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Guide to Doing Business

Vermont

Prepared by Lex Mundi member firm, Downs Rachlin Martin PLLC

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Guide to Doing Business in Vermont:
A Legal Guide for Out-of-State and Foreign Businesses

Disclaimer

The information in this Legal Guide represents a general guide to certain Vermont state laws applicable to doing business in Vermont and is based on information available as of July 1, 2017. This guide does not address United States federal law issues and should not be relied upon in any specific factual situation. If you have any other questions or specific issues to be resolved, you should contact a lawyer authorized to practice in Vermont.

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Chapter 1: Business Entities

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Once the decision is reached to start a business or buy an existing business, the careful entrepreneur will work with his or her professional advisors to decide upon the type of business entity that will best serve his or her financial and operational goals. In most instances, this analysis will be driven by concerns regarding the tax treatment of the business' profits (or losses), the potential of personal liability for the business' debts and the management and control of the business. This Chapter outlines the various types of business entities available to the entrepreneur in Vermont.

1. Business Corporations

A business corporation is owned by its shareholders, managed by its board of directors and operated by its officers. It is the most common type of business entity in Vermont.

The Vermont Business Corporation Act ("VBCA") governs the formation, and subsequent management of a business corporation. The VBCA is a general corporation statute enacted by the Vermont legislature. The VBCA was based upon the Model Business Corporation Act drafted by the American Bar Association (the "MBCA"). A majority of states, including Vermont, have adopted a version of the MBCA, providing Vermont with a uniform and flexible approach to the regulation of business corporations. The following is a brief discussion of some important concepts under the VBCA. The income tax treatment of corporations is discussed in Chapter 4.

1.1 Formation

To form a business corporation, one or more individuals of majority age must file articles of incorporation with the Vermont Secretary of State, which may be made online in a format prescribed by the Secretary of State. The articles of incorporation set forth basic information regarding the new business corporation, including the corporate name, the number of shares the corporation is authorized to issue, the classes of shares, if any, the class or classes of shares with unlimited voting rights and the right to receive the net assets of the corporation upon dissolution, the street address of the corporation's initial registered office, the name of its initial registered agent, and the name and address of each incorporator. There are a number of optional provisions that may be included in the articles of incorporation, including a statement of the purpose or purposes for which the business corporation is organized and a limitation on a director's liability to the corporation and its shareholders for certain actions taken or not taken by the director.

The existence of a business corporation begins when the Vermont Secretary of State issues a certificate of incorporation. To complete the formation of the corporation, the initial board of directors will hold an organizational meeting to appoint officers to operate the corporation, adopt bylaws to govern the management of the corporation and, quite commonly, accept subscriptions from investors to purchase shares of stock in the new corporation.

1.2 Purposes and Powers

Once formed, a business corporation can engage in any lawful business under Vermont law unless a more limited corporate purpose is set forth in the articles of incorporation. A business

corporation has broad corporate powers under the VBCA to purchase and otherwise acquire and hold, own, improve and use real or personal property, wherever located, as well as the ability to sell, convey, mortgage and otherwise dispose of all or a part of its property. Further, a business corporation can enter into contracts, incur liabilities, borrow money and issue other obligations, on a secured or unsecured basis.

1.3 Capital Structure; Limited Liability

The articles of incorporation must prescribe the classes of shares, if any, and the number of shares of each class that the business corporation is authorized to issue. The articles of incorporation must also authorize one or more classes of shares that together have unlimited voting rights and one or more classes of shares that together are entitled to receive the net assets of the corporation upon dissolution. Beyond these requirements, the corporation is free to structure its capital as it sees fit. For example, the business corporation may issue shares of stock that have limited voting rights, including no right to vote at all (except to the extent otherwise prohibited by the VBCA), or, importantly, have preference over any other class of shares with respect to dividends and distributions.

A principal feature of the business corporation is that a shareholder of a corporation is not personally liable for the acts or debts of the corporation. Therefore, with some exceptions, a shareholder's risk will generally be limited to the amount of his or her capital investment in the corporation. The concept of limited liability is a cornerstone of the corporate form.

1.4 Management

The shareholders meet annually to elect the board of directors of the corporation, and under Vermont law, such meetings may take place through any means of electronic telecommunications, such as video conferencing. The board of directors is statutorily charged with managing the overall business and affairs of the corporation. The board of directors must consist of at least one individual. The board of directors appoints the officers of the corporation, who oversee the day-to-day operations of the corporation.

1.5 Indemnity and Insurance

The business corporation may, and in some instances is required to, indemnify its officers and directors against claims for damages asserted by third parties. The corporation may, but is not required to, purchase insurance on behalf of its officers and directors for liability asserted against or incurred by him or her in that capacity or arising from his or her status as an officer or director. This insurance may be purchased regardless of the corporation's obligation or ability to indemnify the officer or director for such liability pursuant to Vermont law.

1.6 Close Corporations

An entrepreneur may want the benefit of limited personal liability but not the perceived burden and expense of maintaining the corporate form. For these entrepreneurs, the VBCA provides for the "close corporation." A close corporation may be managed directly by the shareholders without a board of directors and can eliminate the need for bylaws and an annual meeting.

To form a close corporation, the articles of incorporation must state that it is a close corporation, provide that all of the corporation's issued and outstanding stock will be held by not more than a specified number of persons, not exceeding 35, provide that all of the corporation's issued and outstanding shares will be represented by certificates and that each certificate for shares will both

conspicuously note the fact that it is a close corporation and include related provisions regarding transfer restrictions, and, lastly, provide that the corporation may not offer any of its shares in a "public offering."

2. Partnerships

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. There are two principal types of partnerships – a general partnership and a limited partnership. Like the VBCA for business corporations, Vermont has adopted national uniform statutes to govern general partnerships and limited partnerships.

The primary difference between these two types of partnerships is the imposition of personal liability on each partner in a general partnership; whereas, in a limited partnership, the limited partners are not personally liable for the debts of the partnership.

2.1 General Partnerships

A general partnership may be formed whether or not the persons intend to form a partnership. The partnership will be formed if there is an association of two or more persons to carry on as co-owners of a business for profit. While a general partnership is a separate legal entity under Vermont law, no filing is required to establish a partnership. Most often, the formation of a partnership is accomplished through a written partnership agreement. This agreement will set forth the rights and duties of the partners with respect to each other and the partnership.

Each partner is an agent of the partnership for purposes of its business. Therefore, each partner can act to bind the partnership with respect to matters within the ordinary course of the partnership's business. As noted above, each general partner will be jointly and severally liable for the obligations of the partnership. Often the partnership agreement will narrow the rights of the general partners to act on behalf of the partnership in order to minimize the risk of personal liability.

All property acquired by a partnership is property of the partnership and not of the partners individually. The capital contributions of the partners to a general partnership are maintained by the partnership in a capital account. Each partner is entitled to a share of the partnership's profits and losses. If additional money is needed to fund the partnership, the partnership agreement will typically set forth the terms and conditions of any additional capital contributions.

A general partnership may also elect to become a limited liability partnership. To do so, a partnership must file a statement of qualification with the Vermont Secretary of State. The limited liability partnership must also file an annual report with the Vermont Secretary of State. The benefit of a limited liability partnership is that, unlike a general partnership, the obligations of the partnership are solely the obligations of the partnership and a partner is not personally liable solely by reason of being or acting as a partner. This benefit may make general partnerships, through this election, an attractive alternative to limited partnerships, discussed below.

For income tax purposes, all income and losses generated by a general partnership (or limited liability partnership) are passed through to the partners, whether or not the profits and losses are actually distributed to the partners. The only exception to this is a $250 minimum tax imposed on the partnership if it carries on business in Vermont sufficient to subject its partners or members to Vermont income tax. See Chapter 4 for more on partnership taxation in Vermont.

2.2 Limited Partnerships

A limited partnership consists of one or more general partners and one or more limited partners. The general partners have joint and several liability for the liabilities of the partnership, whereas the limited partners do not. The liability of a limited partner for the debts of the limited partnership are limited to the capital investment of the limited partner in the partnership.

The general partners of a limited partnership typically manage the affairs and day-to-day operations of the partnership. The limited partners typically do not participate in the management of the limited partnership. In fact, any such involvement by a limited partner may make the limited partner jointly and severally liable for the debts of the partnership, much like a general partner.

To form a limited partnership, a certificate of limited partnership must be filed with the Vermont Secretary of State. Like general partnerships, limited partnerships are "pass through" entities for tax purposes. All profits and losses generated by the partnership are reportable by the partners on their individual tax returns. The only exception to this is a $250 minimum tax imposed on the partnership if it carries on business in Vermont sufficient to subject its partners or members to Vermont income tax. See Chapter 4 for more on partnership taxation in Vermont.

