

Legislative Bulletin

Vermont

July 2010

The second biennium of the 2009-2010 session of the Vermont General Assembly recently adjourned. This *Legislative Bulletin* sets forth a number of new acts of interest to real property practitioners. If you have any questions or need assistance, please contact Andy Mikell at (800) 649-3366 or at amikell@caticaccess.com.

Act 75: Small Estates

This act amends a number of provisions in 14 V.S.A. Chapter 81, relative to small estates. Of particular import is section 2 of the act, which expands the range of estates that may qualify as a small estate to include those in which the deceased left a surviving parent or parents but no spouse or child. The maximum value of the personal estate of the deceased continues to be no more than \$10,000. *Effective July 1, 2010.*

Act 89: Termination of Occupancy of Farm Employee Housing

This act begins with a statement that the General Assembly acknowledges that Vermont farmers often provide housing to their employees as a benefit of employment. The stated purpose of the act is to provide a framework for the rights and responsibilities of farmers and their employees where housing is so provided. The act sets forth a standard notice that shall be given to such an employee when the term of employment ends, thus ending the right to occupy the housing. A hearing may be held on the farmer's request for a court order, and the former employee is entitled to file a counterclaim. The filing of a counterclaim will not delay or stop the court from ordering the employee to leave and vacate the dwelling. Further information concerning the relationship between the farmer-employer and the employee is set forth in the act. *Effective April 28, 2010.*

Act 92: Technical Corrections to the Trust Laws

This act makes a number of technical corrections to the Trust Code, covering matters such as certifications of trust, the definition of "qualified beneficiary," and discretionary trusts. *Effective July 1, 2010.*

Act 96: Licensing and Regulation of Loan Servicers

This act adds a new Chapter 83 to Title 8 of the Vermont Statutes ("Banking and Insurance"), titled "Loan Servicers." No person shall act as a third party loan servicer, directly or indirectly, for a loan to a Vermont borrower without first obtaining a license from the Commissioner of Banking, Insurance, Securities and Health Care Administration, in accordance with the new Chapter. The new Chapter applies to residential mortgage loans, and not to commercial loans. No license shall be required of a depository institution, licensed lenders retaining the servicing

rights on a loan originally closed in that lender's name, licensed debt adjusters, and bona fide nonprofit organizations. Detail is set forth concerning the application for a license, bonding requirements, financial and recordkeeping obligations, prohibited acts, and the Commissioner's disciplinary authority.

The act specifies that its provisions do not apply to the Vermont Student Assistance Corporation, 16 V.S.A. 2821. *Effective January 1, 2011.*

Act 103: Regulation of Professions and Occupations

This lengthy act amends numerous statutes that govern the licensing of various occupations and professions, most of which are not of import to the real property practitioner. Of interest, however, are sections 40 through 49, which implement a registration requirement for appraisal management companies. The term is defined in the act as "an entity that acts as a broker in acquiring finished appraisals from real estate appraisers licensed under this chapter (26 V.S.A. Chapter 69) and that supplies the appraisals to third parties." The new statutes set forth detail concerning the registration requirement, prohibited practices, and record retention. *Effective, generally, July 1, 2010.*

Act 110: Establishment of a River Corridor Management Program

Section 1 of this act sets forth the legislature's findings relative to the need to protect the state's surface waters and the shorelands and floodplains that are adjacent to those waters. The act then states that it is in the public interest to encourage and promote buffers adjacent to the lakes, ponds, reservoirs, rivers and streams of the state; to encourage and promote protected river corridors adjacent to rivers and streams; and to authorize municipal river corridor protection. The Secretary of Natural Resources shall establish a shoreland management program to aid and support municipalities in adopting municipal shoreland bylaws, and develop best management practices for the management of shorelands, including buffers within shorelands. Financial incentives shall be offered to municipalities to encourage municipal adoption and implementation of zoning bylaws that protect shorelands and buffers.

Title 10 ("Conservation and Development") is amended by the addition of a new Section 1427, titled "River Corridors and Buffers." The new statute provides that the Secretary shall establish a river corridor management program to aid and support the municipal adoption of river corridor and buffer bylaws. Financial incentives shall also be offered to towns that adopt such bylaws.

