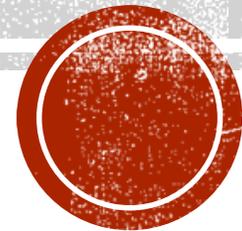


**GOOD MORNING: THE PROGRAM WILL START AT 9:00 AM**

# **CURRENT TOPICS AND MORE**

Vermont Attorneys Title

June 16, 2020



**The Industry Leader in Attorney Education**



# POA: FORM OF EXECUTION BY AGENT

- Peter Piper (Principal) grants a POA to Ansel Adams (Agent).
- At the closing, Ansel Adams signs documents for Peter .
- Which of the following is a valid method of execution?

1. Peter Piper by Ansel Adams, under POA  
Peter Piper

2. Ansel Adams  
Peter Piper



# POA: ACKNOWLEDGEMENT

- Ansel Adams executes documents for Peter Piper under POA. You are a US Bankruptcy Court Trustee.

Which of the following is acceptable?

1. At Somerset, VT this 16<sup>th</sup> day of June, 2020 personally appeared Peter Piper who acknowledged the foregoing to be his free act and deed.

Before me, Notary Public [stamp]

2. At Ferdinand, VT this 16<sup>th</sup> day of June, 2020 personally appeared Ansel Adams who acknowledged the foregoing to be his free act and deed and the free act and deed of Peter Piper.

Before me, Notary Public [stamp]



# POA: DELEGATION, ETC.

- Delegation must be included in the original POA
  - 14 VSA 3504 Scope of Authority
    - (a) The agent shall have the authority to act on the principal's behalf.. but only to the extent such authority is given under the terms of the POA...
    - Create a separate "delegation" POA (template available).
- What if POA names multiple agents?
  - Peter Piper to Ansel Adams OR Andre Agassi OR Amy Adams (please don't use "AND")
- What if an alternate Agent later acts as notary?
  - Ansel Adams executes Deed to seller on behalf of Peter which is notarized by Andre or Amy.



# TRUSTEE STUFF...

## Delegation:

Uniformity of practice is not required but it sure makes life easier. Can a Trustee delegate, if so, how?

1. Check the Trust instrument.
2. If yes – abstract the language in the Trustee Certificate or, I suppose,
3. If barred – bummer.
4. If silent, go to 14 VSA 806 and create:
  - a. a delegation form; or
  - b. a POA

## Co-Trustees: Official Comment to 806:

“This section [does not apply] to delegation to a cotrustee...see Section 703(e).

## Certificates: 14A/1013 (a) ... must include:

(6) An abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument



# FOREIGN ACKNOWLEDGEMENTS

- Governed by 26 VSA, Chapter 103, Subchapter 4
- 26 VSA §5378. Foreign notarial act
  - **Reciprocity**: If the act is performed under authority and in the jurisdiction of a foreign state OR if the act is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this State as if performed by a notary public of this State.
  - If the title of office and indication of authority to perform the act appears in a **digest of foreign law** or in a list customarily used as a course for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
    - The signature and official stamp of an individual holding an office (above) are prima facie evidence that the signature is genuine and the individual holds the designated title.
  - An **apostille** in the form prescribed by the Hague Convention (10/5/61), and issued by a foreign state party to the Convention.
  - A **consular authentication** issued by US Department of State to perform notarial acts overseas.



# POST-CLOSING UPDATES IN THE COVID WORLD

- Post-closing updates have **ALWAYS**:
  - been important;
  - been a requirement as a Title Agent;
  - been an obligation to your client(s); and
- Post-closing updates have **NEVER**
  - been more important than in Covid world.
- **What?:** In person visit.
- **When?** Within 45 days of closing or, for closed offices, within 10 days after clerk re-opens.
- **RIN docs under SOS Emergency Rule:** For title insurance purposes must have “VBA style” acknowledgement!



I further certify that, at the time of acknowledgement:

1. The Signer and I were both physically located in Vermont.
2. I complied with the requirements of the Rules and the Guidance. Without limitation:
  - a. I recorded a live audio-visual communication via a Secure Communication Link, to wit: Zoom;
  - b. the quality of the interaction allowed clear visual observation of both the face of the Signer and the Signer's identification; and
  - c. I will retain the audio-visual recording for at least 7 years.

3. I established identify of the Signer by (check one):

X

signer was personally known to me;

X

oath or affirmation from a credible witness appearing before me; or the following TWO different types of identification:

- a. VT license 43312 [REDACTED] exp. 6.14.78
- b. VISA Chase



appeared and acknowledged the signing of this instrument to be her free act and deed.

Before me, Melissa [Redacted]

AFFIRMATION BY WITNESS

I, Melissa [Redacted], witnessed the signature of this Power of Attorney by the Principal and I affirm that the Principal appeared to me to be of sound mind, was not under duress, and the Principal affirmed to me that he was aware of the nature of this Power of Attorney and signed it freely and voluntarily.

