100,000.<sup>9</sup> The community association is not required to hire a CAM, but where it does so, the CAM is generally responsible for the association's day-to-day operation and management, including the calculation and preparation of estoppel certificates.<sup>10</sup>

### *Licensing*

Part VIII of chapter 468, F.S., governs community association management.<sup>11</sup> Under this part, a person is prohibited from holding himself or herself out to the public as a CAM unless he or she holds a valid CAM license issued by DBPR.<sup>12</sup> A person desiring to obtain a CAM license must apply to DBPR to take the CAM licensure exam<sup>13</sup> and file a complete set of fingerprints taken by a law enforcement officer, which fingerprints must be submitted to the Department of Law Enforcement and to the Federal Bureau of Investigation for processing.<sup>14</sup> Additionally, each applicant must be at least 18 years of age, have successfully completed all precensure education requirements,<sup>15</sup> and be certified by DBPR as being of

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<sup>3</sup> See generally chs. 718, 719, and 720, F.S.; Florida DBPR, FAQs, <http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1> (last visited Jan. 29, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> A Division-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of Division-approved education providers, see <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Jan. 29, 2024). 61B-19.001 and 61B-75.0051, F.A.C.

<sup>6</sup> This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> DBPR, *Community Association Managers*, <http://www.myfloridalicense.com/dbpr/os/documents/CAMBrochure.pdf> (last visited Jan. 29, 2024).

<sup>10</sup> *Id.*; s. 468.431, F.S.

<sup>11</sup> The provisions of this section govern CAMs and community association management firms, which are business entities engaged in the business of community association management for the purpose of providing any of the services which a CAM may provide. S. 468.431, F.S.

<sup>12</sup> S. 468.432, F.S.

<sup>13</sup> The Regulatory Council of Community Association Managers ("Council") must approve a CAM license exam, which exam must show that the applicant has a fundamental knowledge of state and federal laws relating to community association operation and state laws relating to corporations and non-profit corporations, proper community association budget preparation, property procedures for noticing and conducting community association meetings, insurance matters relating to community associations, and management skills. *Id.*

<sup>14</sup> S. 468.433, F.S.

<sup>15</sup> The Council establishes by rule the required amount of precensure education, which must consist of not more than 24 hours of in-person instruction by a DBPR-approved provider; cover all areas of the licensure examination; and be completed within 12 months of the examination. *Id.*

good moral character.<sup>16</sup> Where a qualified applicant successfully completed the CAM licensure exam and pays the appropriate fee,<sup>17</sup> DBPR must issue such person a CAM license.<sup>18</sup> However, where an applicant is found to be unqualified for a license because of a lack of good moral character, DBPR must give the applicant a statement of its findings, a complete record of the evidence upon which the determination was based, and a notice of the applicant's rights to a rehearing and an appeal.<sup>19</sup>

### *Professional Practice Standards*

A CAM is deemed to act as an agent on behalf of a community association within the CAM's scope of authority as enumerated in a written contract.<sup>20</sup> A CAM must discharge duties performed on the association's behalf loyally, skillfully, and diligently, dealing honestly and fairly, in good faith, with care and full disclosure to the association, accounting for all funds and not charging unreasonable or excessive fees.<sup>21</sup>

A contract between a CAM and a community association or between a community association and a community association management firm may provide that the association indemnifies and holds harmless the CAM and the management firm for ordinary negligence resulting from the manager's or management firm's act or omission resulting from an instruction or direction given by the association.<sup>22</sup> However, such indemnification may not cover any act or omission that:

- Violates a criminal law;
- Derives an improper benefit for the CAM, management firm, or association;
- Occurs in bad faith;
- Occurs with malicious purpose; or
- Is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.<sup>23</sup>

### *Disciplinary Proceedings and Other Penalties*

DBPR investigates complaints and allegations that a CAM violated Part VIII of chapter 468, F.S., or any rule adopted thereunder. Where DBPR finds a CAM or management firm guilty of any of the grounds specified in that part, it may enter an order:

