

Bill No. SB 636

Barcode 143382

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Lawson) recommended  
the following amendment:

**Senate Amendment (with title amendment)**

On page 8, between lines 17 and 18,

insert:

Section 8. Subsection (1) of section 701.04, Florida  
Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and  
judgments.--

(1) Within 14 days after receipt of the written  
request of a mortgagor, the holder of a mortgage shall deliver  
to the mortgagor at a place designated in the written request  
an estoppel letter setting forth the unpaid balance of the  
loan secured by the mortgage, including the principal,  
interest, any other charges properly due under and secured by  
the mortgage, and interest on a per-day basis for the unpaid  
balance ~~principal balance, interest due, and the per diem~~  
~~rate~~. Whenever the amount of money due on any mortgage, lien,  
or judgment is to ~~shall~~ be fully paid to the person or party

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1 entitled to the payment thereof, the mortgagee, creditor, or  
 2 assignee, or the attorney of record in the case of a judgment,  
 3 to whom such payment has ~~shall have~~ been made, shall execute  
 4 in writing an instrument acknowledging satisfaction of said  
 5 mortgage, lien, or judgment and have the same acknowledged, or  
 6 proven, and duly entered of record in the book provided by law  
 7 for such purposes in the proper county. Within 60 days after  
 8 ~~of~~ the date of receipt of the full payment of the mortgage,  
 9 lien, or judgment, the person required to acknowledge  
 10 satisfaction of the mortgage, lien, or judgment shall send or  
 11 cause to be sent the recorded satisfaction to the person who  
 12 has made the full payment. In the case of a civil action  
 13 arising out of the provisions of this section, the prevailing  
 14 party is ~~shall be~~ entitled to attorney's fees and costs.

15 Section 9. Section 701.041, Florida Statutes, is  
 16 amended to read:

17 701.041 Title insurer; mortgage release certificate.--

18 (1) DEFINITIONS.--For purposes of this section, the  
 19 term:

20 (a) "Estoppel letter" means a statement of the amount  
 21 of:

22 1. The unpaid balance of a loan secured by a mortgage,  
 23 including principal, interest, and any other charges properly  
 24 due under or secured by the mortgage; and

25 2. The interest on a per-day basis for the unpaid  
 26 balance. "Mortgage" means a mortgage or mortgage lien on an  
 27 interest in real property in this state, including any  
 28 modifications thereof, given to secure a loan in the principal  
 29 amount of \$500,000 or less, other than a mortgage securing an  
 30 open end or revolving credit agreement.

31 (b) "Mortgagee" means:

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1           1. The grantee of a mortgage; or

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

4           (c) "Mortgage servicer" means the last person to whom  
5 a mortgagor or the mortgagor's successor in interest has been  
6 instructed by a mortgagee to send payments on a loan secured  
7 by a mortgage. The ~~A~~ person transmitting an estoppel letter ~~a~~  
8 ~~payoff statement~~ is the mortgage servicer for the mortgage  
9 described in the estoppel letter ~~payment statement~~.

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

11           ~~(e) "Payoff statement" means a statement of the amount~~  
12 ~~of:~~

13           ~~1. The unpaid balance of a loan secured by a mortgage,~~  
14 ~~including principal, interest, and any other charges properly~~  
15 ~~due under or secured by the mortgage.~~

16           ~~2. Interest on a per day basis for the unpaid balance.~~

17           ~~(e)(f)~~ "Record" means to record with the clerk of the  
18 circuit court or the comptroller in the county or counties in  
19 which the real property securing the mortgage is located.

20           ~~(f)(g)~~ "Title insurer" means a corporation or other  
21 business entity authorized and licensed under chapter 624 to  
22 insure ~~to transact the business of insuring~~ titles to  
23 interests in real property ~~in this state under chapter 624~~.

24           (2) APPLICATION.--This section applies to a mortgage  
25 secured by a loan in the principal amount of \$500,000 or less,  
26 as determined from the recorded mortgage, and which contains  
27 no disclosure of record that the mortgage secures an open-end  
28 or revolving line of credit agreement.