3. Limited Liability Companies

Vermont authorized the formation of limited liability companies in July 1996, with the passage of the Limited Liability Company Act. The Vermont Limited Liability Company Act was substantially revised in July of 2015, based largely on the Uniform Limited Liability Company Act as adopted in 2006 by the National Conference of Commissioners on Uniform State Laws. The Revised Vermont Limited Liability Company Act ("RLLCA") became effective on July 1, 2015 as to LLCs formed on or after July 1, 2015, and any LLC that elected to be governed by the RLLCA. The RLLCA became effective as to all LLCs on July 1, 2016. Like many states, Vermont allows the formation of single-member LLCs.

The LLC is most similar to the limited liability partnership, although it shares some state law concepts with the corporation. As a pass-through entity for tax purposes, the LLC may be more advantageous for closely held businesses than an S corporation, which requires distributions of profits and losses strictly proportionally to share ownership.

With certain exceptions, an LLC's operating agreement regulates the affairs of the LLC, the conduct of its business and relations among its members. The RLLCA provides members considerable flexibility in managing the LLC and also sets out detailed default governance provisions that apply unless overridden by the operating agreement.

To form an LLC, the members file articles of organization with the Vermont Secretary of State. As with business corporations, these filings may now be made online. Multi-member LLCs are generally taxed as partnerships on a pass-through basis. Single-member LLCs are generally disregarded as separate entities for tax purposes, i.e. treated as sole proprietorships, unless the member elects to be taxed as a corporation. See Chapter 4 for more on limited liability company taxation in Vermont.

4. Low-Profit Limited Liability Companies ("L3Cs")

In 2008, Vermont became the first state in the nation to authorize the formation of low-profit limited liability companies commonly referred to as "L3Cs". The L3C legislation is intended to bridge the gap between non-profit and for-profit investing by providing a business structure that

facilitates investment in socially beneficial, for-profit ventures while simplifying compliance with IRS rules. Through the L3C, private foundations and philanthropic investors can promote job creation and economic growth while supporting socially responsible efforts in the communities where they choose to invest.

With one important exception described below, the L3C is formed and operated in a manner consistent with other limited liability companies organized under the RLLCA.

To qualify as an L3C, Vermont law requires that (i) the company significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of 28 U.S.C. § 170(c)(2)(B) and would not have been formed but for the company's relationship to the accomplishment of charitable or educational purposes, (ii) no significant purpose of the company is the production of income or the appreciation of property, and (iii) no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of 28 U.S.C. § 170(c)(2)(D). These requirements concerning social benefit distinguish the L3C from the traditional LLC.

5. Sole Proprietorships

An individual may do business in Vermont as a sole proprietorship. This business form, consisting of an individual conducting business in his or her individual capacity, does not require that the individual file any forms in Vermont or otherwise document the formation of the sole proprietorship, unless the individual is doing business under a name other than his or her own. Individuals doing business under a name other than his or her own name must file a tradename registration with the Vermont Secretary of State.

An individual operating as a sole proprietorship does not enjoy the limited personal liability found with substantially all other types of business entities: an individual conducting business as a sole proprietor has unlimited personal liability for the debts of the business. While available as a business form in Vermont, well-advised entrepreneurs will generally avoid conducting business as a sole proprietorship.

6. Non-Profit Corporations

While not necessarily the business entity of choice for the aspiring entrepreneur, Vermont law does provide for the establishment of nonprofit corporations. The nonprofit corporation is typically organized for charitable, educational, scientific or civic purposes and is not permitted to pay dividends or otherwise make distributions. If certain requirements are met, the nonprofit corporation may qualify as a tax-exempt organization under state and federal law. Some of Vermont's largest employers are organized as nonprofit corporations.

The Vermont Nonprofit Corporation Act ("VNCA") governs the formation and subsequent management of a nonprofit corporation. As with the VBCA, the VNCA is a general corporation statute enacted by the Vermont legislature and is based upon a model act drafted by the American Bar Association.

The provisions governing the formation, and subsequent management, of a nonprofit corporation are substantially similar to those governing a business corporation. For example, the nonprofit corporation is formed by filing articles of incorporation with the Vermont Secretary of State that comply with the VNCA, and the overall management of the corporation is vested with a board of directors or trustees.

There are, however, some fundamental differences between the business corporation and the nonprofit corporation. These differences are dictated by the charitable nature of the nonprofit corporation and make this form of business entity ill-suited for an entrepreneur. The VNCA's treatment of the concept of ownership and distributions can be summarized as follows:

6.1 Ownership

The business corporation is owned by its shareholders, who expect (or at least hope) that their investment will appreciate in value. The non-profit corporation, in contrast, is organized to benefit the public and no individual or entity "owns" the corporation.

6.2 Distributions

The shareholders of a business corporation may receive dividends and distributions from the profits of the business corporation. The members of a nonprofit corporation, in contrast, are prohibited from receiving dividends or distributions from the nonprofit corporation. Any revenues generated by the nonprofit corporation are expected to be used by the corporation to further its charitable mission.

7. Benefit Corporations

The Vermont Benefit Corporations Act offers a vehicle to the entrepreneur who is concerned not only about shareholder profits, but also about environmental and social benefits to the community. Like a business corporation, a benefit corporation is owned by its shareholders, managed by its board of directors and operated by it officers. However, unlike a business corporation, in addition to the purpose of generating a profit, a benefit corporation is chartered to provide a general or specific public benefit. Such specific benefits range from providing low income or underserved individuals or communities with beneficial products or services and preserving or improving the environment to improving human health and promoting the arts or sciences or the advancement of knowledge.

A benefit corporation is formed in the same way as a business corporation, i.e. by filing articles of incorporation with the Vermont Secretary of State, but the articles must indicate that the entity is being formed as a benefit corporation and may also state one or more specific benefits it seeks to accomplish. Additionally, an existing business corporation may also become a benefit corporation by amending its articles of incorporation if two-thirds of its shareholders favor such an amendment.

Because a benefit corporation incorporates environmental and social goals into it general purpose, a director is able to take these considerations into account when making a decision affecting the corporation's bottom-line. A benefit corporation must also designate a "benefit director" who is responsible for preparing an annual benefit report describing the progress the benefit corporation has made toward its specific or general benefit objectives.

8. Mutual Benefit Enterprises

In 2012, Vermont enacted the Mutual Benefit Enterprise Act (the "MBEA"). The MBEA authorizes the formation of mutual benefit enterprises, which include characteristics of both LLCs and cooperatives. Mutual benefit enterprises (known in other states as limited cooperative associates) are designed to increase investment opportunities for cooperative enterprises by allowing both voting investor members and patron members.

CHAPTER 2: TRADE REGULATION

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1. Registration of Foreign Corporations

Foreign corporations—corporations organized outside of Vermont—must obtain a certificate of authority from the Secretary of State before transacting business in Vermont. For this purpose, "transacting business" includes most business activities. There are, however, a number of activities that, without more, do not constitute transacting business and do not require registration with the Secretary of State:

(1) maintaining, defending, or settling any proceeding;
(2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
(3) maintaining bank accounts;
(4) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
(5) selling through independent contractors;
(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Vermont before they become contracts;
(7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
(8) making, purchasing and servicing loans if the corporation is a foreign savings bank or a foreign corporation doing a banking business and it participates with a Vermont banking corporation or trust company;
(9) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
(10) owning real or personal property;
(11) conducting an isolated transaction that is not one in the course of repeated transactions of a like nature; and
(12) transacting business in interstate commerce.

To qualify to transact business in Vermont, a foreign corporation must pay a fee of $125 and file with the Secretary of State a certificate of good standing from its jurisdiction of incorporation evidencing its corporate existence. The foreign corporation must also file an application setting forth: (i) the name of the foreign corporation; (ii) where it is incorporated; (iii) its date of incorporation and period of duration; (iv) the street address of its principal office; (v) the address of its registered office in Vermont and the name of its registered agent at that office; and, (vi) the names and business addresses of its current officers and directors. Foreign corporations must file an annual report within two and one-half months after the end of the corporation's fiscal year. More information can be found at: https://www.sec.state.vt.us/corporationsbusiness-services/business-nonprofit-services/register-a-foreign-business.aspx.

Once the foreign corporation meets the filing requirements and pays the applicable fee, the Vermont Secretary of State files the application and issues a certificate of authority. Foreign

corporations that do business in Vermont without a certificate of authority are subject to fines. Unauthorized corporations also cannot bring any action, suit or proceeding in Vermont until they obtain a certificate of authority.

