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May a town clerk refuse to record a survey plat?

Sometimes. 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 are presented for recording. As a rule, clerks should not (and typically do not have the time to) inquire into the legality of a document that is offered for recording.

There are two points of departure from this general rule of “non-inquiry” into the validity of a document: deeds that refer to surveys, and the surveys themselves. In these two instances, clerks have discretion over whether to record 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 unless the survey was prepared on or prior to July 1, 1988. Otherwise the survey must be attached to the deed 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 one or more 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 commonly referred to as “mylars.” However, this has become somewhat of a misnomer now that the use of mylars is no longer required by law. Twenty-seven V.S.A. § 1403 lists specific requirements that a survey plat must include in order to be recorded. A plat must:

1. be on sheets 11"× 17" or 18"× 24" in size or 24"× 36" if the town or city has appropriate storage facilities as determined by the town or city clerk;
2. contain an inset locus map clearly indicating the location of the land depicted and a legend of symbols used;
3. have all lettering and data clearly legible;
4. be of a scale sufficient to allow all pertinent survey data to be shown, and each plat shall contain a graphic scale graduated in units of measure used in the body of the plat;
5. have at least a one-half inch margin, except at least a 1½" margin on the binder side;
6. contain a title area in the lower right-hand corner of the sheet stating the location of the land, scale expressed in engineering units, date of compilation, the name of the record owner as of that date, the land surveyor’s certification as outlined in 26 V.S.A. § 2596, and a certification that the plat conforms with requirements of 27 V.S.A. § 1403, and be accompanied by the responsible land surveyor’s seal, name and number, and signature; and
7. contain a graphical indication of the reference meridian used on the survey plat and a statement describing the basis of bearings referenced on the survey plat.

When the plat sheet is produced by a reproduction process, the process must be identified and certified to by the producer in the margin of the plat sheet. Original plat sheets must be identified and certified to by the same process. Survey plats prepared and dated before July 1, 1992, are exempt from requirements 2-7 above, but must still comply with requirements in state law in effect when the plats were prepared and dated. Survey plats prepared and dated before any statutory regulation of land plats must comply with requirements 1 and 2 above. Plats prepared and dated before July 1, 1992, but revised after this date must meet all the requirements of sections 27 V.S.A. §§ 1401-1406.

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 or is exempt from certain plat criteria pursuant to 27 V.S.A. § 1404.

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.

[This is an update to an article by Maria Gomez originally published in the May 2004 *VLCT News*.]

Gwynn Zakov, Staff Attorney I
Municipal Assistance Center