Melissa [Redacted]  
Witness

ACCEPTANCE BY AGENT

The undersigned Agent executes this Power of Attorney and by such execution does hereby affirm that the Agent:

- a. Accepts the appointment as agent;
- b. understands the duties under the power of attorney and under the law;
- c. understands that Agent has a duty to act if expressly required to do so in the power of attorney consistent with 14 V.S.A. 3506(c);
- d. understands that I am expected to use my special skills or expertise on behalf of the Principal, if so specified in the Power of Attorney; and
- e. acknowledges the additional duties of the Agent set forth in 14 V.S.A. 3505

Dated: \_\_\_\_\_  
Agent

[Redacted Signature Line]

END OF RECORD



# UPDATE ISSUES

- Inclusion of loan amount in POA. Mortgage loan amount increased. New POA with ratification is required.
- Acknowledgment incorrectly recites personal appearance or incorrect capacity. Notary Affidavit required.
- Trust ownership: Mortgagors signing in multiple capacities - Trustee, Borrower, Settlor, Individual. Making sure all authority is properly included in the Delegation AND the POA.
- PMM vs. Refinance: Borrower identified as “Married Person” with no spouse signature (spouse not on title/second home).
- Notarial Acknowledgments with no Commission No. or Printed/Stamped Name. Notary Affidavit required.



# UNDERWRITING COVID 3.0 (NEW RELEASE ON ITS WAY TO YOU)

- History: Where we started...  
March, 2020.
- Current Status of Municipal  
Offices – an update ... June, 2020



**From:** Jeanette White <JWhite@leg.state.vt.us>

**Sent:** Thursday, June 11, 2020 7:28 AM

**To:** Smith, Kendal <Kendal.Smith@vermont.gov>; Kurrle, Lindsay <Lindsay.Kurrle@vermont.gov>; Brady, Ted <Ted.Brady@vermont.gov>; Young, Susanne <Susanne.Young@vermont.gov>

**Subject:** help for a bad situation

Governor Scott and Secretary Kurrle,

**An important issue was brought to the Senate Government Operations this afternoon: we have a very serious problem related to land records access in support of real estate transactions.**

At this moment, there is a lot of activity around home and business sales and refinancing— in two important areas:

- there has been a surge of people trying to move to Vermont—something for which we have been hoping for many years; and
- there are many Vermonters who need to refinance their homes or businesses in order to stay afloat.

Many Vermonters' mortgages are held on the secondary market, and many have worked with lenders to lessen the impact of COVID-19 on their mortgages by using “forbearance,” thereby putting off any action against them by the lender for a period of time—typically 2-3 months. As a result, in June, but surely no later than July, for many Vermonters, mortgage payments will come due.

Meanwhile, many of these homeowners are seeking to refinance as a means to address this payment, and to ensure their long-term ability to make monthly payments in this very uncertain economic time.

**Here's the problem that we believe the Governor and ACCD can help remedy: *many of these refinancing transactions are caught in a bind because the homeowners, or their agents, do not have access to land records to do the needed title searches.***

**This lack of access has already caused real world pain: *it has caused people to lose rates, to pay penalties for extensions, to lose transactions; or, in the most extreme situations, to be sent into foreclosure.***

Today we heard from the Banker's Association, the Title Insurer's Association, Town Clerks Association, and VLCT. We have also had numerous emails from real estate people, attorneys, and lenders. There are many issues out there and this group is trying to come to the best solution.

**Here is our ask of the Governor and ACCD: *we need more direction to town clerks—now.***

While the town clerks have been “allowed” to open, this does not provide much guidance and leaves the decision entirely up to them or to the selectboard. **Some towns have closed their town offices, so even if clerks wanted to be open they could not. It also means there is no uniformity around the state. This is affecting the lenders, the attorneys, the real estate people—but most of all it is affecting the Vermont homeowner who is not able to sell, buy, or refinance.**

In one town alone there are 15 transactions that must happen by end of June, and 8 of these require searches that often take between 2-3 hours each. The attorney has been given three half-hour appointments to complete her work. This is not adequate.

The Senate Government Operations Committee does not know how to “turn the spigot.” But we are all agreed that there needs to be more clear guidance from the Governor on the ability to access land records...

It is the committee's understanding that the Administration does not want to mandate that any town clerk open, but in this case it should be done. If access is mandated, the clerks will figure out ways to accommodate the requirement. We have vast historical evidence that they are very creative people who want to serve their communities and residents. But if the decision is left to them, they will, as would most of us, err on the side of caution. **This truly is an issue that is affecting the lives and ability to withstand this crisis for many Vermonters.**

Thank you for listening to our concerns. We hope that you will establish such a policy and this announce it in your press conference on Friday, June 12. **This is perhaps the most timely issue we have brought to you.**

Thank you for your consideration,

Sen. Jeannette White, Chair

Sen. Anthony Pollina, Vice-Chair

Sen. Alison Clarkson, Clerk

Sen. Christopher Bray

Sen. Brian Collamore



**From:** Young, Susanne <[Susanne.Young@vermont.gov](mailto:Susanne.Young@vermont.gov)>

**Sent:** Thursday, June 11, 2020 3:26 PM

**To:** Jeanette White <[JWhite@leg.state.vt.us](mailto:JWhite@leg.state.vt.us)>

**Cc:** Smith, Kendal <[Kendal.Smith@vermont.gov](mailto:Kendal.Smith@vermont.gov)>; Kurrle, Lindsay <[Lindsay.Kurrle@vermont.gov](mailto:Lindsay.Kurrle@vermont.gov)>; Brady, Ted <[Ted.Brady@vermont.gov](mailto:Ted.Brady@vermont.gov)>; Young, Susanne <[Susanne.Young@vermont.gov](mailto:Susanne.Young@vermont.gov)>

**Subject:** RE: help for a bad situation

Good afternoon Senator White,

Thank you for your email earlier today. I won't profess to have great insight into how to resolve the concerns you raised as I understand the situation varies across the state. I would like to summarize for you and the committee, however, what the Governor's addenda and ACCD guidance have included that apply to municipalities specifically and professional office settings generally:

- Municipalities were never directed by the Governor to suspend in person operations (Addendum 6);
- Municipalities were directed to develop procedures for adherence to CDC/VDH guidance regarding physical distancing;
- Government offices that provide essential government services were directed to stay open;
- When it became apparent some Town Clerks had closed and it was impeding efforts to access government supports, Addendum 9 included direction to ACCD to issue guidance to municipalities (and other professional and financial services), **"to the extent necessary to facilitate assistance to Vermonters seeking to take advantage of state and federal financial support made available in response to the economic impacts of COVID-19."**
- Phased reopening of professional offices is now authorized for offices with up to 25 people, subject to ACCD physical distancing, sanitation and training requirements.

