Legislative Testimony – Misc. Jud. Bill 2026 – 27 V.S.A. §2

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By way of background, I am a Vermont-licensed attorney with 15 years of experience in real estate transactional law. For the past 10 years, I have served with CATIC as an underwriter and counsel and currently hold the position of State Manager and Counsel. I also serve as Chair of the Vermont Title Standards Committee of the Vermont Bar Association. CATIC is the predominant title insurance underwriter in Vermont, working with more than 134 real estate transactional law firms statewide. My testimony is informed by this professional experience, as well as my research and education. I am a graduate of St. Michael's College and Vermont Law School (n/k/a Vermont Law and Graduate School).

Statement of Purpose:
The purpose of my testimony is to provide meaningful analysis of the proposed amendments to Title 27 V.S.A. § 2 contained in the Miscellaneous Judiciary Bill. My remarks are intended to assist the Committee in understanding the implications of the Vermont Supreme Court's decision in *Kirshon v. Abodeely-Mill*, 2026 VT 2, and to inform its legislative deliberations. Consideration of these amendments is essential to avoid unintended consequences for Vermonters and their families, particularly with respect to the stability and status of real property titles held as joint tenants with rights of survivorship.

Testimony:
Facts: The Kirshon Court held the combination of the phrase "joint tenants with rights of survivorship" with the phrase "their heirs and assigns" creates an internal inconsistency because "their heirs and assigns" denotes a tenancy in common. Inconsistent tenancies in deeds results in a default of tenancy in common. To distinguish between tenancy in common and joint tenancy: tenancy in common results in separate ownership interests without survivorship – meaning upon the death of a co-tenant, the ownership interest passes to the deceased co-tenant's heirs; and in joint tenancy, the deceased joint tenant's interest passes automatically to their co-tenant(s) (i.e. survivorship). As supported by legal sources below, the terms "heirs and assigns" is not a modifier of tenancy but rather defines the nature of the estate; specifically it means fee simple absolute. Black's Law Dictionary defines fee simple absolute as: an interest in land that, being the broadest interest allowed by law, endures until that last holder (in the case of joint tenants with rights of survivorship – the last to survive) dies without heirs.

Analysis and Supporting Law:
The holding in Kirshon is the minority in the United States. The majority position by the Courts throughout the United States is that "heirs and assigns" does not modify joint tenancy. The majority cases rely on real property treatises, journals, and law summaries nationally recognized among legal scholars; those resources reflect this matter as well settled law and as established by the proposed legislation.

Legal Sources:
A. *Corpus Juris Secundum 26A C.J.S. Deeds § 301 Fee Simple generally.* In effect, it is essential to create an estate in fee simple in a natural person that the deed include an express designation to that person and their heirs.

B. *Corpus Juris Secundum 26A C.J.S. Deeds § 319 Construction of "heirs" in create interest; "heirs and assigns".* The phrase "heirs and assigns" is not necessary to create a transferable property interest.[3] Ordinarily, deed language referring to an individual's "heirs and assigns," and the like, is understood to describe the quality of the interest in land, as including the rights of inheritance and alienability, rather than to be a literal reference to the individual's heirs

C. *Gardner v. Gardner*, 25 Md. App. 638 (1975). No ambiguity exists by reason of the particular placement of the words "heirs and assigns" in the deed; the words are merely description for the estate conveyed a fee simple. Citing to 26 Corpus Juris Secundum Deeds § 124.

D. *American Jurisprudence 2d* (Am. Jur. 2d) is a comprehensive, multi-volume national legal encyclopedia covering U.S. federal and state law, both substantive and procedural. It provides a broad overview of over 430 legal topics, updated annually, and serves as a foundational, secondary research source for finding legal principles, case citations, and annotations. In addition American Jurisprudence provides thousands of forms for those legal topics, including Deed Forms. Am. Jur. 2d Legal Forms, Deed Forms, §87:150 Vermont – Warranty Deed includes "heirs and assigns" as the standardized language included in a deed for fee simple title. Notably there are with no instruction to delete if joint tenancy is to be recited within the Deed – on this form or any other State's form.

E. *Vermont Title Standards – 2022 Edition; Title Standard 14.1 Conveyance to Two or More Persons, Comment 3:* To make a consistent and unambiguous expression of the intent to create an estate other than an estate in common, the conveyancer should explain precisely the nature of the interest intended, and specific language to that effect should be inserted in any deed, either in the Granting Clause (which passes title to the interest) or in the Habendum Clause (which sets forth the estate to be held), or both, but if it appears in both clauses the expression of the intended estate must be the same. The fact that the expression of the intent to create an estate other than an estate in common appears in only one of the two clauses does not create an ambiguity or negate the effect of specifying the intended estate.

Conclusion:
Failure to adopt the proposed legislation will result in questionable title to thousands of Vermonters who hold title as joint tenants with rights of survivorship. Upon the death of many family members, partners, and trusted relations, the title that was once planned to be held akin to married spouses, now maybe subject to the claims of others. Upon the issuance of the Kirshon Decision, I have heard directly from 100 real estate attorneys in support of this legislation. The VBA Real Property Division has heard from 68 real estate attorneys. The Title Standards Committee has also expressed full support.