



Last Chance CLE

Current Developments

June 8, 2022

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Legislative Updates

Title 26, Chapter 103 Eff. July 1, 2022

H.512 – An act relating to modernizing land records and notarial acts law

- Land Records Management Office
- URPERA (Uniform Real Property Electronic Recording Act)
- RULONA (Revised Uniform Law on Notarial Acts)
 - Uniform Law on Notary Acts (ULONA) 7.1.2019

Title 27, Sect. 546 Eff. July 1, 2022

H.551 – Racially and religiously restrictive covenants in Deeds prohibited

- Prohibited; and
- Void and unenforceable

Title 32, Chapter 124 Eff. July 1, 2023

H.697 - An act relating to eligibility of reserve forestland for enrollment in the Use Value Appraisal Program

- Climate change initiative
- Old forest eligibility

H.512 Land Records Reform

Comprehensive Bill reforming the Land Records to meet technological advances, standardizing recording systems, and creating an Office for oversight and enforcement of non-compliant Municipal Offices.

1 new State Archives position and Study to be committed by January 2024 on state of the Land Records.

Uniform Real Property Electronic Recording Act - URPERA

“Allows local recording offices to accept deeds and other property records in electronic form. The act is technology-neutral; the enacting state determines recording standards based on current best practices.”

Uniform Law Commission

Passed in 38 States between 2005 and 2021

Added to 27 V.S.A. , Chpt. 5 Conveyance of Real Estate



Uniform Real Property Electronic Recording Act – URPERA §622 Definitions

- (1) “Document” means information that is: (A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and (B) eligible to be recorded in the land records maintained by the recorder. (2)
- (2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (3) “Electronic document” means a document that is received by the recorder in an electronic form.
- (4) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

Uniform Real Property Electronic Recording Act - URPERA

§623 Validity of Electronic Documents

IF: electronic document – satisfies requirement for original, paper, writing, or tangible instrument

IF: electronic signature – satisfies requirement for instrument to be signed

IF: electronic notary signature & electronic stamp/image – satisfies requirement for notary acknowledgment



Uniform Real Property Electronic Recording Act - URPERA

§625 Standards and Best Practices

- Shall comply with standards and best practices issues by the Vermont State Archives and Records Administration
- Shall seek services from the Vermont State Archives and Records Administration
- Cannot record until Town compliance
- 1/1/2023 Interim Report
- 1/5/2024 Report



Revised Uniform Law on Notarial Acts - RULONA – 26 V.S.A., Chpt. 103 H.512

“In recent years, technology and commercially available identification services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public. RULONA authorizes remote notarization without geographic limits on the location of the signer through the use of communication and identity-proofing technology provided its requirements have been fulfilled.

Uniform Law Commission

Added to 26 V.S.A. , Chpt. 103 Notaries Public



Remotely Located – WHERE?