Other sections of the act address the municipal adoption of such bylaws, activities by the Agency of Natural Resources, various conservation practices, farmland protection, watercourses, stream alteration permits, and highway construction. *Effective, generally, July 1, 2010, with some sections effective May 18, 2010, and other sections not effective until 2011.*

Act 117: Encroachments on Public Waters

29 V.S.A. § 401 sets forth the state's policy regarding the management of lakes and ponds which are public waters and the lands lying thereunder. Act 117 amends the statute to add the following

language: “For the purposes of this chapter, jurisdiction shall include encroachments of docks and piers on the boatable tributaries of Lake Champlain and Lake Memphremagog upstream to the first barrier to navigation, and encroachments of docks and piers on the Connecticut River impoundments and boatable tributaries of such impounds upstream to the first barrier to navigation.” 29 V.S.A. § 403 is amended to prohibit any encroachment by way of a dock or a pier on such areas without a permit. *Effective July 1, 2010.*

Act 129: Contested Housing Security Deposit Withholding

Section 1 of this act amends 9A V.S.A. § 3-311 (Uniform Commercial Code, Commercial Paper, “accord and satisfaction by use of instrument”) to provide that the section shall not apply to 9 V.S.A. § 4461, relating to security deposits for residential rental units.

Section 2 of the act amends 9 V.S.A. § 4467, which provides that a landlord’s acceptance of partial payment of rent shall not constitute a waiver of the landlord’s remedies for nonpayment of rent. The revised statute now also provides that acceptance of partial payment of rent shall not constitute an accord and satisfaction for nonpayment of rent. *Effective July 1, 2010.*

Act 132: Mediation in Foreclosure Proceedings / Marketable Title

The first portion of this lengthy act establishes a program to assure the availability of mediation and the application of the federal Home Affordable Modification Program (HAMP) requirements in the foreclosure of a mortgage on owner-occupied one-to-four family residences. When a foreclosure action is pending as to a loan that is subject to HAMP guidelines, the case shall be referred for mediation so long as the mortgagor enters an appearance or requests mediation prior to four months after judgment is entered. The act sets forth detail concerning notices that shall be given to the mortgagor, the mediation process, the issuance of a mediation report by the mediator, and the obligations of the mortgagee or servicer. These sections of the act are effective July 1, 2010, and will be repealed on the same day as the expiration date of the federal HAMP statutes.

The act also amends various statutes that affect certifying marketable title to real estate. Section 6 amends 27 V.S.A. § 305 to provide that a conveyance of real estate made by way of a power of attorney executed in another state shall be effective if it is executed in accordance with the laws of the other state, even if it does not meet Vermont’s requirements. This section applies retroactively, although it will not affect a suit begun or pending as of July 1, 2010.

Section 7 of the act amends 27 V.S.A. § 348 to add the lack of proper witnessing to the list of defects in an instrument that are cured after the passage of 15 years. Section 8 amends 12 V.S.A. § 506 to provide that in order to revive or renew a judgment a new and independent action on the judgment must be brought. Section 9 amends 12 V.S.A. § 2903 to provide that the filing of an action to foreclose a judgment lien shall extend the eight year life of the lien, so long as a copy of the complaint is filed in the land records on or before eight years from the issuance of the final judgment. A judgment that is renewed or revived shall constitute a lien for eight years from the issuance of the renewed or revived judgment, so long as the judgment is recorded in accordance with the statute.

Section 10 of the act amends 19 V.S.A. 1111, to provide for a 15-year statute of limitation on municipal actions to enforce highway related permits. Section 11 amends 14A V.S.A. § 102 to provide that Section 1013 of Title 14A (certification of trust) shall apply to all trusts described in § 102, as amended. *Effective, generally, on May 29, 2010, with the foreclosure mediation provisions effective July 1, 2010.*

Act 134: Executive Branch Fees

This lengthy act increases fees for various permits and other matters, including application fees for construction plan approvals and licensing for various occupations. Section 19 concerns notification to the Banking Commissioner when changes occur to the employer or sponsor of a mortgage loan originator. Sections 24a through 24i concern applications for a commercial lender license. Section 30 increases various fees for permits and other actions taken by the Agency of Natural Resources. Section 33 increases fees for various land use permits. *Effective, generally, May 29, 2010.*

