

Oregon Land Title Association

2025 Legislative and case law update

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Oregon

Legislative Update

Case Law
Update



Fidelity National Title

Part 1: Legislative Update

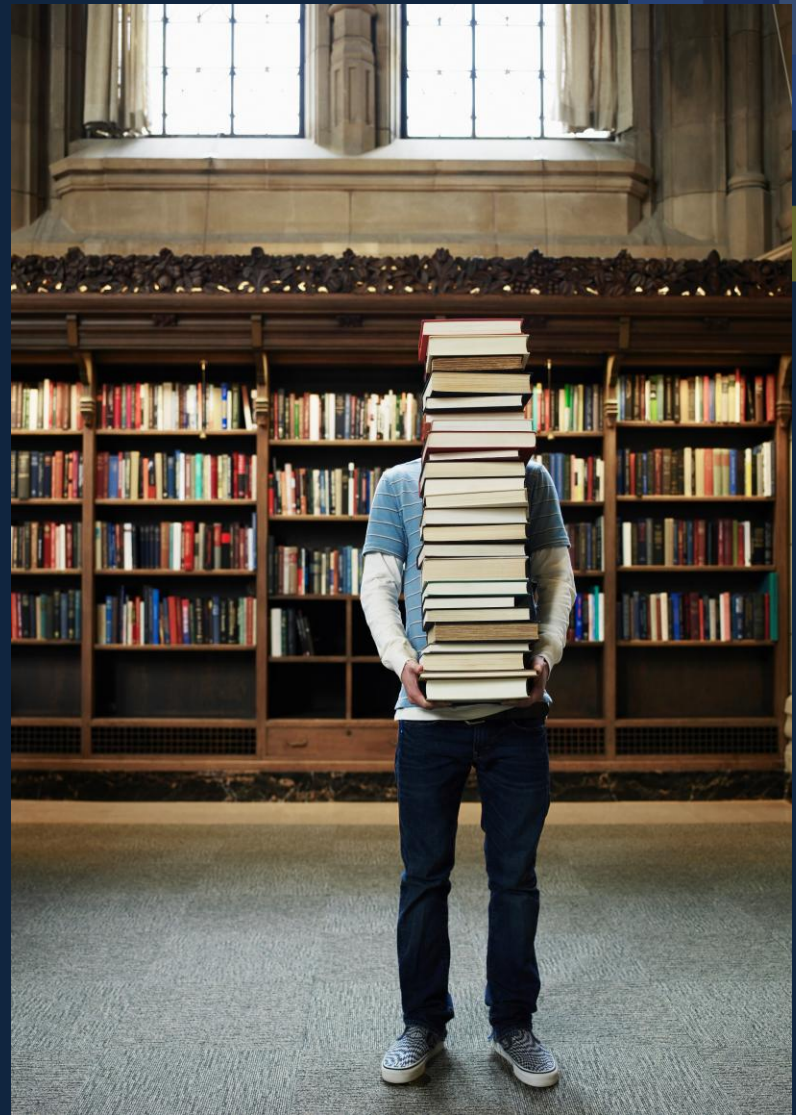
2025 Oregon regular Legislative Session:

January 21 to June 29

Special Summer Session:

August 29 to September 29

Winter 2026 session upcoming



2025 Oregon House Bill 2089

- **Provides a means for former owners of tax-foreclosed real property to claim a surplus after the property is sold by a county**
 - In response to a US Supreme Court decision
 - Law effective September 26, 2025
 - Details follow

2025 Oregon House Bill 2089

- **Tax foreclosure (FC) overview (prior law)**
 - Taxes unpaid for three years
 - Referred for foreclosure
 - COVID-era moratoria?
 - Notice mailed and published in list
 - County applies for a judgment of foreclosure the same day the list is published
 - Wait thirty days. Judgment of foreclosure transfers title to tax collector
 - Collector deeds to County after redemption period runs
 - Note: No private sale prior to deed to county.

House Bill 2089

- **How is notice of tax FC given?**
- **By publication in the foreclosure list, and by delivery of notice to owners.**
 - Publication may now be waived when personal delivery of the notice is made (next slide)

House Bill 2089

- **Personal service on owner:**
 - New: Either orally or in writing.
 - “Hey, your property is in tax foreclosure.”
 - Q: Does a phone call work?
 - If supported by affidavit, the property is excluded from the published foreclosure list.



