

Bulletin

FLORIDA BULLETIN 06-03

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: JULY 12, 2006
RE: CONDOMINIUM/HOMEOWNER ASSOCIATION & CHAPTER 159 ESTOPPELS
FOR RESIDENTIAL (1-4 FAMILY) REFINANCES

Estoppel letters from condominium or homeowner associations in connection with residential (1-4 family) refinances have **NOT** been required for some time. Neither have we required estoppel letters for possible Chapter 159 liens in transactions meeting the same criteria. We believe it is important for you to understand our reasons.

Many of you may be aware of the "relation back" provisions contained in *Florida Statute 718.116* regarding condominium association liens. To refresh your recollection, this statute provides, among other things, that "the association has a lien on each condominium parcel to secure the payment of assessments" and that except as provided, "the lien is effective from and shall *relate back* to the recording of the declaration of condominium." When dealing with a phase condominium, then, the lien relates back to the date of recording the original declaration or the amendment creating the phase, whichever occurs last.

As a result, our commitments and subsequent Owners and Mortgagee policies contain the following exception:

Any loss or damage arising from assessments occurring after the date of the Policy resulting from the provisions contained in Florida Statute 718.116, notwithstanding assurance to the contrary in any ALTA Condominium Endorsement Form 4.1, ALTA PUD Endorsement Form 5.1 or Florida Form 9 Endorsement (Rev. 02/95) which may be attached to this commitment/policy.

Unless you find a Claim of Lien already of record for your particular unit, there is no need to obtain and require an estoppel letter from the condominium association because, as indicated by the above exception, we are not insuring those matters anyway.

**This Bulletin is to become a permanent part of your Bulletin Manual,
and you are to comply with the requirements contained herein.**

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Homeowner association assessments are different: there are no “relation back” provisions in the law and, in fact, there are no specific statutes upon which the associations may rely. Homeowner association liens must be recorded, their priority established by the date of recording, and they shall be effective for 5 years pursuant to *Florida Statute 95.11(2)(b)*. Whether or not we require an estoppel from the homeowners association in residential refinances, we have the same liability we have in any other transaction—our exposure is limited to any recorded matters that fall within the “gap.”

Chapter 159 liens have attained “super” status by virtue of the Florida Statutes; however, these, like condominium association liens, are not insured under our commitments and policies by virtue of the following exception:

Any lien provided by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water systems, sewer systems or gas systems serving the lands described herein..

It follows that if we are not insuring against such liens, no purpose is served by requiring and obtaining an estoppel letter from the various municipalities providing water, sewer or gas systems services.

Should you have any questions, please contact your Old Republic Underwriting Department.