Remotely Located Individual

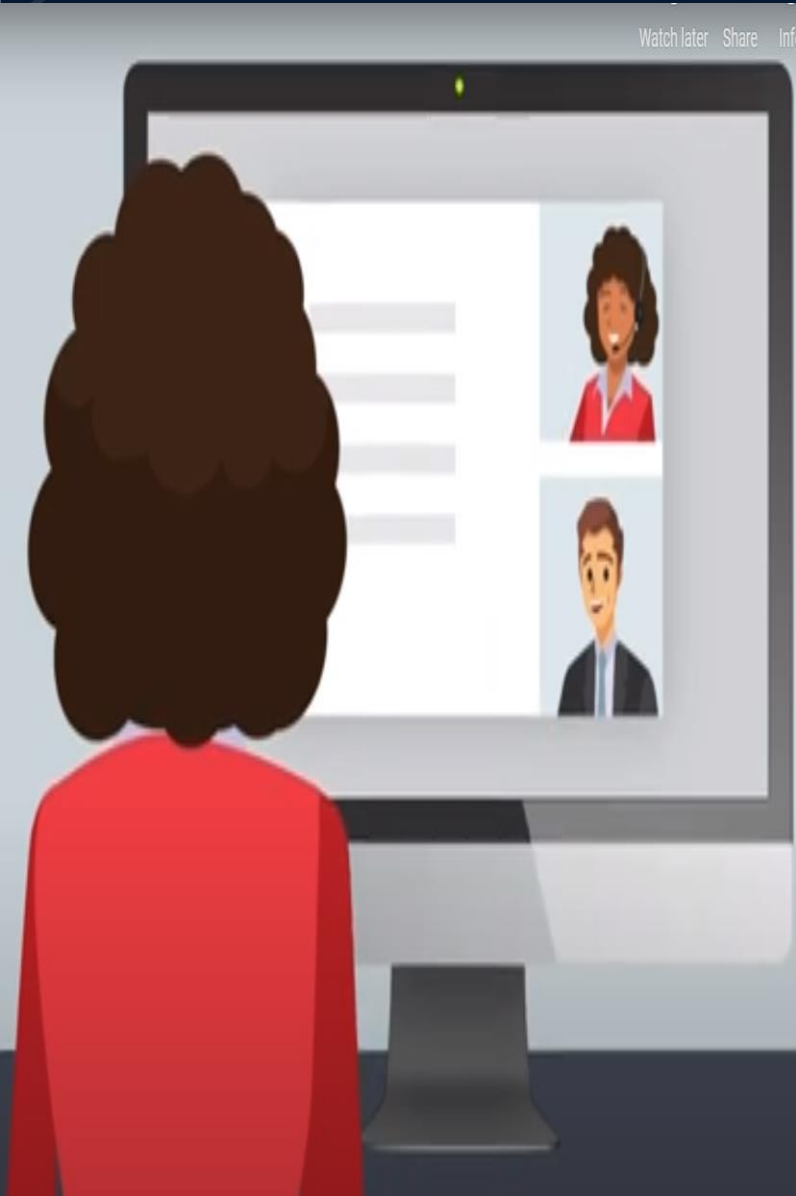


Remotely Located Notary Public

A notary public located in this state may use communication technology to perform a notarial act for a remotely located individual.

An applicant for a commission as a notary public shall: (1) be at least 18 years of age; (2) be a citizen or permanent legal resident of the United States; (3) be a resident of or have a place of employment or practice in this State; ...

