



CURRENT DEVELOPMENTS

June 16, 2021

VATC

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An act relating to emergency judicial response to COVID

As Liz reported to you, Sec. 6 SUSPENSION OF STATUTES OF LIMITATION provided that all Statutes of Limitation or statutes of repose that expire during the STATE OF EMERGENCY are tolled until 60 days after Governor terminates the state of emergency.

Emergency Start Date: 4/28/2020
Emergency End Date: 6/15/2021

Emergency End Date + 60 days = 8/14/2021 (which is a Saturday)

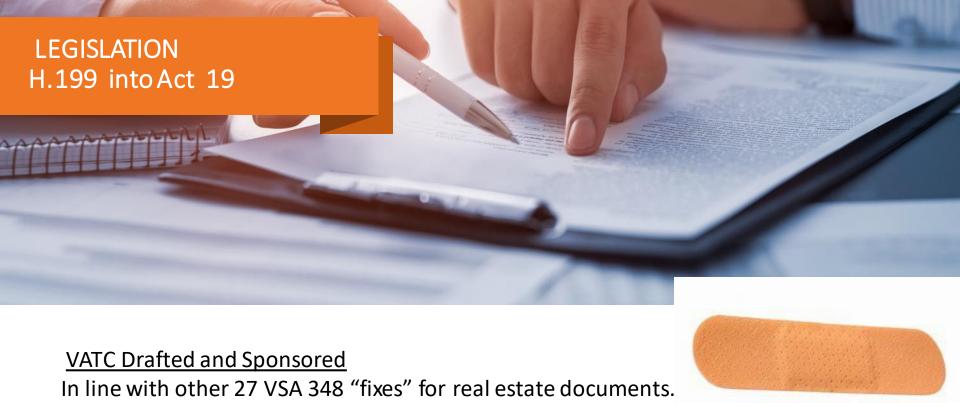
Effect: Liens which would otherwise have expired by their terms during – and including – the term 4/28/20 to 6/15/21 – are tolled until 8/14/2021.

Example A: Lien with expiration date of 6/14/2021 Example B: Lien with expiration date of 6/16/2021



Related:

Moratorium on Eviction proceedings is slated to end July 15, 2020.



What does this amendment to 27 VSA 348 fix?

- A. Defective acknowledgement clause which inaccurately recites personal appearance of Principal and not the AIF.
 - Validated where the instrument has been of record for 3+ years.
- B. Failure to comply with 14 VSA 3503
 - POA validated where it is witnessed, acknowledged and of record for 3+ years
- C. Failure to comply with SOS/OPR Emergency Rules for Remote Notarial Acts
 - POA validated if witnessed, acknowledged and recorded for 3+ years



Possible examples of 14 VSA 3503 defects validated by Act 19:

- 1. Missing witness affirmation language.
- 2. Failure to specifically identify the property. Caveat: Still need express power to deal with real estate.
- 3. Over the 90 day restriction and witness and notary are the same.
- 4. Over the 90 day restriction and the agent fails to accept (or to accept in timely manner).
- 5. Failure to comply with E. Rules ... say maybe you lost the video recording, yikes!



Addresses the hullabaloo arising from 2020 amendment to 27 VSA 545 which provided that deed restrictions (CCRs) that prohibited land development allowed under a municipality's bylaws were invalid.

- Changed the phrase "municipality's bylaws" to "24 VSA 4412(1)(E) and (2)(A)."
- 2. Effect: Narrows the scope of 27 VSA 545 to only invalidate deed restrictions created after 1/1/21 that restrict development of accessory dwellings or pre-existing small lots.
- 3. Act 4: Retroactive to 1/1/21 such that prior change never kicked in.



Miscellaneous Tax Bill

Section 9 amends 32 VSA 3757(f) to provide that enrollment in Current Use creates a contingent lien on the enrolled real estate. Whiplash! Similar legislation which had recently been enacted was inadvertently repealed.

Section 12 increases recording fee for tax sale documents to \$15/page (from \$10/page). Say why? These docs were missed from recording fee overhaul which happened a couple of years ago.



Removal of Restrictive Covenants Based on Race, Ethnicity or Religion

- Concept that is catching around the country and enacted into law in 3+ states.
- Declares such Covenants void and contrary to public policy.
- Person may decline to accept title until the prohibited provisions have been removed.
- Refusal to accept such deed is not breach of contract.
- May be released by the owner by recording a statutory-form, certificate of Release of Certain Prohibited Covenants.



Remote Online Notarization - RON

- Sitting with the SOS/OPR. No movement in 3 years.
- Recognized in other states BUT not recognized in VT
 - o **26 VSA 5371**: "select ... [a] tamper-evident technolog[y] ...with respect to electronic records from the tamper—evident technologies approved by the Office by rule..."
 - o E-Rules:
 - "These rules do not permit electronic notarization or remote online notarization of electronic documents."

o E-Rules Guidance:

- "These Rules do not authorize any form of electronic notarial acts or remote online notarization."
- Not currently accepted by our underwriting via reciprocity
- o Remember: Like on-line title searching. This cuts two ways.



