

By the Committees on Judiciary; Banking and Insurance; and
Senator Atwater

590-2032-05

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

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25 WHEREAS, the Legislature finds that modern trends in
26 the real estate market require that real estate closings must
27 be completed, funds disbursed, and title insurance policies
28 issued prior to the receipt by the title insurer or its
29 authorized agent, or the recording in the public records, of
30 releases or satisfactions of mortgages that have been paid,
31 and

1 WHEREAS, in a significant number of circumstances such
2 releases or satisfactions are not presented in a timely
3 fashion, or are never presented, to the title insurer or its
4 authorized agent, and

5 WHEREAS, this situation is exacerbated by the
6 proliferation of servicing contracts and multiple assignments
7 of mortgages, and

8 WHEREAS, title insurers devote a significant amount of
9 time attempting to obtain and record releases and
10 satisfactions of mortgages that have been paid, and

11 WHEREAS, title insurers and their authorized agents
12 undertake a real and significant risk in the issuance of title
13 insurance policies without an exception for these paid
14 mortgages that have not been released or satisfied in the
15 public records, and

16 WHEREAS, it is in the public interest that an
17 alternative method be made available to title insurers and
18 their authorized agents to evidence in the public records the
19 payment and release of these mortgages, NOW, THEREFORE,

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

22
23 Section 1. Section 701.041, Florida Statutes, is
24 created to read:

25 701.041 Title insurer; mortgage release certificate.--

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

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

3 (b) "Mortgagee" means:

4 1. The grantee of a mortgage; or

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

7 (c) "Mortgage servicer" means the last person to whom
8 a mortgagor or the mortgagor's successor in interest has been
9 instructed by a mortgagee to send payments on a loan secured
10 by a mortgage. A person transmitting a payoff statement is the
11 mortgage servicer for the mortgage described in the payment
12 statement.

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

14 (e) "Payoff statement" means a statement of the amount
15 of:

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

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

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

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

27 (2) CERTIFICATE OF RELEASE.--An officer or duly
28 appointed agent of a title insurer may, on behalf of a
29 mortgagor or a person who acquired from the mortgagor title to
30 all or a part of the property described in a mortgage, execute
31 a certificate of release that complies with the requirements

1 of this section and record the certificate of release in the
2 real property records of each county in which the mortgage is
3 recorded if a satisfaction or release of the mortgage has not
4 been executed and recorded after the date payment in full of
5 the loan secured by the mortgage was made in accordance with a
6 payoff statement furnished by the mortgagee or the mortgage
7 servicer.

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

10 (a) The name of the mortgagor, the name of the
11 original mortgagee, and, if applicable, the mortgage servicer;
12 the date of the mortgage; the date of recording; and the
13 volume and page or document number in the real property
14 records in which the mortgage is recorded, together with
15 similar information for the last recorded assignment of the
16 mortgage.

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

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

30 (d) A statement that the certificate of release is
31 made on behalf of the mortgagor or a person who acquired title

1 from the mortgagor to all or a part of the property described
2 in the mortgage.

3 (e) A statement that the mortgagee or mortgage
4 servicer provided a payoff statement which was used to make
5 payment in full of the unpaid balance of the loan secured by
6 the mortgage.

7 (f) A statement that payment in full of the unpaid
8 balance of the loan secured by the mortgage was made in
9 accordance with the payoff statement and that a copy of the
10 certificate of release was sent to the mortgagee or mortgage
11 servicer that provided the payoff statement.

12 (4) EXECUTION.--

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

21 (b) The appointment of an agent must be duly executed,
22 acknowledged, and recorded by an officer of a title insurer
23 and must state:

24 1. The title insurer as the principal.

25 2. The identity of the person, partnership, or
26 corporation authorized to act as agent to execute and record
27 certificates of release provided for in this section on behalf
28 of the title insurer.

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

1 (c) A separate appointment of agent is not necessary
2 for each certificate of release provided that at least one
3 appointment is recorded in the county in which the mortgaged
4 property is located. The appointment of agent must be
5 rerecorded where necessary to establish authority of the
6 agent, but the authority continues until a revocation of
7 appointment is recorded in the office of the county recorder
8 in which the appointment of agent was recorded.

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

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

3 (6) LIABILITY OF TITLE INSURER.--

4 (a) In addition to any other remedy provided by law, a
5 title insurer recording a certificate of release under this
6 section is liable to the holder of the obligation secured by
7 the mortgage for actual damage sustained due to the recording
8 of the certificate of release. Reasonable costs and attorneys'
9 fees shall be awarded to the prevailing party.

10 (b) The title insurer named in a certificate of
11 release filed by a duly appointed agent is liable under this
12 subsection without regard to whether the title insurer
13 authorized the specific certificate of release recorded by the
14 agent.

15 (c) The title insurer has no liability under this
16 subsection if the title insurer shows that payment in full of
17 the unpaid balance of the loan secured by the mortgage was
18 made in accordance with the payoff statement furnished by the
19 mortgagee or the mortgage servicer.

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

23 (7) RECORDING.--If a mortgage is recorded in more than
24 one county and a certificate of release is recorded in one of
25 the counties, a certified copy of the certificate of release
26 may be recorded in another of the counties with the same
27 effect as the original. In all cases, the certificate of
28 release shall be entered and indexed as satisfactions of
29 mortgage are entered and indexed.

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

4 (9) PREMIUM.--The Financial Services Commission shall
5 adopt rules establishing the actuarially sound premium charge
6 to be made for each certificate of release recorded under this
7 section.

8 Section 2. Section 701.05, Florida Statutes, is
9 repealed.

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

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 CS/Senate Bill 1258

15 The committee substitute clarifies that the Financial Services
16 Commission must adopt rules establishing an actuarially sound
17 premium charge for each certificate of release, rather than a
18 minimum premium charge.