

***May a town clerk refuse to record a survey?***

As a matter of law, clerks are required to record “deeds, instruments or evidences respecting real estate, writs of execution, and other writs,” as defined in 24 V.S.A. § 1154. Generally, the clerk’s job is to record and file records, not to determine the absolute validity of mortgages, deeds, survey plats, and other records to be filed. The nature of a recording office is such that it cannot possibly inquire into the legal validity of all the documents that it is presented with for recording. As a rule, clerks do not (and typically do not have the time to!) inquire into the legality of a document that is offered for recording.

There seems to be only one departure from this general rule of “non-inquiry” into the validity of a document. In this one instance, clerks do have discretion in the recording of an instrument. If a deed refers to a survey plat that has not already been filed with the clerk’s office, the deed cannot be recorded. (The survey must be attached or must be referenced if it has already been recorded.) 27 V.S.A. § 341 (b).

Survey plats must meet certain legal requirements in order to be recorded. Survey plats are maps that are drawn to scale of a parcel, or parcels, of land, tracts, or subdivisions of land, that show, at a minimum, boundaries, corners, markers, monuments, and easements. 27 V.S.A. § 1401. Survey plats are also referred to as “mylars.” Twenty-seven V.S.A. § 1403 lists specific requirements including, but not limited to, dimensions, information included on the plat, and signatures of surveyors that a survey plat must include in order to be recorded. Town clerks are directed by 27 V.S.A § 1406 not to accept any survey plat for recording unless the plat is in compliance with the requirements listed in 27 V.S.A. § 1403.

Ultimately, if a survey plat is not in compliance with the requirements of the law, not only may a clerk refuse to record such a plat, he or she is statutorily prohibited from recording or filing it unless and until it is brought into compliance with 24 V.S.A. § 1403.

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