

Bill No. SB 1258

Barcode 761260

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Atwater) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 701.041, Florida Statutes, is created to read:

701.041 Title insurer; mortgage release certificate.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Mortgage" means a mortgage or mortgage lien on an interest in real property in this state, including any modifications thereof, given to secure a loan in the principal amount of \$500,000 or less, other than a mortgage securing an open-end or revolving credit agreement.

(b) "Mortgagee" means:

1. The grantee of a mortgage; or

2. If a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

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1 (c) "Mortgage servicer" means the last person to whom
 2 a mortgagor or the mortgagor's successor in interest has been
 3 instructed by a mortgagee to send payments on a loan secured
 4 by a mortgage. A person transmitting a payoff statement is the
 5 mortgage servicer for the mortgage described in the payment
 6 statement.

7 (d) "Mortgagor" means the grantor of a mortgage.

8 (e) "Payoff statement" means a statement of the amount
 9 of:

10 1. The unpaid balance of a loan secured by a mortgage,
 11 including principal, interest, and any other charges properly
 12 due under or secured by the mortgage.

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

14 (f) "Record" means to record with the clerk of the
 15 circuit court or the comptroller in the county or counties in
 16 which the real property securing the mortgage is located.

17 (g) "Title insurer" means a corporation or other
 18 business entity authorized and licensed to transact the
 19 business of insuring titles to interests in real property in
 20 this state under chapter 624.

21 (2) CERTIFICATE OF RELEASE.--An officer or duly
 22 appointed agent of a title insurer may, on behalf of a
 23 mortgagor or a person who acquired from the mortgagor title to
 24 all or a part of the property described in a mortgage, execute
 25 a certificate of release that complies with the requirements
 26 of this section and record the certificate of release in the
 27 real property records of each county in which the mortgage is
 28 recorded if a satisfaction or release of the mortgage has not
 29 been executed and recorded after the date payment in full of
 30 the loan secured by the mortgage was made in accordance with a
 31 payoff statement furnished by the mortgagee or the mortgage

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1 servicer.

2 (3) CONTENTS.--A certificate of release executed under
3 this section must contain:

4 (a) The name of the mortgagor, the name of the
5 original mortgagee, and, if applicable, the mortgage servicer;
6 the date of the mortgage; the date of recording; and the
7 volume and page or document number in the real property
8 records in which the mortgage is recorded, together with
9 similar information for the last recorded assignment of the
10 mortgage.

11 (b) A statement that the mortgage, including any
12 modifications thereof, was in the principal amount of \$500,000
13 or less.

14 (c) The name of the title insurer filing the
15 certificate of release, a statement that the person executing
16 the certificate of release is an officer or a duly appointed
17 agent of the title insurer, a statement that the title insurer
18 is authorized and licensed to transact the business of
19 insuring titles to interests in real property in this state
20 under chapter 624 or chapter 626, and, if executed by a duly
21 appointed agent, shall further provide the recording
22 information of the appointment of the agent as required by
23 subsection (4).

24 (d) A statement that the certificate of release is
25 made on behalf of the mortgagor or a person who acquired title
26 from the mortgagor to all or a part of the property described
27 in the mortgage.

28 (e) A statement that the mortgagee or mortgage
29 servicer provided a payoff statement which was used to make
30 payment in full of the unpaid balance of the loan secured by
31 the mortgage.

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1 (f) A statement that payment in full of the unpaid
 2 balance of the loan secured by the mortgage was made in
 3 accordance with the payoff statement and that a copy of the
 4 certificate of release was sent to the mortgagee or mortgage
 5 servicer that provided the payoff statement.

6 (4) EXECUTION.--

7 (a) A certificate of release authorized by subsection
 8 (2) must be duly executed, sworn to or affirmed under penalty
 9 of perjury before a notary public, and recorded and may be
 10 executed by an officer of a title insurer or by a duly
 11 appointed agent of a title insurer. Delegation to an agent by
 12 a title insurer does not relieve the title insurer of any
 13 liability for damages caused by the agent for the execution or
 14 recordation of a certificate of release.

15 (b) The appointment of an agent must be duly executed,
 16 acknowledged, and recorded by an officer of a title insurer
 17 and must state:

18 1. The title insurer as the principal.

19 2. The identity of the person, partnership, or
 20 corporation authorized to act as agent to execute and record
 21 certificates of release provided for in this section on behalf
 22 of the title insurer.

23 3. That the agent has the full authority to execute
 24 and record certificates of release provided for in this
 25 section on behalf of the title insurer.

26 (c) A separate appointment of agent is not necessary
 27 for each certificate of release provided that at least one
 28 appointment is recorded in the county in which the mortgaged
 29 property is located. The appointment of agent must be
 30 rerecorded where necessary to establish authority of the
 31 agent, but the authority continues until a revocation of

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1 appointment is recorded in the office of the county recorder
2 in which the appointment of agent was recorded.

