

ENROLLED

HB 531, Engrossed 1

2005 Legislature

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

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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

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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).

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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

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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

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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.

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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.