

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 531 CS Certificates of Release for Mortgages
SPONSOR(S): Hasner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1258

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>4 Y, 0 N, w/CS</u>	<u>Billmeier</u>	<u>Billmeier</u>
2) <u>Economic Development, Trade & Banking Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 531 creates a new section of statute to allow title insurers to execute a certificate of release and record the certificate of release if a satisfaction or release of the mortgage has not been executed and recorded after the loan is paid in full. This certificate of release must be recorded in the real property records of each county in which the mortgage is recorded. This will address situations where a mortgage is paid but the documents showing the mortgage is paid are not timely filed.

This bill provides that a certificate of release operates as a release of the mortgage described in the certificate of release. Recording of certificate of release by a title insurer does not relieve the mortgagor from any personal liability on the loan or other obligations secured by the mortgage. A certificate of release filed pursuant to this bill serves to fulfill the obligation of the mortgagee or mortgage servicer to file a satisfaction or release of the mortgage. This bill's provisions relating to a certificate of release only apply to mortgages in the principal amount of \$500,000 or less.

This bill specifies requirements of a certificate of release including the name of the mortgagor, the name of the original mortgagee, the date of the mortgage, and the date of recording. The certificate of release must include: (1) a statement that the mortgage was in the principal amount of \$500,000 or less; (2) a statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurer; (3) a statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage; and (4) a statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the payoff statement.

A certificate of release authorized by this bill must be duly executed, sworn, and recorded and may be executed by an officer of a title insurer or by a duly appointed agent of a title insurer. This bill provides specific requirements for delegation of the authority to execute the certificate of release by a title insurer and provides that delegation to an agent does not relieve the title insurer of any liability for damages caused by its agent for the wrongful or erroneous execution of a certificate of release. The bill provides that a title insurer recording a certificate of release is liable to the mortgagee for actual damage sustained due to the recording of the certificate of release and provides for prevailing party attorney fees. This bill provides defenses to claims of title insurer liability.

This bill repeals a section of law relating to criminal liability for failure to timely file a satisfaction of a mortgage.

This bill does not appear to have a fiscal impact on local governments. This fiscal impact on state government is uncertain. See "Fiscal Analysis and Economic Impact Statement." This bill takes effect July 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/14/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – This bill creates an alternative means for showing that mortgages have been paid.

B. EFFECT OF PROPOSED CHANGES:

Current Law Regarding the Release of Mortgages

HB 531 creates a new procedure for showing in property records that a mortgage has been paid. Under current law, a holder of a mortgage is required to provide a payoff statement¹ within 14 days after receipt of a written request.² When the amount is paid, the mortgagee must acknowledge satisfaction of the mortgage and have the satisfaction duly entered in the property records.³ When the mortgage is fully paid, the mortgagee must cancel the mortgage within 60 days.⁴ If a civil action arises out of the provisions of the statute, the prevailing party is entitled to attorney's fees and costs.⁵

Criminal Penalties

A person who pays off a mortgage may ask, by written demand, the holder of the mortgage to cancel and satisfy the mortgage.⁶ If the holder does not do so within 30 days, the holder commits a second degree misdemeanor.⁷

Reported Issues Under the Current Law

The Real Property, Probate, and Trust Law Section of the Florida Bar asserts that releases or satisfactions of mortgages are not presented to the title insurer in a timely fashion. This can result in delays for the buyers, sellers, title insurers, title insurance agents, and lenders.⁸ It has been reported that the delays have been caused because a "huge volume of mortgages were made during the last few years."⁹ However, there is dispute over whether these delays cause significant problems during a transaction:

Although home sellers or owners who are refinancing again tend to worry if they hear about this situation... [i]t's become routine for title companies to issue "hold harmless" letters regarding previous paid-off loans, and new loan transactions proceed.¹⁰

Statutes similar to HB 531 have been enacted in other states.¹¹ A Connecticut court explained the problem such legislation attempts to address:

¹ The holder of the mortgage must provide the unpaid principal balance, interest due, and per diem rate. s. 701.04(1), F.S.

² Section 701.04(1), F.S.

³ Id. The statute further requires that within 60 days of the date of receipt of the full payment of the mortgage, the person required to acknowledge satisfaction of the mortgage shall send or cause to be sent the recorded satisfaction to the person who has made the full payment.

⁴ Section 701.03, F. S.

⁵ Section 701.04(1), F.S.

⁶ Section 801.05, F.S.

⁷ Id.

⁸ White Paper on a Proposed Bill to Permit Title Insurers and Their Authorized Agents to Release the Liens of Mortgages that Have Been Paid in Full, submitted by the Real Property, Probate, and Trust Law Section of the Florida Bar (on file with the Civil Justice Committee).

⁹ Marilyn Kennedy Melia, *Credit Law Late for Spring Buyers*, The Chicago Tribune, January 2, 2005.

¹⁰ Id.

The legislative history suggests that this provision was enacted in response to the perceived unresponsiveness of out-of-state mortgage companies in providing releases for paid-off mortgages.¹²

HB 531 is modeled after a Minnesota statute.¹³

HB 531

This bill permits an officer or duly appointed agent of a title insurer¹⁴ to execute a certificate of release and record the certificate of release if a satisfaction or release of the mortgage¹⁵ has not been executed and recorded after the loan is paid in full. This certificate of release must be recorded in the real property records of each county in which the mortgage is recorded.

