



RE: House Bill 2951 Relating to notarial acts; prescribing an effective date.

February 18, 2025

Chair Bowman, Vice-Chair Drazan, Vice-Chair Pham, and Members of the House Committee on Rules,

The Oregon Land Title Association (OLTA) is the professional association for the title insurance industry in this state. Our membership includes title insurance underwriters and underwritten agents, many of whom are locally owned. OLTA promotes the educational, ethical, professional, and legislative interests of the title industry. OLTA works with regulators, legislators, county clerks, and the public to ensure the title industry is responsive to evolving customer needs.

Many of our members' employees are Oregon notaries. Notarization is a significant part of closing any real estate transaction.

HB 2951 would create a new electronic database for notary acts performed by Oregon notaries public. For each notary acknowledgment or signature witnessed, the notary must enter the following information in the database:

- 1.) The date and time of the notarial act;
- 2.) The full names of each individual for whom the notarial act was performed; and
- 3.) The title of any document notarized and the number of pages in the document. (HB 2951 Section 2.)

The database then generates a unique identification number associated with the entry which must be added to the notary certificate. (Section 3.)

Summary of OLTA's position:

OLTA stands ready to work with county recorders, the Secretary of State, and this Legislature to combat possible deed fraud. OLTA supports the policy rationale for the Bill but has concerns about its implementation.

OLTA **opposes** the Bill as introduced. If the Bill advances, OLTA requests that its members, who are duly licensed and State-regulated title and escrow companies, be **exempted** from the Bill when recording documents as part of an order for title insurance (an "insured order"). Title insurance already protects against fraud in the insured transaction.

Some of OLTA's concerns are:

**Foreign notaries give aspiring fraudsters an easy workaround.** Foreign notary certificates are recognized in Oregon under ORS 194.275. If HB 2951 is passed, a fraudster trying to commit deed fraud in Oregon would just append a foreign notary certificate from another state that does not have any online database requirement, defeating the purpose of the Bill.

At time of writing, it appears **no other state** requires an electronic database for in-person notarizations. (A few states do require online logging of remote online notarizations, which are conducted entirely electronically to begin with.)

**Administrative burden.** Is the county recording clerk required to check the unique I.D. number of every document submitted for recording? If the recorder isn't required to check, the number is of doubtful value. (The presence of the number does not make the notarized document conclusively or even presumptively valid, but may influence the recorder's decision whether or not to accept it for recording.)

On the other hand, checking each unique ID number will be very labor-intensive. In just one affordable housing transaction closing in the City of Portland with Home Forward around the time of this writing, an escrow officer relates that she notarized about **50 signatures for recorded documents**. (Personal communication with author.) The escrow officer is

personally acquainted with the signers at Home Forward whom she works with regularly. The database requirement would be yet another indirect burden on the production of affordable housing and unduly burdens escrow as well as the recording clerk.

**Redundancy:** The information entered in the online database is not the same information required in the notary's physical notary journal. A notary's physical journal also requires a signature and the number of the signer's identification document (usually a driver's license number).

If the Bill is enacted, notaries will have to complete the physical journal as well as enter the additional information online. Will their fees increase for the extra work? Will the physical journal be deprecated over time?

The Bill requires that the number of pages is input online. However, the total page number of recorded documents frequently changes as exhibits or counterpart original signatures are attached, making this requirement challenging.

**Network:** What if notaries don't have internet access? Will they be able to perform an in-person notarization? Mobile notaries frequently meet customers in rural areas. The Bill should clarify that the notary may obtain the Unique ID Number after the notarization is complete, once they have internet access.

**Security.** Access to the database is provided to notaries, court clerks, and of course the Secretary of State. How secure will it be? Might bad actors access it to gain information, or generate fraudulent unique ID numbers?

**Our industry's role in counteracting fraud.** Because of the many steps we already take in any insured transaction to confirm the seller's identity and other bona fides, including contracting with verification services that review ID documents, completed seller or borrower frauds in insured orders are thankfully rare.

OLTA member agents and insurers have a significant stake in combatting fraud. Title insurers are financially liable if a fraudulent deed or mortgage is recorded in an insured transaction (subject to the terms and conditions of the policy of title insurance). (See OLTA's comments filed in connection with HB 2952.) Fraud is a covered risk in an insured transaction. For this reason, OLTA requests that its members be **exempt** from the operation of the Bill when submitting deeds, mortgages or trust deeds which are part of an order for title insurance.

#### **Limit e-recording to licensed title companies, escrow agents, and Oregon attorneys.**

Certain counties in Oregon accept electronic recordings from third-party providers who are not title companies, escrow agents, or law firms licensed in Oregon. In a recent example, a fraudulent deed was submitted through an unlicensed third-party provider in Multnomah County:

<https://www.wweek.com/news/2024/03/27/a-crook-stole-a-north-portland-house-exposing-a-gaping-vulnerability-in-property-records-forged-signatures/>

To efficiently combat fraud, counties should **not** accept recordings from unlicensed third-party providers.

If the counties continue to accept documents from unlicensed third-party providers, the documents submitted should comply with the requirements of HB 2591. Similarly, documents presented in person / across the counter for recording should be required to comply with the Bill.

On the other hand, title companies and escrow agents licensed in Oregon should **be exempted** from the application of the above Bill.

#### **Pending Work Group**

2025 Senate Bill 391 convenes a Work Group for addressing real property title fraud to report back to the Legislature with recommendations.

This year's Legislature should not enact the above provision of HB 2951 until the Work Group's recommendations can be heard, and the matter addressed comprehensively with input from all stakeholders.

**Conclusion**

HB 2951 is well-intentioned but OLTA cannot support the Bill as introduced. A fraudster could easily circumvent the new requirement by using a foreign notary. Title insurers already bear the risk of fraud in an insured transaction, so documents recorded in an insured transaction should not fall within the Bill's scope if it advances.

Thank you for your consideration of this input from OLTA.

**Respectfully submitted by**

**Ian Kyle, Co-Chair, OLTA Legislative Committee (503) 796-6625; Email: [ian.kyle@fnf.com](mailto:ian.kyle@fnf.com)**      **Rich Bailey, Co-Chair, OLTA Legislative Committee (503) 750-6427 Email: [rbailey@firstam.com](mailto:rbailey@firstam.com)**