29           ~~(3)(2)~~ CERTIFICATE OF RELEASE.--An officer or duly  
30 appointed agent of a title insurer may, on behalf of a  
31 mortgagor or a person who acquired from the mortgagor title to

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1 all or a part of the property described in a mortgage, execute  
 2 a certificate of release that complies with the requirements  
 3 of this section and record the certificate of release in the  
 4 real property records of each county in which the mortgage is  
 5 recorded if a satisfaction or release of the mortgage has not  
 6 been executed and recorded after the date payment in full of  
 7 the loan secured by the mortgage was made in accordance with  
 8 an estoppel letter ~~a payoff statement~~ furnished by the  
 9 mortgagee or the mortgage servicer.

10 (4)(3) CONTENTS.--A certificate of release executed  
 11 under this section must contain:

12 (a) The name of the mortgagor, the name of the  
 13 original mortgagee, and, if applicable, the mortgage servicer;  
 14 the date of the mortgage; the date of recording; and the  
 15 volume and page or document number in the real property  
 16 records in which the mortgage is recorded, together with  
 17 similar information for the last recorded assignment of the  
 18 mortgage.

19 (b) A statement that the mortgage being released has  
 20 been determined eligible for release under this section,  
 21 ~~including any modifications thereof, was in the principal~~  
 22 ~~amount of \$500,000 or less.~~

23 (c) The name of the title insurer filing the  
 24 certificate of release, a statement that the person executing  
 25 the certificate of release is an officer or a duly appointed  
 26 agent of the title insurer, a statement that the title insurer  
 27 is authorized and licensed to insure ~~transact the business of~~  
 28 ~~insuring~~ titles to interests in real property ~~in this state~~  
 29 under chapter 624 or chapter 626, and, if executed by a duly  
 30 appointed agent, shall further provide the recording  
 31 information of the appointment of such agent as required by

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1 subsection(5) ~~(4)~~.

2 (d) A statement that the certificate of release is  
3 made on behalf of the mortgagor or a person who acquired title  
4 from the mortgagor to all or a part of the property described  
5 in the mortgage.

6 (e) A statement that the mortgagee or mortgage  
7 servicer provided an estoppel letter ~~a payoff statement~~ which  
8 was used to make payment in full of the unpaid balance of the  
9 loan secured by the mortgage.

10 (f) A statement that payment in full of the unpaid  
11 balance of the loan secured by the mortgage was made in  
12 accordance with an estoppel letter ~~the payoff statement~~ and  
13 that a copy of the certificate of release was sent to the  
14 mortgagee or mortgage servicer that provided the estoppel  
15 letter ~~payoff statement~~.

16 ~~(5)(4)~~ EXECUTION.--

17 (a) A certificate of release authorized by subsection  
18 ~~(3)~~ ~~(2)~~ must be duly executed, sworn to or affirmed under  
19 penalty of perjury before a notary public, and recorded and  
20 may be executed by an officer of a title insurer or by a duly  
21 appointed agent of a title insurer. Such delegation to an  
22 agent by a title insurer does ~~shall~~ not relieve the title  
23 insurer of any liability for damages caused by the agent for  
24 the execution or recordation of a certificate of release.

25 (b) The appointment of an agent must be duly executed,  
26 acknowledged, and recorded by an officer of a title insurer  
27 and must state:

- 28 1. The title insurer as the principal.
- 29 2. The identity of the person, partnership, or
- 30 corporation authorized to act as agent to execute and record
- 31 certificates of release under ~~provided for in~~ this section on

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1 behalf of the title insurer.

2           3. That the agent has the full authority to execute  
3 and record certificates of release under ~~provided for in this~~  
4 section on behalf of the title insurer.

5           (c) A separate appointment of agent is ~~shall not be~~  
6 necessary for each certificate of release if ~~provided that~~ at  
7 least one such appointment is recorded in the county in which  
8 the mortgaged property is located. The appointment of agent  
9 must be rerecorded where necessary to establish the authority  
10 of the agent, but such authority shall continue until a  
11 revocation of appointment is recorded in the office of the  
12 county recorder in which the appointment of agent was  
13 recorded.

