

Summary of Testimony regarding Town Clerk Fee Bill  
To: The House Committee on Government Operations  
Date: March 11, 2019

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

Background: I am a licensed attorney who has been in practice for 38 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 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 38 years, a title insurance company underwriter and state counsel for 8 of the 38 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.

#### Summary of Testimony

##### I. Fee Structure

Generally the members of the Real Estate Section recognize that recording and other town fees related to real estate transactions have not changed for an extended period of time and should be reviewed and adjusted.

##### II. Land Records Preservation / Restoration

The provisions of the proposed legislation creating a fund for preservation and restoration of the land records is very important. Most people do not really focus on the fact that the land records represent the only proof that a person owns a particular parcel of real estate, and identifies those persons who have a claim on that property. Bear in mind that a person's home is most likely the most valuable thing they will own, and for many represents a significant portion of their wealth. That means that preservation of and restoration of the land records protects investments in real property.

It is also important to consider the need to ensure that the land records are digitized. Eventually Vermont will have to acknowledge that people expect to be able to access records regarding their property online. Many (most) other States have converted their records to digital records.

##### III. Technical Issues / Comments on Specific Provisions

###### **A. Bill Section 2. - Section 1671, Page 3 of 9, Lines 1 and 2.**

*Background.* I believe this provision was crafted to address the current inconsistency among towns in the circumstance where several previously recorded instruments are discharged or modified by a document submitted for recording. Presently, some towns charge \$10.00 per

page, so a discharge that released 2 mortgages and 2 assignments of leases would cost \$10.00 to record. Other towns would charge \$10.00 for each prior recorded instrument affected by the newly submitted instrument. Under the second process, the recording fee for the same document would be \$40.00. The proposed revision helps by clarifying how the recording fees will be assessed statewide.

*Recommendation.* The current placement and wording of the proposed revision is ambiguous. I would recommend that the newly crafted sentence be moved to a separate subparagraph in the same section, with its own label, and should read something like this:

*When more than one previously recorded instrument is discharged, released in whole or in part, or modified by the terms of a new instrument submitted for recording, the fee for recording shall be \$15.00 per document affected by the instrument submitted for recording.*

**B. Bill Section 2. - Section 1671, Page 3 of 9, Lines 6 and 7.**

*Background.* This added language pertains to a very specific process for recording long instruments in multiple towns. Typically the only parties who can take advantage of this provision are utility companies, railroads and other parties who own land in multiple towns. The provision allows for the recording of mortgages, sometimes called indentures, encumbering all the company's assets in multiple towns without paying the per-page fee. That process was created when clerks had to hand-write or type the documents submitted for recording into the land records. Recording a 200 page mortgage was deemed to be excessive when processed by hand. So, the parties to the transaction were permitted to submit a bound copy of the mortgage to the clerk and the clerk was to record a single page in the land records identifying the parties to the transaction and alerting title searchers that the actual document was on a shelf somewhere in the vault.

*Recommendation.* The proposed language should recognize that the newly increased fee should apply only to the single page recorded in the land records and not to the bound copy of the mortgage submitted.

**C. Bill Section 2. - Page 4 of 9, lines 14 – 19,**

That's a really good idea.

**D. Bill Section 3. - Page 6 of 9, Lines 1-2**

Add a new subpart after Item (d).

(e) The failure of the surveyor to comply with this provision shall not render the subdivision or boundary adjustment invalid, void, and shall not render the title to the property which is depicted on the plan unmarketable, solely as a result of the failure to submit the duplicate copy of the plan as provided in this Section.

**E. Bill Section 5. Page 7 of 9, Line 1-2**

Add a new subpart after Item (2).

(3) The failure to comply with this provision shall not render the deed or other instruments recorded without the plan invalid or void, and shall not render the title to the property which is depicted on the plan unmarketable, solely as a result of the failure to record the plan referenced in Subsection (b)(1) or (b)(2).

**F. Page 8 of 9, Lines 2 and 3 – (filing of tax liens)**

This process is fine.

**G. Page 8 of 9, Lines 9-12 – (10 day recording requirement)**

This proposal is fine.

**H. Page 9 of 9 Lines 1-3 (mailing notice of certification or recording)**

Query: Is the language in lines 1-3 meant to address only the return of a certified copy to the requesting party, or is it intended to address the current mixed practices regarding the return of documents submitted for recording.

If the language is intended to address the issue of who pays to return the recorded documents to the party who submitted them, the language might better appear elsewhere in the statute (perhaps at the end of Section 1154 and should be more specific.

1 (b) The town shall bear the costs of ~~mailing any notice or certification of returning~~  
2 ~~the original the recording of an~~ instruments to the individual who filed the  
3 instrument for record pursuant to section 1154 of this chapter.

**I. Page 9 of 9 Lines 5-7 (Certified copy of Vital Record)**

I have been told that the Secretary of State's system is only partly implemented. Clerks can print death certificate but not birth certificates or other certificates. If the system is not working, it would be imprudent remove the ability to provide certified copies of birth certificates because the world will grind to a halt. People won't get passports, married, apply for driver's licenses, be admitted to school and all kinds of havoc will ensue.