

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 for  
12 liability of title insurers under certain circumstances;  
13 providing criteria for recording multiple certificates of  
14 release; providing application; requiring the Financial  
15 Services Commission to adopt rules establishing an  
16 actuarially sound premium charge for certificates of  
17 release; repealing s. 701.05, F.S., relating to failing or  
18 refusing to satisfy a lien and punishment therefor;  
19 providing an effective date.

20  
21 WHEREAS, the Legislature finds that modern trends in the  
22 real estate market require that real estate closings must be  
23 completed, funds disbursed, and title insurance policies issued  
24 prior to the receipt by the title insurer or its authorized  
25 agent, or the recording in the public records, of releases or  
26 satisfactions of mortgages that have been paid, and

27 WHEREAS, in a significant number of circumstances such  
28 releases or satisfactions are not presented in a timely fashion,

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29 | or are never presented, to the title insurer or its authorized  
 30 | agent, and

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

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

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

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

46 |

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

48 |

49 |       Section 1. Section 701.041, Florida Statutes, is created  
 50 | to read:

51 |       701.041 Title insurer; mortgage release certificate.--

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

53 |       (a) "Mortgage" means a mortgage or mortgage lien on an  
 54 | interest in real property in this state, including any  
 55 | modifications thereof, given to secure a loan in the principal

56 amount of \$500,000 or less, other than a mortgage securing an  
 57 open-end or revolving credit agreement.

58 (b) "Mortgagee" means:

59 1. The grantee of a mortgage; or

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

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

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

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

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

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

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

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

81 (2) CERTIFICATE OF RELEASE.--An officer or duly appointed  
 82 agent of a title insurer may, on behalf of a mortgagor or a  
 83 person who acquired from the mortgagor title to all or a part of

84 the property described in a mortgage, execute a certificate of  
 85 release that complies with the requirements of this section and  
 86 record the certificate of release in the real property records  
 87 of each county in which the mortgage is recorded if a  
 88 satisfaction or release of the mortgage has not been executed  
 89 and recorded after the date payment in full of the loan secured  
 90 by the mortgage was made in accordance with a payoff statement  
 91 furnished by the mortgagee or the mortgage servicer.

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

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

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

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

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

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

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

124        (4) EXECUTION.--

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

133        (b) The appointment of an agent must be duly executed,  
134 acknowledged, and recorded by an officer of a title insurer and  
135 must state:

136            1. The title insurer as the principal.

137            2. The identity of the person, partnership, or corporation  
138 authorized to act as agent to execute and record certificates of

139 release provided for in this section on behalf of the title  
140 insurer.

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

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

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

162 (5) EFFECT.--For purposes of releasing the mortgage, a  
163 certificate of release containing the information and statements  
164 provided for in subsection (3) and executed as provided in  
165 subsection (4) is entitled to be recorded with the county  
166 recorder and operates as a release of the mortgage described in

167 the certificate of release. The county recorder shall rely upon  
168 the certificate to release the mortgage. Recording of a  
169 certificate of release by a title insurer or its agent shall not  
170 relieve the mortgagor, or the mortgagor's successors or assigns,  
171 from any personal liability on the loan or other obligations  
172 secured by the mortgage. A certificate of release recorded  
173 pursuant to this section fulfills any other obligation of the  
174 mortgagee or mortgage servicer to file a satisfaction or release  
175 of the mortgage.

176 (6) LIABILITY OF TITLE INSURER.--

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

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

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

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

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

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

206        (9) PREMIUM.--The Financial Services Commission shall  
 207 adopt rules establishing an actuarially sound premium charge to  
 208 be made for each certificate of release recorded pursuant to  
 209 this section.

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

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