

September 26, 2024

Vermont Secretary of State - Office of Professional Regulation  
Attn: Jennifer Colin and Noura Eltabbakh  
89 Main Street, 3<sup>rd</sup> Floor  
Montpelier, Vermont 05620

Dear Jennifer and Noura,

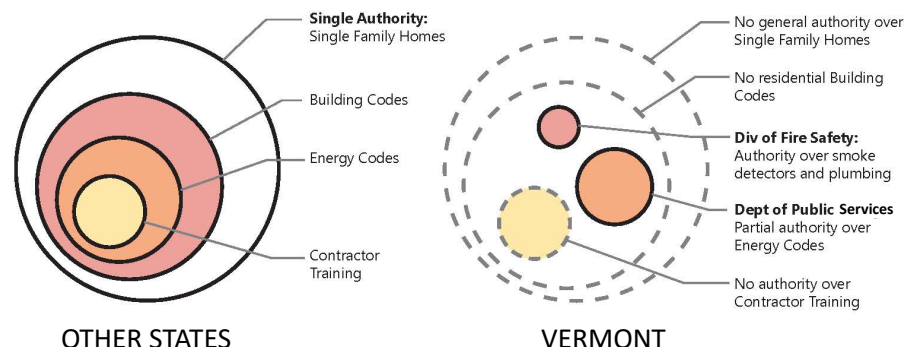
Thank you for updating key members of VBRA about OPR's progress with residential contractor certification. As you know, Vermont Builder and Remodelers Association (VBRA) is the primary organization of residential contractors and tradespeople in Vermont with 119 members and a growing network of affiliates. We hope to deepen our relationship with OPR and become more involved with both registration and certification.

This letter responds both to your 9/8/24 request for certification details as well as your draft report to the Legislature. We hope it's appropriate to share our perspective as contractors and consumers while input is still constructive. Briefly, our positions are:

- While oversight over construction fraud is beginning to take shape, authority over competence and construction quality remains unclear in Vermont. Both the Office of Professional Regulation and the Division of Fire Safety currently have some authority over residential construction. While OPR recommends distinguishing authority by time (whether a building is complete), we see a clearer distinction between competence (the skilled person) and fraud (the business entity).
- Require all residential contractors to register with OPR, regardless of project cost, but keep the \$10,000 threshold on insurance and contract requirements.

### **A clear distinction of authority**

Your report to the Legislature with new data reinforces what has been discussed for many years: residential construction defects and fraud are a major source of consumer harm in Vermont. You clearly outline Vermont's messy and incomplete authority over all aspects of residential construction, which we have attempted to express in this diagram:



Your report clearly articulates the Division of Fire Safety's and the Office of Professional Regulation's strengths. Both organizations are dedicated to minimizing consumer harm. DFS is closely connected with buildings and allied professions and is focused on continuous improvement in a collegial environment. OPR excels at fraud investigation and legal resolution; OPR regulates most professions. However, existing statutes have muddled each organization's responsibilities regarding construction.

Your report recommends resolving boundaries by marking the point in time when construction is complete -- “There are significant differences between proactive code enforcement and reactive professional conduct enforcement: code enforcement occurs in real time ... prior to project completion, whereas professional conduct enforcement occurs after the fact in response to complaints filed by consumers.” (page 6)

In practice, however, building officials are naturally involved with a continuing cycle of improvement. They drive code development; they monitor technology changes and building failures; they improve codes. They follow buildings as they age and as occupancy changes; they require improvements as codes evolve; they are often the first point of contact if a consumer (owner or occupant) has a problem. DFS mentors young tradespeople; they develop working relationships over decades; they oversee credentialing with the same advisory board of peers who help improve codes. Building officials are Vermont’s stewards of building safety over the life of any one building and over the duration of a contractor’s career.

Moreover, consumers (even owners of single family homes) do call DFS first to find out what is wrong. DFS staff already try to help homeowners as much as possible, and they are the first contact for rentals and duplexes. DFS has convened a panel to study adoption of the International Residential Code (IRC) for duplexes and rented single-family homes. From there, it is a small step to educate the entire residential contractor and trade community – most of these people work on rentals as well as owner-occupied homes - as well as to recognize competence with, say, voluntary certifications.