We all are aware that that town clerks have certain constitutional obligations (duty to record deeds) and statutory duties that are critical to real estate transactions. If as you note, these duties are not being carried or are somehow impeded by limited hours, there are two Senate bills that provide possible avenues for the Legislature to weigh in very quickly (S. 348 and S. 349). Perhaps there is a creative solution through a session law that would allow a selectboard or the Secretary of State to ensure services are being provided during an emergency when the town clerk is not able to act.

Many thanks to you and your committee for your work during these challenging times. I hope you find clarification of the state of the orders and guidance that are currently in place are helpful.

Regards,  
Susanne

**Susanne R. Young** | Secretary of Administration  
109 State Street, 5<sup>th</sup> Floor | Montpelier, VT 05609-0201



# UNDERWRITING COVID 3.0 (NEW RELEASE ON ITS WAY TO YOU)

Effective Monday, June 22

New underwriting guidance. The basics:

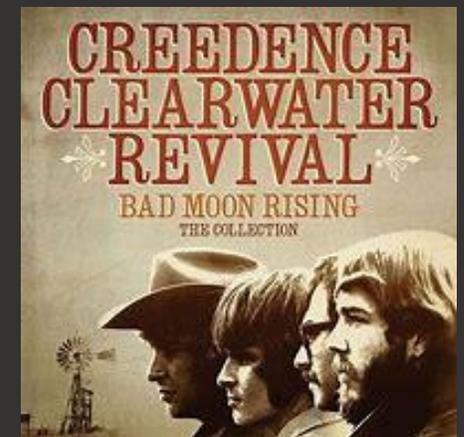
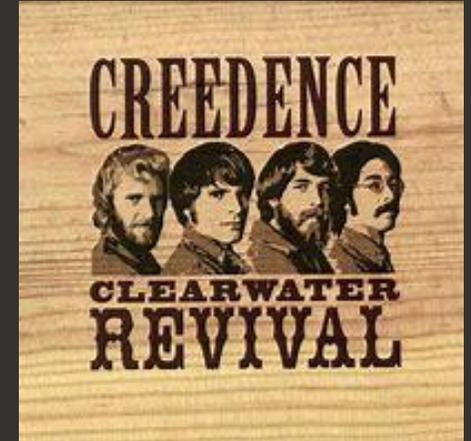
- Moving forward the Title Search (e.g. access to both the index AND the records) must be completed solely by the searcher NOT by the town clerk sending you stuff.
- If the clerk is closed and full records are not available on-line, sorry, but it's game over until the town decides to comply with 1 VSA 316.
- Please issue Commitments for all OPs and, if applicable, for MPs.
- If Zoning Records are not completely accessible, always issue Standard Policies (both OP & MP)
- Closing in the pipeline that might be affected by this change? Call Andy or Liz!



