

1 A bill to be entitled
2 An act relating to mortgage payoff letters; amending
3 s. 701.04, F.S.; revising the timeframe within which a
4 mortgagee or mortgage servicer must send or cause to
5 be sent an estoppel letter containing specified
6 information; revising the circumstances under which a
7 copy of the instrument showing title in the property
8 or other lawful authorization must be included in a
9 request for an estoppel letter; requiring notice to
10 the mortgagor of a request for an estoppel letter
11 under certain circumstances; revising requirements for
12 an estoppel letter; prohibiting certain actions by the
13 mortgagee or mortgage servicer; authorizing the
14 mortgagee or mortgage servicer to send a corrected
15 estoppel letter under certain circumstances; providing
16 that a corrected estoppel letter supersedes any
17 previous estoppel letter under certain circumstances;
18 providing methods for sending a corrected estoppel
19 letter; prohibiting the mortgagee or mortgage servicer
20 from denying the accuracy of certain information
21 provided in an estoppel letter under certain
22 circumstances; prohibiting payments received pursuant
23 to an estoppel letter from being returned and
24 requiring such payments to be promptly applied to any
25 unpaid balance of the loan properly due under or

26 secured by a mortgage; providing methods for sending a
 27 written request for an estoppel letter and for sending
 28 an estoppel letter; providing that the mortgagee or
 29 mortgage servicer is not required to pay for a common
 30 carrier delivery service; requiring the mortgagee or
 31 mortgage servicer to take certain actions within a
 32 specified time after the unpaid balance of a loan
 33 properly secured by a mortgage has been fully paid or
 34 paid pursuant to an estoppel letter; authorizing
 35 reasonable attorney fees and costs; amending s.
 36 701.041, F.S.; revising the definition of the term
 37 "estoppel letter"; conforming provisions to changes
 38 made by the act; providing legislative findings;
 39 providing for retroactive applicability; providing an
 40 effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Section 701.04, Florida Statutes, is amended to
 45 read:

46 701.04 Cancellation of mortgages, liens, and judgments.—

47 (1) (a) Within 10 ~~14~~ days after receipt of the written
 48 request of a mortgagor, a record title owner of the property, a
 49 fiduciary or trustee lawfully acting on behalf of a record title
 50 owner, or any other person lawfully authorized to act on behalf

51 of a mortgagor or record title owner of the property, the
 52 ~~mortgagee holder of a mortgage shall deliver or mortgage cause~~
 53 ~~the servicer shall send or cause to be sent of the mortgage to~~
 54 ~~deliver to the person making the request at a place designated~~
 55 ~~in the written request~~ an estoppel letter setting forth the
 56 unpaid balance of the loan secured by the mortgage. If the
 57 written request is made by a person other than the mortgagor,
 58 the request must include a copy of the instrument showing such
 59 person's title in the property or other lawful authorization,
 60 and the mortgagee or mortgage servicer must notify the mortgagor
 61 of the request.

62 ~~(a) If the mortgagor, or any person lawfully authorized to~~
 63 ~~act on behalf of the mortgagor, makes the request, the estoppel~~
 64 ~~letter must include an itemization of the principal, interest,~~
 65 ~~and any other charges properly due under or secured by the~~
 66 ~~mortgage and interest on a per-day basis for the unpaid balance.~~

67 ~~(b) If a record title owner of the property, or any person~~
 68 ~~lawfully authorized to act on behalf of a mortgagor or record~~
 69 ~~title owner of the property, makes the request:~~

70 ~~1. The request must include a copy of the instrument~~
 71 ~~showing title in the property or lawful authorization.~~

72 ~~2. The estoppel letter may include the itemization of~~
 73 ~~information required under paragraph (a), but must at a minimum~~
 74 ~~include:~~

75 1. The ~~total~~ unpaid balance of the loan properly due under

76 | or secured by the mortgage as of the date specified in the
77 | estoppel letter, including an itemization of the principal,
78 | interest, and any other charges comprising the unpaid balance.

79 | 2. Interest accruing on a per-day basis for the unpaid
80 | balance, if applicable.

81 | (c)1. Except for mortgages for which a notice of lis
82 | pendens in a foreclosure action or a suggestion of bankruptcy
83 | has been properly filed and recorded, the mortgagee or mortgage
84 | servicer may not qualify, reserve the right to change, or
85 | condition or disclaim the reliance of others on the information
86 | provided in an estoppel letter under paragraph (b), and any
87 | attempt to do so is void and unenforceable. However, if the
88 | mortgagee or mortgage servicer determines that any of the
89 | information provided in the estoppel letter under paragraph (b)
90 | was inaccurate, the mortgagee or mortgage servicer may send a
91 | corrected estoppel letter to the person who requested the
92 | estoppel letter.

