



# Vermont Bar Association

• *Serving the Public and the Profession*

February 27, 2019

35-37 Court Street  
PO Box 100  
Montpelier, VT 05601-0100  
p. 802-223-2020  
f. 802-223-1573  
www.vtbar.org

## BOARD OF MANAGERS

Gary L. Franklin, Esq.  
President

Michael E. Kennedy, Esq.  
Past-President

Edward J. Tyler, III, Esq.  
Secretary

Matthew F. Valerio, Esq.  
Treasurer

Katelyn B. Atwood, Esq.  
Francesca M. Bove, Esq.  
David G. Carpenter, Esq.  
Joshua R. Diamond, Esq.  
Judith L. Dillon, Esq.  
Hon. Thomas S. Durkin  
Robert E. Fletcher, Esq.  
Elizabeth A. Kruska, Esq.  
Andrew D. Manitsky, Esq.  
Elizabeth Novotny, Esq.  
James M. Rodgers, Esq.  
Charles A. Romeo, Esq.  
Benjamin Traverse, Esq.

## VBA STAFF

Therese M. Corsones, Esq.  
Executive Director  
tcorsones@vtbar.org

Jennifer Emens-Butler, Esq.  
Education and Communication  
jeb@vtbar.org

Mary C. Ashcroft, Esq.  
Legal Access Coordinator  
mashcroft@vtbar.org

Lisa M. Maxfield  
CFO/Member Benefits  
lmaxfield@vtbar.org

Laura Welcome  
Programs Coordinator  
lwelcome@vtbar.org

Tami Baldwin  
Office Administrator  
tbaldwin@vtbar.org

Michelle Abajian  
Lawyer Referral & Membership  
Coordinator  
mabajian@vtbar.org

Senator Ann Cummings, Chair  
Senate Committee on Finance  
115 State Street  
Montpelier, Vermont 05633-5301

Re: S. 98

Dear Senator Cummings:

Thank you for the opportunity to provide testimony about S. 98, as introduced. A copy of the bill was posted to the VBA Property Law Section and to the VBA Municipal Law Section last Friday. Although persons were supportive of property tax assistance to older taxpayers, they were concerned about a number of issues with the bill. We also heard from municipalities who indicated that they would like the opportunity to testify about (in their words) the "problematic if not catastrophic" effects this bill would have on their record-keeping and accounting practices, if the bill advances. Following is a summary of the comments that were received, set out in four broad areas of question.

1. **Funding Questions:** It's our understanding that 32 V.S.A. §5402 requires municipalities to remit education taxes to the state on December 1 and June 1, whether collected or not. Unless the amounts remitted are adjusted, this bill would have the towns carrying the burden on those tax due dates. The towns are also required under the bill to remit the full deferred amount to the state upon the death of the taxpayer. There would need to be clarification in the affected statutes to address what would otherwise amount to a double payment. There is also the larger question of who covers the education funds that are being deferred during the time of deferral.

2. **Mortgage Questions:** Mortgages require mortgagees to pay property taxes as part of the mortgage obligation. A failure to pay property taxes when due typically constitutes a default under the mortgage. Persons over 65 who currently have a mortgage on the property would not be able to take advantage of the bill without risking defaulting on their mortgages. It's also unlikely that banks will lend to persons if there's a possibility that the persons will defer their property taxes under this bill and jeopardize the bank's priority position.

3. **Title Certification Questions:** In order for a title examiner to certify title, the deferral would have to be reflected in records that the title examiner can review. There would have to be a point of contact that title examiners can access to identify whether deferrals have been made. There would also have to be a mechanism for obtaining an official pay-off in writing certified by the point of contact, in the event of a property transfer before the

taxpayer's death. There would also have to be a place where payments could be made and a receipt/discharge for payments obtained. This will introduce a whole new level of bureaucracy and will likely drive up the cost of real estate closings involving a deferred parcel.

4. Priority Questions: The bill provides: "Any claim against an estate for these funds shall take priority over any other claims against the estate." Claims against an estate could include mortgages, federal income taxes, state income taxes, Medicaid liens, judgment liens, mechanic's liens, etc. It's unclear whether stating that deferred property tax payments take priority would actually take priority over other claims. It's also unclear as to what is done if there isn't sufficient value in a property at the time of the taxpayer's death to cover the deferred taxes.

We hope that this is helpful to identifying several of the issues associated with the proposal. We assume that the bankers would have many comments about the feasibility of lending where the priority of a mortgage is in doubt. We also assume that the Tax Department would have a number of questions about the effect of the bill on tax rates and on collection costs. Please let us know if you would like more detailed testimony about any of the various areas of concern. Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Therese Corsones".

Therese Corsones  
VBA Executive Director