**CCR<sub>s</sub>:**

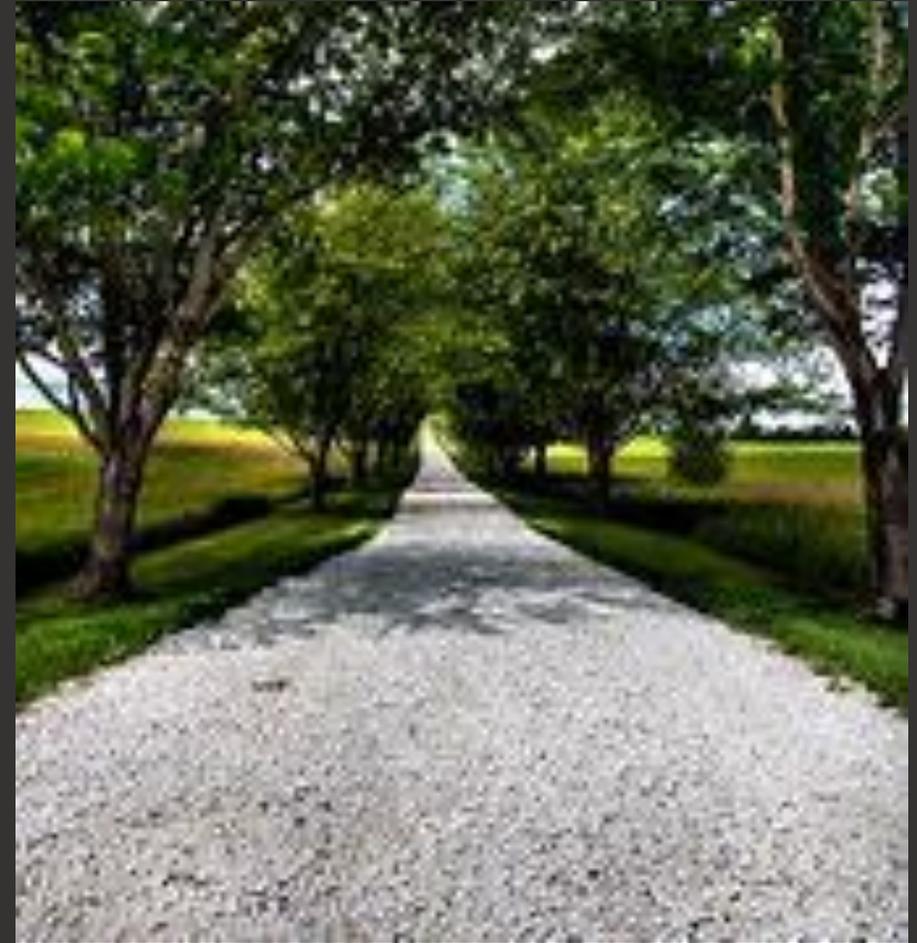
**LOOKING OUT MY BACK DOOR I SEE ....**

**WHAT CAN I DO ABOUT IT?**



# LOCATION, LOCATION, LOCATION ACCESS, ACCESS, ACCESS

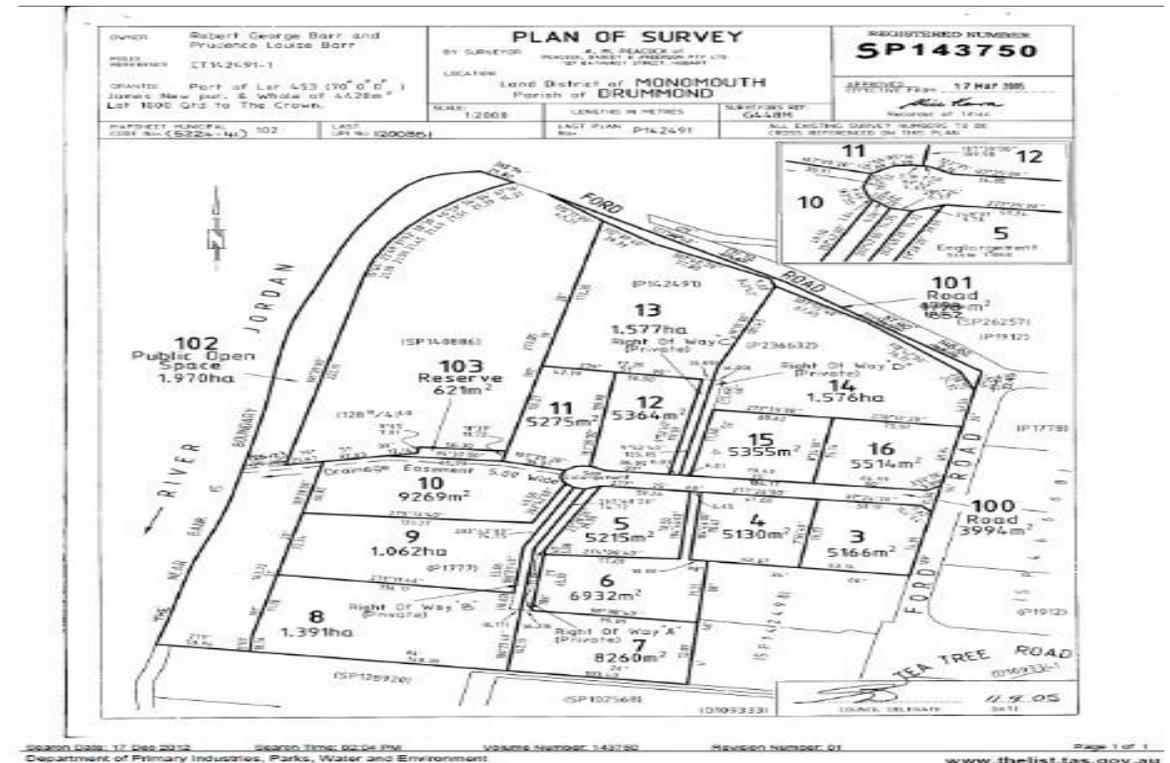
- MUST BE AN AFFIRMATIVE FINDING ON YOUR TITLE SEARCH CHECKLIST.
- IS ACCESS **DIRECT** OR **INDIRECT**?
  - **DIRECT ACCESS**: STRAIGHT FROM PUBLIC HIGHWAY
    - PERMITTING ISSUES?
  - **INDIRECT ACCESS**: ACCESS IS OVER ONE OR MORE PROPERTIES
    - WHAT IS THE AUTHORITY (SEE DRAFT TITLE STDS “EASEMENTS”)
      - EXPRESS (GRANTED OR RESERVED) OR IMPLIED
      - APPURTENANT EASEMENT GRANTED BY 3<sup>RD</sup> PARTY? NEED 40 YEAR SEARCH
      - OVERBURDENING ISSUES
      - SHARED EXPENSE AGREEMENT



# SNEAK PEEK—TITLE STANDARDS 2020

## Easement Sections

- Appurtenant Easements
  - *Post & Beam Equities Group v. Sunne Village, 199 Vt. 313 (2015)*
- Easements in Gross
  - *Barrett v. Kunz, 158 Vt. 15 (1992)*
- Implied Easements – by Plat
  - *Clearwater Realty Company v. Bouchard, 146 VT 359 (1985)*
- Implied Easements – by Necessity/Implication
  - *Regan v. Pomerleau, 2014 VT 99*
- Implied Easement – by Prescription
  - *Moyers v. Poon, 167 A.3d 337 (Vt. 2017)*





