

H.512

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Why is this bill in front of you?

Need your help can solve a long-standing problem and move VT's municipal land records system from the worst and most complicated in the country to a best in the country system.

What are the various parts of the bill?

3 parts:

- a. Land Records Office or a Land Records Commission to oversee the municipal land records system
- b. RULONA – notary stuff
- c. URPERA – recording electronic documents

Scope of my testimony:

concepts are simple;

background information (somewhat lengthy) is important for context

Staying at the Public Policy level of analysis for now. It would not seem a good use of the committee's time to get down into the weeds and wordsmith this rather lengthy bill today. That can be done later and would be a distraction to today's Public Policy question.

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Town Clerks:

You will hear me testify about the overall failings of VT's current Land Records system. The General Assembly is in a position to take VT from worst in the country to first in the country.

In addressing the issue, you may hear me talk bad business practices by town clerks. Let me be very clear. Many clerks are superior at what they do. Many clerks are current on 21<sup>st</sup> Century technology. Many clerks go above and beyond the pale to provide outstanding service and they do that everyday.

I am not speaking ill of any town clerk, personally. Many clerks are thrown into their positions completely untrained (not their fault); many of them have no support from their legislative body (not their fault); many of them can't afford new technology (not their fault); many of them don't know what they don't know (how could they); many of them are thrust into the role when the town clerk becomes seriously ill or dies. This is NOT about the clerks. This is NOT personal. This is a systems problem not a people problem.

Why have you never heard of this issue before?

This is the perfect UN-Storm and Vermont's dirty quiet secret. T

NEVER CHALLENGE THE TOWN CLERK OR YOU ARE TOAST because you will never learn where the secrets practices of that clerk. You will never know what unique, orthodox systems have been put in place. You can be blacklisted.

Nobody can or will speak against the power of a town clerk.

- Lawyers, paralegals, searchers fear retribution and suffer in silence.
- The SOS office may even be in a position of not wanting to exercise actual authority over the clerks.
- Consumers don't really understand the process they just pay higher prices.

Example: Just last year CATIC was the victim of a vicious state and national misinformation/disinformation posted on social media by municipal clerk John Odum which alleging all kinds of conspiracy theories that CATIC was seeking to divest clerks of all of their autonomy.

Who are the Stakeholders?

I may use the term Stakeholders: that term generally includes municipal clerks, attorneys, lenders (banks and credit unions), Vermont League of Cities and Towns, Vermont Municipal Clerks and Treasurers Association (of which many clerks are NOT members), surveyors, appraisers, property owners, Vermont Paralegal Organization, and more that I am forgetting.

What is The Scope of the Issue –

- a. The estimated value of all the real property in Vermont approximately \$95 Billion. <sup>1</sup>
- b. Have to go thru a town clerk. Municipal Land records are the only way a person can prove that they own a parcel of land, or that they have a legitimate claim (mortgage, lien, easement, etc.) encumbering a parcel of land.
- c. The bulk of current land records are stored in paper, in 245+ town vaults
  - i. Vermont is one of 3 states in the country with municipal recording (as opposed to County recording).
  - ii. Vermont 245 different, independent business models.
  - iii. CT has 169 towns; RI has 39. VT has more recording jurisdictions than CT & RI combined making VT the most complicated, least organized system in the country.
- d. Title Search and access to records.

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<sup>1</sup> Vermont Department of Taxes – Property Valuation and Review Annual Report Figure 4 based on 2021 data.

