

To: House Judiciary Committee

From: James Knapp, Co-chair of the VT Bar Assoc., Real Estate Section

Date: April 7, 2022

Regarding: H.536 - Uniform Act - Powers of Attorney

Generally, H.536 is appropriate to accomplish its purpose. The provisions are an appropriate revision of the current law on Powers of Attorney. As a Uniform Act, the provisions have been tested in other States.

There are three areas - one major concern and two minor concerns that raise issues in the area of real estate transactions.

Major Area of Concern - The Statutory Power of Attorney Form proposed in the bill.

The proposed statutory form is approximately 5-7 pages long, depending on how the text is formatted for final use. Real estate transactions require (no exceptions) that a power of attorney be recorded if the agent signs any documents related to a real estate closing. During the pandemic, almost all real estate transactions were completed using powers of attorney and there is no reason to believe that practice will disappear or become less prevalent, even as the pandemic appears to be less of an issue. As a result, typically the seller side of a deal would have one or two powers of attorney and the buyer side would also have one or two powers of attorney.

- The issue is the recording fees. 5-7 pages of recording will cost between \$75-105 to record EACH power of attorney. Potentially that adds a significant cost to a closing.
- Presently the statutes recognize a short form power of attorney solely for real estate transactions that consists of a single page. The recording fees for a single page are only \$15.00.
- ***As a means of addressing the costs of recording powers of attorney in real estate transactions, the Real Estate Section would like to recommend that there be two (2) statutory forms of Powers of Attorney. Form A would be the form proposed in the current bill. Form B would be a short form Power of Attorney used only for real estate transfers. A proposed form of short form Power of Attorney is attached to this Memorandum.***
- The proposed short form power of attorney has been reviewed and approved by the principal title insurance underwriters operating in Vermont.

Minor Area of Concern - Recommending / Requiring Redaction of Personally Identifiable Information if a Power of Attorney is recorded.

- The proposed statutory form specifies that the principal include an address and phone number in the execution block. That is a reasonable requirement where it is important for an agent to be able to contact the principal during the term of the power of attorney.
- **HOWEVER**, as indicated above, whenever a power of attorney is used to execute documents affecting the title to real property, the power of attorney must be recorded in the land records. That has the potential of exposing telephone numbers and addresses to the public, which is generally not recommended practice for personal information security.
- As a means of addressing the potential for accidental disclosure of personal identifiable information, the bill might provide for two things:
 - *That the address and telephone number, if shown on the power of attorney should be redacted from any copy to be submitted for recording in the land records.*
 - *And, if a municipal clerk receives a Power of Attorney for recording with an address or phone number visible on the form, the municipal clerk or deputy clerk may redact that information before recording the document. (NOTE: Specific authority to redact the information is required, because there is no general authority vested in a municipal clerk to alter an instrument submitted for recording.*

Minor Area of Concern - The bill as written permits both digital signatures and presumptive would also require a digital notary .

- In section 4002(12) of the bill, a signature is defined to include digital and other signatures. Presumptively, if a Power of Attorney is going to be signed with a digital signature, the notarial certificate would also have to be digital.
- ***Presently there is no authority for digital notarial certificates, so a digital signature could not be acknowledged if the notary cannot legally complete a digital notarial certificate.***
- ***MORE IMPORTANTLY, HOWEVER, a document with a digital signature cannot be recorded in the land records. There is presently no statutory authority allowing for the recording of a digitally signed document in the land records. If a Power of Attorney were digitally signed, but could not be recorded, the intent of the principal might be defeated. If the principal were no longer competent, then no real estate transactions could be completed by the agent, because the power of attorney could not be recorded.***
- A bill (H.512) passed the House and is presently pending in the Senate that would authorize digital notarial certificates and the recording of digitally signed documents. If that bill passes, then this becomes a non-issue. If that bill (H.512) does not pass, then this bill creates a potential issue.

**STATUTORY POWER OF ATTORNEY (“POA”)
FOR REAL ESTATE TRANSACTIONS ONLY
14 VSA _____**

Principal: _____
Agent: _____
Property Address: _____, Vermont (the “Property”)
Term: **Ninety (90) days** duration from the date of execution.

I / We appoint the Agent to act in my name and place, to the fullest extent which I could act if I were personally present related to a transaction involving the Property identified above and for the following purpose.

Delegation: I appoint the Agent, or if more than one agent is named, any one Agent acting solely, to act for me / us in the purchase, purchase and finance, sale, or refinance, of the Property, doing any and all actions that I might do if personally present to effectuate the transaction.

Delegation: The Agent may delegate the powers granted to the Agent by this POA by a delegation in writing which makes reference to this POA and which otherwise complies with applicable law.

In witness whereof, I execute this instrument this _____ day of _____, 20____.

Principal _____ Principal _____

Printed Name: _____ Printed Name: _____

State of _____
County of _____, S.S.

This record was acknowledged before me by the Principal named above on _____, 20____.

Notary Public
Printed Name: _____

Commission Expires: _____
Commission Number: _____

[Apply Notary Stamp above]