

S.349 (An act relating to emergency funding for local government)

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BACKGROUND

As of January 2020, the State of Vermont is reportedly the only state that has not modernized its administration of land records through both legislation and technology. All other states have enacted the Uniform Real Property Electronic Recording Act (URPERA) or similar forms of legislation to enable (1) recorders within their respective states to provide land records through electronic means; and (2) users to use land records provided online for legal purposes. All other states, although not uniformly among all their jurisdictions except for Iowa, whose county recorders have used a single statewide platform managed and administered by the Iowa County Recorders Association since 2005 (<https://iowalandrecords.org>), have progressively moved into electronic recording as well. The latter is becoming increasingly necessary at a national level.

The State of Vermont, through different legislatively created committees and a state commission, have attempted to modernize the recording of real property documents *for more than two decades with little or no success*. While some of the challenges faced by each committee and the Vermont Municipal Lands Records Commission have diminished over time, others remain.

The observation of the Secretary of State's Office, which has been a steadfast and active participant in all committees and the Municipal Land Records Commission (and often charged with commencing activity and also providing staff and resources for administrative support), is that disparate recording practices, inconsistent infrastructure and systems, and varying philosophies regarding the role of the recorder require action by the General Assembly if these are concerns the State of Vermont truly wants to address.

RECOMMENDATION FOR ACTION

Current concerns raised by the closure of town clerk offices due to the current pandemic can be addressed through the practical and rational adoption of statewide standards and sustainable support from state government. As reported to the General Assembly by the Vermont State Archives and Records Administration (Office of the Secretary of State), the Vermont League of Cities and Towns, and Vermont Municipal Clerks and Treasurers Association in January 2019, enacting the Uniform Real Property Electronic Recording Act (URPERA) and updating Vermont's land records laws "would untie the hands of many of the actors involved in the recording process, allowing more widespread adoption of electronic systems."¹

¹ Vermont State Archives and Records Administration (2019). [*Blockchains for Public Recordkeeping: A White Paper. v.1.*](#)

Building on this 2019 report as well as our Office’s experience with the recent changes made by the General Assembly to adopt a statewide registration system for vital events, a system administered by the Department of Health but used by all town clerks, it is the recommendation of the Vermont Secretary of State’s Office that the General Assembly:

- Enact sections, or all, of the Uniform Real Property Electronic Record Act (URPERA), including designating a public body or state agency responsible for establishing statewide standards for the recording of land records, and enact relevant sections of the Revised Uniform Law on Notarial Acts (RULONA).
- Provide, through legislation, the mechanism for an existing state agency to provide statewide contracts for electronic land record systems and related processes, such as backfile conversion and/or, perhaps, a statewide electronic land record system that is made universally available to all town clerks to perform their recording duties for their respective towns in a standardized system – and to land record users for access.
- Designating an existing state agency rather than a new public body as the entity responsible for establishing standards under the advice of town clerks, paralegals, attorneys, title insurers, land surveyors and others who work with and use local land records.²

ALLOCATION OF FUNDS UNDER THE CARES ACT FOR LAND RECORDS

The Secretary of State’s Office does not have jurisdiction over the administration of land records other than its authorities under the Statewide Records and Information Management Program for the overall management of public records (3 V.S.A. § 117). Our Office would only be willing to accept an allocation of funds under the CARES Act in relation to land records if the following occur:

- 1) When the Legislature returns, our *Recommendation for Action*, including the designation of a state agency with appropriate authority, is addressed and we are the designee;
- 2) We apply State of Vermont contracting and procurement standards and requirements, in addition to industry standards and best practices for land records under the advisement of a formalized standards body, to assure long-term and sustainable success; and
- 3) The Vermont League of Cities and Towns and the Vermont Municipal Clerks and Treasurers Association support designating the Secretary of State’s Office and support our *Recommendation for Action*.

² The Vermont State Archives and Records Administration did not exist when the General Assembly created its land records study committees or the Vermont Municipal Land Records Commission and charged the State Archivist with a significant role in each – but is a strong consideration.”