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To: Senate Government Operations Committee

From: The Vermont Bar Association – Real Estate Section

Date: March 31, 2020

Regarding: e-signatures

Greetings:

We have been made aware that the Committee is in the process of assessing e-signatures for use in Vermont. Given that there are a wide variety of transactions in which e-signatures may be used, and we are generally familiar with the real estate context, we would offer these thoughts as the discussion relates to real estate transactions.

1. Through the actions of the Legislature, the Secretary of State and the Bar Association, we have solved the immediate crisis with the adoption of Rules and Guidance for Remote Notarization. The open challenge at this time is the limitation on Remote Notarization imposed by requiring the signers be physically located in Vermont. This is probably a reasonable response in the emergency situation, but as the requirement for maintaining social distancing extends, this may need to be addressed. On the other hand, most surrounding States have also adopted remote notarization, in some form or another, meaning a resident of another State can arrange for remote notarization in their home State.
2. Vermont already has approved e-sign for many transactions, but not for Vermont Real Estate Transactions. The implementing statutes are in 9 VSA Chap 20 – better known as the Uniform Electronic Transactions Act or UETA. The process is being used in some contexts, but not in real estate transactions at this point.
3. E-sign documents are digital documents. If this is supposed to apply to real estate transactions, then there is no mechanism to record digital documents in any town or city in Vermont. That process will take time, lots of money, and a complete reconfiguration of how real estate transactions are structured and completed as well as a complete restructuring of how land records are maintained. While this is a worthwhile topic to address, this is not a topic to do as part of an emergency response to the Covid-19 pandemic.
4. E-signatures on documents – at least in the real estate world – requires a significant infrastructure for proof of identity, preparation, transmission and storage of documents, the process of creating and authenticating tamper-proof digital signatures, and none of that infrastructure exists in Vermont. Adopting e-signatures in advance of the infrastructure means exporting to other states

all the process of signatures, etc. That means minimal control by Vermont authorities over the standards and processes.

5. The Real Estate section is available and willing to assist in any way desired as the process for studying e-signatures proceeds.