

# OHIO LAND TITLE ASSOCIATION

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Chairman Hottinger, Ranking Member Brown, Vice Chair Hackett, and Members of the Senate Insurance and Financial Institutions Committee. Thank you for the opportunity to present proponent testimony on Senate Bill 263.

The Ohio Land Title Association (OLTA) is a trade association representing licensed title insurance agents, underwriters, abstractors and real estate / title attorneys operating in all 88 Ohio counties. Our members conduct examinations of recorded documents and insure title to real property. OLTA formed an internal task force consisting of title agents, title insurance underwriters and real estate attorneys to provide feedback on Senate Bill 263.

The task force's comments are as follows:

- On line 1413, OLTA seeks further guidance on what a “credible witness” means? We believe it would create an area for a judgment call for a notary that could be questioned and the source of litigation if more explicit guidance is not provided on what does and does not constitute a credible witness. Additionally, the witness is not subjected to the same credentialing process as the principal. OLTA believes the witness should be subject to the same credentialing verification process as the principal.
- Could the bill provide a “papering out” option for counties where electronic documents cannot be recorded? In other words, could a certified paper copy of the electronic document be printed to be reviewed by county agencies? OLTA believes that a person with access to the securely stored electronically executed document could attach a “wet” certification, sworn before a notary, that the document presented for record is an unaltered copy of the electronically executed document, and thus conveniently allow for recording in counties where e-recording is not available or where the document must be walked through the auditor's office. There should be language which clearly indicates the document so certified is deemed an “original” for purposes of presentation for transfer and recording. It may be prudent to include a draft of the form of certification.

- Should the Secretary of State's rules promulgated in SB 263 be subjected to Chapter 119? OTLA believes this would be appropriate.
- There is a separate e-notary commission. This commission expires when the notary's commission expires. See Lines 1326 – 1328. Commissions awarded to attorneys do not expire. Does this mean that e notary commissions issued to attorneys also do not expire? OTLA believes it may be prudent to provide for expiration of even attorney notaries for e-notary commissions because continued education will be more important for compliance in this dynamic electronic notarization environment.
- E-notary records maintained by an attorney for client matters would be considered public records. See Line 1527. Any person can make a request for inspection of the log. Lines 1544 – 1548. We would believe that such broad access merely upon request could conflict with matters subject to an attorney-client privilege but also provide the opportunity for abuse of the request process by unscrupulous solicitors. We believe it would be appropriate to limit the request to a person who either was or acted on behalf of the principal in the notarial act. OTLA would also suggest that for attorney notaries, that the request may be declined on the grounds of privilege.

Again, we appreciate the opportunity to provide comments and welcome further discussion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russell J. Kutell".

Russell J. Kutell, Esq.  
President  
Ohio Land Title Association