- Denying a licensure application;
- Revoking or suspending a license;
- Imposing an administrative fine not exceeding \$5,000 for each count or separate offense;
- Issuing a reprimand;
- Placing the CAM on probation for a set time period, subject to conditions specified by DBPR; or
- Restricting the CAM's authorized scope of practice.<sup>24</sup>

Further, any person who violates the provisions of that part commits a second-degree misdemeanor.<sup>25</sup>

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<sup>16</sup> "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of Florida and of the United States. DBPR may refuse to certify an applicant as being of good moral character only if there is a substantial connection between the applicant's lack of good moral character and a CAM's professional responsibilities; the finding is supported by clear and convincing evidence; or the applicant is found to have provided CAM services without the requisite license. *Id.*

<sup>17</sup> Fees are established in s. 468.435, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> S. 468.4334, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> S. 468.436, F.S.

<sup>25</sup> A second-degree misdemeanor is punishable by up to six months in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

## Estoppel Certificates

Where a person intends to buy a unit in a condo or co-op, or a parcel in an HOA, an “estoppel certificate” helps to facilitate the closing of the sale by giving the parties thereto a summary of the fees, fines, dues, and assessments which the seller may owe to the community association.<sup>26</sup> In most instances, the seller does not have any outstanding monetary obligations to the association; however, where the seller does owe money to the association, the amount owed must generally be collected from the seller and applied at closing.<sup>27</sup> Otherwise, under Florida law, the buyer of the unit or parcel becomes jointly and severally liable with the previous owner for any money due to the association at the time of the sale.<sup>28</sup>

### *Estoppel Certificate Completion*

Florida law gives an association ten business days after receiving a written or electronic request for an estoppel certificate from a unit or parcel owner, a unit or parcel mortgagee, or the designee thereof, to issue the estoppel certificate.<sup>29</sup> Any board member, authorized agent, or authorized representative of the association may complete the estoppel certificate, including any CAM, and such certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance.<sup>30</sup>

An estoppel certificate that is hand-delivered or sent electronically has a 30-day effective period, while a certificate sent by regular mail has a 35-day effective period.<sup>31</sup> If additional information or a mistake becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale of the unit or parcel has not closed during the effective period.<sup>32</sup> However, an association waives the right to collect any moneys owed in excess of the amounts listed in the estoppel certificate from any person who in good faith relies upon the certificate, and from such person’s successors and assigns.<sup>33</sup>

### *Required Estoppel Certificate Information*

An estoppel certificate must contain the following information:

- The date of issuance;
- The name of the unit or parcel owner as reflected in the association’s books and records;
- The unit or parcel designation and address;
- The parking or garage space number, if applicable, as reflected in the association’s books and records;
- If the seller owes money to the association and his or her account has been turned over to an attorney for collection, the attorney’s name and contact information;
- The amount of the fee charged for the certificate’s preparation and delivery; and
- The requestor’s name.<sup>34</sup>

In addition to the information specified above, an estoppel certificate must disclose:

- The amount of the regular periodic assessment levied against the unit, and the frequency of its assessment;
- The date through which the regular periodic assessment is paid;
- The date the next installment of the regular period assessment is due, and the amount thereof;

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<sup>26</sup> Florida Realtors, *Estoppel*, <https://www.floridarealtors.org/advocacy/legislative-priorities/business-issues/estoppel#:~:text=estoppel%20letters%2Fcertificates,-.An%20estoppel%20letter%2Fcertificate%20is%20used%20to%20facilitate%20a%20closing,assessments%20owed%20to%20the%20association> (last visited Jan. 25, 2024).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Ss. 718.116, 719.108, and 720.30851, F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

- An itemized list of all assessments, special assessments, and other moneys owed on the date of the certificate's issuance by the unit or parcel owner for the specific unit or parcel at issue;
- An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the certificate's issuance for the certificate's effective period;
- Whether there is a capital contribution fee, resale fee, transfer fee, or other fee due, and, if so, the type and amount of such fee;
- Whether there is any open violation of rule or regulation noticed to the unit or parcel owner in the association's official records;
- Whether the association's rules and regulations require the board's approval to transfer the unit or parcel and, if so, whether the board has approved the transfer;
- Whether the association's members have a right of first refusal and, if so, whether the members exercised that right;
- A list of, and contact information for, all other associations of which the unit or parcel is a member;
- Contact information for all insurance the association maintains;
- The signature of an officer or authorized agent of the association; and
- Any additional information the association chooses to provide.<sup>35</sup>