House Bill 2089

- **Due diligence now required :**

- In noticing foreclosures (Section 1(2)):

(2) For all notices of foreclosure proceedings, counties shall conduct due diligence to locate property owners by means including, but not limited to, searches of land, court and other records, online databases and other resources.

- And giving notice of expiration of rights of redemption
Section 2(1)(c):

(c) Counties shall conduct due diligence to locate interested property owners by means including, but not limited to, searches of land, court and other records, online databases and other resources.

- **The words “due diligence” did not appear in the statute previously. Mail and forget ... don’t even have to use best efforts.**



House Bill 2089

- **Notice of redemption period (Section 2)**
 - Must be posted to County website.
 - Redemption period follows judgment of foreclosure.

House Bill 2089

- **Notice of surplus following sale (Section 3)**
 - Who is entitled to notice.
 - The claimant at the claimant's last-known address.
 - Estate Administration Section at Dept of Treasury (Oregon)
 - Oregon DOJ
 - City, if any
 - Form of notice

House Bill 2089

- **Definition of claimant (Section 5)**

- The claimant (who is entitled to notice of a surplus / may claim surplus) is:

(1)(a) “Claimant” means:

(A) The owner of real property as of the date on which the property was sold to the county on foreclosure for delinquent taxes under ORS 312.100; or

(B) The former owner’s estate, heirs, devisees, power of attorney, trustee, guardian, custodian or bankruptcy estate or a successor in interest that has acquired substantially all of the former owner’s assets by intestate succession, probate, merger, acquisition, dissolution or takeover.

- So, includes successors by deed from foreclosed owner. But must obtain fee; can’t just receive an assignment of the proceeds.



House Bill 2089

- **Persons who are not claimants:**

(b) “Claimant” does not include:

(A) The creditors or garnishor of a claimant;

(B) Other persons holding an interest in the property that was sold to the county; or

(C) Voluntary or involuntary assignees of a claimant’s interest in a surplus.

Non claimants include:

**Secured lenders (whose interest was foreclosed),
unsecured creditors of old owner,
assignees of claimant’s interest in a surplus.**

House Bill 2089

- **Sale Procedures (Section 6)**
- **County may choose not to sell property by:**
 - Retaining the property for public purposes, or
 - Deeding to a nonprofit for public benefit.
- **In such cases, the surplus is the fair market value of the property (minus tax debt and costs of sale).**

House Bill 2089

- **Sale Procedures (Bill Section 6)**
- **If property was the principal residence of the foreclosed owner and is located in a residential zone:**
 - List property with broker for resale.
- **Property does not meet above description (or fails to sell once listed within a year)**
 - High-bid auction
 - Which may include bids entered online
 - Floor bid is initially 2/3's of assessor's RMV.
 - If property doesn't sell, auction again; minimum bid is for tax debt and county's expenses of sale
 - If it still doesn't sell, County may forgive tax debt and expenses and convey property to a non-profit or retain title, both f/b/o public.
- **The surplus, if any, is deposited into a separate interest-bearing account.**



House Bill 2089

- **Calculating the Surplus (Section 8)**
 - See sale procedures above.

House Bill 2089

- **Claiming the surplus (recap)**

- Claimants entitled to notice of a surplus
 - Includes the foreclosed owner, their estate, heirs, devisees, and subsequent owners of the fee,
- Does not include
 - Creditors of the decedent or lienholders with an interest in the property.
 - Or parties receiving only an assignment of the claimant's right to a surplus.
- Section 5 of HB 2089.

House Bill 2089

- **Applicability**

- Surplus claims authorized for foreclosures noticed after May 25, 2023 (Section 13 of Bill)
 - What happened on this day?
 - US Supreme Court decision *Tyler v. Hennepin County* was handed down
- State law takings case for excess proceeds:
 - *Lynch v. Multnomah County*, Case No. 3:23-CV-01502-IM

House Bill 2138 A

- **Summary: allows denser home building in cities and requires LCDC to adopt rules**
- **Discussion**
 - Purportedly retroactively invalidates CC&R limitations on density
 - But they are vested property rights (BarBooks)
 - Contrast 2019 HB 2001
 - Check with your underwriter
- **Effective July 17, 2025**