- e. Digital: Approximately 98+ municipalities have some level of digital records, ranging from a partial index only to a full index with copies of all related instruments.<sup>2</sup>
- f. Remote Access: Of the municipalities with digital land records – most allow remote access to the records either directly or through a service provider. <sup>3</sup>
- g. There are four service providers listed in the Vermont Municipal Clerks and Treasurers Site summarizing the current state of digitization. Kofile (11), Cott (49); Avenu (18) and NEMRC (24).
- h. The process for accessing records through a service provider varies from provider to provider. Most providers charge a fee for copying records. Fees for providing the records from a service provider are not regulated by statute, though fees charged by municipalities for copies are regulated. Fees range from \$1-3 per page for a copy of a digital record. The process of completing a title search may generate hundreds of dollars of fees paid to the service providers to create a record of a search. This increases the costs to property owners seeking to purchase property or refinance a mortgage.
- i. The process and procedures for managing municipal land records range from exceptional to challenging because the town may have had multiple clerks over the years whose skill at managing records varied widely. The reliability of the land records is directly related to how the clerk managed or mismanaged the records. Some clerks take office without a lick of training;
- j. There have never been official/mandatory indexing standards in Vermont and the practice is all over the place.
  - i. Especially important with digitized records.
- k. Hours: Municipal clerks have varying office hours ranging from a standard work week (5 days a week, approximately 40 hours per week) down to a few hours every other week. Pre-pandemic, this system functioned at a level that was not overly disruptive, and most users of the land records could cope with the varying schedules. Commerce doesn't work this way.
- l. As you will hear shortly, this problem predated Covid by decades but , as a result of pandemic induced disruptions, many clerk's offices instituted reduced hours, limited access (appointments, time limits, search procedures that limited individual access to records, "town clerk search" [a user provides the clerk with requests for information, clerk then procures information and forwards responses to the user- user is not allowed direct access to the records]). ALL while Vermont's real estate market was on fire.
  - i. LIABILITY will come home to roost.
- m. The consequence of the pandemic induced limitations on access to records caused mild to catastrophic disruptions of the real estate market, resulting in

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<sup>2</sup> Vermont Municipal Clerks and Treasurers Association Website – URL - [https://www.vmcta.org/index.asp?Type=B\\_BASIC&SEC={4B33047A-D870-4B9C-BC17-239E5088BE04}](https://www.vmcta.org/index.asp?Type=B_BASIC&SEC={4B33047A-D870-4B9C-BC17-239E5088BE04})

<sup>3</sup> Vermont Municipal Clerks and Treasurers Association Website – URL - [https://www.vmcta.org/index.asp?Type=B\\_BASIC&SEC={4B33047A-D870-4B9C-BC17-239E5088BE04}](https://www.vmcta.org/index.asp?Type=B_BASIC&SEC={4B33047A-D870-4B9C-BC17-239E5088BE04})

delayed or disrupted real estate closings for Vermont residents, potential residents (those seeking to purchase property to move to Vermont) and non-resident property owners seeking to purchase in Vermont.

- i. LIABILITY will come home to roost.
- n. Property owners were delayed in the process of refinancing mortgages to take advantage of historically low interest rates.
- o. The geographically distributed land records system requires users to drive to most clerk's offices to perform a title search, resulting in excess use of road, consumption of petroleum, additional costs to property owners as a result of excess time used in travelling to the records.
- p. At present, there is no mechanism, short of a comprehensive revision of the statutes related to land records recording that would create a comprehensive online system of recording.
- q. Clerk's attitudes towards creating a consistent, standards based online recording system vary from acceptance to outright refusal to participate. Legitimate concerns include lack of available funding to implement an online system for recording to absence of necessary infrastructure.
- r. Some town clerks are elected. Some are appointed. Those who are elected as a general rule say "I'll do what I want because I'm elected". Those who are appointed generally say: "I do what the legislative body of the town tells me." Often, legislative bodies do not support their clerk.
- s. Current digital records solutions are provided by <five> providers<sup>4</sup>, each of which operates on a different system, provides different levels of functionality, limited interoperability, and varying cost structures.<sup>5</sup>
  - i. Example: Last session, as a result of discussions in Senate Gov Ops. several million dollars were allocated for towns to apply for federal money to begin digitization. Many towns applied and were granted funds. With no guidance, many clerks selected the "lowest level" provider. The on-line records provided by that provider are very usual such that those several million dollars were wasted.
- t. Lest we think that this is a Covid issue, recall that major issues were also created when Tropical Storm Irene hit VT, including physical damage to town offices and land records documents. Even in towns not directly impacted, there were many near misses.
- u. *A comprehensive online system of land records would eliminate or minimize many of the impacts outlined above resulting from the current system of managing land records.*

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<sup>4</sup> Vermont Municipal Clerks and Treasurers Association Website – URL -

<sup>5</sup> Current cost structures for online search and retrieval of land records are unregulated, vary widely and generally exceed the statutory fees for printed pages of land records.

Is there disagreement among the Stakeholders that VT has a serious problem that needs immediate resolution and that the solution is better standardization and oversight from a governmental agency?