3 (d) After recordation of a title insurer's revocation
4 of appointment in the office of the county recorder in which
5 the appointment was recorded, the agent whose appointment is
6 revoked in that county shall have no further authority to
7 execute or record certificates of release as provided in this
8 section on behalf of that title insurer with respect to any
9 mortgages recorded in that county, and no certificate of
10 release thereafter executed or recorded by that agent on
11 behalf of that title insurer shall be effective to release any
12 mortgage recorded in that county.

13 (5) EFFECT.--For purposes of releasing the mortgage, a
14 certificate of release containing the information and
15 statements provided for in subsection (3) and executed as
16 provided in subsection (4) is entitled to be recorded with the
17 county recorder and operates as a release of the mortgage
18 described in the certificate of release. The county recorder
19 shall rely upon the certificate to release the mortgage.
20 Recording of a certificate of release by a title insurer or
21 its agent does not relieve the mortgagor, or the mortgagor's
22 successors or assigns, from any personal liability on the loan
23 or other obligations secured by the mortgage. A certificate of
24 release recorded under this section fulfills any other
25 obligation of the mortgagee or mortgage servicer to file a
26 satisfaction or release of the mortgage.

27 (6) LIABILITY OF TITLE INSURER.--

28 (a) In addition to any other remedy provided by law, a
29 title insurer recording a certificate of release under this
30 section is liable to the holder of the obligation secured by
31 the mortgage for actual damage sustained due to the recording

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1 of the certificate of release. Reasonable costs and attorneys'
2 fees shall be awarded to the prevailing party.

3 (b) The title insurer named in a certificate of
4 release filed by a duly appointed agent is liable under this
5 subsection without regard to whether the title insurer
6 authorized the specific certificate of release recorded by the
7 agent.

8 (c) The title insurer has no liability under this
9 subsection if the title insurer shows that payment in full of
10 the unpaid balance of the loan secured by the mortgage was
11 made in accordance with the payoff statement furnished by the
12 mortgagee or the mortgage servicer.

13 (d) Liability of a title insurer under this section
14 shall be considered to be a title insurance claim on real
15 property in this state under s. 627.7865.

16 (7) RECORDING.--If a mortgage is recorded in more than
17 one county and a certificate of release is recorded in one of
18 the counties, a certified copy of the certificate of release
19 may be recorded in another of the counties with the same
20 effect as the original. In all cases, the certificate of
21 release shall be entered and indexed as satisfactions of
22 mortgage are entered and indexed.

23 (8) APPLICATION.--This section applies only to a
24 mortgage, including any modifications of the mortgage, in the
25 principal amount of \$500,000 or less.

26 (9) PREMIUM.--The Financial Services Commission shall
27 adopt rules establishing a minimum premium charge to be made
28 for each certificate of release recorded under this section.

29 Section 2. Section 701.05, Florida Statutes, is
30 repealed.

31 Section 3. This act shall take effect July 1, 2005.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

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5 and insert:

6 A bill to be entitled

7 An act relating to certificates of release for
8 mortgages; creating s. 701.041, F.S.; providing
9 definitions; providing for the issuance of a
10 certificate of release for a mortgage by a
11 title insurer or its authorized agent for
12 certain purposes; providing for recordation;
13 specifying contents of a certificate of
14 release; requiring execution, acknowledgment,
15 and recordation of a certificate of release by
16 certain entities; providing requirements for
17 appointment of an agent for execution purposes;
18 providing for effect of a certificate of
19 release; providing for liability of title
20 insurers under certain circumstances; providing
21 criteria for recording multiple certificates of
22 release; providing application; requiring the
23 Financial Services Commission to adopt rules
24 establishing a minimum premium charge for
25 certificates of release; repealing s. 701.05,
26 F.S., relating to failing or refusing to
27 satisfy a lien and punishment therefor;
28 providing an effective date.

29

30 WHEREAS, the Legislature finds that modern trends in
31 the real estate market require that real estate closings must

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1 be completed, funds disbursed, and title insurance policies
 2 issued prior to the receipt by the title insurer or its
 3 authorized agent, or the recording in the public records, of
 4 releases or satisfactions of mortgages that have been paid,
 5 and

6 WHEREAS, in a significant number of circumstances such
 7 releases or satisfactions are not presented in a timely
 8 fashion, or are never presented, to the title insurer or its
 9 authorized agent, and

10 WHEREAS, this situation is exacerbated by the
 11 proliferation of servicing contracts and multiple assignments
 12 of mortgages, and

13 WHEREAS, title insurers devote a significant amount of
 14 time attempting to obtain and record releases and
 15 satisfactions of mortgages that have been paid, and

16 WHEREAS, title insurers and their authorized agents
 17 undertake a real and significant risk in the issuance of title
 18 insurance policies without an exception for these paid
 19 mortgages that have not been released or satisfied in the
 20 public records, and

21 WHEREAS, it is in the public interest that an
 22 alternative method be made available to title insurers and
 23 their authorized agents to evidence in the public records the
 24 payment and release of these mortgages, NOW, THEREFORE,

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