2. Registration Requirements For Foreign Limited Partnerships, Limited Liability Partnerships and Limited Liability Companies

Like foreign corporations, limited partnerships, limited liability partnerships and limited liability companies organized outside of Vermont must register with the Vermont Secretary of State before doing business in Vermont.

2.1 Foreign Limited Partnership

To register to transact business in the State of Vermont, a foreign limited partnership must pay a fee and file with the Secretary of State an application for registration, executed by a general partner, setting forth: (i) the name of the foreign limited partnership (and any other name it proposes to register and transact business under in Vermont); (ii) the state and date of its formation; (iii) the name and address of its registered agent in Vermont for service of process; (iv) a statement that the Vermont Secretary of State is appointed the agent of the foreign limited partnership for service of process under certain circumstances; (v) the address of the office required to be maintained in the state of its organization (or if not required, the principal office of the foreign limited partnership); (vi) the name and address of each general partner; and (vii) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions. More information can be found at: https://www.sec.state.vt.us/corporationsbusiness-services/business-nonprofit-services/register-a-foreign-business.aspx.

The Vermont statutes do not define when a foreign limited partnership is "transacting" business in the State of Vermont and must be qualified. Presumably, however, the same activities that would subject a foreign corporation or limited liability company to Vermont jurisdiction would also apply to a foreign limited partnership.

2.2 Foreign Limited Liability Partnership

A foreign limited liability partnership must pay a fee and file a statement of foreign qualification with the Vermont Secretary of State to transact business in the State of Vermont. The statement must contain: (i) the name of the foreign limited liability partnership; (ii) the street address of the partnership's principal office and, if different, the street address of an office of the partnership in Vermont; (iii) if there is no office of the partnership in Vermont, the name and street address of the partnership's agent for service of process; and (iv) a deferred effective date, if any. More information can be found at: https://www.sec.state.vt.us/corporationsbusiness-services/business-nonprofit-services/register-a-foreign-business.aspx.

Vermont law provides a number of exceptions to the requirement of qualification. These exceptions are essentially identical to those applicable to foreign corporations, with the exception of making, purchasing and servicing loans as part of a banking business, and owning real or personal property.

2.3 Foreign Limited Liability Company

To register to transact business in Vermont, a foreign limited liability company must pay a fee and submit an application to the Secretary of State, setting forth: (i) the name of the foreign

limited liability company; (ii) the jurisdiction under whose law it is organized; (iii) the address of its initial designated office; and (iv) the name and street address, and the mailing address if different from the street address, of its designated agent for service of process in Vermont. A foreign limited liability company also must provide a certificate of existence, authenticated by the Secretary of State or other official in the state where the LLC was organized, dated no later than 90 days prior to the filing of the application. More information can be found at: https://www.sec.state.vt.us/corporationsbusiness-services/business-nonprofit-services/register-a-foreign-business.aspx.

Vermont law provides a number of exceptions to the requirement of qualification. These exceptions are essentially identical to those applicable to foreign corporations, with the exception of making, purchasing and servicing loans as part of a banking business.

Foreign limited liability companies that do business in Vermont without a certificate of authority are subject to fines. Unauthorized corporations also cannot bring any action, suit or proceeding in Vermont until they obtain a certificate of authority.

3. Usury Laws

The Vermont usury statute imposes limitations on interest rates that may be charged for the forbearance or use of money. With certain specific exceptions, the legal interest rate is capped at 12%. Finance charges for single payment loans by federal savings and loans and other loaning institutions cannot exceed 18%. For retail installment contracts, the maximum rate is 18% on the first $500 and 15% on the balance. For bank credit card accounts or revolving lines of credit, the lender and borrower can agree on an interest rate. Finally, interest on a loan secured by a vehicle, mobile home, travel trailer, aircraft, watercraft or farm equipment of the current or previous model year is limited to 18%. If the collateral securing the loan is older than the current or previous model year, the maximum interest rate is 20%.

If a person pays interest in excess of the legal rate, that person is entitled to a return of the excess interest (with interest from the time of payment) and may also sue to recover from the lender all expenses of collection, including reasonable attorney's fees. A lender who knowingly or willingly lends at a rate in excess of the legal rate forfeits all interest and half of principal. Any person, partnership, association or corporation and the members, officers, directors, agents and employees thereof, who knowingly or willfully contracts for or collects any sum in excess of legal interest for the loan, use or forbearance of money is subject to a $500 fine, six-month prison sentence or both for the first offense.

Lenders are also limited on the non-interest charges that may be made in connection with a loan. The Depository Institutions Deregulations and Monetary Control Act of 1980 preempts this provision, however, for lenders making loans secured by a first lien on real estate.

Although it is not a usury loan per se, Vermont's Licensed Lender Law imposes licensure requirements on non-exempt lenders. The statute also creates disclosure requirements, interest rate caps, limitations on permissible charges and other requirements applicable to specified types of loans. Certain classes of lenders are exempt from the requirements of the statute, including banks, insurance companies, a seller of goods or service that finances the sale of such goods or services (other than a residential mortgage loan) and persons who loan (other than residential mortgage loans) an aggregate of less than $250,000.00 in any one year at rates of interest of no more than 12 percent per annum. The penalty for violation of the statute is an inability to collect

interest, and can include administrative penalties of up to $10,000.00. If a contract of loan is found to have been made in knowing and willful violation of the statute, then the lender shall have no right to collect principal, interest or other charges.

4. Restrictions On Specific Professions

Vermont prescribes standards and restrictions for a wide range of specific professions and occupations. The statutory framework establishes licensing, certification, qualification and permitting requirements, sets standards for professional schools and establishes self-governing boards responsible for overseeing the activities of practitioners under their jurisdiction.

Some of the more common regulated occupations include:

Accountant	Dentist	Nurse	Polygraph Examiner
Acupuncturist	Dental Hygienist	Occupational Therapist	Private Investigator
Architect	Dietician	Optician	Psychoanalyst
Audiologist	Electrician	Optometrist	Psychologist
Athletic Trainer	Embalmer	Osteopath	Radiologist
Barber	Funeral Director	Pharmacist	Real Estate Appraiser
Chiropractor	Land Surveyor	Physical Therapist	Real Estate Broker
Clinical Social Worker	Lawyer	Physician's Assistant	Speech Pathologist
Clinical Mental Health Worker	Marriage and Family Therapist	Plumber	Tattooist
Cosmetologist	Naturopathic Physician	Podiatrist	Veterinarian

5. Business Name Registration

Any person, firm, corporation or association that does business in Vermont under a tradename or any name other than a legal name must register the tradename with the Secretary of State. The tradename application requires the applicant to set forth: (i) the name under which the business is conducted; (ii) the town where the business is located; (iii) a brief description of the kind of business; and, (iv) the individual names and residences of all persons, general partners or members doing business under the tradename. The name must be registered within 10 days of starting business in Vermont and must be renewed every 5 years. More information can be found at https://www.sec.state.vt.us/corporationsbusiness-services/business-nonprofit-services/start-a-vermont-business/trade-name-dba.aspx.

5.1 Registered Agent

Foreign businesses doing business in Vermont under a tradename must appoint (as agent for service of process) a person who has an office or place of business, and who resides in, the town where the principal office of the foreign business is located. Failing such appointment, the Secretary of State is deemed appointed as the agent for service of process. Foreign investment companies, foreign building and loan associations and foreign creamery companies are exempt from appointing a process agent.

6. Warranties

Sellers of goods within Vermont must understand Vermont law governing warranties. A "warranty" is a seller's promise or agreement that the seller has good title to an article or good or that an article or good has certain qualities. Vermont law provides for warranties of title, an implied warranty of merchantability, an implied warranty of fitness for a particular purpose and implied warranties arising from a course of dealing or usage of trade.

Generally, a contract for sale includes a warranty by the seller that the seller has good title to the goods being transferred, that the transfer is rightful and that the goods are delivered free from any security interest or other lien or encumbrance of which the buyer has no knowledge. Warranties of title may be excluded or modified only by specific contract language or by circumstances giving the buyer reason to know the seller has no title or that the seller is transferring only such title as the seller has.

A seller may create an express warranty by affirming a fact or making a promise to the buyer relating to the goods that becomes a part of the basis of the transaction between them. In addition, product descriptions and samples or models of the goods that similarly become a part of the basis of the transaction create express warranties that the goods will conform to the description, sample or model.

Certain warranties about goods may also be implied in a transaction, unless modified or excluded. If the seller is a merchant of goods of the kind being sold, the seller is deemed to warrant that the goods are merchantable. Vermont law provides standards for determining merchantability and for effectively modifying or excluding an implied warranty of merchantability. If the seller has reason to know that the buyer will use the goods for a particular purpose and that the buyer is relying on the seller's skill or judgment to select goods suitable for such purpose, the seller is deemed to warrant that such goods will be fit for such purpose. Generally, this warranty of fitness may be expressly modified or excluded. However, a seller may not exclude or modify implied warranties of merchantability or of fitness for a particular purpose in connection with the sale of new or unused consumer goods or services.