- Take a Warvaims tax sale is void
- No material factual dispute
 1.Town faired to find the sed says barge of statute.
- 2. 1 ygapsΩl for filed within so days
 3. lssugears sΩl vfor Chare BUT (constitutional
- Holding: maxprepainly gets 1 year; 4. claimants of maining herently risky 3 Some are years: some are not. Call now operators are standing by.





Ultimately an argument over whether the parties agreed to arbitrate disputes per VT's Arbitration Act in 12 VSA 562 but... couple of favorite issues along the way:
Take aways/Drafting Tips:

- Beach access (storing boats; launching jet skis)
 Is the easements to arbitrate must be in writing and signed
- Overburgening! Overburgening!
- Post-training (specify: "additional easements MAY/MAY NOT be conveyed")





- Problem with Pooling Water in patio & outside of unit
- BOD convenes special mtg
- Amends bylaws Board reduced size 10 to 5
- Lawsuit by unit owner: compensatory, punitive, personal liability, no-indemnification, injunctions
- 30 page amended Complaint





- Added VT Mutual Insurance; 11 causes of action
- Contempt motions ("utterly frivolous"); sanctions; atty fees awarded
- Model of the state of the state
- Pamight add to savings"
- Followed by appeal to SCOVT





Suit seeking declaration that plaintiff had a right of vehicle access over a Town trail and appeal of denial for access to new subdivision.

Take aways:

Background:

2001 - Towhitienatsivithepageomaseterided (4allegalarbasis of Claim

2010 – Sui Prestried entillenging the sufficiency of the reclassification Selectionification into Trail (unique characteristics)

2015 – Plaintiff applied for access (curbcut) for subdivision; denied; appeal; upheld.



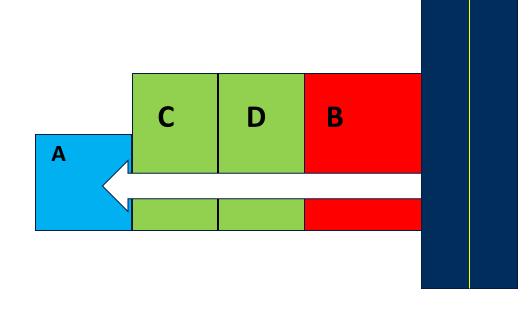
1984 partition deed

Vehicular and utility access

2 ROW over B

- In common
- "Exclusive"

Restrictions, Reservations, Servitudes





Deed interpretation

Master Rule: Intent of parties

Restatement: Servient estate may make any use of the servient estate that does not reasonably interfere with the enjoyment of the servitude.

Α **ROW**

Common Plan



City of Hayford decision (2003) still relevant?

- Background: Extensive zoning procedural issues in Hayford
- Holding: Each day was an on-going violation such that there was no applicable SOL for "use violations" (as opposed to "structural violations").
 24 VSA 4454
- Along came <u>In re 204 North Avenue</u> (2019). Held that the statute DID apply to on-going "use" violations and barred City of Burlington from enforcing NOV.
- Post In re 204 North Avenue, appellants re-surfaced and sought relief.
- Parties stipulated to resolution.



Court: "Show me authority to modify a judgment when the decision was affirmed by SCOVT"

Okay – how about Rule 60(b)(5)

Holding: Court distinguishes Hayford from In Re 204 North Avenue because in Hayford there was a 1998 change in the zoning law such that a 15 year period of violation did not exist. Joint stipulation denied. Go find another solution.



Court (J. Hoar) applies the principal of Occam's Razor in partition action

Merriam-Webster Definition of Occam's razor

: a scientific and philosophical rule that entities should not be multiplied unnecessarily which is interpreted as requiring that the simplest of competing theories be preferred to the more complex or that explanations of unknown phenomena be sought first in terms of known quantities

Did You Know?

William of Occam (also spelled "Ockham") didn't invent the rule associated with his name. Others had espoused the "keep it simple" concept before that 14th-century philosopher and theologian embraced it, but no one wielded the principle (also known as the *law of parsimony*) as relentlessly as he did. He used it to counter what he considered the fuzzy logic of his theological contemporaries, and his applications of it inspired 19th-century Scottish philosopher Sir William Hamilton to link *Occam* with the idea of cutting away extraneous material, giving us the modern name for the principle.



Got a partion action?

Apply the Whippie formula by splitting property in half and then consider equitable factors in the following order.

- 1. Contributions of each party toward actual expenses;
- 2. Credit against contribution claims a rental value offset for any period of exclusion of an ousted party;
- 3. Equities cognizable in partition and allocate costs and fees arising from partition.

Plus:

4. All relevant circumstances to ensure that complete justice is done. Wilk v. Wilk



- 6 claims including violation of VT Consumer Fraud Act and Covenant of Good Faith and Fair Dealing.
- Involving loan modification attempts from 2011
- BOA declined alleging plaintiff not eligible because she could not create an affordable payment with the terms of the program.
- Holding:
 - Facts do not support Plaintiffs' claims
 - Judgment for BOA