# SOLAR PANEL UCCs

<https://bizfilings.vermont.gov/Online/UccInquire/>

## Land Records Search

VERMONT Secretary of State

CORPORATIONS DIVISION

Vermont Secretary of State,  
**JIM CONDOS**

[ICC Lien Search](#) [HOME](#)

**Non-Standard (Basic) UCC Search**

Select Report Type    I would like to search by

Debtor Name:  Contains  Starts With  Exact Match

Financing Statement #:

Refine by Timeframe:  ▼

Status:  ▼

[Search](#)   [Clear](#)

---

**Standard (IACA) UCC Debtor Search** [IACA Search Logic](#)

Basic Search    (Free)

Uncertified Debtor Report    (\$5.00)    [Report Preview](#)

Note :To file a UCC11 Certified Debtor Search or Certified Search and Copy Request, Please Click [here](#)

**Debtor Name to be searched**

This is an Organization     This is an Individual

Organization Name:\*

[Search Debtor](#)   [Clear](#)

[Select All](#)
[Invert Selection](#)
View Pages: 20 50 100

<input type="checkbox"/>	<a href="#">File Date▲</a>	<a href="#">Name/Corporation</a>	<a href="#">Book</a>	<a href="#">Page</a>	<a href="#">Type Desc.</a>	<a href="#">Img Flag</a>	<a href="#">View Img.</a>	<a href="#">Add to Basket</a>
<input type="checkbox"/>	<a href="#">12/1/2015</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00429</a>	<a href="#">424</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">12/1/2015</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00429</a>	<a href="#">427</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/4/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00430</a>	<a href="#">106</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/4/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00430</a>	<a href="#">109</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/4/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00430</a>	<a href="#">112</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/4/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00430</a>	<a href="#">115</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/4/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00430</a>	<a href="#">118</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/29/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00430</a>	<a href="#">500</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">4/7/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00431</a>	<a href="#">883</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">4/7/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00431</a>	<a href="#">886</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">5/20/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00432</a>	<a href="#">852</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">6/2/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00433</a>	<a href="#">243</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">7/15/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00434</a>	<a href="#">212</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">7/20/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00434</a>	<a href="#">304</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">7/20/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00434</a>	<a href="#">307</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">8/22/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00435</a>	<a href="#">116</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">9/2/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00435</a>	<a href="#">413</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">9/14/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00435</a>	<a href="#">652</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">11/15/2016</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00437</a>	<a href="#">180</a>	<a href="#">UCC FIN STATEMENT</a>	**		
<input type="checkbox"/>	<a href="#">1/10/2017</a>	<a href="#">SOLARCITY CORP</a>	<a href="#">00438</a>	<a href="#">484</a>	<a href="#">UCC FIN STATEMENT</a>	**		





# SOLAR PANEL UCCs



4. COLLATERAL: This financing statement covers the following collateral:

All energy generation systems and associated components at any time provided by SolarCity Corporation to Debtor. The Secured Party is not taking a security interest in the real property (except solely to the extent the foregoing is a fixture). The Secured Party's only security interest is in the specific collateral described in this section.



4. COLLATERAL: This financing statement covers the following collateral:

**(1) A first priority security interest in all of the Debtor's now owned and hereafter acquired Solar Facility machinery and equipment, including but not limited to all solar panels, racks, conduit, inverters, transformers, meters, electrical and communications wires and cables, antennas, security devices, fences, gates, and related fixtures, ancillary equipment, other appurtenances thereto, and all replacements, substitutions, accessories, accessions and parts thereof and all products and proceeds thereof and insurance proceeds thereof.**



4. COLLATERAL: This financing statement covers the following collateral:

The collateral includes the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

1. All solar panels, inverters, racking systems, wiring, electrical and mechanical connections, metering, monitoring and/or other distributed generation interconnect equipment, battery storage equipment, electrical vehicle power charging equipment, thermostat equipment, and landscaping services to accommodate the solar system (collectively, "Collateralized Goods");

2. All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any Collateralized Goods;

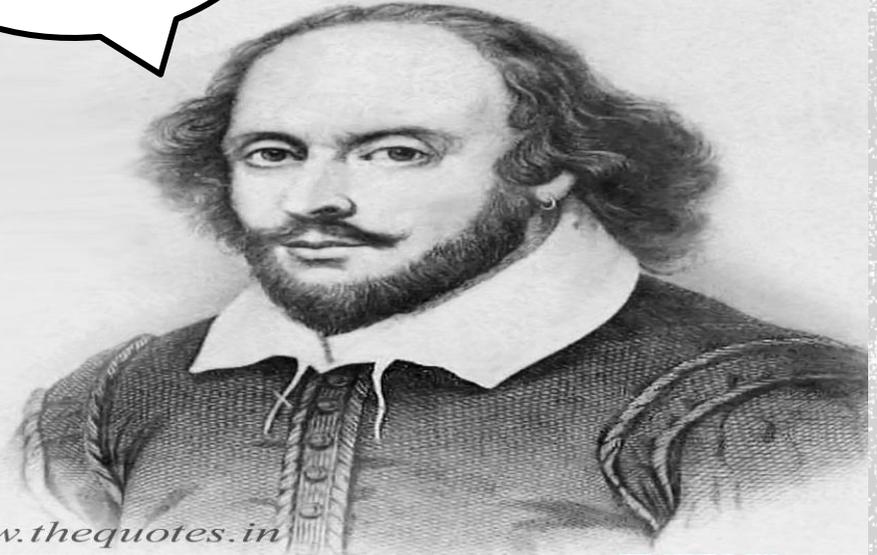


Yes, one must  
always terminate.

terminate terminate  
To ~~be~~, or not to ~~be~~, that is  
the question.