### *Preparation and Delivery Fees*

In 2017, the Legislature capped the maximum amount that an association, or the management company thereof, may charge for estoppel certificate preparation and delivery.<sup>36</sup> Under current law, an association is, accordingly, prohibited from charging:

- More than \$299 for certificate preparation and delivery if, on the date of the certificate's issuance, the seller did not owe any money to the association;
- More than a \$179 additional fee if the seller owes money to the association for the unit or parcel at issue; and
- More than a \$119 additional fee if the certificate is requested on an expedited basis.<sup>37</sup>

Further, where an association receives requests for estoppel certificates for multiple units or parcels owned by the same person, and such person owes no money to the association, the total certificate preparation and delivery fee which the association may charge may not exceed, in the aggregate:

- \$896 for 25 or fewer units or parcels;
- \$1,194 for 26 to 50 units or parcels;
- \$1,791 for 51 to 100 units or parcels; or
- \$2,985 for more than 100 units or parcels.<sup>38</sup>

However, the association's authority to charge estoppel certificate preparation and delivery fees must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.<sup>39</sup> Moreover, where the association receives a request for an estoppel certificate and fails to deliver the certificate within ten business days, the association is prohibited from charging a fee for the certificate's preparation and delivery.<sup>40</sup>

<sup>35</sup> *Id.*

<sup>36</sup> The fee caps must be adjusted every five years in an amount equal to the total of the annual increases for that five-year period in the Consumer Price Index, and DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website. Chapter 2017-93, Laws of Fla.

<sup>37</sup> Ss. 718.116, 719.108, and 720.30851, F.S.; DBPR, *Estoppel Certificate Fees Revised*, [http://www.myfloridalicense.com/dbpr/lsc/documents/ESTOPPEL\\_CERTIFICATE\\_FEES.pdf](http://www.myfloridalicense.com/dbpr/lsc/documents/ESTOPPEL_CERTIFICATE_FEES.pdf) (last visited Jan. 29, 2024).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

## Payment of Fees Where Closing Does Not Occur

If an estoppel certificate is requested in conjunction with the sale of a unit or parcel but closing does not occur, and the payor submits a written refund request along with reasonable documentation that the sale did not occur no later than 30 days after the closing date for which the certificate was sought, the association must refund the fee to the payor within 30 days after receiving the refund request.<sup>41</sup> However, the refund is the obligation of the unit or parcel owner; thus, Florida law allows the association to collect the refunded amount from the unit or parcel owner in the same manner as the association would collect an assessment.<sup>42</sup> Further, the prevailing party in any action brought to enforce a refund right is entitled to an award of his or her damages and all applicable attorney fees and costs.<sup>43</sup>

### Effect of Proposed Changes

HB 979 prohibits an association from charging any fees for estoppel certificate preparation or delivery. The bill provides an effective date of July 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 718.116, F.S., relating to assessments; liability; lien and priority; interest; collection.

**Section 2:** Amends s. 719.108, F.S., relating to rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.

**Section 3:** Amends s. 720.30851, F.S., relating to estoppel certificates.

**Section 4:** Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it:

- Reduces closing costs associated with the sale of a unit in a condo or co-op unit or a parcel in an HOA;
- Prevents the seller of such a unit or parcel from losing out on the fee amount where the sale does not close and the payor requests a fee refund; or
- Prevents an estoppel fee payor from losing money as part of a sale that does not close where the payor would not have otherwise wished to request a fee refund to the seller's detriment.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

However, the bill may have a negative economic impact on the private sector to the extent that it prohibits associations from recovering fees to cover those costs which they must expend in preparing or delivering an estoppel certificate.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**