Act 137: Department of Banking, Insurance, Securities, and Health Care Administration

This lengthy act makes numerous revisions to the statutes governing banking, insurance, securities and health care. Section 4 of the act provides that the holder of a mortgage on an owner-occupied one-to-four family residence shall maintain a registered agent in the state with the authority to endorse insurance claims checks on behalf of the mortgage holder, or take any other action incident to the mortgage on behalf of the mortgage holder. Information concerning the agent shall be filed annually with the Banking Department. This provision shall not apply to financial institutions that maintain a physical location in the state; mortgage loans between immediate family members; a seller of owner-occupied property who takes back a mortgage from the buyer; and state agencies, political subdivisions or other public instrumentalities. This section of the act is effective October 1, 2010.

Other matters covered by the act include licensing, captive insurance companies, insolvent insurers, and fire safety training programs. *Effective, generally, on July 1, 2010, with some provisions effective May 29, 2010, and Section 4, above, effective October 1, 2010.*

Act 140: Transfers of Mobile Homes / Rent-To-Own Transactions

This act makes many substantive revisions to 9 V.S.A. § 2602, relative to the sale or transfer of a mobile home. The revised statute sets forth a new mobile home uniform bill of sale and a new process for documenting that the property taxes associated with the mobile home have been paid. The act also imposes requirements for mobile home “rent-to-own” agreements. *Effective September 1, 2010.*

Act 145: Potable Water Supply and Wastewater System Permits

Section 1 of this act adds a new § 1973(j) to Title 10, concerning applications for a permit for a water supply or wastewater system with isolation distances that extend onto property other than

the property for which the permit is sought. The act requires the applicant to send a copy of the complete permit application, including any plans, to any such neighboring landowner, no later than the date that the permit application is submitted to the Secretary of the Agency of Natural Resources. The applicant shall certify to the Secretary that the required notice and other information have been sent to the affected landowners, and shall provide the Secretary with the names and addresses of all such affected neighboring landowners.

Section 2 concerns the municipal adoption of bylaws that condition the issuance of a final permit upon the issuance of a wastewater and potable water supply permit under Chapter 64 of Title 10. Section 3 of the act calls for the reconvening of the Technical Advisory Committee charged with advising the Secretary of Natural Resources on the technical standards and proven technologies regarding potable water supply and wastewater systems. The reconvened Committee shall review issues related to the extension of isolation distances onto adjoining property. *Effective June 1, 2010.*

Act 155: Uniform Common Interest Ownership Act

This very lengthy act makes numerous changes to the state's Common Interest Ownership Act, and addresses the formation, management and termination of common interest communities, including condominiums, planned communities and real estate cooperatives. Revisions of import cover matters such as the applicability of CIOA to pre-existing common interest communities, amendments to a declaration, the powers and duties of an association, association records, the removal of officers and directors, and the conduct of meetings held by unit owners and by the executive board. These revisions to CIOA are driven by changes made in the last few years to the Uniform Act, as promulgated by the National Conference of Commissioners on Uniform State Laws. *Effective January 1, 2012.*

Act 160: Miscellaneous Tax Provisions

This very lengthy act contains many revisions to the state's various tax laws. Among the items of interest are sections 16 through 20 of the act, which revise the statutes governing the property transfer tax (32 V.S.A. § 9601, *et seq.*). For example, section 16 amends 32 V.S.A. § 9605(a) to provide that the tax paid under the Chapter shall be paid directly to the Commissioner of Taxes (rather than to the town clerk) at the time of the transfer of title to the property subject to the tax. Section 9 of the act provides that a municipality may recover all expenses associated with the maintenance of an uninhabitable building, so long as the municipality has adopted rules to determine habitability, including provisions for appropriate notice to the building's owner prior to incurring expenses, and provisions for an administrative appeals process. The expenses a municipality incurs in this regard constitute a lien on the property, in the same manner and to the same extent as property taxes. *Effective at various times, with sections 16 through 20 applicable to transfers occurring on or after January 1, 2011, and section 9 effective June 4, 2010.*