*William Shakespeare*

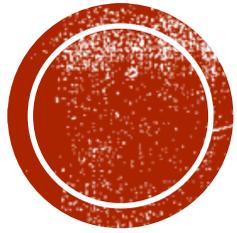
*www.thequotes.in*



- Correct Secured Party
- Re-filing before recording of Mortgage
- Exception for UCC



# **ACREAGE DISCREPANCY?**



## **Tax Map/Tax Bill/Survey/Deeds**

**Acreage not covered under Title Insurance Policy**

**Survey Exception?**

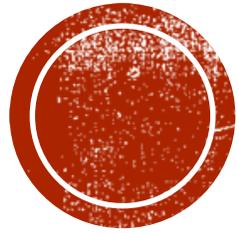
**Expanded Owner Policy**

**Standard Owner Policy**

**Standard Mortgagee Policy**

**Disclosure issues/Contract issues/Survey recommended**

# **ACREAGE DISCREPANCY?**



## **Tax Map/Tax Bill/Survey/Deeds**

**Acreage not covered under Title Insurance Policy**

**Expanded Mortgagee Policy**

**Risk analysis – LTV**

**Exception**

**Diminution in value – CATIC Claims**

# ESCROW AGREEMENTS AT CLOSING

## Buyer v. Seller

- ❖ **Escrow for \$5k** at closing for WW Permit and Firewall Installation per Fire Safety Violation/Report
- ❖ Permit issue resolved with no cost
- ❖ Firewall repair **\$25k** paid by buyer
- ❖ Seller refused to reimburse for \$20k balance

## Decision

- SCOV'T reverses and remands
- Plain reading of Escrow Agreement
  - No cap to Seller's liability at \$5k
  - No limitation of liability
  - No liquidated damages
  - No waivers

**CHAPA V. GAY, APRIL  
TERM, 2020  
DOCKET NO. 2019-401**



## QUIET TITLE ACTION **BENSON V. LOWE**, JUNE TERM, 2020 DOCKET NO. 2020-021

- 608 sq. feet/32 feet Lake Champlain  
- Plaintiff's dock location
- Benson: 2005 purchase/Leased 1989-2005
- Lowe: 2017 purchase – predecessors never objected to neighbor's use/dock
- Lowe chains off access area to disputed land and dock

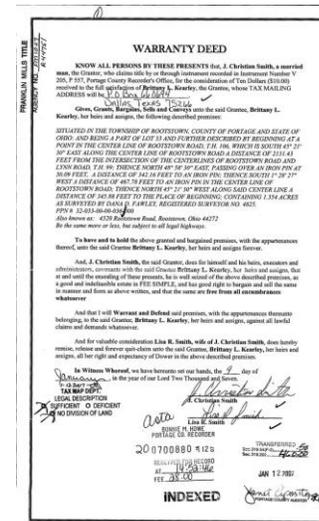


# ACQUIESCENCE VS. PERMISSION

## Elements of Prescriptive Easement

- OPEN
- NOTORIOUS
- CONTINUOUS FOR 15 YEARS
- HOSTILE or UNDER CLAIM OF RIGHT

*ADVERSE POSSESSION: + EXCLUSIVE*



## 19 V.S.A. §302 Classification of Town Highways

Unidentified corridors are town highways that:

- (i) have been laid out as highways by proper authority through the process provided by law at the time they were created or by dedication and acceptance; and
- (ii) do not, as of July 1, 2010, appear on the town highway map prepared pursuant to section 305 of this title; and
- (iii) are not otherwise clearly observable by physical evidence of their use as a highway or trail; and
- (iv) are not legal trails.

# ACT 178 – JULY 1, 2006

- *Ancient Roadways: Act 178 prompted by disputes over legally existing but *physically invisible* highway*
- *Procedure created for Towns to locate “unidentified corridors” and either discontinue or reclassify (Town Hwy Class 1, 2, 3, 4, or Legal Trail) and include on Town Hwy map by July 1, 2015*
- *If not reclassified, then road is discontinued and reverts/belongs to owners of adjoining land*
- *Private ROW retained if only access 19 V.S.A. §717(c)*

