

Realtor® Attorney Joint Committee

Why Won't Anyone Answer Me???

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It is all about how you ask, and when it comes to homeowner's or community associations, which are notorious for not providing the information you need to as quickly or as thoroughly as you would like in preparation for your closing, knowing what you can ask is your best tool!

As of July 1, 2017, both the Condominium Act (Florida Statutes Chapter 718) and the Homeowners' Association Act (Florida Statutes Chapter 720) were amended to provide form estoppel certificates to be used in connection with the sale or transfer of a property. Both statutory provisions list a number of questions that a community association must answer upon request by an owner, an owner's designee, or a mortgagee or a mortgagee's designee.

Estoppel certificates must be issued by the association within ten business days after receipt and may be completed by any association board member or authorized agent of the association. However, here are some practical points to consider when using the statutory estoppel process.

1. An association only has to answer the questions listed in the statutes. At the association's discretion, it may, but is not required to, provide answers to any other questions. Many associations will not answer anything more than what is required as a wrong answer creates liability for the association, and an unfavorable answer may persuade a purchaser to walk away from the property, leaving the association to answer to the angry owner/seller.

2. An association does not have to give you documents relating to the association business regardless of how relevant they may be to the transaction. However, that is not the end of the story. The owners/sellers have the right as a member of an association to "access" the "Official Records of the Association" and to make copies. See Florida Statutes Section 718.111(12) and Section 720.303(5). So, if the purchaser really needs to see how business is conducted in the community and wants the minutes of the board meetings from the last few months, have the seller obtain copies from the association through an official records request.

3. Estoppel certificates must be good for 30 days if provided by the association via hand delivery or electronic means. However, an estoppel certificate sent by regular mail has a 35-day effective period. If additional information (which would include a special assessment that was just passed) or a mistake related to the estoppel becomes known by the association within the effective period, the association must provide an updated estoppel free of charge. Further, if the association misses the ten-business-day deadline, the association cannot charge any fee for the estoppel certificate.

4. Fees for estoppel certificates are capped by law at \$250.00 if no assessments are delinquent. However, if assessments are delinquent on the date the certificate is issued, the association may charge up to an additional \$150.00. Further, if an estoppel certificate is requested on an expedited basis and delivered within three days after the request, the

association may charge an additional fee of \$100.00. *The more you know!*

For a list of the questions that are contained on the statutory estoppel certificates, refer to Florida Statutes Sections 718.116(8) and 720.30851.

This article is not intended to serve as legal advice and should not be used as a substitute for consultation with an attorney.

