

TESTIMONY OUTLINE RE: H.283

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On Behalf of Vermont Attorneys Title Corporation
Senate Health & Welfare Committee
March 30, 2017

1. Introduction/Overview of VATC/Title Insurance/Title Search Process/Marketable Title

A marketable title is one that allows an owner to hold the land free from the probable claim of another. It is a title which would allow the holder of the land if he or she wanted to sell, to transfer a title which is reasonably free from doubt. A title is marketable when its validity cannot be said to involve a question of fact and is good as a matter of law.

2. In determining whether title to a parcel of real estate is marketable an attorney will look for and consider instruments recorded in the land records relating to, among many other things, issues such as mortgages, liens, any prior foreclosure action involving the property, trust estates, probate estates, bankruptcy estates, restrictive covenants, condominium declarations, easements and rights of ways, spring rights, possible ancient roads, life estates, joint tenancies, homestead rights, agreements regarding maintenance of jointly used private roads, homeowner associations, and land use and environmental permits such as zoning permits, Act 250 permits, water supply & wastewater permits, and stormwater permits.
3. As introduced H.283 would have a significant impact on the ability of an attorney to certify marketable title. Creates a presumption that a conveyance of real estate by a “vulnerable adult” was the result of undue influence if Court finds transfer for less than FMV and seller not represented by counsel. An attorney reviewing instruments recorded in land records cannot discern whether a transferor was a vulnerable adult, whether transaction was for less than FMV, and whether transferor was represented. Additionally:
 - a. Remedies could be obtained against a good faith, innocent purchaser.
 - b. 6 year Statute of Limitations that wouldn’t begin to run until plaintiff has actual knowledge they were clearly exploited.
4. VT Legal Aid has presented a scaled back version of the bill. VATC appreciates their attempt to respond to its concerns.
5. VATC acknowledges the legitimate, serious nature of the problem the proponents are trying to address, although it does question how extensive it is and whether existing common law

causes of action and remedies are not already sufficient.

6. Nonetheless, there are still concerns with VLA's scaled back proposal relative to its impact on real estate conveyancing. Among other things, it leaves GF purchasers and their lenders exposed to lawsuits. While in the end they might be able to prove they should be dismissed from a case, it takes effort and expense to accomplish that, which is problematic.
7. With further dialogue those concerns can probably be resolved, but it would take some time and VATC would want input from members of the Vermont bar. VATC is willing to engage in such a dialogue in good faith.
8. In the meantime, please do not advance the bill.