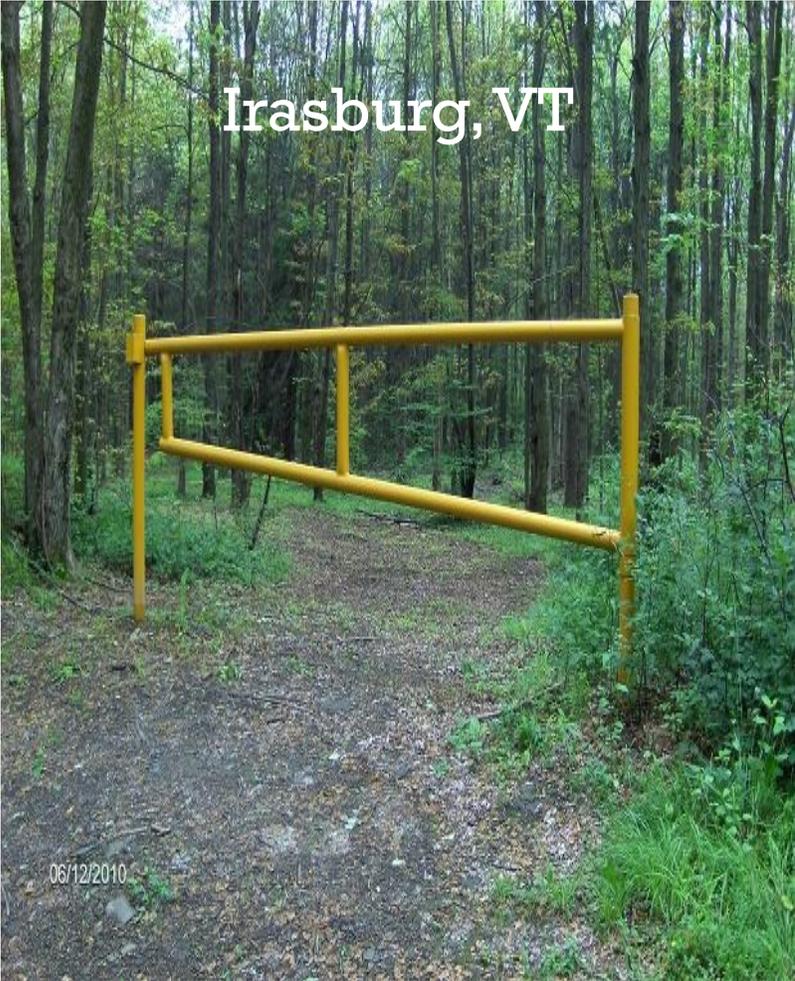
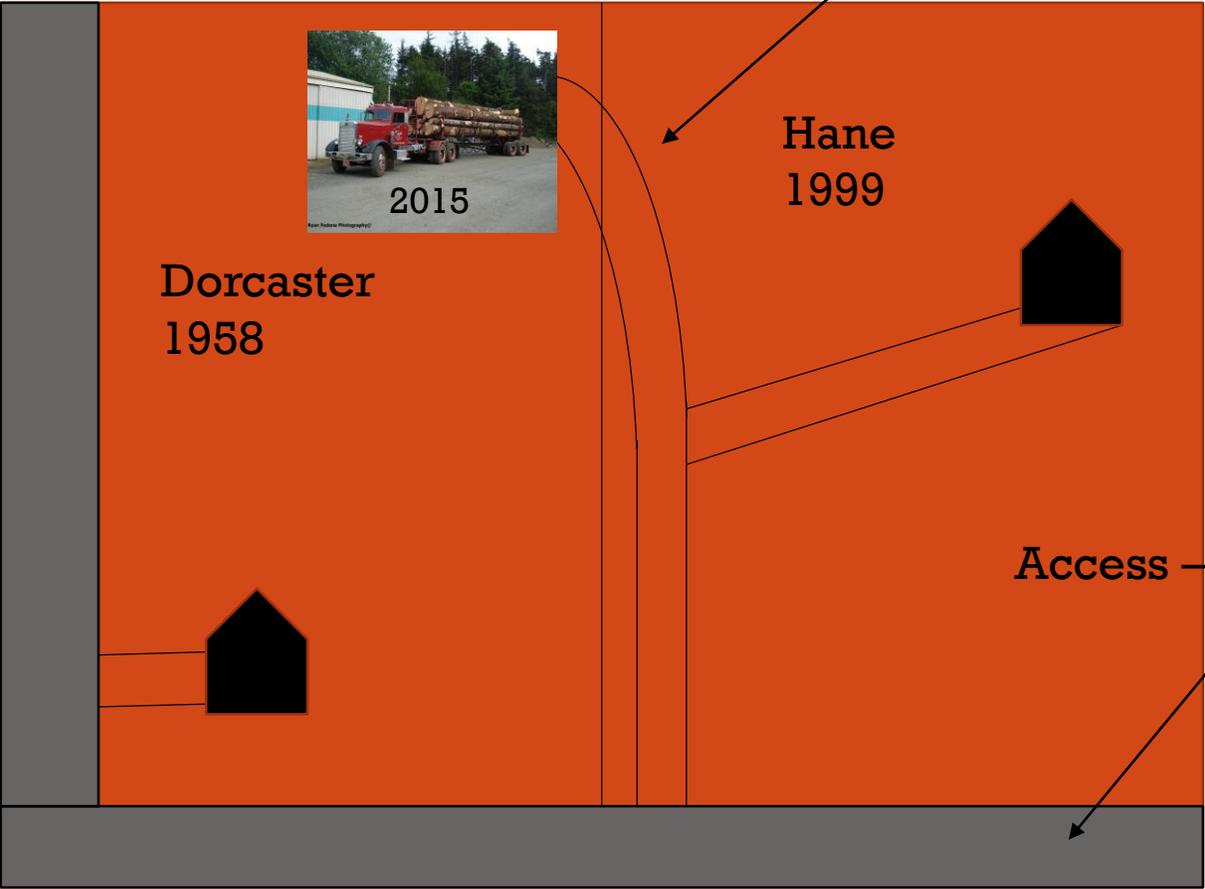


# Doncaster v. Hane, 2020 VT 22

Access – Town Hwy

Boundary

“Unidentified Corridor”?  
Howe Road - 1867



## **DEFENDANT ARGUES:**

1. 19 V.S.A. §305 (c) controls: All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015. **WRONG!**
2. Road is unidentified corridor and discontinued because Town never determined independently that there was physical evidence of use. **WRONG!**
3. Trial court incorrectly applied date of July, 2015 instead of July, 2010 for determination of physical evidence of use. **RIGHT!**

## **BUT**

Court concluded as of July, 2010 Plaintiff adequately proved physical evidence of use excluding the roadway from the definition of **UNIDENTIFIED CORRIDOR.**

Act 178 discontinued only unidentified corridors that were not reclassified by July 1, 2015. It did not discontinue other types of town highways, even if those highways were not included on the town highway map by that date.