What DFS is not equipped to manage is fraud. There definitely are more “bad actors” in Vermont with the advent of frequent floods. Our southern members see an exponential increase of out-of-state trucks at lumber yards, and in going over failures with their customers, they hear of “in and out” contractors who are not even registered as businesses in Vermont. These people take money without service; they do shoddy work. The entire population of Vermont, but especially residential contractors, hope OPR will go after these “bad actors” and help re-establish trust. Some immediate actions might include:

- 1) Assure that no work is done on a project of any size unless the person or entity is registered as a business with the Secretary of State as a sole proprietor, LLC, or corporation.
- 2) Clarify and protect use of words in marketing such as “licensed,” “certified,” and “registered.” We see websites that already use the term “certified builder” and trucks with “licensed” on their side.
- 3) Change the terminology of what OPR issues to residential contractors. Currently OPR issues a license; this is incredibly confusing to everyone.

To simplify governance boundaries, we propose drilling down on competence versus fraud instead of time. Fraud can happen before, during, or after construction; effective construction starts long before construction and lasts the life of the building. We notice that competence is more about the person, and fraud is more about the entity who agrees to work. (Whether it’s an individual or a company who signs a contract with the property owner, it is a business entity.) ***In other words, we propose that DFS oversee actions of the person – adding certification of residential contractors to its current licensure of electricians and plumbers – while OPR oversees the business entity – registration, insurance, contracts, and marketing.***

|                        | DIVISION FIRE SAFETY<br>COMPETENCE<br>(SKILLED PERSON)                                | OFF. PROF. REGULATION<br>FRAUD<br>(BUSINESS ENTITY)                  |
|------------------------|---|--|
| Before construction    | contractor training<br>certification & licensure<br>project review<br>building permit | marketing<br>registration<br>contract including deposit<br>insurance |
| During construction    | on-site mentoring<br>inspections<br>stop work orders<br>certificate of occupancy      | consumer complaint if<br>contract terms are not met                  |
| Building in normal use | occupant questions<br>help with problems  | warranty issues  |
| Building defects       | consumer calls; physical<br>analysis determines what<br>is wrong & how to fix it      | consumer calls; legal<br>analysis determines who is<br>at fault      |

We realize that this involves reorganizing current Vermont statute. OPR was instrumental in creating any oversight of the residential construction industry, and all of us did the best we could from nothing in 2018; we are forever grateful and indebted to OPR for progress to date. This evolution will be a challenge, but we fear the messiness is only going to get worse as other components of residential construction oversight develop.

Specifically, we hope OPR will join us in lobbying for these changes:

- 1) **The language of 26 V.S.A. § 5503 (b)<sup>1</sup> should be partially deleted and incorporated into 20 V.S.A. § 2731.** DFS should oversee all construction trade certifications and licenses, including apprenticeships, mentoring, training, continuing education, and discipline including revocation. In questions of competence, DFS and its advisory board of peers would be fully responsible for establishing and maintaining standards of conduct and performance whether voluntary or mandatory.
- 2) OPR (or another division of the Secretary of State) should oversee all residential contractor business entities, including sole proprietors and companies, through its contractor registry. **This may require moving Chapter 106 out of “Professions and Qualifications” or even out of OPR. What is now 26 V.S.A. § 5501<sup>2</sup> should clearly state it is the business who is registering, and the \$10,000 threshold should be eliminated. Statutory language should be added that requires any person performing residential construction work in Vermont to register as a business.**
- 3) Electricians, plumbers and other licensed or certified trades under DFS regulation are currently exempted from the OPR registry. **26 V.S.A. § 5502 should be modified to eliminate these exemptions.<sup>3</sup>**
- 4) OPR should maintain the primary searchable public database for residential contractor businesses (both individuals and companies). This database should include current employee certifications and licenses, not only from DFS but also credentials such as lead certification and OSHA compliance. This database could include discipline history both of current employees of the business and of the business itself.

We believe this legislation lays the framework for smoother, simpler governance into the future. It will help Vermont move toward the straightforward environment other states enjoy. We firmly believe this delegation of responsibilities will cost Vermont taxpayers less, and it is the most effective arrangement for consumers.

