



OREGON LAND TITLE ASSOCIATION
Legislation Adopted in the 2023 Regular Session
Bills of Interest to Title Companies

The following are summaries of some of the bills passed during the 2023 legislative session that are of interest to the title industry. Unless stated otherwise, the effective date for all bills is January 1, 2024:

House Bill 2029 Relating to instruments presented for recording to county clerk; creating new provisions; and amending ORS 205.232

This bill amends ORS 205.232 to increase the minimum font size of instruments recorded with the county clerk from 8-point to 10-point.

House Bill 2032 Relating to domestic partnerships; amending ORS 106.310 and 106.340

Expands registered domestic partnerships under the Oregon Family Fairness Act (OFFA) to individuals of any sex. Previously, registered domestic partnerships were limited to individuals of the same sex.

While the OFFA aims to extend the 'privileges, rights, and immunities' of married persons to registered domestic partners, a tenancy by the entireties is reserved to "spouses married to each other" per ORS 93.180(3), as modified by Or Laws 2015, Ch. 629 sec. 5.

As a result, there is a difference of opinion on whether registered domestic partners are presumed to take title as tenants by the entireties, or even whether they may do so. The best practice is to be explicit if the intention is to hold title with survivorship.

House Bill 2033 Relating to instruments conveying title to real property; amending ORS 311.411

Clarifies that should a deed be recorded without the required certificate, any outstanding charges as of the date of recording may be pursued against the grantor personally per ORS 311.411(6).

A deed to an entity exempt from ad valorem taxation (such as government) must be accompanied by a certificate from the assessor stating that all taxes and other assessments have been paid current as of the date of recording. ORS 311.411. Assessors cannot reliably produce the certificates in time for transactions to close and while the recorder is not supposed to accept deeds to exempt entities without the certificate, they manage to be recorded from time to time. This bill clarifies the collection of those unpaid taxes.

Effective date: September 24, 2023

House Bill 3294 Relating to removal of discriminatory language from recorded instruments; creating new provisions; and amending ORS 93.274.

Modifies the procedure for redaction of discriminatory covenants. A petitioner owning real property, or a portion of real property (such as a lot in a burdened subdivision) affected by a discriminatory covenant may bring an in

rem declaratory relief action to remove a discriminatory covenant as defined in ORS 93.270(1)(a) from the deed records for the property affected. No parties other than the petitioner need to be joined to the action. The petition shall specify the discriminatory language to be removed and include as an attachment a certified copy of the deed, declaration, or other instrument containing the provision. If the court finds the provision is discriminatory, the court enters an order with the recording information of all the instruments affected and attaches a certified copy on which the court has physically struck (redacted) the void provisions. The order is then recorded in the deed records and takes the place of the original instrument(s). The order has the same effective date as the original instrument(s). The county clerk removes the original instruments from the record and maintains them for historical purposes, but not readily accessible to the public.

Discriminatory covenants have been unenforceable since the Shelly v. Kraemer US Supreme Court decision in 1948 but appear in historical property records. The goal of this Bill is to permit redaction of the original without republishing the offending covenants, and without adjusting the original priority dates of the instruments in question, which may contain other provisions that are still enforceable.

Senate Bill 308 Relating to decedent's estates; creating new provisions; and amending ORS 111.200, 113.238, 114.505, 114.510, 114.515, 114.517, 114.520, 114.525, 114.535, 114.537, 114.540, 114.542, 114.545, 114.550, 114.552, 114.555, 114.650, 119.021, 119.026, 119.062, 130.150, 238.390, 238.458, 708A.655 and 723.844.

'Small' estates under ORS 114.505 et seq. are renamed 'simple' estates. The eligibility threshold remains unchanged for intestate estates. However, the threshold for filing a testate simple estate has changed. The testate estate may qualify for administration under the simple estate affidavit procedure if the decedent died testate and the following conditions are met.

- (A) Not more than \$75,000 of the fair market value of the estate is attributable to specifically devised personal property;
- (B) Not more than \$200,000 of the fair market value of the estate is attributable to specifically devised real property; and
- (C) The balance of the fair market value of the estate is attributable to property that is devised to the trustee of a trust of which the decedent was a settlor, as defined in ORS 130.010, and which came into existence prior to the decedent's date of death.

The trust agreement, or a certificate of trust, shall be filed simultaneously with the simple estate affidavit.

This Bill addresses the common scenario of an estate planning client forgetting to transfer title to real estate to their trust before death.

Senate Bill 619 Relating to protections for the personal data of consumers; creating new provisions; and amending ORS 180.095

Permits consumers to obtain from the controller that processes consumer personal data confirmation as to whether the controller is processing consumer's personal data and categories of personal data controller is processing, a list of specific third parties to which the controller has disclosed consumer's personal data or any personal data and copy of all of consumer's personal data that controller has processed or is processing. Permits the consumer to require the controller to correct inaccuracies in personal data about the consumer, require the controller to delete personal data about the consumer, or opt out from the controller's processing of the consumer's personal data under certain circumstances. Requires the controller to provide to consumers reasonably accessible, clear, and meaningful privacy notice that lists categories of personal data controller processes, describes the controller's purpose for processing personal data, describes how the consumer may

exercise consumer's rights with respect to personal data, lists categories of personal data that controller shares with third parties, lists all categories of third parties with which controller shares personal data and provides other information. Specifies duties of, and prohibits specified actions of, the controller and of the processor that acts at the controller's direction. Permits the Attorney General to investigate violations of the Act and to bring action to seek a civil penalty of not more than \$7,500 for each violation. Permits consumer or class of consumers to bring action after specified date for ascertainable loss of money or property resulting from violation of the Act.