

Rep. Helen Head, Chair
House General, Housing & Military Affairs Committee
c/o Ron Wild
via e-mail

From: Richard Linton Brock, Association of Vermont Credit Unions, Inc.
February 23, 2015

Re: House 25

Madam Chair:

This confirms my testimony on February 11, 2015 regarding House 25.

I spoke, and I now write, on behalf of the Association of Vermont Credit Unions, Inc., the trade association of Vermont's credit unions.

The Association of Vermont Credit Unions has no position on the existence or creation of natural burying grounds. It does have a concern with regard to the mortgages of real estate.

We believe that the creation of a natural burying ground on property mortgaged to a credit union would pose a significant obstacle should the credit union be forced to take the property back. We do predict that the courts of this state would rule that a mortgage recorded prior to the declaration of a natural burying ground would have legal priority. That is, the mortgagee credit union would be entitled to remove the burying ground. But, we doubt that priority would solve the problem.

The removal of human remains would be the result of removing the burial ground.

The removal of human remains would be, and is, a sensitive and delicate matter. It would certainly involve the sensibilities of the families of the interred persons. It might involve significant issues of health, sanitation and re-interment. While these may or may not be legal obstacles, they would very likely be a daunting practical problems. These practical problems might significantly impair the salability of the recovered property or significantly increase the expense of recovering and reselling the property.

Vermont's credit unions are certainly prepared to accept the possibility of granting mortgages or declining to do so where natural burying grounds are designated prior to the granting of the mortgage. The existence of a burying ground would be known and its existence would simply be a lending decision.

However, the current text of the bill suggests to Vermont's credit unions that a "landowner" could unilaterally create a natural burying ground on a property previously mortgaged to the credit union. See the text of the bill on page 9 at line 6. The consent of a credit union holding a mortgage on that landowner's property would not apparently be needed. That credit union might not have taken that property in mortgage had there been a burial ground. It would be unfair to allow the landowner to unilaterally burden the credit union by changing the nature of the property in a way that would be, as a practical matter, very difficult to undo.

Again, although the credit union would probably have the legal right to remove the natural burying ground, the practical difficulties in doing so would be great. There may be legal or procedural problems related to health, sanitation, or re-interment.

Therefore, we ask that Vermont's credit unions and other lenders holding current mortgages on a "landowner's" property be required to give permission before a natural burial ground be established. The principle might well be extended to other interested parties in the ownership of particular parcel of real estate. But, we ask it at least for Vermont's credit unions.

I attach two proposals for language should the Committee be in a position to grant this request.

One of the proposals is very narrowly drawn to require the consent of mortgage holders only. One is more broadly drawn to require the consent of any person with a record title interest in the real estate. This might include the easement holders mentioned in the testimony. It might also include persons holding a remainder interest or leasehold interest in the property. Who would be the "landowner" in a property in which parents reserved a life estate but granted the post-death remainder to their children? There may be other kinds of interests in a particular parcel of real estate.

Feel free to call on me for anything further relating to House 25.