### **Thresholds for Insurance and Contracts**

While we agree that all residential contractor business entities should register with the Secretary of State, we strongly believe the \$10,000 threshold should be kept for contractor insurance and for written contracts. This impact on the cost of construction has already been debated and accepted; to require insurance and written contracts below this threshold will significantly impact the cost of handyman-type construction.

### **OPR Certifications**

Turning to your email of 9/8/24, we are happy to hold on the question of voluntary building code certification for now. VBRA will continue to issue certificates for passing the national Residential Building Contractor exam that the International Code Council offers. We will make it clear that this certificate does not give the contractor the right to use the term “certified contractor.”

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<sup>1</sup> **26 V.S.A. § 5503 (b)** ... “The Director of Professional Regulation, in consultation with public safety officials and recognized associations or boards of builders, remodelers, architects, and engineers, may:

(1) adopt rules providing for the issuance of voluntary certifications, as defined in subdivision 3101a(1) of this title, that signify demonstrated competence in particular subfields and specialties related to residential construction;  
(2) establish minimum qualifications, and standards for performance and conduct, necessary for certification; and  
(3) discipline a certificant for violating adopted standards or other law, with or without affecting the underlying registration.”

<sup>2</sup> **26 V.S.A. § 5501 (a)** “A person shall register with the Office of Professional Regulation prior to contracting with a homeowner to perform residential construction in exchange for consideration of more than \$10,000.00, including labor and materials.”

<sup>3</sup> **26 V.S.A. § 5502 Exemptions** – “This chapter does not apply to... (2)(A) a professional engineer, licensed architect, or a tradesperson licensed, registered, or certified by the Department of Public Safety acting within the scope of his or her license, registration, or certification; or (B) a business that performs residential construction if the work is performed primarily by or under the direct supervision of one or more employees who are individually exempt from registration under subdivision (2)(A) of this section.”

We note that Act 182 says OPR may adopt rules and establish certifications, not “shall.” While the Director shall “receive applications for registration or certification; issue registrations and certifications to applicants qualified under this chapter; deny or renew registrations or certifications; and issue, revoke, suspend, condition, and reinstate registrations and certifications as ordered by an administrative law officer” ... if the certification is not created under this chapter, there is no obligation. **We hope, therefore, that OPR will suspend its current efforts and that all parties will urge the Legislature to make the above-stated changes in the coming session so that DFS may continue the work you have begun.**

If OPR decides to continue its process of rule making for residential contractor certification, we strongly hope that you will focus on two basic certifications:

- 1) a proctored exam specific to VT RBES that we understand is being developed by Energy Futures Group in cooperation with the International Code Council. ICC is the leading provider of state-accepted construction professional exams. We are intimately familiar with other ICC exams, and they can come with study guides and practice questions. Such an exam can be taken at any proctored location, and any qualified organization can offer study groups, classes, etc, to prepare. Online courses can be developed. We stand ready to help EFG develop offerings.
- 2) the Building Science Principles exam offered by the Building Performance Institute:  
<https://www.bpi.org/certificates/building-science-principles/> BPI issues a certificate upon completion; they offer study guides and online courses; they train teachers.

We support OPR’s recognition of advanced performance certificates, such as SEON and PHIUS, as long as they are not mistaken as basic competencies.

Lastly, we note that Act 182 requires OPR to consult “with public safety officials and recognized associations or boards of builders, remodelers, architects, and engineers” to develop certifications. If you move forward with rule making, we ask that DFS be encouraged to weigh in regarding skills for duplexes and rented single family homes. VBRA would like to be more involved in the development of rules, regulations, and certifications that substantially affect our membership. We would like to have VBRA member and your advisor, Jim Bradley, involved in the development and application of OPR rules and regulations. We have non-VBRA members who are also interested in serving as advisors.

Thank you very much for encouraging this dialogue; and we look forward to continuing it.

Sincerely yours,



Dixie O’Connor, President,  
VBRA

Attn: Sen. Chris Bray  
Rep. Scott Campbell  
Secretary Lindsay Kurrle, ACCD  
Commissioner Jennifer Morrison, Public Safety  
William Nash (ICC’s Vermont liaison)  
Richard Faesy, EFG, BECWG consultant  
Jim Bradley, OPR Advisor - Residential Contractors  
Chris Johnson, OPR Advisor - Residential Contractors