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My View: Florida estoppel bill would force owners in associations to pay fees for failed sales

House Bill 203 is on track for a vote during the legislative session

One aspect of the bill is sure to have a deleterious financial impact on many condo associations and HOAs

BY MICHAEL L. HYMAN - Special to the Miami Herald

Last year, the Florida Legislature introduced a bill to increase the regulations and liabilities for the state's more than 46,000 community associations for their issuance of estoppel certificates, which are prepared by associations, their attorneys and property managers to provide the amount owed to an association for a unit as of a particular date. They are issued at the request of prospective buyers of units in communities, as the buyers as well as their lenders and closing agents rely on estoppels in order to bind the association to the stated amount.

Several aspects of the measure proved to be controversial. Condominium associations, HOAs and property managers voiced their opposition, and the bill was not passed.

However, with the backing of the powerful real estate industry and title companies, a new version of the bill now seeks to take the burden of paying for the preparation of estoppels away from some of their clients and place it on the existing homeowners in the communities where their clients wish to buy.

House Bill 203, this year's version of the measure, has already passed the House's Civil Justice Committee, and it is on track for a vote during the 2016 legislative session that began on Jan. 12. It calls for changes to allow estoppel certificates to be delivered electronically and require them to include specific content as well as effective periods. The amount that associations can charge home buyers for the certificates would be capped at \$500, and the certificates would be required to be prepared and delivered within 10 business days of a request.

None of these changes are the one that presents the most concerns for associations, although the requirement for a 10 business-day turnaround will prove difficult in complex cases that may include fines in addition to delinquent maintenance dues and/or litigation. Bear in mind that the

size and sophistication of community associations varies greatly, and small associations with antiquated bookkeeping will find these difficult cases to be particularly daunting. In addition, any differences between the capped amounts that home buyers can be charged for the preparation of an estoppel and the actual cost of creating it would be passed on to all of the unit owners of an association.

While the bill should be applauded for attempting to codify the parties that must pay the fee for the preparation of an estoppel, as currently that is left to the parties' discretion, the most troubling aspect of the bill for associations is that they and their unit owners would be on hook for these fees in many cases when sales fail to close. The bill calls for associations to wait for a sale of a unit to close until they get paid for the work and fees that they incurred in preparing an estoppel to facilitate the sale. If the home or condominium sale did not close, the association would ultimately be responsible for these fees and costs if it were unable to collect them from the seller of the unit, as would often be the case with so many distressed properties being sold by owners already delinquent on their association dues.

This aspect of the bill is sure to have a deleterious financial impact on many condominium associations and HOAs throughout the state. Real estate sales fail to close all of the time due to failed inspections, and the associated costs for conducting these home inspections are always rightfully borne by the prospective buyers. Estoppel certificate fees, which are typically less than \$400, are actually among the smallest expenses of all of the closing costs and fees incurred in connection with real estate transactions.

Community associations in Florida have had to overcome dire financial strains in order to recover from the collapse of the housing market and the foreclosure crisis. HB 203 seeks to shift estoppel fees to the associations and their unit owners, and take them away from those who enter into contracts for the purchase of a property and then fail to close. Association directors and members as well as property managers should contact the Florida lawmakers for their district to voice their opposition.

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