The warranties described above extend to the immediate buyer and, in some cases, to third parties. The theory behind extending warranties to third parties is that the seller, in marketing a product for use and consumption, has undertaken and assumed a special responsibility to any member of the consuming public who may be injured by it. Thus, a seller's warranty, whether express or implied, extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured by a breach of such warranty.

In an action based on breach of warranty, Vermont law requires the buyer to show not only the existence of the warranty but also that the warranty was breached and an injury or loss was

thereby sustained. If these elements are proven, the remedies available to the buyer include monetary damages and specific performance of the contract.

7. Consumer Protection

Vermont's consumer protection act (the "Act") seeks to protect the public against "unfair or deceptive acts or practices." Courts have applied the Act liberally to foster its remedial purposes. Vermont courts and enforcing agencies have construed the Act by looking to the interpretations accorded similar terms and provisions of the Federal Trade Commission Act and other state consumer protection laws.

The Act provides a remedy for any consumer who contracts for goods or services and, in reliance upon false or fraudulent representations or promises, sustains damages or injury at the hands of the seller, solicitor or other violator. The Vermont Supreme Court has defined the term "seller" broadly.

To establish a "deceptive act or practice" under the Act requires proof of three elements: (i) there must be a representation, omission, or practice likely to mislead consumers; (ii) the consumer must be interpreting the message reasonably under the circumstances; and (iii) the misleading effects must be material. Deception is measured by an objective standard and actual injury need not be shown to establish a violation of the Act. Furthermore, the Act does not require a showing of intent to mislead, but only an intent to publish the statement challenged.

The Office of the Attorney General has extensive powers to investigate alleged violations of the Act. These powers include the ability to examine documents and demand written responses under oath where there is reason to believe that a violation of the Act has occurred. The remedies available to the Attorney General's office include equitable relief, the imposition of a civil penalty, an order for restitution of cash or goods on behalf of a consumer and an order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting the action. Injured consumers may recover actual damages along with exemplary damages and reasonable attorney's fees.

Additionally, use of the word "Vermont" in labeling and/or advertising of food products and other goods and services, or otherwise making representations of a Vermont origin for such goods and services, is governed by specific rules adopted by the Attorney General. Failure to comply with such rules is considered a violation of the Act.

8. Regulation Of Franchises

Vermont law governs certain types of specific franchises, including motor vehicle franchises, service station franchises, beer and wine franchises and machinery dealerships. Vermont has not adopted the Uniform Franchise and Business Opportunities Act.

CHAPTER 3: FINANCING

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Vermont is served by numerous financial institutions offering a wide range of financial services to commercial and residential customers. This Chapter identifies the sources of funding available to businesses that are locating or expanding in Vermont and outlines the state securities laws that govern fundraising activity.

The Vermont Department of Financial Regulation ("DFR") is the principal governing body, which oversees the banking and insurance industries, and regulates securities transactions. The DFR has four divisions: The Banking Division, the Insurance Division, the Securities Division and the Captive Insurance Division.

1. Commercial Banking

The banks operating in Vermont range from business units of regional or national institutions to small, independent community banks. Most banks offer innovative loan programs, as well as cash management and deposit services, and trust services.

As the Fall of 2017, Vermont is served by six Vermont chartered banks, 14 Vermont credit unions, and 11 out-of-state and federal financial institutions conducting business in Vermont. Additional information regarding the financial institutions offering services to Vermont companies is available at www.dfr.vermont.gov/.

2. Financing Assistance from State Agencies

Since 1974, when it was created, the Vermont Economic Development Authority ("VEDA") has played a significant role in providing loans and other financial support to qualified Vermont industrial, commercial and agricultural businesses and nonprofit organizations. VEDA often works alongside Vermont banks to help meet the financing needs of Vermont businesses. VEDA's direct loan program requires that VEDA partner with a bank or other independent and responsible lenders on every project it finances. Since its creation, VEDA has provided over $2.288 billion in financing assistance to Vermont businesses in the form of direct loans and loan participations. VEDA offers a variety of commercial, energy, agricultural, and other financing programs including direct loans, small business loans, and revenue bond programs. VEDA also makes loans to local development corporations for construction of facilities that can be leased to businesses on favorable terms. A complete list of VEDA programs is available on the web at http://www.veda.org/.

The State of Vermont has several economic incentive programs to enhance business recruitment, growth and expansion. The Vermont Economic Progress Council ("VEPC") oversees the Vermont Employment Growth Incentive program. VEPC has the authority to authorize cash grants to businesses based on the revenue return generated to Vermont by prospective qualifying job and payroll creation and capital. To earn the cash incentive, the VEPC must find, among other things, that the total estimated incremental tax revenues from all sources generated to Vermont by the proposed economic activity exceeds the revenue costs of the activity to Vermont, including the cost of the cash incentive. For additional details, see http://accd.vermont.gov/economic-development/funding-incentives/vegi.

The U.S. Small Business Administration ("SBA") also plays a very important role in commercial lending in the State of Vermont. Vermont banks often partner with VEDA or the SBA or both in order to meet the borrowing needs of Vermont businesses. An SBA resource guide for small businesses in Vermont is available at www.sba.gov/sites/default/files/files/resourceguide_3156.pdf.

3. Non-Bank Lenders

Numerous non-bank lenders compete to make loans to Vermont residents and businesses. The Banking Division of the DFR regulates a wide variety of loan activity, including commercial lending by non-bank lenders. Vermont has a Licensed Lender Law, 8 V.S.A. Ch. 73, which requires that any company or person that engages in the business of making loans of money, credit or goods, and receives loan interest or similar consideration obtain a license, unless an applicable exemption exists. This law distinguishes Vermont from most other states in that it imposes a licensing requirement on non-bank commercial lenders, and imposes severe penalties for failure to comply. The licensure requirements, and a list of exemptions, can be found at 8 V.S.A. § 2201.

Licensed lenders include commercial finance companies that make mortgage, inventory, accounts receivable and equipment loans. The Banking Division also licenses debt adjusters, loan servicers, money servicers, mortgage brokers, sales finance companies and mortgage loan originators. The DFR website contains a complete listing of licensing requirements. http://www.dfr.vermont.gov/banking/licensees/licensees

State chartered credit unions are another important source of financing and other services for Vermont businesses. Credit unions are member organizations that offer a variety of services, including depository services, mortgage loans and business loans. Based on the most recent report published by the DFR, as of December 31, 2016, approximately 21 credit unions operate in the state.

Several Small Business Investment Companies operate in Vermont to provide seed capital to start-up and rapidly-growing businesses. Typically, capital is made available in exchange for equity interests or in the form of preferred stock or debt convertible to equity. For example, FreshTracks Capital is a Vermont-based venture fund offering financing to early stage companies. Further information is available at www.freshtrackscap.com.

An additional source of funding to non-profit organizations and small businesses is the Vermont Community Loan Fund, a non-profit institution that provides loans, grants and technical assistance for affordable housing, community facilities and small businesses. Further information is available at www.investinvermont.org.

4. Sources of Equity Financing

Equity investment in Vermont comes from a variety of sources. Numerous Vermont businesses have obtained substantial equity financing from out-of-state venture capital firms, particularly technology growth companies. In addition, the Vermont-based venture capital firm, FreshTracks Capital, has provided start-up financing for numerous Vermont technology companies. Vermont Works is a newly created Vermont-based venture firm, which focuses investment in areas that include employment and economic development, sustainable living, health and wellness. The Vermont Seed Capital Fund is another potential source of equity investment for Vermont technology companies. In addition, there are numerous other regional development

organizations, trade groups and industry organizations that support the development and financing of early-stage businesses.

5. Vermont Securities Laws

Offers and sales of securities in Vermont are governed by the Vermont Securities Act (the "Securities Act"). The Securities Act also regulates activities of brokers, dealers, investment advisors who transact business in Vermont. Further information on Vermont securities laws is available at www.dfr.vermont.gov/securities/securities-division.

Under the Securities Act, it is unlawful to offer or sell a security in the State of Vermont unless (i) the security, transaction or offer is exempted from registration, (ii) the security is registered under the Securities Act, or (iii) the security is a federal covered security. Exemptions that are commonly used in Vermont include: (a) isolated non-issuer transactions, (b) offers and sales by an issuer in a single issuance involving not more than 25 purchasers in a 12-month period, with no general advertising or general solicitation, no commission or other remuneration paid to persons other than registered broker dealers, and (c) offers and sales by an issuer to existing holders of securities of the issuer (subject to certain additional requirements).