Online Signatures



Special Endorsement to Notary Commission - \$30.00

Special Endorsement Rules for identify proofing and technology use – TBD SOS

Tamper-evident technologies to be used

Identity Proofing – knowledge; affidavit of person w/knowledge; or 2 forms of ID

E-signing and E-Notarizing same document in an online portal

Ten (10) year retention required

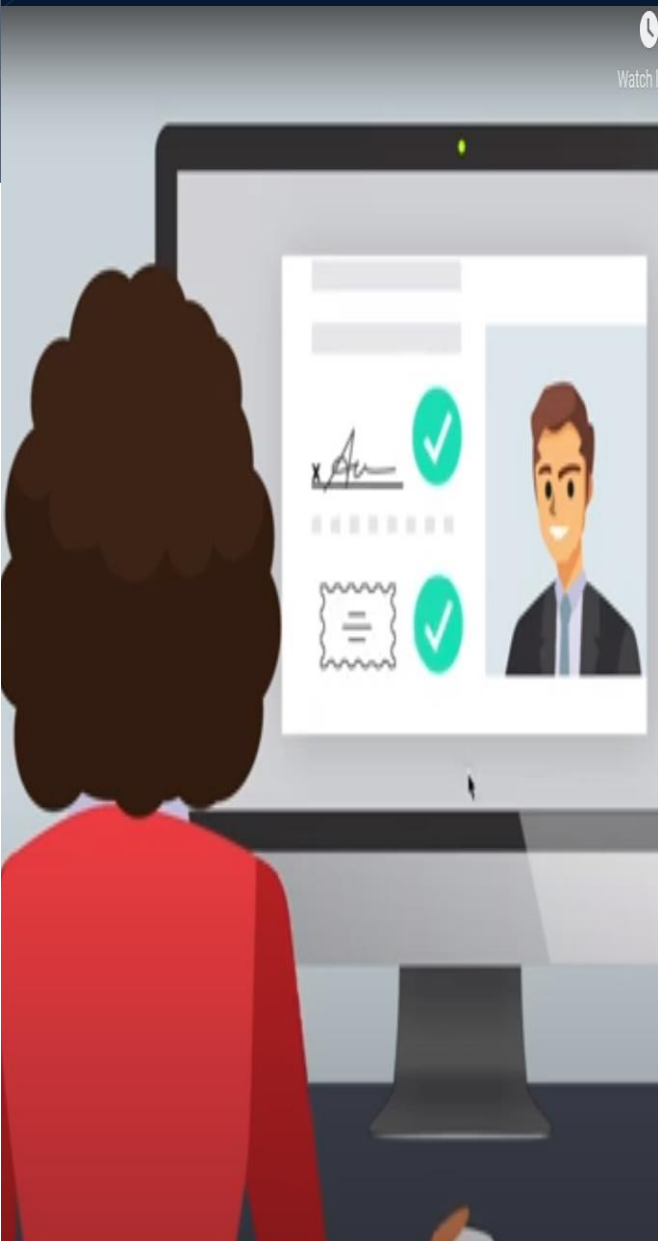


SAME RECORD - United States

- 1.) Identity proofing
- 2.) Determine the record before you to be notarized is the same record in which the remotely located individual executed a signature
- 3.) Notary Public creates an audiovisual recording of the performance of the notarial act



SAME RECORD - Outside USA



- 1.) Identity proofing
- 2.) Determine the record before you to be notarized is the same record in which the remotely located individual executed a signature
- 4.) Notary Public creates an audiovisual recording of the performance of the notarial act
- 5.) Involves property within or substantially connected to the United States
- 6.) Foreign jurisdiction does not prohibit e-signature/e-notarization



RULONA

- Provides for e-notarization hybrid - proof same record is being e-signed and e-notarized
- Declaration provided by remote signer
- Mailed within 3 days
- Special statement included by Notary Public

“The Notary Public, after receipt of the record and declaration from the individual, shall execute a certificate of notarial act under this chapter, which must include a statement in substantially the following form: I, (name of notary public), witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).”

Print and Record

A recorder may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.



Print and Record

State of _____

County of _____

I certify that this is a true and correct copy of a
record in the possession of

Dated _____

Signature of notarial officer _____

Stamp _____

Title of office _____

My commission expires: _____



§ 5323. RULES

(a) The Office, with the advice of the advisor appointees, may adopt rules to implement this chapter. The rules may:

4.) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking the commission or special commission endorsement of or otherwise disciplining a notary public and assuring the trustworthiness of an individual holding a commission or special commission endorsement as notary public;

(5) include provisions to prevent fraud or mistake in the performance of notarial acts; and

(6) prescribe standards for remote online notarization, including standards for credential analysis, the process through which a third person affirms the identity of an individual, the methods for communicating through a secure communication link, the means by which the remote notarization is certified, and the form of notice to be appended disclosing the fact that the notarization was completed remotely on any document acknowledged through remote online notarization the means of performing a notarial act involving a remotely located individual using communication technology;

(7) establish standards for communication technology and identity proofing;

(8) establish standards and a period for the retention of an audiovisual recording created under section 5379 of this chapter; and

(9) prescribe methods for a notary public to confirm, under subsections 5379(c) and (d) of this chapter, the identity of a tangible record.



**TAKE AWAYS:
NO INFRASTRUCTURE
ISSUES OF UNIFORMITY
TECHNOLOGY COST
EFFICIENCY?
DELAY IN RULE MAKING**

A photograph of a multi-story steel building frame under construction, showing a grid of vertical columns and horizontal beams against a clear blue sky. The image is partially obscured by a dark blue curved graphic element.





