

Presented By:  
J.P. Kissling



# LEGISLATIVE UPDATE

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# Introduction

Owner and President of a fourth-generation family Title Agency with a remarkable 115-year history. A Washington Title Professional, past president of the Washington Land Title Association and current Legislative Co-chair. Additionally, A member of the Washington State recording standards commission with over 30 years of expertise in the Title Insurance and Escrow Industry.

J.P. Kissling

# What We Did

In 2024, a brief 60-day legislative session occurred.



● Hundreds of bills were prefiled before the session began on January 8. Over 1,000 bills had been filed by the start of the second week of the session.

● After all the bills are screened, WLTA identified about 100 that needed further review for potential impact on the title industry.

● Reviewing bills, suggesting amendments to some bills, and and testifying when needed.



# Meet Our Team



**Chris Rollins**  
Stewart Title

**Craig Trummel**  
WFG

**Dwight Bickel**  
Real Property Title  
Advisor

**George Peters**  
WLTA Executive Director

**Gerry Guerin**  
Stewart Title

**Jim Blair**  
Fig Title

**Lindsay Doucette**  
Fidelity National Title

**Megan Powell**  
First American Title

**Sean Holland**  
2024 Co-Chair(retired)

**Michelle Taylor**  
Co-Chair

**Maureen Pfaff**  
Vice Chair

**J.P. Kissling**  
Co-Chair

# Our Superstar Lobbyist



**Carrie Tellefson J.D.**

# Senate Bill 5840

Acknowledgment  
Requirement Eliminated  
for Unrecorded Leases  
but Retained for  
Recorded Documents

Passed

 Intent

Senate Bill 5840 was advanced by real property lawyers to eliminate the acknowledgment requirement for leases

 Outcome

RCW 64.04.010 now provides in relevant part that “Leases do not require acknowledgment, witness, or seals, but to be recorded, a lease and a memorandum of lease must have the lessee’s and lessor’s signatures acknowledged”

# House Bill 2240

Clarifying Process for  
Redacting Void  
Covenants from the  
Public Records

**Did not pass**

## Intent

House Bill 2240 aimed to implement crucial adjustments to court-ordered procedures for eliminating illegal covenants from public records, which were initially established by Engrossed Second Substitute House Bill 1335 in 2021 and codified in RCW 49.60.227.

## Outcome

The WLTA would have given its full support to this bill. Unfortunately the committee to which the bill was assigned never scheduled it for a hearing.

# House Bill 2140

## Abolishing Adverse Possession

A poorly reasoned and badly written bill. It would have eliminated adverse possession in any case “where there is a properly recorded instrument in the auditor’s office . . . establishing ownership and identifiable boundaries of the property”

**Did not pass**

### ● Intent

Adverse possession would be possible only in situations where the party holding record title did so under a deed with a legal description so defective that the boundaries of the property could not be identified.

### ● Outcome

At the bill’s one and only committee hearing the witness speaking in support was unable to answer even basic questions from the committee members. The WLTA presented testimony opposing the bill. The bill never came up for a committee vote.



# Engrossed Substitute Senate bill 5968

## Regulating Home Equity Sharing Agreements under the Consumer Loan Act

Home equity sharing agreements are arrangements between a homeowner and an investor where the investor fronts funds to the homeowner in return for a share of the proceeds when the home is sold or refinanced.

**Did not pass**

### ● Intent

The bill would have subjected these arrangements to regulation under the Washington Consumer Loan Act. The bill was regulatory in nature and lacked provisions directly affecting recorded documents.

### ● Outcome

The WLTA took no position on the bill, which passed the Senate, but not the House. We should see a variation of this bill again in the 2025 legislative session.

# Senate Bill 6290 & Reintroduced HB 1412

## Concerning Ownership of Agricultural Real Estate

In the 2023 session the WLTA opposed a similar bill, House Bill 1412, that would have banned acquisition of agricultural land by foreign entities and required pre-clearance of all sales of agricultural land by the Washington Department of Agriculture.

**Did not pass**

### Intent

This bill would have banned the acquisition of agricultural, forestry, or mining land in Washington by non-resident aliens unless the laws of the non-resident aliens home country permitted Americans to purchase agricultural land.

### Outcome

Neither Senate Bill 6290 nor House Bill 1412 received a hearing in 2024.

# Senate Bill 6034

Clarifying the Excise Tax  
Treatment of Document  
Recording and Filing  
Fees Received by Title  
and Escrow Businesses  
from Clients for  
Remittance to County  
Recording and Filing  
Offices

**Did not pass**

## Intent

Senate Bill 6034 would have amended the statutory definition of “abstract, title insurance, and escrow services” so that funds received by a title company or escrow company for remittance to a county auditor to record documents would not be subject to sales and B&O tax.

## Outcome

The fate of the bill was sealed when the Department of Revenue issued a fiscal note stating that the bill would result in a hit to the state general fund of \$18,200,000. The original committee never even scheduled a vote on the bill.

# Regulatory Issue

## Washington Department of Revenue Auditing Title Companies and Assessing Sales Tax and Business & Occupation Tax on Recording Fees.

The DOR position seems contrary to the statutes and regulations regarding both sales and B&O tax. WAC 458-20-111 provides that advances paid on behalf of a customer or client are not includable in gross income.