93 | 2. If the person who requested the original estoppel
94 | letter under paragraph (a) receives a corrected estoppel letter
95 | by 3 p.m. in such person's time zone at least 1 business day
96 | before a payment is issued in reliance on the previous estoppel
97 | letter, the corrected estoppel letter supersedes all prior
98 | estoppel letters. The corrected estoppel letter is considered
99 | received by the person who requested the original estoppel
100 | letter:

101 a. Five business days after the corrected estoppel letter,
 102 which is to be sent by first-class mail, is deposited with the
 103 United States Postal Service;

104 b. The day the corrected estoppel letter is delivered by a
 105 common carrier delivery service; or

106 c. The day the corrected estoppel letter is sent by e-
 107 mail, facsimile, or other electronic means or through an
 108 automated system provided by the mortgagee or mortgage servicer
 109 for requesting an estoppel letter.

110 3. If any of the information provided in the estoppel
 111 letter under paragraph (b) was inaccurate, but the person who
 112 requested the estoppel letter did not timely receive a corrected
 113 estoppel letter as provided in subparagraph 2., the mortgagee or
 114 mortgage servicer may not deny the accuracy of such information
 115 as against any person who relied on it.

116 (d)3. The mortgagee or mortgage servicer ~~of the mortgagee~~
 117 acting in accordance with a request in substantial compliance
 118 with this subsection ~~paragraph~~ is expressly discharged from any
 119 obligation or liability to any person on account of the release
 120 of the requested information, other than the obligation to
 121 comply with the terms of the estoppel letter.

122 (e) If a payment is received at the location and in the
 123 manner specified by the mortgagee or mortgage servicer, the
 124 mortgagee or mortgage servicer must accept, and may not return,
 125 any payment received in reliance on an estoppel letter and must

126 promptly apply such payment to the unpaid balance of the loan
127 properly due under or secured by the mortgage.

128 (f)1. A written request for an estoppel letter under
129 paragraph (a) must be sent to the mortgagee or mortgage servicer
130 by first-class mail, postage prepaid; by common carrier delivery
131 service; or by e-mail, facsimile, or other electronic means at
132 the address made available by the mortgagee or mortgage servicer
133 for such purpose or through an automated system provided by the
134 mortgagee or mortgage servicer for requesting an estoppel
135 letter. The written request is considered received by the
136 mortgagee or mortgage servicer:

137 a. Five business days after the request sent by first-
138 class mail is deposited with the United States Postal Service;

139 b. The day the request is delivered by a common carrier
140 delivery service; or

141 c. The day the request is sent by e-mail, facsimile, or
142 other electronic means or through an automated system provided
143 by the mortgagee or mortgage servicer for requesting an estoppel
144 letter.

145
146 If any of the days in sub-subparagraph a., sub-subparagraph b.,
147 or sub-subparagraph c. falls on a Saturday, Sunday, or legal
148 holiday under the laws of the state or the United States, the
149 request for an estoppel letter is considered timely received by
150 the mortgagee or mortgage servicer on the next business day.

151 2. The mortgagee or mortgage servicer must send an
 152 estoppel letter by first-class mail; by common carrier delivery
 153 service; or by e-mail, facsimile, or other electronic means, as
 154 directed in the written request, or through an automated system
 155 provided by the mortgagee or mortgage servicer for this purpose.
 156 However, the mortgagee or mortgage servicer is not required to
 157 pay for a common carrier delivery service. If the 10-day period
 158 after a written request is received by the mortgagee or mortgage
 159 servicer ends on a Saturday, Sunday, or legal holiday under the
 160 laws of the state or the United States, the estoppel letter is
 161 considered timely if it is sent by the close of business on the
 162 next business day.

163 (g)(e) Notwithstanding s. 655.059, a mortgagee or mortgage
 164 servicer ~~mortgage holder~~ may provide the financial information
 165 required under this subsection to a person authorized under this
 166 subsection to request the financial information ~~notwithstanding~~
 167 s. 655.059.

168 (2) Within 60 days after the unpaid balance of a loan
 169 secured by a mortgage has been fully paid or paid pursuant to an
 170 estoppel letter under subsection (1), whichever is earlier, the
 171 mortgagee or mortgage servicer shall execute in writing an
 172 instrument acknowledging satisfaction of the mortgage; have the
 173 instrument acknowledged, or proven, and send it or cause it to
 174 be sent for recording in the official records of the proper
 175 county; and send or cause to be sent the recorded satisfaction

176 to the mortgagor or record title owner of the property. The
 177 prevailing party in a civil action brought against the mortgagee
 178 or mortgage servicer to enforce the requirements of this
 179 subsection is entitled to reasonable attorney fees and costs.