VERMONT FRAMEWORK

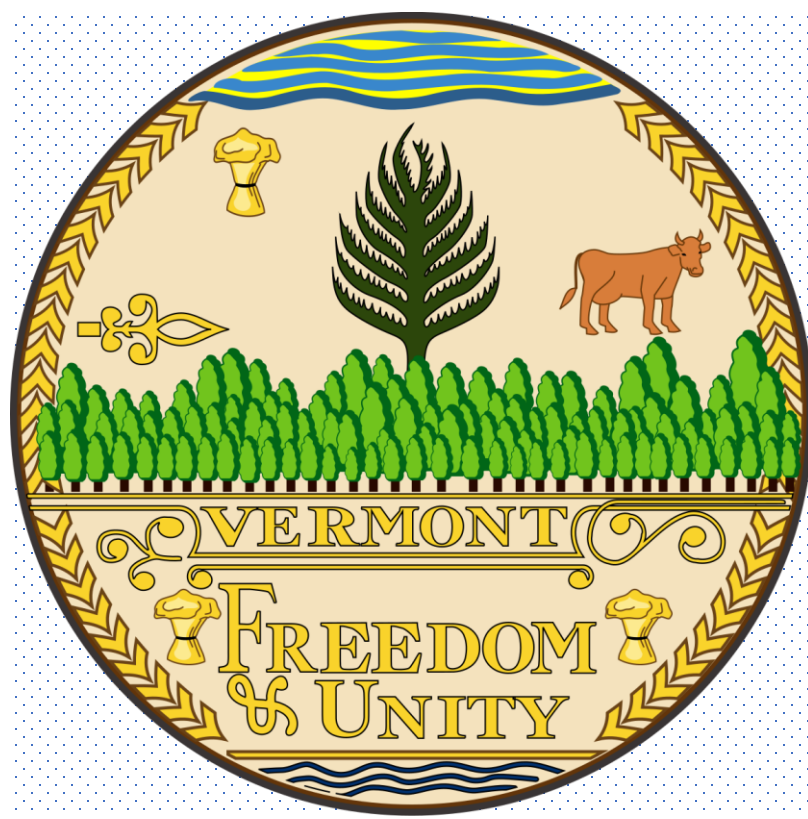


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E-CLOSING

Types of Closings

Type of Closing	In Person	Paper Documents	Digital Docs w/ eSignatures	Notary	
Hybrid 	✓	✓	✓	In Person	
Fully Electronic 	✓	✗	✓	In Person	
Remote Ink 	✗	✓	✗	Remote via Webcam	
Remote Online 	✗	✗	✓	Remote via Webcam	



It is the intent of the General Assembly that this act prohibit racially and religiously restrictive covenants from ever being used in Vermont again, regardless of their enforceability, and that it ensure that existing racially and religiously restrictive covenants remain in municipal land records to preserve the historical record and maintain critical evidence of a pervasive system of discrimination that existed in Vermont and throughout the county.

27 V.S.A. § 546. RACIALLY AND RELIGIOUSLY RESTRICTIVE COVENANTS IN DEEDS PROHIBITED

- (a) A deed, mortgage, plat, or other recorded device recorded on or after July 1, 2022 shall not contain a covenant, easement, or any other restrictive or reversionary interest purporting to restrict the ownership or use of real property on the basis of race or religion.
- (b) A covenant, easement, or any other restrictive or reversionary interest in a deed, mortgage, plat, or other recorded device purporting to restrict the ownership or use of real property on the basis of race or religion is declared contrary to the public policy of the State of Vermont and shall be void and unenforceable. This subdivision shall apply to a restrictive covenant executed at any time.

Title Standards Committee – 2022



Title Standard 9.2



Execution and Acknowledgement by Electronic Signatures

Notwithstanding any other provision in the Standards, any instrument executed by a Vermont Court of a Federal Court in compliance with applicable Rules for electronic filing.





Title Standard 6.5 Powers of Attorney

Comment 10. Notwithstanding any other provision of law, a military power of attorney containing a provision stating that the power of attorney is prepared pursuant to 10 U.S.C. § 1044b shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of Vermont. See 14 V.S.A. §3502(e).

Title Standard 16.2

Judgment Liens

Comment 6 Divorce Decree with financial obligations: The filing of a final divorce decree issued pursuant to 15 V.S.A. § 754 is a judgment lien. *Cramer v. Billado*, 2017 VT 38, held that the recording of a certified copy of the divorce order in the land records perfected a judgment lien on defendant's property. Compare the result in *Cramer* to *Sumner v. Sumner*, 176 Vt. 452 (2004) in which a final decree that provides that one party owes a financial obligation to another did not automatically create an encumbrance on title reasoning that an encumbrance is created only if specified in the terms of the judgment.



DIVORCE LAWS IN

VERMONT

Cramer v. Billado, 2017 VT 38

COVENANTS

1. Covenants – Generally

Reference is also herein made to Agency of Natural Resources Wastewater System and Potable Water Supply Permit #WW-7-211 dated March 7, 2007 and recorded in Book 42 at Pages 119-120 of the Town of Westfield Land Records.

There is also hereby conveyed to the Grantees and their heirs and assigns an easement and right-of-way for connection to and extension of electrical utilities and other utilities from the existing electrical transmission line and poles and other utilities located on Grantors' land lying on the westerly side of Town Highway #1 (North Hill Road) together with the right to enter upon the lands and premises of the Grantors for the purpose of constructing, repairing and maintaining electrical lines and other components as may be required to extend the electrical utilities and other utilities to the within conveyed lands and premises.