The Securities Act also regulates the activities of broker-dealers and investment advisors The Securities Act is administered by the Securities Division of the DFR. Further information on Vermont securities laws is available at www.dfr.vermont.gov/securities/securities-division.

The Securities Division of the DFR has adopted the Uniform Limited Offering Exemption. This exemption, which tracks the federal exemption under Regulation D of the Securities Act of 1933, requires filing of a copy of the Form D with the Securities Division. To take advantage of this exemption, issuers must provide an offering document to investors setting forth considerable information about the company. Vermont Securities Regulations are available at the Securities Division website, www.dfr.vermont.gov/reg-bul-ord/vermont-securities-regulations. Additionally, while Vermont has adopted the Uniform Securities Act, as revised, effective July 1, 2006, many of the regulations and bulletins issued under the predecessor act continue to apply. For details, see www.dfr.vermont.gov/reg-bul-ord/applying-provisions-certain-regulations-bulletins-policy-statements-and-orders-effect-pr.

In 2014, the Securities Division revised the Vermont Small Business Offering regulation ("VSBO") to allow companies to seek up to $1,000,000 from investors in any 12-month period. While accredited investors have no individual investment limit, a "Vermont Certified Investor" may invest up to $25,000 per offering, and a "Vermont Main Street Investors" (i.e., anyone who is not an accredited investor or a Vermont Certified Investor) may invest up to $10,000 per offering. General solicitation is permitted, although the issuer must submit any proposed advertising to the Securities Division for substantive review. To take advantage of the VSBO, an issuer must provide an offering document (i) to the Securities Division at least 30 days prior to the sale of securities and (ii) to each offeree at least 24 hours prior to the sale. Subject to certain rules, the VSBO also permits issuers to use social media and the Internet to promote their offering. For details on the VSBO, see http://www.dfr.vermont.gov/reg-bul-ord/vermont-small-business-offerings.

If a security is not exempt and if the transaction in which the security is to be sold is not exempt, then the issuer must register the offering with the Securities Division. The offering of securities must be registered by coordination or qualification, each of which involves the filing of a

registration statement, a fee, and certain required materials with the Securities Division. The offering will be reviewed on a "merit" basis to ensure that it is fair to investors. For further details on registration by coordination or qualification, see http://www.dfr.vermont.gov/securities/corporate-finance/corporate-finance-registration.

The Securities Division has adopted a streamlined form of registration for small businesses. For qualified offerings, the issue may submit a Small Corporate Offering Registration ("SCOR") form to the Securities Division for merit review. Once approved, the form becomes the investor disclosure document.

CHAPTER 4: TAXATION

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This Chapter covers the general provisions of Vermont tax law most relevant to investment and business operations in the State. It is not intended as a comprehensive analysis of Vermont's taxing scheme for individuals and businesses.

1. Income Taxation

1.1 The Vermont Personal Income Tax

Vermont imposes an income tax on the taxable income of individuals, trusts and estates. For calendar year 2017, the income tax is imposed at rates ranging from 3.55% to 8.95% in 5 tax brackets. The brackets are adjusted annually for inflation. The top tax rate—8.95%—for married individuals filing "joint" returns, a "head of household," and "single" taxpayers is imposed on taxable income in excess of $413,500. For married individuals filing separately, the top tax rate is imposed on taxable income in excess of $206,675. In the case of part-year residents and nonresidents who earn income from Vermont sources, adjustments are made so that only taxable income from Vermont sources is taxed. This is done by reducing the tax by the percentage of adjusted gross income ("AGI") that is attributable to non-Vermont income.

The Vermont taxable income of residents, part-year residents and nonresidents begins with their federal taxable income. That amount is then adjusted to arrive at Vermont taxable income. Notable among the adjustments is a deduction for 40% of taxpayer's adjusted net capital gain income from assets held for more than three years. Importantly, the capital gain exclusion does not extend to stocks, bonds and other financial instruments which are publicly traded, and most categories of depreciable personal property. Vermont also eliminates the itemized deduction for Vermont state income taxes, and caps the sum of all other itemized deduction other than the deduction for (i) medical and dental expenses, (ii) home mortgage interest, and (iii) charitable contributions to an amount equal to two and one-half times the federal standard deduction allowable to the taxpayer. For example, the standard deduction for married taxpayers filing jointly in 2017 is $12,700, thus, itemized deductions subject to the Vermont cap would be limited to $31,750.

1.1.1 Vermont Income of Residents

An individual is a resident of Vermont for the portion of the taxable year that the individual: (i) is domiciled in Vermont; or (ii) maintains a permanent place of abode in Vermont and is present in Vermont for more than an aggregate of 183 days in the taxable year.

1.1.2 Vermont Income of Nonresidents

The Vermont income of nonresidents includes only certain items of income from Vermont sources, to the extent they are included in the person's AGI:

(1) rents and royalties derived from the ownership of property located within Vermont;
(2) gains from the sale or exchange of property located within Vermont;
(3) wages, salaries, commissions or other income (with exclusion for certain military pay) received with respect to services performed within Vermont;

(4) income (other than income exempt from state taxation under federal law) derived from every business, trade, occupation or profession of the taxpayer to the extent that the business, trade, occupation or profession is carried on within Vermont, including any compensation received (i) under an agreement not to compete with a business operating in Vermont, (ii) for goodwill associated with the sale of a Vermont business, and (iii) for services to be performed under a contract associated with the sale of a Vermont business unless it can be demonstrated that such compensation is not attributable to the sale of the business;

(5) income that was previously deferred under a nonqualified deferred compensation plan and that would have previously been included in the taxpayer's Vermont income if it had not been deferred, and income derived from such previously deferred income[1]; and

(6) proceeds from any Vermont state lottery or multi-jurisdictional lottery ticket purchased in Vermont.

1.1.3 Vermont Income of Part-Year Residents

Individuals who become Vermont residents during the year are considered "part-year residents." Their Vermont income is the sum of: (i) all items of income that are Vermont income of a resident, earned or received during the period of residency during the taxable year; and (ii) items of income that would be Vermont income of a nonresident, earned or received during the portion of the taxable year that the individual was a nonresident.

1.1.4 Credits Against Vermont Personal Income Tax Liability

Vermont provides a number of credits against the personal income tax liability. Such credits include: (i) the amount of income taxes imposed by and paid to other U.S. states and Canadian provinces on income from those sources; (ii) the tax on amounts received by an actor in a commercial film production in Vermont; and (iii) earned income credits similar to the federal credit. Vermont also provides a number of economic development/business credits that may flow through to individual's return from a pass-through entity taxable as a partnership, a small business corporation (an "S corporation") or business trust.

1.2 Corporations

Vermont follows the classification of business entities for federal income tax purposes. A "corporation" is any business entity subject to income taxation as a corporation, and any entity qualified as an S corporation. The term "corporation" does not include: (i) railroad companies, (ii) insurance companies (whether organized as stock or mutual insurers), including captive insurance companies, (iii) certain farming and agriculture cooperatives; (iv) nonprofit organizations organized for religious, charitable, scientific or educational purposes; (v) certain

[1] However, see 4 U.S.C. § 114, which provides that no state may impose an income tax on the "retirement income" of an individual who is not a resident or domiciliary of such state. For this purpose, retirement income is defined to include, among other items, distributions from nonqualified plans provided the nonqualified plan satisfies one of the following tests:

(i) the distributions from the plan are made in a series of substantially equal periodic payments (at least annually), payable over the life expectancy of the recipient (or over the joint lives of the recipient and another beneficiary), or for a period of at least 10 years; or

(ii) the distributions are made after retirement and the purposes of the plan is to provide benefits in excess of the limitations imposed under the internal revenue Code.

nonprofit business leagues and social clubs; and (vi) organizations that, in general, qualify as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Vermont taxes the apportioned income of all "taxable corporations," which are defined as (i) Vermont corporations; (ii) non-Vermont corporations that hold a certificate of authority to do business in Vermont; and (iii) any other corporation that has income allocable or apportionable to Vermont.

For calendar year 2017 the corporate income tax rates range from 6% to 8.5%. The minimum corporate income tax is $250. Subchapter S corporations are subject only to a $250 corporate-level tax with all other income taxable only to the individual shareholders. However, an entity level tax may be imposed in the case of an S corporation with nonresident shareholders. See "1.3.1 S Corporations" for taxation of S corporations.