The regulation contains the following example: “Where an attorney pays filing fees or court costs in any litigation, such fees and costs are paid as agent for the client and should be excluded from the gross income of the attorney.”

The charge to file a lawsuit with the court is assessed by the court clerk for a service that can be obtained solely through the court clerk. The charge to record a document with a county auditor is for a service that can be obtained solely through the county auditor.

In both cases the funds are coming not from the agent, the attorney in the case of filing a complaint, or the title company in the case of recording a document, but from the principal, either the client behind the litigation or the customer whose transaction is being closed. The two types of filing actions are functional equivalents. Nonetheless DOR takes the position that the regulatory exemption for attorneys does not apply to title companies.

# Building Industry Association of Washington

## v. State.

Filed  
Washington State  
Court of Appeals  
Division Two  
February 27, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BUILDING INDUSTRY ASSOCIATION OF  
WASHINGTON, a Washington non-profit  
trade association, and SOUNDBUILT  
HOMES, LLC., a Washington Limited  
Liability Company,

Appellants,

v.

THE STATE OF WASHINGTON and  
THURSTON COUNTY AUDITOR, MARY  
HALL, in her official capacity,

Respondents.

No. 57502-7-II

PUBLISHED OPINION

CHE, J. — Building Industry Association of Washington and Soundbuilt Homes, LLC

(Soundbuilt) appeal the order granting summary judgment in favor of the State and the Thurston County Auditor (collectively, the State).

To record documents with the county auditor in the course of their business, BIAW, or its members, pay a document recording surcharge. Generally, the surcharge finances affordable housing and related funds. BIAW filed a declaratory judgment action against the State arguing, among other things, that the document recording surcharge violated article VII, sections 1 and 5 of the Washington Constitution, BIAW and the State moved for summary judgment. The trial court found that BIAW asserted only facial challenges to the surcharge. The trial court granted summary judgment for the State and denied summary judgment for BIAW.

BIAW filed a declaratory judgment lawsuit objecting to a “document recording surcharge” that was paid by builders for affordable housing and related funds. The document recording surcharge was enacted under RCW 36.22.250 and required county auditors to assess a \$183.00 per recorded document surcharge. One percent of the surcharge (\$1.83) went to the auditors and the rest (\$181.17) went to fund homeless housing and assistance funds. BIAW challenged the surcharge as unconstitutional.

The appellate court held that the surcharge was a “tax”, not a “fee” because the primary purpose was to “alleviate the housing crisis by financing certain funds, which is a public benefit.

Moreover, the appellate court held that the tax was an “excise tax”, not a “property tax” and thus not subject to a uniformity requirement imposed by the state constitution. This was because the “tax” was not levied on property ownership, but rather on the exercise of rights associated with owning property.

## Where Does the \$303.50 Recording Fee Go?

By state law, the standard recording fee is distributed to the following funds:

### Archives and Preservation

<b>Preservation Fund</b>	<b>\$2.00</b>
For preservation of historical county documents.	
<b>State Archives Fund</b>	<b>\$2.00</b>
For archives and records management training, funding grant programs, and constructing a new regional archives facility.	
<b>Commissioner's Preservation Fund</b>	<b>\$1.00</b>
For local historical document preservation and programs.	
<b>State Library-Archives Fund</b>	<b>\$6.00</b>
To operate and maintain the state archives, state library, and capital museum.	

### Affordable Housing

<b>Homeless Housing Assistance Fund</b>	<b>\$46.67</b>
To fund local homeless housing services, programs, and grants in the county, cities and towns.	
<b>Covenant Homeownership Fund</b>	<b>\$99.00</b>
To reduce racial disparities in homeownership in the state by providing down payment and closing cost assistance.	
<b>State Home Security Fund</b>	<b>\$99.00</b>
Provides grants statewide for partial rental assistance, homeless shelters, youth shelters, and transitional housing.	
<b>Low-Income Housing Assistance Fund</b>	<b>\$8.24</b>
To provide affordable housing for very low-income households and emergency shelters in the county.	
<b>State Landlord Mitigation Fund</b>	<b>\$3.29</b>
To reimburse landlords for certain improvements, damages, unpaid rent and unpaid utilities across the state.	
<b>State Affordable Housing Fund</b>	<b>\$23.97</b>
To fund statewide low-income housing subsidy programs.	
<b>Growth Management Planning Fund</b>	<b>\$2.50</b>
To manage high density residential growth and environmental impacts in Washington state.	

### Administration and Recording

<b>Recording Operations and Maintenance</b>	<b>\$4.83</b>
For modernizing and improving the Recording Division's recording and indexing system.	
<b>General Fund</b>	<b>\$5.00</b>
For county administration and operations.	

**\$303.50**

OR

**\$4.83**

If the logic of the Court of Appeals decision is applied to the full \$303.50 charged to record a single page deed, more than 90% of that charge would be an excise tax, meaning that fully exempting recording fees from sales and excise tax should have a negative effect on the general fund that is only about 7% of the figure DOR provided

Recording fees paid for customers should not be subject to any tax. However, even if that argument does not prevail with DOR, the scope of potential liability has been reduced 90% by this case. Because the combined \$283 surcharge on most documents is an excise tax, it should not be subject to sales tax and B&O tax.



WLTA Legislative Committee

We are always looking for more people to get involved. If you have any interest in what we do, reach out to a member of the committee.

**THANK YOU**