There is also hereby conveyed a right-of-way and easement in common for the installation of underground electrical and other utilities over and along a strip of land having a uniform width of 20 feet and lying adjacent to and easterly of the easterly limits of North Hill Road as reserved by Grantors in prior deeds to Meisinger and Deslandes and Chasse referenced above.

Grantors and Grantees hereby covenant and agree that any electrical and other utilities constructed and maintained by them and their respective heirs and assigns shall be installed within a 20-foot wide easement area and adjacent to and easterly of the easterly limits of North Hill Road, so-called.

EXCEPTING and RESERVING those utility easements and rights-of-way previously described and set forth in the Warranty Deed from Austin and Vivian Slayton to Gary C. Meisinger dated August 2, 2007 and recorded in Book 42 at Pages 341-342 and in the Warranty Deed from Austin H. Slayton and Vivian J. Slayton to Nathan J. Deslandes and Lisa Deslandes and Roger Chasse dated December 5, 2007 and recorded in Book 43 at Pages 30-32 of the Town of Westfield Land Records.

The within conveyed lands and premises are conveyed subject to certain restrictions intended to run with the land and bind the Grantees and their heirs and assigns as follows:

1. No mobile homes or temporary living structures shall be placed on the within conveyed lands and premises.
2. The within conveyed parcel of land may not be further subdivided.
3. No ~~vehicles~~, junk or other refuse may be stored on the premises;
4. Any dwelling erected on the subject lands and premises shall have living space of at least 1,200 square feet.

Reference is hereby made to the above mentioned deeds, to the references and descriptions therein contained and to the Town of Westfield Land Records for further and more complete description of the land and premises hereby conveyed.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said GRANTEES, MARK R. DESLANDES and BONITA DESLANDES, husband and wife as tenants by the entirety and their heirs and assigns, to their own use and behoof forever;

And we, the said GRANTORS, AUSTIN H. SLAYTON and VIVIAN J. SLAYTON, for ourselves and our heirs, executors and administrators,

2. Implied Covenants – Common Scheme



3. Covenants Involving Design Review





1. Covenants - Generally

A covenant is distinguished from an interest in land and is rather a restriction, limitation or requirement imposed on real property.

A covenant created by (a) inclusion in an instrument of conveyance or (b) in a separate instrument must be presumed to be valid and in effect unless the covenant expired by its terms or was released of record by an instrument executed by (i) a specified number or percentage of the holders of the beneficial rights pursuant to the terms of the instrument that creates the covenant; or (ii) in the absence of a specified number or percentage of the holders, all the holders of the beneficial rights pursuant to the terms of the instrument that creates the covenant.

1. COVENANTS – GENERALLY

COMMENTS

Creation

A covenant shall be presumed to run with the land if the covenant (a) touches and concerns the land; (b) is intended by the party imposing the covenant to run with the land; (c) is imposed in a written instrument; and (d) there is privity between the party imposing the covenant and the party against whom the covenant is to be enforced. ***Gardner v. Jefferys, 178 VT. 594 (2005).***

Intent

A covenant that is clear and unambiguous is given effect according to its terms. If a covenant is determined to be ambiguous and open to one or more reasonable interpretation, the intent of the original parties and circumstances of the creation of the covenant shall be considered. ***Creed v. Clogston, 2004 VT 34.***

S.O.L.

The statute of limitations applied to violation of covenants is 8 years. **12 V.S.A. §505**