1.2.1 Exemptions From Taxation

If a corporation is not a Vermont corporation, does not possess a certificate of authority to do business in Vermont and does not have income that is allocable or apportionable to Vermont, the corporation is exempt from Vermont income tax if its activities in Vermont are limited to the performance of any activity that, by itself, would not subject the corporation to taxation in this state by virtue of federal law, e.g. solicitation of sales or similar activities exempted under U.S. Public Law 86-272 or one or more of the following activities:

(1) maintaining cash balances with banks or trust companies in Vermont;
(2) using an "unrelated person," i.e. an independent contractor, for (i) sales order processing; (ii) credit card processing; (iii) the receipt, storage and removal from storage of property of the corporation, in conjunction with the packaging or repackaging of such property for shipment to a customer of the corporation; and (iv) reproduction of property of the corporation contained in or on electromagnetic or optical media, such as computer discs, magnetic tapes, compact discs, laser discs and microprocessor chips, onto tangible media, and receipt, storage and removal from storage, of property of the corporation for shipment to a customer of the corporation or to the corporation itself in conjunction with any such reproduced property; and
(3) engaging in any of the following to the extent necessary to the creation or maintenance of a web page or internet site for the corporation: (i) ownership or use of data or programming code in Vermont, (ii) ownership of, or receipt of services from, computer servers located in Vermont, or (iii) receipt of computer processing or web hosting services from a Vermont service provider.

1.2.2 Unitary Tax

Vermont has adopted a unitary tax regime expanding the taxable income base of a Vermont "taxable corporation" (See Section 1.2 above) by requiring the inclusion of such corporation's apportioned share of the combined net unitary income of any unitary business conducted with affiliated corporations. An affiliated corporation means one in which there is directly or indirectly more than 50% common ownership. However, Vermont currently imposes a "water's edge" approach by excluding from the definition of affiliated group those corporations that normally have 80% or more of their property and payroll outside the 50 states and the District of Columbia. A "unitary business" for

this purpose will be found to exist among the Vermont taxable corporation and its out-of-state affiliates where there exists unitary of ownership, operation and use, evidenced by functional interdependence, strong centralized management and economies of scale. Once a unitary business enterprise is determined to exist, the combined income of the members of the unitary business group must be apportioned to Vermont based on the three-factor formula (double weighting the sales factor). See Section 1.2.3 below. The Vermont Supreme Court addressed the scope of Vermont's unitary tax regime in ***AIG Insurance Management Service, Inc. v. Vermont Dept. of Taxes***, 2015 VT 137.

1.2.3 Determination of Corporate Income Taxable in Vermont

In general, "Vermont net income" is the corporation's taxable income for federal income tax purposes prior to any deduction for a federal net operating loss, (i) reduced by income not subject to state taxation; and (ii) increased by the amount of deduction for state and local income taxes, and by interest on state and local obligations (other than obligations of the state and municipalities in Vermont) and dividends or other distributions with respect to such obligations. In addition, Vermont does not allow the bonus depreciation allowed under Section 168(k) of the Code. Vermont allows net operating losses to be carried forward for 10 years but no amount may be carried back.

Corporations are taxed on Vermont net income that is apportioned to Vermont based on a three-factor formula that takes into account the corporation's property, payroll and sales receipts attributable to Vermont. For corporations not established in Vermont and that are not includable in a Vermont unitary group the income apportionable to Vermont does not generally include "nonbusiness income," which is allocated to the state in which the income-producing assets are located. If the income producing asset has no situs, the income is allocated to the state of commercial domicile, which is the principal place of business from which the business is directed or managed. Typically, nonbusiness income consists of portfolio income. Income from dividends, interest and capital gains will be considered nonbusiness income unless the acquisition, management, and disposition of the underlying property generating the income constitute an integral part of the taxpayer's regular business operations.

Apportionment Formula

If the corporation's income is derived from sources both within and outside Vermont (or the Vermont corporation is includible in a unitary group that engages in business outside Vermont), a percentage of the Vermont net income is apportioned to Vermont. The percentage is the arithmetic average of three factors, the "sales," "payroll" and "property" factors, however, the sales factor is to be double weighted. Each factor is the ratio of the corporation's Vermont-related sales, payroll or property as compared to the sales, payroll and property from all sources both within and without Vermont. If the application of these apportionment factors does not fairly represent the extent of the business activities of a corporation in Vermont, the corporation may petition for, or the Commissioner of Taxes may require, with respect to all or part of the corporation's business activity, if "reasonable": (i) separate accounting; (ii) the exclusion or modification of any or all of the factors; (iii) the inclusion of one or more additional factors which will fairly represent the corporation's business activity within Vermont; or (iv) the employment of any other method to effectuate an equitable allocation and apportionment of the corporation's income.

Property Factor

The property factor includes the average value of all real and tangible personal property within Vermont at the beginning and end of the taxable year, as a percentage of all such property owned by the corporation (or unitary group). Tangible personal property is within Vermont if it is physically situated in Vermont. This includes property held by an agent, consignee or factor that is situated or located in Vermont.

Property in transit between locations of the taxpayer to which it belongs is considered to be at its destination. The value of movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Vermont during the taxable year is allocated according to the amount of time spent in and outside Vermont. Construction in progress is not included in the property factor until it is placed in service.

Intangible property (and the income derived from it) is generally deemed to be located where the corporation is incorporated or has its principal place of business. The exception to this is intangibles used actively in a business carried on in Vermont, which are deemed located in Vermont.

Leased property is included in the property factor, based on a capitalized rental cost. The assumed value is eight times the "gross rent" payable during the taxable year. "Gross rent" does not include: (i) intercompany rents if the lessor and lessee are taxed on a consolidated basis (or combined unitary basis); (ii) amounts payable as separate charges for water and electric service furnished by the lessor; or (iii) amounts payable for storage provided no designated space under the control of the taxpayer as a tenant is rented for storage purposes.

Payroll Factor

The payroll factor includes total wages, salaries, and other personal service compensation paid during the taxable year to employees within Vermont, as a percentage of all such compensation paid to all employees. For this purpose, "compensation" includes salary and wages, payments to employees for board, rent, housing, lodging, and any other benefits paid in exchange for labor. These amounts are considered as income if they are considered income under the Internal Revenue Code. Thus, this would not include expense reimbursement to employees, amounts received under a Code Section 127 educational assistance plan, or fringe benefits excludible under Code Section 132.

An "employee" is any person, including an officer of a corporation, who is regarded as an employee for purposes of FICA payroll taxes. The compensation is considered paid in Vermont if:

(1) the individual's services are performed entirely within Vermont;
(2) the individual's services are performed both within and without Vermont, but the out-of-state services are incidental to the Vermont services;
(3) some of the individual's services are performed within Vermont and the company's base of operation or the place from where the service is controlled is within Vermont; or
(4) some of the individual's services are performed within Vermont, which is his or her state of residence, and there is no base of operation or place from where the service is controlled in any of the other states where part of the individual's services are performed.

Sales Factor

The sales factor comprises the gross sales receipts, or charges for services performed, within Vermont, expressed as a percentage of all such sales and charges inside and outside Vermont. Sales of tangible personal property are made in Vermont if: (i) the property is delivered or shipped to a purchaser, other than the U.S. Government, who takes possession within Vermont, regardless of f.o.b. point or other conditions of sale, or (ii) the property is shipped from an office, store, warehouse, factory or other place of storage in Vermont and the purchaser is the U.S. Government or the selling corporation is not taxable in the state in which the purchaser takes possession.

Receipts specifically allocable to Vermont include:

(1) sales of tangible personal property in Vermont;
(2) services performed in Vermont;
(3) rentals from property situated in Vermont;
(4) royalties from the use in Vermont of patents and copyrights; and
(5) all other business receipts earned in Vermont.

Receipts from rentals of real and personal property situated in Vermont, royalties from the use in Vermont of patents or copyrights and receipts from the licensing of computer software used in Vermont and similar transactions are apportionable to Vermont. Receipts from rentals include all amounts received directly or indirectly by the taxpayer for use of or occupancy of property, whether or not such property is owned by the taxpayer.

1.3 Partnerships, S Corporations, and Limited Liability Companies

1.3.1 S Corporations

S corporations are certain small business corporations that elect special "pass-through" tax treatment under subchapter S of the Internal Revenue Code. In general, S corporations are limited to 100 non-corporate shareholders and can have only one class of common stock. Unlike a regular corporation, where income tax is imposed on the corporation's earnings and then again on the corporation's shareholders when they receive distributions from the corporation, an S corporation is not taxable on its income. Instead, the corporation's items of income, deduction, loss and credit are deemed received by the shareholders in proportion to their shares. The S corporation shareholders take these items into account in computing their respective income tax liabilities. The character of an S corporation item carries through to the shareholder. Thus, capital gains at the corporate level are capital gains for the shareholders, ordinary losses remain ordinary losses, etc.

