

CHAMBER ACTION

1 The Justice Council recommends the following:

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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 an  
20 actuarially sound premium charge for certificates of  
21 release; repealing s. 701.05, F.S., relating to failing or  
22 refusing to satisfy a lien and punishment therefor;  
23 providing an effective date.

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

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

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

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

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

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

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

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

55 701.041 Title insurer; mortgage release certificate.--

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

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

62 (b) "Mortgagee" means:

63 1. The grantee of a mortgage; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

128       (4) EXECUTION.--

129       (a) A certificate of release authorized by subsection (2)  
 130 must be duly executed, sworn to or affirmed under penalty of  
 131 perjury before a notary public, and recorded and may be executed

132 by an officer of a title insurer or by a duly appointed agent of  
 133 a title insurer. Such delegation to an agent by a title insurer  
 134 shall not relieve the title insurer of any liability for damages  
 135 caused by the agent for the execution or recordation of a  
 136 certificate of release.

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

140 1. The title insurer as the principal.

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

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

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

156 (d) After recordation of a title insurer's revocation of  
 157 appointment in the office of the county recorder in which the  
 158 appointment was recorded, the agent whose appointment is revoked  
 159 in such county shall have no further authority to execute or

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160 record certificates of release as provided in this section on  
 161 behalf of that title insurer with respect to any mortgages  
 162 recorded in that county, and no such certificate of release  
 163 thereafter executed or recorded by that agent on behalf of that  
 164 title insurer shall be effective to release any mortgage  
 165 recorded in that county.

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

180 (6) LIABILITY OF TITLE INSURER.--

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

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

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

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

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

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

210        (9) PREMIUM.--The Financial Services Commission shall  
 211 adopt rules establishing an actuarially sound premium charge to  
 212 be made for each certificate of release recorded pursuant to  
 213 this section.

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



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