

1 WHEREAS, title insurers devote a significant amount of
2 time attempting to obtain and record releases and
3 satisfactions of mortgages that have been paid, and

4 WHEREAS, title insurers and their authorized agents
5 undertake a real and significant risk in the issuance of title
6 insurance policies without an exception for these paid
7 mortgages that have not been released or satisfied in the
8 public records, and

9 WHEREAS, it is in the public interest that an
10 alternative method be made available to title insurers and
11 their authorized agents to evidence in the public records the
12 payment and release of these mortgages, NOW, THEREFORE,

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

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

18 701.041 Title insurer; mortgage release certificate.--

19 (1) DEFINITIONS.--For purposes of this section:

20 (a) "Mortgage" means a mortgage or mortgage lien on an
21 interest in real property in this state, including any
22 modifications thereof, given to secure a loan in the principal
23 amount of \$500,000 or less.

24 (b) "Mortgagee" means:

- 25 1. The grantee of a mortgage; or
26 2. If a mortgage has been assigned of record, the last
27 person to whom the mortgage has been assigned of record.

28 (c) "Mortgage servicer" means the last person to whom
29 a mortgagor or the mortgagor's successor in interest has been
30 instructed by a mortgagee to send payments on a loan secured
31 by a mortgage. A person transmitting a payoff statement is the

1 mortgage servicer for the mortgage described in the payment
2 statement.

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

4 (e) "Payoff statement" means a statement of the amount
5 of:

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

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

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

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

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

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

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

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

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

19 (d) A statement that the certificate of release is
20 made on behalf of the mortgagor or a person who acquired title
21 from the mortgagor to all or a part of the property described
22 in the mortgage.

23 (e) A statement that the mortgagee or mortgage
24 servicer provided a payoff statement which was used to make
25 payment in full of the unpaid balance of the loan secured by
26 the mortgage.

27 (f) A statement that payment in full of the unpaid
28 balance of the loan secured by the mortgage was made in
29 accordance with the payoff statement.

30 (4) EXECUTION.--
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1 (a) A certificate of release authorized by subsection
2 (2) must be duly executed, acknowledged, and recorded and may
3 be executed by an officer of a title insurer or by a duly
4 appointed agent of a title insurer. Such delegation to an
5 agent by a title insurer shall not relieve the title insurer
6 of any liability for damages caused by its agent for the
7 wrongful or erroneous execution of a certificate of release.

8 (b) The appointment of an agent must be duly executed,
9 acknowledged, and recorded by an officer of a title insurer
10 and must state:

11 1. The title insurer as the principal.

12 2. The identity of the person, partnership, or
13 corporation authorized to act as agent to execute and record
14 certificates of release provided for in this section on behalf
15 of the title insurer.

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

19 (c) A separate appointment of agent shall not be
20 necessary for each certificate of release provided that at
21 least one such appointment is recorded in the county in which
22 the mortgaged property is located. The appointment of agent
23 must be rerecorded where necessary to establish authority of
24 the agent, but such authority shall continue until a
25 revocation of appointment is recorded in the office of the
26 county recorder in which the appointment of agent was
27 recorded.

28 (5) EFFECT.--For purposes of releasing the mortgage, a
29 certificate of release containing the information and
30 statements provided for in subsection (3) and executed as
31 provided in subsection (4) is prima facie evidence of the

1 facts contained in the certificate, is entitled to be recorded
2 with the county recorder, and operates as a release of the
3 mortgage described in the certificate of release. The county
4 recorder shall rely upon the certificate to release the
5 mortgage. Recording of a wrongful or erroneous certificate of
6 release by a title insurer or its agent shall not relieve the
7 mortgagor, or the mortgagor's successors or assigns, from any
8 personal liability on the loan or other obligations secured by
9 the mortgage. In addition to any other remedy provided by law,
10 a title insurer wrongfully or erroneously recording a
11 certificate of release under this section shall be liable to
12 the mortgagee for actual damage sustained due to the recording
13 of the certificate of release.

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

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

24 Section 2. This act shall take effect July 1, 2005.
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