14           (d) After recording ~~recordation~~ of a title insurer's  
15 revocation of appointment in the office of the county recorder  
16 in which the appointment was recorded, the agent whose  
17 appointment is revoked ~~in such county~~ shall have no further  
18 authority to execute or record certificates of release ~~as~~  
19 ~~provided in this section~~ on behalf of that title insurer with  
20 respect to any mortgages recorded in that county, and no such  
21 certificate of release ~~thereafter~~ executed or recorded by that  
22 agent on behalf of that title insurer is ~~shall be~~ effective to  
23 release any mortgage recorded in that county.

24           ~~(6)(5)~~ EFFECT.--For purposes of releasing the  
25 mortgage, a certificate of release containing the information  
26 and statements provided for in subsection(4) ~~(3)~~ and executed  
27 as provided in subsection(5) may ~~(4) is entitled to be~~  
28 recorded with the county recorder and operates as a release of  
29 the mortgage described in the certificate of release. The  
30 county recorder shall rely upon the certificate to release the  
31 mortgage. Recording of a certificate of release by a title

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1 insurer or its agent shall not relieve the mortgagor, or the  
 2 mortgagor's successors or assigns, from any personal liability  
 3 on the loan or other obligations secured by the mortgage. A  
 4 certificate of release recorded pursuant to this section  
 5 fulfills any other obligation of the mortgagee or mortgage  
 6 servicer to file a satisfaction or release of the mortgage.

7 ~~(7)(6)~~ LIABILITY OF TITLE INSURER.--

8 (a) In addition to any other remedy provided by law, a  
 9 title insurer and a title insurance agent recording a  
 10 certificate of release under this section shall be liable to  
 11 the holder of the obligation secured by the mortgage for  
 12 actual damage sustained due to the recording of the  
 13 certificate of release. Reasonable costs and attorneys' fees  
 14 shall be awarded to the prevailing party.

15 (b) The title insurer named in a certificate of  
 16 release filed by a duly appointed agent shall be liable  
 17 pursuant to this subsection without regard to whether the  
 18 title insurer authorized the specific certificate of release  
 19 recorded by the agent.

20 (c) The title insurer and the title insurance agent  
 21 shall have no liability under this subsection if the title  
 22 insurer or title insurance agent shows that payment in full of  
 23 the unpaid balance of the loan secured by the mortgage was  
 24 made in accordance with the estoppel letter ~~payoff statement~~  
 25 furnished by the mortgagee or the mortgage servicer.

26 (d) Liability of a title insurer under ~~pursuant to~~  
 27 this section is ~~shall be~~ considered to be a title insurance  
 28 claim on real property in this state pursuant to s. 627.7865.

29 ~~(8)(7)~~ RECORDING.--If a mortgage is recorded in more  
 30 than one county and a certificate of release is recorded in  
 31 one of such counties, a certified copy of the certificate of

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1 release may be recorded in another of such counties with the  
 2 same effect as the original. In all cases, the certificate of  
 3 release ~~must~~ shall be entered and indexed as satisfactions of  
 4 mortgage are entered and indexed.

5 ~~(8) APPLICATION. This section applies only to a~~  
 6 ~~mortgage, including any modifications of such mortgage, in the~~  
 7 ~~principal amount of \$500,000 or less.~~

8 ~~(9) PREMIUM. The Financial Services Commission shall~~  
 9 ~~adopt rules establishing an actuarially sound premium charge~~  
 10 ~~to be made for each certificate of release recorded pursuant~~  
 11 ~~to this section.~~

12  
13 (Redesignate subsequent sections.)

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15  
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 On page 1, line 15, after the semicolon,

19  
20 insert:

- 21 amending s. 701.04, F.S.; clarifying the
- 22 content of estoppel letters sent to mortgagors;
- 23 amending s. 701.041, F.S.; revising definitions
- 24 relating to mortgage certificates of release;
- 25 revising limitations on the application of the
- 26 statute; adding title insurance agents for the
- 27 purpose of assigning liability for damages;
- 28 deleting the authority of the Financial
- 29 Services Commission to adopt rules establishing
- 30 charges;

31