

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

HB 531

2005
CS

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

30 WHEREAS, in a significant number of circumstances such
 31 releases or satisfactions are not presented in a timely fashion,
 32 or are never presented, to the title insurer or its authorized
 33 agent, and

34 WHEREAS, this situation is exacerbated by the proliferation
 35 of servicing contracts and multiple assignments of mortgages,
 36 and

37 WHEREAS, title insurers devote a significant amount of time
 38 attempting to obtain and record releases and satisfactions of
 39 mortgages that have been paid, and

40 WHEREAS, title insurers and their authorized agents
 41 undertake a real and significant risk in the issuance of title
 42 insurance policies without an exception for these paid mortgages
 43 that have not been released or satisfied in the public records,
 44 and

45 WHEREAS, it is in the public interest that an alternative
 46 method be made available to title insurers and their authorized
 47 agents to evidence in the public records the payment and release
 48 of these mortgages, NOW, THEREFORE,

49
 50 Be It Enacted by the Legislature of the State of Florida:
 51

HB 531

2005
CS

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

54 701.041 Title insurer; mortgage release certificate.--

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

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

61 (b) "Mortgagee" means:

62 1. The grantee of a mortgage; or

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

65 (c) "Mortgage servicer" means the last person to whom a
66 mortgagor or the mortgagor's successor in interest has been
67 instructed by a mortgagee to send payments on a loan secured by
68 a mortgage. A person transmitting a payoff statement is the
69 mortgage servicer for the mortgage described in the payment
70 statement.

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

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

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

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

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

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

84 (2) CERTIFICATE OF RELEASE.--An officer or duly appointed
 85 agent of a title insurer may, on behalf of a mortgagor or a
 86 person who acquired from the mortgagor title to all or a part of
 87 the property described in a mortgage, execute a certificate of
 88 release that complies with the requirements of this section and
 89 record the certificate of release in the real property records
 90 of each county in which the mortgage is recorded if a
 91 satisfaction or release of the mortgage has not been executed
 92 and recorded after the date payment in full of the loan secured
 93 by the mortgage was made in accordance with a payoff statement
 94 furnished by the mortgagee or the mortgage servicer.

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

97 (a) The name of the mortgagor, the name of the original
 98 mortgagee, and, if applicable, the mortgage servicer; the date
 99 of the mortgage; the date of recording; and the volume and page
 100 or document number in the real property records in which the
 101 mortgage is recorded, together with similar information for the
 102 last recorded assignment of the mortgage.

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

106 (c) The name of the title insurer filing the certificate
 107 of release, a statement that the person executing the

HB 531

2005
CS

108 certificate of release is an officer or a duly appointed agent
109 of the title insurer, a statement that the title insurer is
110 authorized and licensed to transact the business of insuring
111 titles to interests in real property in this state under chapter
112 624 or chapter 626, and, if executed by a duly appointed agent,
113 shall further provide the recording information of the
114 appointment of such agent as required by subsection (4).

115 (d) A statement that the certificate of release is made on
116 behalf of the mortgagor or a person who acquired title from the
117 mortgagor to all or a part of the property described in the
118 mortgage.

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

122 (f) A statement that payment in full of the unpaid balance
123 of the loan secured by the mortgage was made in accordance with
124 the payoff statement and that a copy of the certificate of
125 release was sent to the mortgagee or mortgage servicer that
126 provided the payoff statement.

127 (4) EXECUTION.--

128 (a) A certificate of release authorized by subsection (2)
129 must be duly executed, sworn to or affirmed under penalty of
130 perjury before a notary public, and recorded and may be executed
131 by an officer of a title insurer or by a duly appointed agent of
132 a title insurer. Such delegation to an agent by a title insurer
133 shall not relieve the title insurer of any liability for damages
134 caused by the agent for the execution or recordation of a
135 certificate of release.

136 (b) The appointment of an agent must be duly executed,
 137 acknowledged, and recorded by an officer of a title insurer and
 138 must state:

139 1. The title insurer as the principal.

140 2. The identity of the person, partnership, or corporation
 141 authorized to act as agent to execute and record certificates of
 142 release provided for in this section on behalf of the title
 143 insurer.

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

147 (c) A separate appointment of agent shall not be necessary
 148 for each certificate of release provided that at least one such
 149 appointment is recorded in the county in which the mortgaged
 150 property is located. The appointment of agent must be rerecorded
 151 where necessary to establish authority of the agent, but such
 152 authority shall continue until a revocation of appointment is
 153 recorded in the office of the county recorder in which the
 154 appointment of agent was recorded.

155 (d) After recordation of a title insurer's revocation of
 156 appointment in the office of the county recorder in which the
 157 appointment was recorded, the agent whose appointment is revoked
 158 in such county shall have no further authority to execute or
 159 record certificates of release as provided in this section on
 160 behalf of that title insurer with respect to any mortgages
 161 recorded in that county, and no such certificate of release
 162 thereafter executed or recorded by that agent on behalf of that

HB 531

2005
CS

163 title insurer shall be effective to release any mortgage
 164 recorded in that county.

165 (5) EFFECT.--For purposes of releasing the mortgage, a
 166 certificate of release containing the information and statements
 167 provided for in subsection (3) and executed as provided in
 168 subsection (4) is entitled to be recorded with the county
 169 recorder and operates as a release of the mortgage described in
 170 the certificate of release. The county recorder shall rely upon
 171 the certificate to release the mortgage. Recording of a
 172 certificate of release by a title insurer or its agent shall not
 173 relieve the mortgagor, or the mortgagor's successors or assigns,
 174 from any personal liability on the loan or other obligations
 175 secured by the mortgage. A certificate of release recorded
 176 pursuant to this section fulfills any other obligation of the
 177 mortgagee or mortgage servicer to file a satisfaction or release
 178 of the mortgage.

179 (6) LIABILITY OF TITLE INSURER.--

180 (a) In addition to any other remedy provided by law, a
 181 title insurer recording a certificate of release under this
 182 section shall be liable to the holder of the obligation secured
 183 by the mortgage for actual damage sustained due to the recording
 184 of the certificate of release. Reasonable costs and attorneys'
 185 fees shall be awarded to the prevailing party.

186 (b) The title insurer named in a certificate of release
 187 filed by a duly appointed agent shall be liable pursuant to this
 188 subsection without regard to whether the title insurer
 189 authorized the specific certificate of release recorded by the
 190 agent.

HB 531

2005
CS

191 (c) The title insurer shall have no liability under this
 192 subsection if the title insurer shows that payment in full of
 193 the unpaid balance of the loan secured by the mortgage was made
 194 in accordance with the payoff statement furnished by the
 195 mortgagee or the mortgage servicer.

196 (d) Liability of a title insurer pursuant to this section
 197 shall be considered to be a title insurance claim on real
 198 property in this state pursuant to s. 627.7865.

199 (7) RECORDING.--If a mortgage is recorded in more than one
 200 county and a certificate of release is recorded in one of such
 201 counties, a certified copy of the certificate of release may be
 202 recorded in another of such counties with the same effect as the
 203 original. In all cases, the certificate of release shall be
 204 entered and indexed as satisfactions of mortgage are entered and
 205 indexed.

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

209 (9) PREMIUM.--The Financial Services Commission shall
 210 adopt rules establishing a minimum premium charge to be made for
 211 each certificate of release recorded pursuant to this section.

212 Section 2. Section 701.05, Florida Statutes, is repealed.

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