HB 3137 A

- **Changes laws around real estate agents**
- **Creates classification of license:**
 - Managing Principal Broker
 - Has supervisory responsibilities over brokers and principal brokers
 - Over their trust accounting, CE compliance, practice of real estate
- **Prohibition on “real estate teams”**
 - Required all marketing materials be updated by Jan 1, 2026
 - Public outcry (429 pages of comments submitted to REA in rulemaking)
 - Outcome of REA rule adoption process
- **Effective Jan. 1, 2026**



HB 3144

- **Stops private bans on mobile homes after effective date**
- **Discussion**
 - New planned community documents may not bar manufactured structures or prefab homes
- **Effective Jan. 1, 2026**

HB 3175

- **Removes cap on recording fees that counties may charge to fund public land survey corner recovery**
- **Discussion**
 - Prior cap - \$10
 - Purpose of collection – establishing government survey land corners
 - Notice and comment period required prior to adoption
 - Rural counties?
- **Effective Jan. 1, 2026**

HB 3522 A

- **Allows eviction of a squatter**
- **Definition**

"Squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over as described in [ORS 90.427 \(Termination of tenancy without tenant cause\)](#) (11). [🔗](#)

- Squatter is defined in Chapter 90 (ORLTA)
- **Effective Jan. 1, 2026**

HB 3522 A

- **Allows eviction of a squatter**
- **Discussion**
 - Squatters not previously included in persons “unlawfully holding by force” who could be subject to a summary eviction action. ORS 105.115(1).
 - 24 hour notice
 - Doesn’t endow tenancy rights to a squatter
 - Squatter is defined in Chapter 90 (ORLTA)
- **Effective Jan. 1, 2026**

HB 2951 (Not passed)

- **Directed SOS to make an online database of notary acts**
 - Similar to MERS. Kinda.
 - Notaries would enter information twice; once online and again on the jurat.
- **Discussion**
 - OLTA opposed
- **(No effective date)**

HB 2951 (Not passed)

Sample jurat (what you would have had to complete if not for the fierce advocacy of OLTA):

This record was acknowledged before me on (date) _____ by (name(s) of individual(s))

Signature of notarial officer: _____

Stamp (if required):

Title of office: _____

My commission expires: _____

Notarial Acts Database identification number: _____

HB 2952 (Not passed)

- **Adds to notary certificate additional information**
 - Type of document notarized “Deed”, “Deed of Trust”, etc.
- **Gives recorder discretion to reject a document with indicia of fraud**
- **Indexing**
 - County indexes documents by notary and parcel ID
- **(No effective date)**

Reprise

- But is the “deed fraud” issue gone?
- AARP
- Model legislation from ALTA
- Possible adoption of ALTA 49 or HO policies

Other Bills not passed:

- **Restricting foreign ownership of Oregon real estate**
 - National defense concerns
 - Cf. other states.
 - OLTA opposed
 - Purchases voided ab initio
- **(No effective date)**

Senate Bill 15 B

- **Changes simple estate thresholds**
- **Discussion**
 - Revisit what might have been (sole devisee up to \$750k)
 - OLTA proposed a median home price threshold
- **Gifted this outcome:**
 - MH counted as real property for threshold (\$200k) even if still classed as personal property.
- **Same: property devised to trust in pour-over will exempted.**
- **Effective Jan. 1, 2026**

Senate Bill 74 A

- **Directs DSL to study how to determine a waterway is navigable**
- **Discussion**
 - “Notwithstanding common law principles of accretion and avulsion”, State may pursue ownership of current submerged lands within water way.
 - Rather than historical location of waterway. I think.
 - Impress your underwriters with this material!
- **Effective Jan. 1, 2026, sunsets Jan 2, 2027**



Senate Bill 165 A

- **Amends and repeals laws about State Land Board's power to claim title to historically filled lands**
- **Authorizes State to record a notice of historically filled lands**
 - Asserting ownership interest
 - Just in case you see one recorded.
- **Effective May 28, 2025**

Senate Bill 168 (Companion to SB 15 A)

- **Changes law that applies to a decedent's estate**
 - Simple estates. Technical fix to 2023 enactment involving general devises we won't worry about
- **Holographic wills by clear and convincing evidence**
 - Writing must be executed before death of decedent and
 - Decedent signed the writing; or
 - Another person signed the writing at the direction of the decedent
- **Effective Jan 1, 2026**

