

Summary of Testimony regarding H.206 (Notaries Public)  
To: The Senate Committee on Government Operations  
Date: April 18, 2017

Presented by James Knapp, Co-Chair of the Vermont Bar Association – Real Estate Committee

Background: I am a licensed attorney who has been in practice for 37 years. I presently serve as the Co-Chair of the Vermont Bar Association Real Property Section, and I have also served as the recorder of the proceedings of the Title Standards sub-committee for more than 25 years. During my career I have been in private practice concentrating my practice in the area of real estate transactions including acquisition, financing, development and dispositions of all forms of property interest. I regularly provide continuing legal education programs for attorneys in all areas of real property law. My career includes being in private practice for 25 of the 37 years, a title insurance company underwriter and state counsel for 7 of the 37 years and was the Interim Director of Property Valuation and Review from 2013 to 2015. I was also a member of the adjunct faculty at Champlain College for over 10 years, presenting the Advanced Real Estate Course in the College's Paralegal program.

#### Topic/Issue

The Real Estate Bar has a limited concern with H.111 – Vital Records. Throughout the history of land conveyances in Vermont, properties have been conveyed to

- a) multiple owners as joint tenants, or
- b) to couples joined in marriage or civil union, or
- c) by a person to others creating a life estate with remainder interest.

If the conveyance is to two person, without designation of their relationship, but it is believed they are married or joined in a civil union, it may be necessary to acquire a certified copy of a marriage license / proof of a civil union to establish that the title was held as a tenancy by the entirety and therefore rights of survivorship existed.

In the case of a survivor trying to convey or mortgage property it may be necessary to prove the death of the other tenant or tenants or the holder of the life estate, so the survivor can show that no other person needs to sign the deed or mortgage.

Historically that has been done by recording a certified copy of a death certificate in the land records of the municipality where the property is located. The challenge occurs when the transfer happened in the past and it is not the survivor or a related party looking to establish the marriage / civil union or death. The most common occurrence is that the problem with the missing proof of marriage / civil union or death is not discovered until years later, and the property is now owned by persons not related to or who have no relationship with the deceased person or their family.

Under the terms of H.111, certified copies of proof of marriage or civil union or proof of death will no longer be available to parties without a relationship to the deceased person.

As long as the provision remains in the bill that allows a non-certified copy to be recorded in the land records, that problem is satisfied. The open issues are (a) who can apply to obtain a non-certified copy

of the record of marriage / civil union or death certificate; and (b) what is the process for obtaining a non-certified copy to record in the land records?