

House Bill No. 531

An act relating to certificates of release for mortgages; creating s. 701.041, F.S.; providing definitions; providing for the issuance of a certificate of release for a mortgage by a title insurer or its authorized agent for certain purposes; providing for recordation; specifying contents of a certificate of release; requiring execution, acknowledgment, and recordation of a certificate of release by certain entities; providing requirements for appointment of an agent for execution purposes; providing for effect of a certificate of release; providing for liability of title insurers under certain circumstances; providing criteria for recording multiple certificates of release; providing application; requiring the Financial Services Commission to adopt rules establishing an actuarially sound premium charge for certificates of release; repealing s. 701.05, F.S., relating to failing or refusing to satisfy a lien and punishment therefor; providing an effective date.

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:

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

701.041 Title insurer; mortgage release certificate.—

(1) DEFINITIONS.—For purposes of this section:

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

(b) “Mortgagee” means:

1. The grantee of a mortgage; or

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

(c) “Mortgage servicer” means the last person to whom a mortgagor or the mortgagor’s successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payment statement.

(d) “Mortgagor” means the grantor of a mortgage.

(e) “Payoff statement” means a statement of the amount of:

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

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

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

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

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

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

(a) The name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording; and the volume and page or document number in the real prop-

erty records in which the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage.

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

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

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

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

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

(4) EXECUTION.—

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

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

1. The title insurer as the principal.
2. The identity of the person, partnership, or corporation authorized to act as agent to execute and record certificates of release provided for in this section on behalf of the title insurer.
3. That the agent has the full authority to execute and record certificates of release provided for in this section on behalf of the title insurer.

(c) A separate appointment of agent shall not be necessary for each certificate of release provided that at least one such appointment is recorded in the county in which the mortgaged property is located. The appointment of agent must be rerecorded where necessary to establish authority of the

agent, but such authority shall continue until a revocation of appointment is recorded in the office of the county recorder in which the appointment of agent was recorded.

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

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

(6) LIABILITY OF TITLE INSURER.—

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

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

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

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

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

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

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

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

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

Approved by the Governor June 1, 2005.

Filed in Office Secretary of State June 1, 2005.