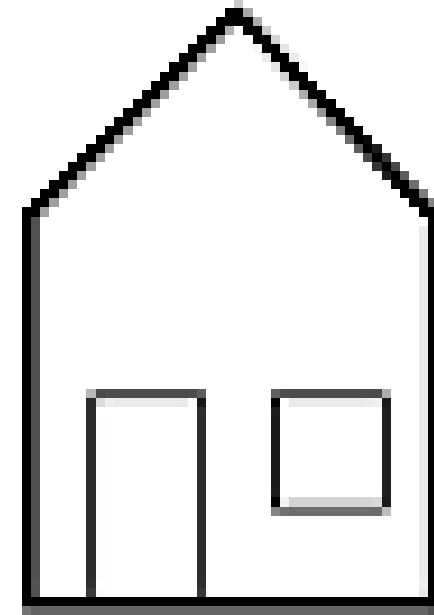
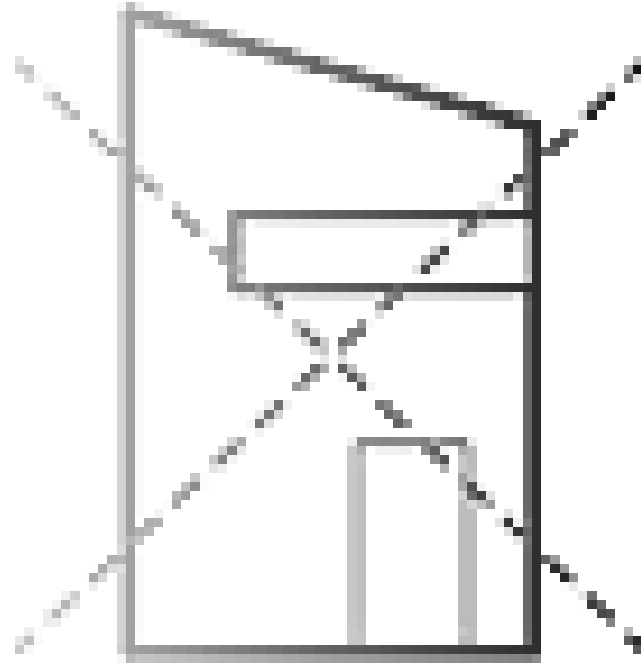


2. Implied Covenants – Common Scheme

When a title examiner encounters deeds to lots from a common grantor, some or all of which contain covenants regulating the use of the land conveyed, the title examiner must assess whether the covenants found in the chain of title differ from other deeds from the common grantor, and whether those covenants not found in the chain in title apply to the title being examined by virtue of inclusion in other deeds from the common grantor.

Common Scheme of Development

- Multiple Lots with varying covenants – similar but not identical?
- For the buyer/client – assume all covenants apply.
- Issues between neighbors can arise.
- Intent cannot always be determined between parties (or the Courts).
- "A provision in a contract is ambiguous only to the extent that reasonable people could differ as to its interpretation."



- E.G. *Creed v. Clogston*, 2004 VT 34
- 1982-2002 20-year span, 11 deeds
- Restriction: "No mobile homes, campers or trailers shall be installed for residential purposes, even on a part-time basis."
- Lower court ordered removal, reversed on appeal



3. Covenants Involving Design Review

When a title examiner encounters covenants that require design approval of improvements on the burdened property, the title examiner should determine if consent was provided according to the terms of the covenant.

Condominiums and Planned Communities

- **Common Interest Communities**
Defined under VCIOA and Condominium Act
Projects qualified as subdivisions
Statutory references
- **Unit Boundaries**
Properly identified
Requirements
- **Development Rights**
Statutory reservation
Required Amendments



Title Standard 13.1



13.1 Conveyance by Heirs' Deed

A deed by heirs, whether in warranty or quitclaim form, shall be effective to pass title to real estate where the same has been of record for a period of at least fifteen years and it is established by corroborative evidence that the signatories of said deed are all of the decedent's heirs-at-law.

13.1 Conveyance by Heirs' Deed

A deed by heirs, whether in warranty or quitclaim form, shall be effective to pass title to real estate where the same has been of record for a period of at least fifteen years; **or, if the deed is of record less than fifteen years, it is established by corroborative evidence that the signatories of said deed are all of the decedent's heirs-at-law subject to unexpired claims against the decedent, the estate, or estate tax liens.**

Title Standard 13.1



13.1 Conveyance by Heirs' Deed – Comment 2

Comment 2. Evidence of heirship may be established through probate or other public records in this or other states or by affidavit based upon personal knowledge from one closely acquainted with decedent's family history. *Jones v. Jones Estate*, 121 Vt. 111, 114 (1959). When reasonably possible, the collateral evidence thus established shall be placed of record and cross-indexed to the instrument of conveyance it purports to corroborate.