No. The situation best summarized by the Secretary of State's position in April, 2020:

*The State of Vermont, through different legislatively created committees and a state commission, has 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 Land Records Commission have diminished over time, others remain.*

*The observation of the SOS's Office, ... 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 change.*

*These concerns can be addressed through the practical and rational adoption of statewide standards and sustainable support from state government ... 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." (citation omitted]*

*It is the recommendation of the Vermont Office of the Secretary of State that the Vermont General Assembly: "Enact sections 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).*

*Future steps, for example, could be statewide contracts for electronic recording systems or, perhaps, a statewide electronic recording system universally used by all town clerks to perform their recording duties of their respective towns. Another possible future step is expanding the State of Vermont's digital preservation system ... to include preservation of electronic municipal land records that are electronically recorded.*

*It is further recommended that the General Assembly also consider designating an existing state agency rather than a new public body as the entity responsible for establishing standards ...*

What is the history of this issue?

Remember the 20+ year history described earlier. ALL STAKEHOLDERS were involved.

Past Actions:

1997: Act 125, Sect 7 (Adj. Session) created a committee to, inter alia, “study, the feasibility, cost, obstacles, and ways in which to **computerize Vermont’s land records...**” The committee submitted a detailed report dated January 15, 1999.

Result: No action.

1998: Act 155, Sec. 66a instructed the Secretary of State to determine the condition of the municipal records. A detailed report dated January 15, 1999 was prepared.

Finding: Not good.

Result – no action.

1999: Act 46, Sec. I, created a committee to, inter alia, “**study the maintenance of, location of, indexing of, costs relating to, and access to the municipal land use permits issued by municipalities, and to develop and recommend a simplified and standardized process for recording permits in Vermont’s land record so those permits may be more easily, more reliably, and less extensively searched. The committee shall also investigate the use of technology to expand access...**”

Finding: Big problem

Result: The committee submitted a detailed report dated January 15, 2000.

No action.

May, 2002: “*Best Practice Standards For Indexing Land Record Instruments*” published

A Joint Publication of the Office of the Secretary of State and the Vermont Municipal Clerks and Treasurer’s Association. (Task Force)

Result - Never implemented; never enforced.

2003: Act 66, Section 49(b), created a Committee to, inter alia, develop guidance for maintenance of municipal land records in the state with the purpose of modernizing the management of Vermont’s municipal land records affecting title to real property and to consider: developing standards for content, format and indexing; developing technology standards for automation or computerization; recommending sustainable funding sources in order to modernize, automate and computerize the land records.

The committee submitted a detailed report on January 15, 2004 (the “2004 Report”).

Result – no action.

2004: Executive Order No. 27-1 (no. 04-05): Commission on the Marketability of Title.

Result – no action.

2004: Act 122 created VT Municipal Land Records Commission to “address the significant long-term and system material issues associated with [municipal land records... \$30,0000  
9 charges:

1. Proposes stds for formatting, filing, recording, and preserving municipal land records.
2. Propose a uniform system of indexing municipal land records
3. Propose continuing education requirements for municipal official corresponding compliance requirements for municipalities.
4. Proposes incentives for municipal officials and municipalities to improve all aspects of managing and preserving municipal records.
5. Propose a system for financing all facets of municipal land records management on a sustainable basis.
6. Analyze the prerequisites for a municipality to digitize its land records and examine related administrative and public policy issues.
7. Analyze the need for future oversight of recommended uniform standards.
8. Analyze how to balance the conflicting public policy objectives of protecting personal privacy and providing public access to municipal land records.
9. Analyze any other administrative and public policy issues related to uniformity and modernization of municipal land records which the commission may address.

Result: filed report in 2006 and dissolved. Report said do this.

- Update and adopt the Best Practices Standards for Indexing
- Establish municipal records accreditation office
- Establish a municipal grant program
- Establish a parcel based indexing system

Result: Nothing

2013: A Strategic Plan for Vermont Land Records, Project Charter and Plan by Vermont Secretary of State.

Result – no action.

### REAL WORLD EXAMPLES (there are dozens and dozens)

1. Intentional restriction of access to public and constitutionally kept records.
  - a. Some town can push a button and “go public”. They intentionally choose not to do so.
  - b. Instead of 24/7 access, they provide limited access, often by appointment only; often limited to 2 hours of search time or less;
  - c. While the rest of the world is working remotely or hybrid, these clerks force searchers to: make an appt. possibly days out; travel, sometimes long distances by car to the office; unnecessarily subject themselves to getting COVID from people in the clerks office who frequently are NOT wearing masks even when it was State mandated and even now when signs on the clerk’s door says “Masks

Required.” Sign should read: Masks Required But Only For Searchers. Town clerk EXEMPT for this health and safety requirement.

