

1 A bill to be entitled
 2 An act relating to certificates of release for mortgages;
 3 creating s. 701.041, F.S.; providing definitions;
 4 providing for the issuance of a certificate of release for
 5 a mortgage by a title insurer or its authorized agent for
 6 certain purposes; providing for recordation; specifying
 7 contents of a certificate of release; requiring execution,
 8 acknowledgment, and recordation of a certificate of
 9 release by certain entities; providing requirements for
 10 appointment of an agent for execution purposes; providing
 11 for effect of a certificate of release; providing criteria
 12 for recording multiple certificates of release; providing
 13 application; providing an effective date.

14
 15 WHEREAS, the Legislature finds that modern trends in the
 16 real estate market require that real estate closings must be
 17 completed, funds disbursed, and title insurance policies issued
 18 prior to the receipt by the title insurer or its authorized
 19 agent, or the recording in the public records, of releases or
 20 satisfactions of mortgages that have been paid, and

21 WHEREAS, in a significant number of circumstances such
 22 releases or satisfactions are not presented in a timely fashion,
 23 or are never presented, to the title insurer or its authorized
 24 agent, and

25 WHEREAS, this situation is exacerbated by the proliferation
 26 of servicing contracts and multiple assignments of mortgages,
 27 and

28 WHEREAS, title insurers devote a significant amount of time
 29 attempting to obtain and record releases and satisfactions of
 30 mortgages that have been paid, and

31 WHEREAS, title insurers and their authorized agents
 32 undertake a real and significant risk in the issuance of title
 33 insurance policies without an exception for these paid mortgages
 34 that have not been released or satisfied in the public records,
 35 and

36 WHEREAS, it is in the public interest that an alternative
 37 method be made available to title insurers and their authorized
 38 agents to evidence in the public records the payment and release
 39 of these mortgages, NOW, THEREFORE,

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

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

45 701.041 Title insurer; mortgage release certificate.--

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

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

51 (b) "Mortgagee" means:

52 1. The grantee of a mortgage; or

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

55 (c) "Mortgage servicer" means the last person to whom a

56 mortgagor or the mortgagor's successor in interest has been
 57 instructed by a mortgagee to send payments on a loan secured by
 58 a mortgage. A person transmitting a payoff statement is the
 59 mortgage servicer for the mortgage described in the payment
 60 statement.

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

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

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

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

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

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

74 (2) CERTIFICATE OF RELEASE.--An officer or duly appointed
 75 agent of a title insurer may, on behalf of a mortgagor or a
 76 person who acquired from the mortgagor title to all or a part of
 77 the property described in a mortgage, execute a certificate of
 78 release that complies with the requirements of this section and
 79 record the certificate of release in the real property records
 80 of each county in which the mortgage is recorded if a
 81 satisfaction or release of the mortgage has not been executed
 82 and recorded after the date payment in full of the loan secured
 83 by the mortgage was made in accordance with a payoff statement

84 furnished by the mortgagee or the mortgage servicer.

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

87 (a) The name of the mortgagor, the name of the original
88 mortgagee, and, if applicable, the mortgage servicer; the date
89 of the mortgage; the date of recording; and the volume and page
90 or document number in the real property records in which the
91 mortgage is recorded, together with similar information for the
92 last recorded assignment of the mortgage.

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

96 (c) A statement that the person executing the certificate
97 of release is an officer or a duly appointed agent of a title
98 insurer authorized and licensed to transact the business of
99 insuring titles to interests in real property in this state
100 under chapter 624 or chapter 626, and, if a duly appointed
101 agent, shall further provide the recording information of the
102 appointment of such agent as required by subsection (4).

103 (d) A statement that the certificate of release is made on
104 behalf of the mortgagor or a person who acquired title from the
105 mortgagor to all or a part of the property described in the
106 mortgage.

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

110 (f) A statement that payment in full of the unpaid balance
111 of the loan secured by the mortgage was made in accordance with

112 the payoff statement.

113 (4) EXECUTION.--

114 (a) A certificate of release authorized by subsection (2)
 115 must be duly executed, acknowledged, and recorded and may be
 116 executed by an officer of a title insurer or by a duly appointed
 117 agent of a title insurer. Such delegation to an agent by a title
 118 insurer shall not relieve the title insurer of any liability for
 119 damages caused by its agent for the wrongful or erroneous
 120 execution of a certificate of release.

121 (b) The appointment of an agent must be duly executed,
 122 acknowledged, and recorded by an officer of a title insurer and
 123 must state:

124 1. The title insurer as the principal.

125 2. The identity of the person, partnership, or corporation
 126 authorized to act as agent to execute and record certificates of
 127 release provided for in this section on behalf of the title
 128 insurer.

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

132 (c) A separate appointment of agent shall not be necessary
 133 for each certificate of release provided that at least one such
 134 appointment is recorded in the county in which the mortgaged
 135 property is located. The appointment of agent must be rerecorded
 136 where necessary to establish authority of the agent, but such
 137 authority shall continue until a revocation of appointment is
 138 recorded in the office of the county recorder in which the
 139 appointment of agent was recorded.

140 (5) EFFECT.--For purposes of releasing the mortgage, a
 141 certificate of release containing the information and statements
 142 provided for in subsection (3) and executed as provided in
 143 subsection (4) is prima facie evidence of the facts contained in
 144 the certificate, is entitled to be recorded with the county
 145 recorder, and operates as a release of the mortgage described in
 146 the certificate of release. The county recorder shall rely upon
 147 the certificate to release the mortgage. Recording of a wrongful
 148 or erroneous certificate of release by a title insurer or its
 149 agent shall not relieve the mortgagor, or the mortgagor's
 150 successors or assigns, from any personal liability on the loan
 151 or other obligations secured by the mortgage. In addition to any
 152 other remedy provided by law, a title insurer wrongfully or
 153 erroneously recording a certificate of release under this
 154 section shall be liable to the mortgagee for actual damage
 155 sustained due to the recording of the certificate of release.

156 (6) RECORDING.--If a mortgage is recorded in more than one
 157 county and a certificate of release is recorded in one of such
 158 counties, a certified copy of the certificate of release may be
 159 recorded in another of such counties with the same effect as the
 160 original. In all cases, the certificate of release shall be
 161 entered and indexed as satisfactions of mortgage are entered and
 162 indexed.

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

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