

VERMONT

2008 STATE LEGISLATIVE TOPICS

VIII. B.

[Act 90: Grants to Communities / Ancient Roads and Unidentified Corridor Requirements](#)

This lengthy act, which makes adjustments to various budget matters, includes a provision setting aside the sum of \$55,000 to be used for grants to communities, on a one-time basis, for costs related to ancient roads and unidentified corridors requirements. *Effective March 6, 2008.*

X. F.

[Act 96: Consolidating Management of Public Records](#)

This act consolidates the administration and management of public records into a new program called the Vermont State Archives and Records Administration, within the Office of the Secretary of State. The state archivist shall serve as Director of the program. The act amends 3 V.S.A. § 117, listing the duties of the state archivist, to add new language providing that the state archivist shall administer a central reformatting program for public records, including land records. Public records that are microfilmed, electronically captured, or otherwise reformatted shall be taken and received in all courts, public offices, and official bodies as prima facie evidence. The state archivist shall also establish policies for the management of public records and public documents, with the policies to include instructions for retention, access and management of such records and documents. *Effective July 1, 2008.*

VIII. B.

[Act 158: Mapping Class Four Town Highways and Trails / Discontinuances of Unmapped Town Highways](#)

Section 1 of this act sets forth the General Assembly's finding that there is a need to clarify the provisions of 19 V.S.A. § 305(h) relative to a municipality's ability to discontinue town highways. The act extends, by one year, the time which municipalities have to map unidentified corridors from July 1, 2008 to July 1, 2009. The act states that "...19 V.S.A. § 305(h) is intended to apply only to those highways that are not otherwise clearly observable by physical evidence of their use as a highway or trail." Notwithstanding this new language, the act also provides that on or before July 1, 2010, a municipality's legislative body may vote to discontinue all town highways that are not otherwise clearly observable. *Effective July 1, 2008.*

IX. E.

[Act 177: Discharge of Mortgage by Attorney / Conveyance of Homestead Interest / Validation of Mortgage Discharges](#)

Section 1 of this act adds a new subsection (d) to 27 V.S.A. § 141, concerning estates of homestead and the execution and acknowledgment of conveyance. The new subsection provides that a spouse or civil union partner may convey his or her respective homestead interest to the other party prior to the time the homestead right vests, thereby divesting the grantor of any homestead interest in the property. A conveyance of homestead property between spouses or civil union partners shall be deemed to include a conveyance of any homestead interest. This revision to the statute is to apply retroactively, except that it shall not affect a suit begun or pending as of July 1, 2008.

Section 2 of the act amends 27 V.S.A. § 348, concerning the validation of defective instruments of record, by adding new language validating certain errors after three years. The types of errors validated include: a defective acknowledgment; an incorrect statement of date of execution; the absence of a statement of consideration; and the improper execution of a conveyance from a business entity. The new language also validates, immediately, certain errors relative to the execution of a document pursuant to a recorded power of attorney, such as the failure to reference the power of attorney, or the recording of the power of attorney after the recording of the instrument. Additional language concerns the discharge or assignment of a mortgage interest executed by a commercial lender with respect to one-to-four family residential real estate, which document recites the authority to act on behalf of the record holder of the mortgage, under a power of attorney, where the power of attorney is not of record. The new language validates such a discharge or assignment, unless within three years of the recording of the instrument an action to challenge the document is brought and a copy of the complaint is recorded on the land records. This new provision shall not apply to releases, discharges or assignments obtained by fraud or forgery.

Section 3 amends 27 V.S.A. § 464a, which allows an attorney to discharge a mortgage if the mortgagee has failed to do so. The existing statute was limited to mortgages on dwellings with two units or less and occupied by the owner as a principal residence, and to mortgages on farmland. The revised statute removes that limitation, thereby allowing the discharge as to any type of property. The new language also provides that the statute shall apply if a discharge has been executed by, or is in the name of, a purported mortgagee that is not the holder of record, or if the discharge was not executed in accordance with Sections 461 ("by entry on record"), 462 ("by acknowledgment of payment"), or 463 ("by separate instrument") of Title 27. Other revisions to the statute concern the content of the affidavit to be recorded on the land records, and provide that the attorney who executes and records a discharge of mortgage pursuant to the statute shall not be liable to the holder of the mortgage, except in the event of negligence or fraud by the discharging attorney.

Section 4 adds a new § 470 to Title 27, titled "Validation of Mortgage Discharge on One-to-Four-Family Residential Property." The new statute sets forth criteria for the validation of a discharge with respect to such a mortgage where the discharge is not executed by or is not issued by or in the name of the record holder of the mortgage. Three years must have passed with no challenge to the validity of the mortgage. There must be an affidavit, recorded and dated more than three years after the recording of the discharge, setting forth the following: a statement that the affiant has been the record owner of the property for at least two years prior to the date of the affidavit; the recording information for the mortgage, any assignments and the release; a statement that, since the date of the recording of the release, the affiant has received no demand for payment or any notice that would indicate that all or any part of the mortgage debt remains unpaid; and a statement that, to the best of the affiant's knowledge and belief, the mortgage has been paid in full. The provisions of this new section shall not apply to any release obtained by fraud or forgery. *Effective July 1, 2008.*

I. F.

[Act 186: Guardianships](#)

This lengthy act makes a number of revisions to 14 V.S.A. Chapter 11, concerning guardianship, covering matter such as the probate court's supervisory authority over guardians; petitions for the appointment of a guardian; court-ordered evaluation of a respondent; advance directives and consent for medical or dental treatment; guardianship powers; financial conflicts of interest; annual reports and accountings; and termination and modification of guardianship. The act also establishes a task force charged with assessing ways to improve guardian accountability and competency and protect the rights and well-being of individuals under guardianship. The task force shall report its findings and recommendation on or before December 15, 2008. *Effective July 1, 2008.*

II. C.

[Act 199: Groundwater Withdrawal Permit Program](#)

Section 1 of this act sets forth the General Assembly's finding that it is the policy of the state that the state shall protect its groundwater resources in order to maintain high-quality drinking water, that the groundwater resources shall be managed to minimize the risk of groundwater quality deterioration by regulating human activities that

pose a risk to those groundwaters, and that the groundwater resources of the state are held in trust for the public. A new Subchapter 6 is added to 10 V.S.A. Chapter 48, titled "Groundwater Withdrawal Program," covering matters such as groundwater withdrawal permits and reporting requirements, public input at hearings on permit applications, and the adoption of rules by the Secretary of the Agency of Natural Resources implementing the new statutes. The rules shall include requirements for the mitigation of undue adverse effects on water systems and requirements for the renewal of permits. *Effective June 9, 2008.*