For Vermont income tax purposes, an S corporation is not subject to income tax other than the $250 corporate minimum tax (unless the S corporation is itself taxable under the Internal Revenue Code with respect to certain built-in gains and excess passive income, in which case a Vermont corporate tax is imposed as well). If the S corporation has income apportionable to states other than Vermont, the apportionment of income carries through to the shareholder level. For nonresident shareholders, this means that they are subject to Vermont income tax only with respect to the portion of their allocated share of S corporation attributable to Vermont. Vermont residents are taxable on all of their

allocated share of S corporation income, but they can receive a credit against their Vermont tax liability with respect to taxes that they are required to pay on their share of S corporation income apportioned to other states. No credit is allowed the shareholders for income taxes paid by the S corporation to another state.

1.3.2 Estimated Tax – Non-resident Shareholders

An S corporation is liable for all income taxes, interest and penalties imposed on nonresident shareholders with respect to the nonresidents' pro rata share of the S corporation income. The S corporation must declare and pay estimated tax with respect to its nonresident shareholders. The estimated tax is the shareholder's pro rata share of S corporation income attributable to Vermont, multiplied by the next-to-the lowest marginal Vermont income tax rate for individuals, currently 6.8%. The estimated tax payment is treated as a payment by the nonresident shareholder and is required to be made by the S corporation on a quarterly basis.

1.3.3 Partnerships and Limited Liability Companies

Partnerships under Vermont law consist of 2 or more partners, and include any entity that is regarded as a partnership for federal income tax purposes, including general partnerships, limited partnerships, limited liability partnerships (LLPs), limited liability companies (LLCs), and publicly traded partnerships.

For federal and Vermont income tax purposes, non-corporate business entities such as partnerships and LLCs are taxed as partnerships unless they elect to be taxed as corporations. For purposes of this discussion, both partnerships and LLCs are considered "partnerships." Note, however, that single-member LLCs are treated under Vermont income tax law as either (i) disregarded as a separate taxable entity, or (ii) if the member elects, taxable as corporations.

Vermont treats partnerships in much the same way as S corporations. Partnerships are pass-through entities, so only the individual partners are taxed annually on the partnership's items of income, gain, loss, deduction and credit. The only exception to this is a $250 minimum tax imposed on the partnership if it carries on business in Vermont sufficient to subject its partners or members to Vermont income tax. The tax applies to multi-member LLCs taxed as partnerships, but it does not apply to single-member LLCs that are disregarded as separate entities for tax purposes.

If the partnership has income attributable to states other than Vermont, the attribution of income carries through to the partner level. For nonresident partners, this means that they are subject to Vermont income tax only with respect to the portion of their allocated share of partnership income attributable to Vermont. Vermont residents are taxable on all of their allocated share of partnership income, but they can receive a credit against their Vermont tax liability for income taxes paid to other states on their share of partnership income taxed in other states.

A partnership is liable for all income taxes, interest and penalties imposed on nonresident partners with respect to the nonresident's share of the partnership income. As in the case of an S corporation, the partnership must declare and pay estimated tax with respect to its nonresident partners. The estimated tax is the partner's pro rata share of partnership income attributable to Vermont, multiplied by the next-to-the lowest marginal Vermont income tax rate for individuals, currently 6.8%. The estimated tax payment is treated as a

payment by the nonresident partner and is required to be made by the LLC or partnership on a quarterly basis.

2. Property Taxes

Until 1997, only municipalities levied ad valorem taxes on real property and certain business personal property within their borders. These taxes were used to fund municipal operations and local school budgets. This changed, however, with the passage of the Equal Educational Opportunity Act of 1997 (more commonly known as "Act 60"). Act 60 introduced state funding for public education through a revenue sharing program. A state-level tax on real property and certain business personal property was enacted, which supplanted the portion of municipal taxes levied and devoted to school funding. As a result, the ad valorem property tax dedicated to municipal operations is known as the "municipal services tax," the ad valorem tax dedicated to public schools is known as the "education property tax."

2.1 Municipal Services Tax

The municipal services tax is assessed annually on non-exempt properties located within a municipality. The tax applies only to real property and business personal property; however, many municipalities have voted to exempt business personal property from taxation. Each April 1, the value of real property is set for assessment purposes. Taxpayers can appeal listed values to the municipal listers, the board of civil authority, and then to superior court or the Division of Property Valuation and Review within the Vermont Department of Taxes. Once the grand list is finalized, the tax rate is set based on the municipal services budget adopted at the annual town meeting. In most communities, the annual town meeting is held on the first Tuesday in March.

Properties may be subject to a mandatory exemption by statute, as is the case with most state and federal-owned lands and properties devoted to public, pious or charitable purposes. The residents of a municipality may also vote to exempt certain real and personal property from the municipal property tax, including property used for manufacturing, alternative energy generation, certain college and university properties, and properties used for health or recreation purposes.

2.2 Education Property Tax

The education property tax is assessed against "homestead" and "nonresidential property," which is all non-exempt, nonresidential real property. Homestead properties are currently subject to a uniform rate of $1.00 per $100 of grand list value. However, the rate will be adjusted to account for local education spending in excess of an annually determined per pupil spending target referred to as the "base education payment" as well as the town's common level of appraisal (the "CLA") The purpose of the CLA is to account for the fact that the assessed value of a town's property relative to fair market value may deviate widely particularly where it has been several years since a town has gone through a town-wide reappraisal. The Education Property Tax also includes an "income sensitivity" feature that will result in a reduced rate for eligible Vermont residents with a household income of less than $141,000. Nonresidential property is currently subject to a uniform rate of $1.535 per $100 of grand list value. Unlike the uniform homestead rate, the nonresidential rate is only adjusted to account for common level of appraisal for the town, and thus, may vary widely from town to town.

3. Excise Taxes

3.1 Sales Tax

The Vermont sales tax is 6% of receipts from the "retail sale" of: (i) tangible personal property, (ii) public utility services including gas and electricity but excluding water and transportation; (iii) charges for producing, fabricating or imprinting tangible personal property for consumers who supply the materials used; (iv) amusement charges; (v) telecommunications services (vi) directory assistance; and (vii) tangible personal property to an advertising agency for its use in providing advertising services or creating advertising material for transfer in conjunction with delivery of advertising services. A "retail sale" means the sale of tangible personal property or telecommunications service to any person for any purpose, but excluding sales for resale. A municipality may also vote to impose an additional 1% tax "option tax" on retail sales occurring within the electing community.

Vermont sales tax laws include a number of exemptions based on the item sold, the use of the property or service, and the status of the party purchasing or selling the property or services. By way of example, exemptions include: (i) prescription drugs and prostheses; (ii) casual sales; (iii) sales of property subject to other excise taxes; (iv) tangible personal property used as a component in manufacturing, or which is consumed in a manufacturing process; (v) various amusement admission charges; (vi) certain agricultural products and machinery; and (vii) purchases by governmental entities and exempt organizations.

The sales tax also does not apply to transfers by shareholders to corporations that qualify for nonrecognition treatment under Code Section 351 or transfers by partners to partnerships (or by members to LLCs) qualified for nonrecognition under Code Section 721, and liquidations of corporations and partnerships.

The tax is levied on the purchaser, but the seller is liable for any sales tax that the seller fails to collect and remit to the Department of Taxes.

3.1.1 Streamlined Sales and Use Tax Agreement

Vermont is a 'full" member to the Streamlined Sales and Use Tax Agreement (the "SSUTA"); meaning that Vermont's sales and use tax laws fully comply with the terms of the SSUTA. For more information about SSUTA and the Streamlined Sales Tax Initiative visit http://www.streamlinedsalestax.org.

By adopting uniform definitions, when Vermont uses a defined term it will have the same meaning as it does in other states that are members of SSUTA. This clarification should assist multistate sellers in conducting business in Vermont by eliminating some of the uncertainty of classifying products. Although Vermont uses uniform definitions of goods, Vermont will retain the right to decide whether the sales and use tax applies to that particular good.

Generally under the SSUTA, states are not allowed to have multiple rates for sales and use tax on personal property items or services. There is an exception allowing the state to impose a single additional rate for food and food ingredients and drugs. For local taxes, the state may not have more than one local rate for sales and use. In Vermont the allowable local rate is 1%. The SSUTA provides a limited number of exceptions to the state and local rates uniformity rule including: (i) taxes on electricity; (ii) piped or natural or artificial gas; (iii) heating fuels delivered by the seller; and (iv) the retail sale or

transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

3.2 Use Tax

A Vermont use tax of 6% is imposed on any personal property purchased at retail by a Vermont resident or entity business doing business in Vermont if the property is delivered to or used in Vermont and that transaction is not otherwise subject to the sales tax. The tax also applies to tangible personal property manufactured, processed or assembled by the user, if items of the same type are regularly offered for sale in the course of business. Finally, the use tax applies to personal property that has been the subject of production, fabrication or imprinting. Taxpayers are required to attest to the amount of their use tax liability on their income tax returns. A municipality may also vote to impose an additional 1% tax "option tax" on a taxable use of personal property within the electing community.