- d. Why isn't there someone that can require unfettered (and safe) access to public records.
2. Other recent examples of towns which fail to follow current (long standing) statutes:
- a. Indexing system: Clerk has no indexing system to show documents have been recording. Clerk relies solely on 3<sup>rd</sup> party system (not allowed) and she is way behind in uploading documents to that system.
  - b. Town clerk refused to record a deed from seller to buyer because there allegedly was a small, unpaid tax bill due. It may take days, weeks or longer for party to realize that documents transferring title and encumbering a property with a mortgage lien were never recorded.
  - c. Town clerk not recording municipal permits (or notices of permits) in the land records as statutorily required for YEARS. A title searcher has NO idea that a property was subject to a permit.
  - d. Town clerk unilaterally taking legal documents (mortgages) and despite being directed by legal counsel for the lender to record them in a certain (very conventional) order, clerk unilaterally decides to significantly alter the page recording sequence; clerk is apparently encouraging or counseling other municipalities to do this her way, too.

### Notary Part of the Bill: RULONA

Policy level discussion

Generally addressing a concept called Remote Online Notarization

Notary is in Place X; Signer is in Place Y; Via electronically secure methodology, pursuant to adopted Rules, the notary takes the acknowledgment without wet ink signatures.

CATIC is introducing this legislation because, although VT already adopted RON years ago, current statute says RON is not effective until SOS adopts rules.

Despite forming a committee to adopt RON Rules, after the passage of those years, the SOS has failed to adopt Rules so VT does not have RON.

Action is needed. Many, many states have RON.

## Electronic Part of the Bill: URPERA

### Policy level discussion

Do we need URPERA? Yes.

- a. Nationally, large financial institutions are in the process of moving to digital documents (pure digital or mixed digital and paper documents) for real estate closings. If Vermont does not accommodate the process for allowing the submission of digital documents, Vermonters will be excluded from significant portions of the financial framework. As a result, Vermonters will lose opportunities for current and/or future advantageous and beneficial financial products available to others throughout the country.
- b. Vermont is the only state in the country where 0% of the population resides in a jurisdiction that accept eRecordings. In every other state in the U.S., the majority of the population is located in an eRecording jurisdiction. Right now, 87.3% of the entire U.S. population lives in an eRecording jurisdiction.
- c. CAVEAT: The proposal for adopting URPERA will create a process for recording digital documents that would be unlikely to be implemented in the current system of recording. Thus, adopting in a vacuum will perpetuate the problem. We will have some municipalities who might have initiative, who might have the money, who might have the training, and who might implement it. By why should a resident of (example only) Burlington be able to obtain an e-sign mortgage while someone who lives in small town VT NOT have access to the same product at the same cost. Disparate. Not equal.

Summary: There has been lockstep agreement among the STAKEHOLDERS for 25 years that VT's municipal land records need an overhaul. Statewide uniformity on all levels and oversight in the form of a LRO or LRC with the ability to adopt and enforce measures to take VT from worst to first.

### Miscellaneous

Rulemaking authority must be granted to the Office in order to implement and oversee improvements and changes to Vermont's land records system. The Office needs jurisdiction over municipal offices to create, implement and enforce minimum standards and educational requirements to ensure consistent a level of professionalism.

A permanent source of funding must be made available to the Office. An Office is best poised to understand the issues facing the industry and to implement change in the most effective and expedient manner.

To ensure the on-going improvement of Vermont's existing land records system, and to ensure that the system is able to keep pace with 21<sup>st</sup> Century technological changes which are constantly being introduced into the commercial marketplace, the Land Records Office must be granted future oversight over not only the recommended uniform standards but over many other essential components of the land records system as well.

Without oversight, in the form of rule-making and other administrative authority, the Office will not be able to: adopt existing uniform standards; introduce and adopt new standards or amend existing standards; address issues of non-compliance with the standards, including possible sanctions for violations; design and introduce a municipal officer education and certification program relating to the standards; introduce and/or enforce new initiatives into the land records system such as a cover sheet to accompany documents filed with municipal clerks; initiate and oversee pilot projects designed to test changes and improvements to the land records system.