



Testimony in Opposition to House Bill 2952
House Committee on Rules
February 19, 2025

Chair Bowman, Vice Chair Drazan, Vice Chair Pham and members of the House Committee on Rules, my name is Kevin Christiansen and I am the government affairs director for the Oregon Bankers Association (“OBA”) and Community Banks of Oregon (“CBO”). Our organizations represent the diverse FDIC insured banks and trust companies doing business in Oregon. The banking industry employs over 20,000 Oregonians at approximately 800 locations throughout our state. Thank you for the opportunity to provide testimony on House Bill 2952.

As an initial matter, preventing fraud is of primary importance to the banking industry. Like the bill sponsors, we share the concerns about the increased incidence of deed or other encumbrance fraud across the country and in our state. Further, our bankers who serve as notaries take their responsibilities very seriously. While well-intentioned, we believe there are several provisions in House Bill 2952, and a related bill, House Bill 2951, that raise concerns. The following is a non-exhaustive list of those concerns identified by our bankers and legal counsel:

- **Page Numbering Requirements.** Sections 1 and 2 require the notary to identify the number of pages for a notarized document. Despite sounding innocuous, this requirement can create practical problems. The following are a few examples. Pagination could be incorrect because the legal description is off or a document did not get added at the time of signing before the notary, even though it is referenced in the document itself. If there is a fight about the document there could be claims of fraud if the page count is off. Another example is when the front page of a recordable document does not comply with ORS 205.234. In that circumstance the recorder’s office may insist on a “cover page” which then adds a page to the overall document page count. ORS 205.234(2). These pages would be added after notarizing the document.
- **Documents Type.** Additional clarity and definition are needed in Section 1 with respect to “document type.” The bill appears to be written as if adding “Document Type” to the Notary certificate applies to all Notarial acts. The bill, however, only updated the two Acknowledgement Certificates listed in the statute.
- **Parcel Numbers.** Sections 3 and 5 relate to parcel numbers. Parcel numbers change when land is developed. This might give a clerk reason to refuse to record a document despite

there being nothing nefarious taking place. Clerks may not always have access or the time to look to see if a parcel number has changed.

- Notary Identification. Section 3 requires disclosure of the name and, if applicable, the commission number of the notary. The Secretary of State already maintains a list of active Oregon notaries on its website. It is not clear why clerks would also need this information. It is also unclear what would be done in the case of a notary from another state. Each notary block is dictated by the state in which the document is signed, not the state where it is recorded.
- Clerks Rejecting Documents. Section 4 would allow a clerk to refuse to accept a document if the clerk believes that the document “has any characteristic suggesting it may be fraudulent.” Clerks should not have this broad level of discretion to refuse to record a document. The many detailed requirements in statute for recording a document (e.g., size, cover page info, notary) are intended to remove discretion from the process and provide certainty that a document will be recorded. A clerk can refuse to record if those requirements are not met. The ability to refuse to accept a document could cause chaos in the purchase and sale of real estate, as well as loan closings. Bankers indicated they are unsure how they would address some of the regulatory timing and disclosure requirements in Real Estate Settlement Procedures Act (Regulation X, 12 CFR Part 1024) and Truth in Lending (Regulation Z, 12 CFR 1026) if a closing does not occur on-time due to a clerk refusing to record a nonfraudulent document. It is important to note that in the event a fraudulent document is recorded there is a process for getting the title fixed. See ORS 205.450 to 205.470. ORS 205.460 outlines the process and includes a template for a petition and affidavit.
- Privacy. In conjunction with the reporting requirements of House Bill 2951, “Representative Capacity” may entail a public release of non-public confidential information contained in bank records, which are often used to verify capacity. This could be a violation of 16 CFR Part 314 - Standards for Safeguarding Customer Information (Gramm Leach Bliley). An example would be a notarized loan document pertaining to a trust or business loan. An individual’s trustee, ownership, or business capacity or affiliation is not public information. It would become public information under this bill if requested by the public.
- Non-Recorded, Notarized Documents. It is important to note that not every document that is notarized is recorded. The bill, however, does not limit the reporting requirement to just those documents that will be recorded and a matter of public record. Financial documents commonly notarized by banks, but not recorded include: loan agreements; affidavits of lost or stolen checks; unauthorized card or ACH transactions; account signature cards and opening documents, including Customer Identification Plan and Beneficial Ownership acknowledgements; power of attorney affidavits; affidavits for a Safe Deposit Box;

indemnity agreements; and declarations of a lost bank check or lost check indemnity agreement. There are many circumstances and reasons in which a notarized but non-recorded document should not be subject to public disclosure, not the least of which is the parties desire to have the document remain private.

While OBA and CBO encourage you to oppose House Bill 2952 as drafted, we stand ready to work with the sponsors to reach mutually agreeable solutions. A work group over the interim may be the best course of action to address the concerns related to this issue. If you have any questions, please feel free to contact me at (503) 576-4123 or our lobbyist John Powell at (503) 510-8758.

Thank you.