## **DONCASTER V. HANE 2020 VT 22**



# BARTLETT V. ROBERTS ET AL., 2020 VT 24

- Plaintiff: 2005 owner (125 acres)
- Defendant: 2017 owner (42 acres)
- Defendant's predecessors:
  - Camp access approx. 1960-1975;
  - Periodic logging ends approx. 2012
- Plaintiff's predecessors: 2001 -2005
- 2009 Ancient Roads Committee



# BARTLETT V. ROBERTS ET AL., 2020 VT 24

## **Not an “Unidentified Corridor”**

### **PLAINTIFF ARGUES:**

- Road discontinued by operation of Act 178
- Evidence of public use necessary for road to be a “highway”
- Road not Defendant’s sole means of access under 19 V.S.A. §717(c)
- Public road became “private” - one user and gate constructed

### **RECALL**

19 V.S.A. §302 Classification of Town Highways

Unidentified corridors are town highways that:

- (i) have been laid out as highways by proper authority through the process provided by law at the time they were created or by dedication and acceptance; and
- (ii) do not, as of July 1, 2010, appear on the town highway map prepared pursuant to section 305 of this title; and
- (iii) are not otherwise clearly observable by physical evidence of their use as a highway or trail; and
- (iv) are not legal trails.



## Vermont Supreme Court

- Does not lose status because it is impassable by car
- Identity of users irrelevant
- Laying out of the road is sufficient to create a highway (synonymous with road)
- Actual construction of highway not necessary
- Legislative intent
  - Determination of public or private evidence of use?
  - Adverse possession and creation of unidentified corridors by private use construction?

**BARTLETT V.  
ROBERTS ET AL.,  
2020 VT 24**





# MADDEN V. MADDEN JUNE TERM, 2020

## Trial Court excludes Finland property held by Wife

- Husband argues inequitable property division
- Wife held title to land in Finland
  - Held with siblings
  - Produced no income
  - “Perhaps” for Estate planning of Father
  - Insulate land from Father’s liabilities
- Husband asserts he showed higher listing value of property but Court had no record for Husband to appeal



# COBURN V. COOK, 2014 VT 45 ENHANCED LIFE ESTATE DEEDS - DIVORCE

**Coburn SCOVTT Holding**



**Enhanced Life Estate Deed Act**



# MARKETABLE TITLE MAYHEM

## ALL STAR QUESTIONS



**Title search reveals that an easement for access, conveyed eight years ago, benefiting the search property was omitted from the deed in to the seller. The state of access is:**

- A. There is no easement because it was not conveyed to seller. A new easement must be procured from neighbor.
- B. If the easement was appurtenant, the easement runs with the land and seller should grant the easement by referencing it in deed to buyer.
- C. The buyer would have an easement by necessity for access.
- D. The buyer would have a prescriptive easement for access.



# MARKETABLE TITLE MAYHEM

## ALL STAR QUESTIONS

**Title search in 2020 reveals that a WW permit was issued in 2005 approving a 2 bedroom home. Current lister card shows 3 bedrooms. You:**



- A. Don't care because the property is automatically "clean slated" per WW Rule 1-304(a)(1).
- B. Report the issue to your client but say it's not a problem because the number of bedrooms on the lister card matches the number of bedrooms in the P&S contract (e.g.3).
- C. Ask seller for an affidavit establishing the existence of 3 bedrooms on or before 12/31/06.
- D. Tell the client to hire an engineer to see if the existing septic system can support 3 bedrooms.



# MARKETABLE TITLE MAYHEM ALL STAR QUESTIONS



In addition to insuring Marketable Title, a title insurance policy insures which of the following:

- A. Access to the Insured Property
- B. Value as listed in the Schedule A
- C. Acreage
- D. Tenancy



# MARKETABLE TITLE MAYHEM

## ALL STAR QUESTIONS

Title search reveals a mortgage to “MERS, as nominee for ABC Bank”. There are no recorded mortgage assignments. Mortgage was discharged by “QRS Mortgage”. The discharge is:



A. Not valid because a servicer is never authorized to execute discharges.

B. Not valid because there is no recorded mortgage assignment to QRS Mortgage.

C. Valid if QRS Mortgage is a MERS-member, as discussed in Title Standard 18.5.

D. Valid, but only if accompanied by a POA from ABC Mortgage to QRS Mortgage.



# MARKETABLE TITLE MAYHEM

## ALL STAR QUESTIONS



**In the absence of a recorded mortgage discharge, which of the following facts, when applied with 12 VSA Sect. 502 and *Huntington v. McCarty*, 174 Vt. 69 (2001), can be relied upon to conclude that a mortgage of record is unenforceable by operation of law.**

- A. The land records reflect that the undischarged mortgage was refinanced, and the subsequent mortgage has been of record for 15 years or more.
- B. The mortgagors sold the property more than 15 years ago.
- C. The mortgage contains a due date/term which occurred 15 or more years ago.
- D. None of the above, the mortgage must be discharged.