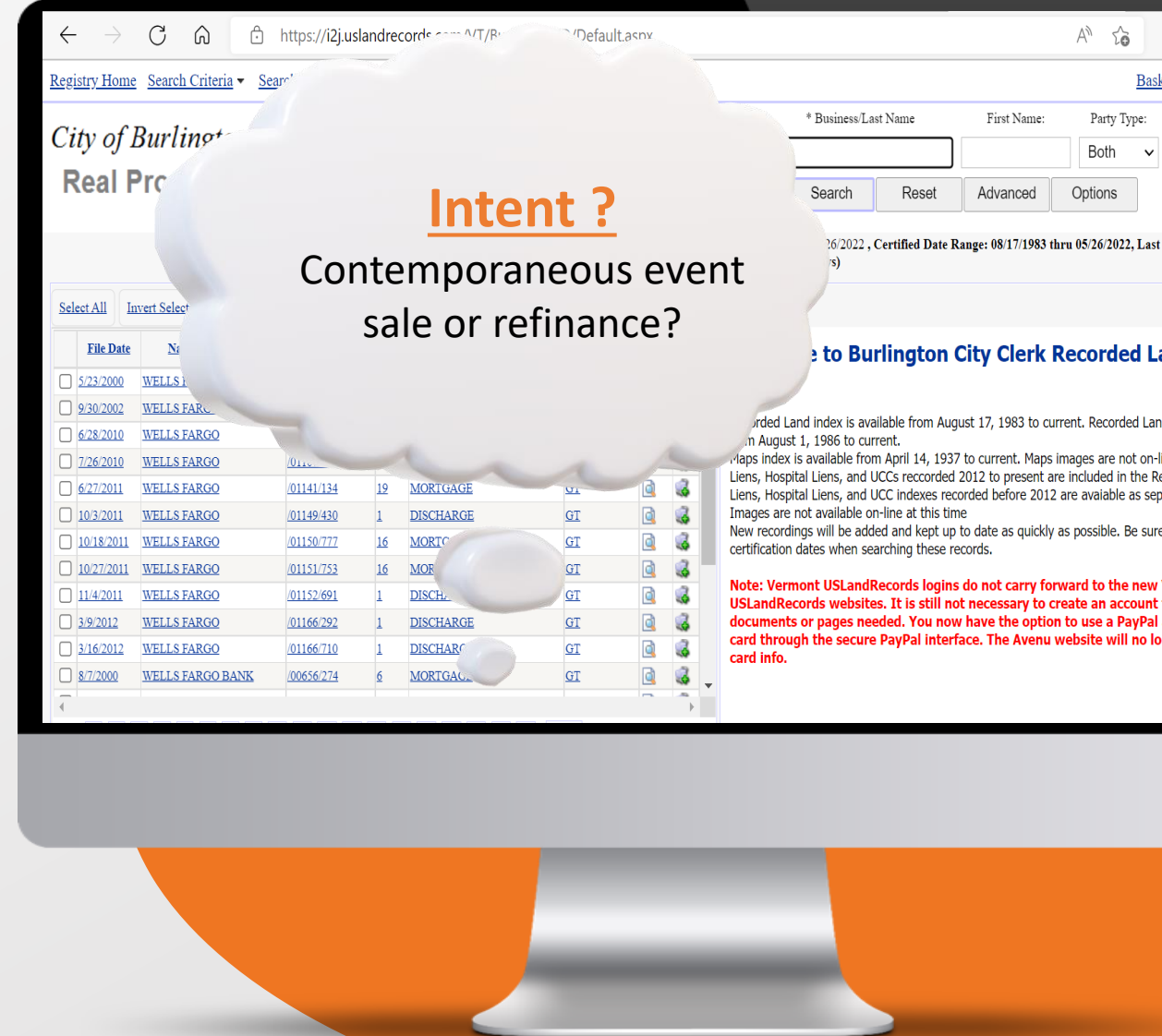
13.1 Conveyance by Heirs' Deed – Comment 2

Comment 2. Corroborative evidence of heirship may be established through probate or other public records in this or other states or, for example, by affidavit based upon personal knowledge from one closely acquainted with decedent's family history. *Jones v. Jones Estate*, 121 Vt. 111, 114 (1959). When reasonably possible, the collateral evidence thus established shall be placed of record and cross-indexed to the instrument of conveyance it purports to corroborate.

Discharges of Corrected, Re-Recorded, or Modified Mortgages

Title Standard 18.4

- Re-recorded/Corrective Mortgage and obvious it is to correct a previously recorded Mortgage and both purport to secure the same indebtedness = Discharge of the original Mortgage or later recorded Mortgage is sufficient to discharge both instruments unless Mortgagee's intent appears otherwise.
- Mortgage Modification Agreement = Discharge of the original Mortgage or the Mortgage Modification Agreement is sufficient.



THANK
YOU!

WE MISSED YOU!

**THANK YOU – FOR YOUR BUSINESS AND
YOUR TRUST!**



The Future Is Bright

building trust together.

