To: Senate Economic Development Housing and General Affairs Committee
From: Maura Collins, Executive Director
Date: February 18, 2026
Re: Technical Concerns and Proposed Amendments to S.328

Summary

The Vermont Housing Finance Agency (VHFA) supports efforts to promote housing stability, reasonable leasing practices, and family child care access within common interest communities. However, as currently drafted, Section 5 of S.328 would have significant unintended consequences well beyond condominium governing documents. In particular, the bill would void provisions contained in mortgage deeds, security instruments, housing subsidy covenants, and VHFA program agreements that are essential to affordable housing finance, compliance with federal mortgage requirements, and the long-term stewardship of publicly supported housing.

These impacts are not necessary to accomplish the bill's policy goals. VHFA respectfully recommends narrowing the scope of § 3-125(a) and (b) so that they apply only to condominium governing documents and rules, rather than to all instruments affecting transfer or sale of an interest in a common interest community.

Proposed Leasing Restrictions Changes

The proposed language on page 8, line 14 voids any "covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest community" that limits or restricts leasing.

This language is problematic because it extends far beyond condominium declarations, bylaws, and rules, and would unintentionally invalidate:

- Mortgage deeds and security instruments, including those used in VHFA and private-market financing;
- Housing subsidy covenants recorded to ensure long-term affordability and owner occupancy;
- Regulatory and program agreements required for participation in VHFA's tax-exempt bond-financed loan programs; and
- Owner-occupancy and primary-residence requirements that are foundational to affordable homeownership programs.

Although § 3-125(a)(2) references 27A V.S.A. § 3-120(f), that exception is limited to allowing condominium associations to adopt restrictions consistent with institutional mortgage underwriting standards. It does *not* preserve enforceability of restrictions imposed by lenders, housing finance agencies, or subsidy providers. As a result, owner-occupancy provisions in VHFA mortgages, covenants, and agreements would be rendered unenforceable.

This overbreadth also creates serious secondary risk: many mortgages eligible for sale to Fannie Mae or Freddie Mac include occupancy and leasing restrictions required by their underwriting

standards. If such provisions are deemed void under Vermont law, even if permitted in condominium documents, the affected mortgages could become ineligible for purchase on the secondary market, increasing costs and reducing access to mortgage credit statewide.

VHFA recommends limiting the statute to condominium governing documents and rules, which are the appropriate and intended focus of the legislation, as indicated below:

> (1) Any ~~covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest community, and any~~ provision of a governing document associated with a common interest community, such as a declaration, bylaw, or rule, that either effectively prohibits or unreasonably restricts a unit owner from leasing the individual unit owner's unit for residential purposes or is in conflict with this section is void and unenforceable.
>
> (2) Nothing in this subsection shall prevent or prohibit any ~~deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest community, and any~~ provision of a governing document associated with a common interest community, such as a declaration, bylaw, or rule, from preventing the subleasing of a unit or restricting the leasing of residential units as authorized by subdivision 3-120(f)(3) of this title.

Proposed Family Child Care Homes Changes

The same drafting issue appears in proposed § 3-125(b) (page 9, line 16), which voids restrictions on operating a family child care home.

VHFA strongly supports family child care. However, VHFA mortgage documents and subsidy agreements often include reasonable limitations on home-based business use, such as limits on the percentage of the dwelling used for commercial purposes. These restrictions are important to:

- Preserve the residential character of owner-occupied housing;
- Maintain compliance with federal bond and mortgage program requirements; and
- Protect the long-term viability of affordable homeownership.

As drafted, § 3-125(b) would void these provisions simply because they appear in a deed, mortgage, or covenant, even when they do not prohibit child care, but instead impose reasonable, program-required limits.

The solution is to narrow the provision to condominium governing documents and rules as indicated below:

> (1) Any ~~covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest community, and any~~ provision of a governing document associated with a common interest community, such as a declaration, bylaw, or rule, that either effectively prohibits or unreasonably restricts a unit owner from operating a family child care home, as that term is defined by law, within the unit owner's unit is void and unenforceable.