Senate Bill 347 A

- **Ends special farm assessment for owner convicted of cannabis violation**
- **Roll back taxes a concern for us.**
- **Effective Sept. 26, 2025**

Senate Bill 174 A

- **Would have included insurance within Unlawful Trade Practices Act**
- **History**
 - The goal of many legislative sessions
 - Compromise:
 - Dems agreed to repeal wildfire risk map and defer ODOT bill to summer session.
 - UTPA not expanded to cover insurance
- **(not passed)**

Summer Session Update

- **No Bills of concern to OLTA**
- **Just if you register cars in Oregon**

Oregon

Legislative Update

Case Law
Update

Case law update

Recent cases of interest



KKMH Properties Inc. v. Shire

- **Tenant kept 277 guinea pigs on the property inflicting significant damage.**
 - LL terminated tenancy for cause.
- **T appealed; upheld in Court of Appeals**
- **SC overruled**
 - LL's notice defective; failed to give tenant 14 days to remove guinea pigs and repair damage
 - (Even if that wasn't factually possible)
- **Takeaway**



Easement merger cases update

- ***Partney v. Russell* 304 Or App 679 (2020)**
 - Common law rule of merger / unity of title re-affirmed
- ***Lute v. Cascadia Tower, Inc.* 336 Or App 155 (2024)**
 - Okay to look at intent of parties
 - I.e. beyond record documents by having them testify at trial
 - OLTA asked to brief

Easement merger cases update

- ***Humphreys v. Huls* 343 Or App 683 (2025)**
 - Re-affirms *Partney*
 - A conveyance of an appurtenant easement is specific to the parcel to be benefitted; not all parcels owned by the grantee at the time that are in the vicinity.

Trust Amendment Case

- ***Downs v. Binn*, 336 Or App 665 (December 2024)**
- **Facts**
 - Married couple Dean and Joyce Binn created a revocable trust in 2007, naming their nephew a contingent beneficiary.
 - The trust agreement stated that upon the death of a settlor (trustor), the trust agreement became irrevocable.
 - Trustor Dean Binn died in 2008.
 - His surviving spouse, with the help of counsel, amended the trust several times and removed nephew as beneficiary.

Trust Amendment Case

- ***Downs v. Binn*, 336 Or App 665 (December 2024)**
 - More Facts:
 - The son of Dean and Joyce Binn died unexpectedly in 2009 while in his forties.
 - After the deaths of her husband and son, the contingent interest of nephew (Theo Downs) vested.
 - Surviving spouse Joyce attempted to amend the trust and testified at trial that nephew was never “really” an intended beneficiary of the trust; their lawyer just told them someone should be listed as a contingent bene.



Trust Amendment Case

- ***Downs v. Binn*, 336 Or App 665 (December 2024)**
 - Trial court
 - Okay that's plausible Joyce. We will reform the trust to meet the settlor's intent (Joyce was a settlor after all) and revoke nephew's interest. ORS 130.220.
 - Court of appeals:
 - Not so fast. The trust stated it became irrevocable upon the death of the first spouse to die

“2.1 At any time prior to the death or incapacity of a Grantor, by a duly executed instrument, Grantor, or either of them, may amend this Trust Agreement in any manner, or may revoke this Trust Agreement in whole or in part. *Upon the death or incapacity of a Grantor, this Trust becomes irrevocable.*”

Trust Amendment Case

- ***Downs v. Binn*, 336 Or App 665 (December 2024)**
 - Oregon Supreme Court denied review in 2025.
 - Relevant to title:
 - We see many amendments and revocations of trust agreements after the death of the first spouse (trustor)
 - Caution if trust became irrevocable after first spouse to die.

Adverse Possession

- **Mowing grass isn't enough**
- **Warren v. Burnham, 341 Or. App. 226 (2025)**
 - Mowing grass as a neighborly accommodation
 - Does not establish “open and notorious possession”
 - Of a character to put the true owner on notice of the hostile claim of the mower's to title



Disclaimer

- **Nothing in this presentation shall be construed as legal advice or an offer to insure.**
- **You get what you pay for.**

Closing

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