180 (3)-(2) Within 60 days after the unpaid balance ~~Whenever~~
 181 ~~the amount of money due on a any mortgage, lien, or judgment has~~
 182 ~~been fully paid to the person or party entitled to the payment~~
 183 ~~thereof, the mortgagee, creditor, or assignee, or the attorney~~
 184 ~~of record in the case of a judgment, to whom the payment was~~
 185 ~~made, shall execute in writing an instrument acknowledging~~
 186 ~~satisfaction of the mortgage, lien, or judgment; and have the~~
 187 ~~instrument acknowledged, or proven, and~~ send it or cause it to
 188 be sent for recording ~~duly entered~~ in the official records of
 189 ~~the proper county; and. Within 60 days after the date of receipt~~
 190 ~~of the full payment of the mortgage, lien, or judgment, the~~
 191 ~~person required to acknowledge satisfaction of the mortgage,~~
 192 ~~lien, or judgment shall send or cause to be sent the recorded~~
 193 ~~satisfaction to the person who has made the full payment. In the~~
 194 ~~case of a civil action arising out of this section, The~~
 195 prevailing party in a civil action brought against the creditor
 196 or assignee, or the attorney of record in the case of a
 197 judgment, to enforce the requirements of this subsection is
 198 entitled to reasonable attorney fees and costs.

199 (4)-(3) When ~~Whenever~~ a writ of execution has been issued,
 200 docketed, and indexed with a sheriff and the judgment upon which

201 it was issued has been fully paid, it is the responsibility of
 202 the person ~~party~~ receiving payment to request, in writing,
 203 addressed to the sheriff, return of the writ of execution as
 204 fully satisfied.

205 Section 2. Paragraph (a) of subsection (1) and subsection
 206 (2) of section 701.041, Florida Statutes, are amended to read:

207 701.041 Title insurer; mortgage release certificate.—

208 (1) DEFINITIONS.—For purposes of this section:

209 (a) "Estoppel letter" means a statement containing, at a
 210 minimum, the information required in s. 701.04(1)(b) ~~of the~~
 211 ~~amount of:~~

212 1. ~~The unpaid balance of a loan secured by a mortgage,~~
 213 ~~including principal, interest, and any other charges properly~~
 214 ~~due under or secured by the mortgage.~~

215 2. ~~Interest on a per-day basis for the unpaid balance.~~

216 (2) CERTIFICATE OF RELEASE.—An officer or duly appointed
 217 agent of a title insurer may, on behalf of a mortgagor or a
 218 person who acquired from the mortgagor title to all or a part of
 219 the property described in a mortgage, execute a certificate of
 220 release that complies with the requirements of this section and
 221 record the certificate of release in the real property records
 222 of each county in which the mortgage is recorded if a
 223 satisfaction or release of the mortgage has not been executed
 224 and recorded after the date payment in full of the loan properly
 225 due under or secured by the mortgage was made in accordance with

226 an estoppel letter ~~a payoff statement~~ furnished by the mortgagee
227 or ~~the~~ mortgage servicer.

228 Section 3. The Legislature finds that the timeliness and
229 accuracy of an estoppel letter is critical because the parties
230 to a real estate transaction must rely on the estoppel letter to
231 establish the loan payoff amount necessary to release the
232 mortgage, which in turn will allow the owner to confer clean
233 title to a buyer or to refinance the property. The Legislature
234 further finds that estoppel letters increasingly contain
235 conditional language disclaiming the ability of an owner to rely
236 on the stated loan payoff amounts, extending even to the return
237 of such payments submitted by owners, creating unnecessary
238 delays in the efficient operation of the state's real estate
239 market, which is a vital economic contributor to the state, and
240 imposing needless costs and burdens on property owners and
241 buyers. Additionally, the Legislature finds that real estate
242 lending, mortgages, real estate transactions, and estoppel
243 letters are extensively regulated under both state and federal
244 law. The Legislature finds and determines that this act makes
245 changes to state law that appropriately balance the parties'
246 interests, are reasonable and necessary to serve and achieve an
247 important state interest, are necessary for the prosperity and
248 welfare of the state and its property owners and inhabitants,
249 and must be applied to existing mortgages in order to provide
250 effective relief.

251 Section 4. This act applies to all mortgages, and all
252 loans secured by such mortgages, existing as of, or entered into
253 on or after, October 1, 2022.

254 Section 5. This act shall take effect October 1, 2022.