Requirements of a Certificate of Release

A certificate of release executed under this bill must contain:

- The name of the mortgagor,¹⁶ the name of the original mortgagee,¹⁷ and, if applicable, the mortgage servicer,¹⁸ the date of the mortgage, the date of recording, and the volume and page or document number in the real property records in which the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage.
- A statement that the mortgage, including any modifications thereof, was in the principal amount of \$500,000 or less.
- The name of the title insurer filing the certificate of release, a statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurer, a statement that the title insurer is authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 624 or chapter 626.
- A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage.
- A statement that the mortgagee or mortgage servicer provided a payoff statement¹⁹ which was used to make payment in full of the unpaid balance of the loan secured by the mortgage.

¹¹ See e.g. Section 507.401, Minnesota Statutes; Chapter 846, Section 49-8a, Connecticut General Statutes; 765 Illinois Compiled Statutes 935.

¹² Gordon v. Tobias, 2001 WL 835123, 4 (Conn. Super. June 28, 2001)(unpublished opinion).

¹³ Section 507.401, Minnesota Statutes.

¹⁴ This bill defines "title insurer" as "a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 624."

¹⁵ This bill defines "mortgage" as "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."

¹⁶ "Mortgagor" means the grantor of a mortgage.

¹⁷ "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.

¹⁸ "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payment statement.

¹⁹ This bill defines "payoff statement" as a statement of the amount of (1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, and (2) interest on a per-day basis for the unpaid balance.

- A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the payoff statement; and
- A statement that copy of the certificate of release was sent to the mortgagee or mortgage servicer that provided the payoff statement.

Execution of a Certificate of Release

A certificate of release authorized by this bill must be duly executed, sworn to, or affirmed under penalty of perjury before a notary public and may be executed by an officer of a title insurer or by a duly appointed agent of a title insurer. This bill provides specific requirements for delegation of the authority to execute the certificate of release by a title insurer. Delegation to an agent does not relieve the title insurer of any liability for damages caused by its agent for the execution of a certificate of release.

The appointment of an agent must be duly executed, acknowledged, and recorded by an officer of a title insurer and must state:

- the title insurer as the principal;
- the identity of the person, partnership, or corporation authorized to act as agent to execute and record certificates of release provided for in this section on behalf of the title insurer; and
- that the agent has the full authority to execute and record certificates of release on behalf of the title insurer.

If a title insurer's agent's authority to record certificates of release is revoked, the agent shall have no authority to record certificates on behalf of that title insurer and no certificate recorded after revocation of authority on behalf of that title insurer shall be effective.

Effect of a Certificate of Release

This bill provides that for purposes of releasing the mortgage, a certificate of release is entitled to be recorded, and operates as a release of the mortgage described in the certificate of release. Recording of a certificate of release by a title insurer or its agent shall not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage.

Liability of a Title Insurer

This bill provides that a title insurer recording a certificate of release is liable to the holder of the obligation secured by the mortgage for actual damage sustained due to the recording of the certificate of release. Reasonable costs and attorneys' fees shall be awarded to the prevailing party. This bill provides that the title insurer named in a certificate of release filed by a duly appointed agent shall be liable without regard to whether the title insurer authorized the specific certificate of release recorded by the agent. However, the title insurer shall have no liability if the title insurer shows that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the payoff statement furnished by the mortgagee or the mortgage servicer. This bill provides that liability of a title insurer pursuant to this section shall be considered to be a title insurance claim on real property in this state pursuant to s. 627.7865.

Applicability to Certain Mortgages

This bill's provisions relating to a certificate of release only apply to mortgages in the principal amount of \$500,000 or less.

Rulemaking

This bill requires the Financial Services Commission to adopt rules establishing a minimum premium charge to be made for each certificate of release recorded pursuant to the bill.

Repeal of Criminal Penalties

A person who pays off a mortgage may ask, by written demand, the holder of the mortgage to cancel and satisfy the mortgage. If the holder does not do so within 30 days, the holder commits a second degree misdemeanor. This bill repeals this section of law.

Effective Date

This bill takes effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Creates section 701.041, Florida Statutes, to allow a title insurer to file a certificate of release to record the satisfaction of a mortgage in certain situations. This bill provides requirements for filing a certificate and provides that a title insurer is liable for damages caused by the filing of an erroneous certificate of release.

Section 2. Repeals section 701.05, F.S., relating to criminal penalties for failing to record a satisfaction of a mortgage, lien, or judgment.

Section 3. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill requires the Financial Services Commission to adopt rules establishing a minimum premium charge for each certificate of release recorded. It is not known how many of these certificates would be recorded so the fiscal impact is uncertain.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local governments.

2. Expenditures:

This bill does not appear to have a fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill requires the Financial Services Commission to adopt rules establishing a minimum premium charge to be made for each certificate of release recorded pursuant to the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Civil Justice Committee consider the bill on March 9, 2005. The committee adopted a "strike everything" amendment that made the following changes to the original bill:

- Added language to provide that the provisions of the bill shall not apply to a mortgage securing an open-end or revolving credit agreement;
- Added additional information, such as the name of the title insurer filing the certificate of release and a statement that a copy of the certificate of release was sent to the mortgagee or mortgage service provider, that must be included on a certificate of release;
- Added a requirement that the title insurer must swear to the contents of a certificate of release;
- Provided that the filing of a certificate of release fulfills any other obligation of the mortgagee or mortgage servicer to file a satisfaction or release of mortgage;
- Provided that a title insurer is liable for actual damages caused by the recording of a certificate of release and providing for prevailing party attorney fees.
- Provided that liability of a title insurer under the bill is considered a title insurance claim on real property pursuant to s. 627.7865, F.S.; and
- Repealed s. 701.05, F.S., relating to criminal penalties for failing to record a satisfaction of a mortgage.

The bill, as amended, was reported favorably as a committee substitute.