3.3 Rooms and Meals Taxes

Hotel room rentals and sales of taxable meals are subject to a 9% rooms and meals tax. "Taxable meals" include any food or beverage furnished by a restaurant for a charge, whether furnished for consumption on or off the premises. Taxable meals also include non-prepackaged food or beverages sold by facilities other than restaurants, and all sales of sandwiches, foods or beverages from salad bars, and heated foods or beverages (whether or not prepackaged). A municipality may also vote to impose an additional 1% tax "option tax."

4. Taxes Associated with Transfers of Real Property

4.1 Real Property Transfer Tax

Vermont imposes a tax on the transfer of real property by deed equal to 1.25% of the fair market value of the transferred property. If the transferred property will be the transferee's principal residence, the tax on the first $100,000 of value is 0.5%, and the remainder is taxed at 1.25%. Unless the parties agree otherwise, the purchaser is liable for the real property transfer tax. Currently, there is a surcharge of .2% on the value of the transferred property except that no surcharge is due on the first $100,000 of value where the property will be used as the transferees principal residence. The statute provides for a number of exemptions, including: (i) transfers of security interests; (ii) transfers in connection with nontaxable corporate reorganizations or corporate liquidations; (iii) transfers at the time of formation to corporations qualifying under Section 351 of the Internal Revenue Code, or to partnerships or LLCs qualifying under Section 721; and (iv) transfers to certain 501(c)(3) charitable organizations. A transfer will be regarded as having been made at the time of formation if it occurs within 90 days of the formation of the entity.

For this purpose, a "deed" is any "deed, instrument, memorandum of deed, memorandum of lease, or other writing evidencing a transfer of title to property," or an agreement or instrument in which the transferee has equitable title, and the transferor holds legal title pending the transferee's satisfaction of some condition.

"Title to property" includes:

(1) interests in property which endure for an indefinite period of time, including an estate in fee simple, life estate, perpetual leasehold and perpetual easement; and
(2) interests in property of a fixed term if:

(a) the term is 50 years or more;
(b) the term is less than 50 years, but the transferor has an option or right to extend the term to 50 years or more; or
(c) the term is less than 50 years, with a right to purchase and construct buildings or other major capital improvements such as water and sewer systems, roads and parking facilities.

In order for the town clerk to accept a deed for recording, a property transfer tax return (Form PTT-172) must be filed with the town clerk along with a recording fee. The property transfer tax is due at the time of transfer and is paid directly to the Vermont Department of Taxes via the property transfer payment voucher (Form PTT-173).

If the transferor is not a Vermont resident, the transferee also must withhold 2.5% of the consideration paid for the transfer and remit that amount to the Commissioner of Taxes within 30 days of the transfer (Form RW-171). No withholding is due if the Commissioner issues a certificate to the seller that it has satisfied its tax liabilities or has provided adequate security for such liability. Note that these and other forms may be downloaded from the State of Vermont Tax Department website, http://tax.vermont.gov/property-owners/real-estate-transaction-taxes.

4.2 Vermont Land Gains Transfer Tax

Vermont imposes a tax on the gains from the sale or exchange of certain land in Vermont held for less than 6 years. The tax is a percentage of the gain on the sale, which decreases the longer the property is held before sale. For purposes of the tax, "land" includes certain timber rights, building rights, and easements, but does not include realty of 10 acres or less used as a principal residence and certain other parcels of land.

A "sale or exchange" is any transfer of title to land for a consideration. This includes transfers of options for the sale or exchange of land, and contracts for the sale of land where some consideration has passed to or for the benefit of the seller. The tax is based on the amount of the gain from the sale of land. The rate of tax depends upon the Sellers' holding period and the size of any gain expressed as a percentage of the basis of the kind as follows:

HOLDING PERIOD	**Land Gains Tax Rate (as % of gain realized)**		
	gain is 0-99% of basis	gain is 100-199% of basis	gain is 200% or more of basis
Less than 4 months	60%	70%	80%
4 months, but less than 8	35%	52.5%	70%
8 months, but less than 1 year	30%	45%	60%
1 year, but less than 2	25%	37.5%	50%
2 years, but less than 3	20%	30%	40%
3 years, but less than 4	15%	22.5%	30%

HOLDING PERIOD	Land Gains Tax Rate (as % of gain realized)		
4 years, but less than 5	10%	15%	20%
5 years, but less than 6	5%	7.5%	10%
6 years or more	no tax	no tax	no tax
(*Gain, as percent of basis, shall be rounded to the next highest whole percentage. A single flat rate of tax shall apply to all of the gain, and shall be determined by the percentage which the entire gain is of the basis (tax cost).)			

The seller's basis in the land is the adjusted basis for federal tax purposes. The amount realized is the full consideration, including liabilities assumed by the buyer, reduced by reasonable expenses of sale and commissions. If the cost includes the cost of buildings or other structures, the cost is allocated between the land and the structures for purposes of determining gain with respect to the land. The Vermont Department of Taxes has adopted certain guidelines for streamlining the allocation between land and buildings. For example, it is assumed that 10% of the value of a condominium or timeshare is attributable to the owner's interest in the underlying land.

The taxable gain is the difference between the amount realized and the basis. The holding period of the land is determined under the applicable rules of the Internal Revenue Code.

The transferor of the property is liable for the tax, unless the transferee provides a certificate of exemption from the tax, in which case the transferee is liable. If the seller is a partnership the partnership itself is liable. Within 30 days of the sale or exchange, the transferor files a return (Form LG-2) indicating the land gains tax due, the amount withheld, and making a claim for refund or remitting any balance due.

The transferee must withhold 10% of the consideration at the time of payment for the land and remit the withholding to the Tax Department. The transferor may pay the tax due in advance of the sale or exchange, in which case no withholding is due. Withholding is required regardless of any taxable gain, unless the property was held for more than 6 years or the buyer provides an exemption certificate. If the buyer fails to withhold consideration as required, it will be liable for the seller's outstanding tax liability.

5. Estate and Gift Tax

5.1 Estate and Generation Skipping Tax

Vermont recently passed a new estate tax law applicable to the estate of decedents with dates of death occurring on or after December 31, 2015. Under the updated 32 V.S.A. § 7402, if an individual is domiciled in Vermont on the date of death, the individual's entire estate is subject to Vermont estate tax. The estates of deceased nonresidents are taxable on real and personal property sited in Vermont on the decedent's date of death. The Vermont estate tax will be imposed on the value of a decedent's Vermont taxable estate that exceeds $2,750,000, at a rate of 16%. The tax is payable at the time the Vermont estate tax return is filed. Generally, the estate tax return must be filed if a deceased person had an interest in property located in Vermont and (1) their federal gross estate plus federal adjusted taxable gifts made within two years of their

death is worth more than $2,750,000 or (2) they are required to file federal Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return.

Vermont also imposes a generation skipping tax on transfers subject to the federal generation skipping tax imposed by Chapter 13 of the Internal Revenue Code. The generation skipping tax is equal to the amount of credit for state generation skipping taxes allowed in computing the federal liability prior to the change made under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA).

5.2 Gift Tax

Vermont does not impose a tax on gifts. However, the value of a decedent's gross estate will be increased to include the value of gifts made within two years of a decedent's death.

CHAPTER 5: CAPTIVE INSURANCE COMPANIES

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1. Background and General Statistics

Vermont has long been recognized as the "gold standard" domicile for captive insurance companies. As of July 2017, Vermont has issued over 1095 captive insurance licenses, which exceeds the number issued by any other U.S. domicile. Forty-three of the Fortune 100 and fifteen of the Dow Jones 30 companies have established captive insurers in Vermont. During 2014, Vermont-domiciled captives generated over $32.8 billion in gross written premium.

Vermont is the leader in U.S. captive insurers because of the regulatory expertise and extensive support environment developed over the past 30 years. The Captive Insurance Division of the Vermont Department of Financial Regulation deals exclusively with regulatory and administrative matters particular to captive insurers. Vermont's small government allows captives access to elected and appointed officials that is not available in most other states.

Vermont has also fostered the growth of a captive insurance support industry. This includes 19 approved management firms that provide accounting, underwriting, claims administration and regulatory compliance services. Vermont's legal community boasts an expertise in captive insurance that is known nationally and internationally. Other consultants, including auditors, actuaries and investment managers maintain offices in Vermont that serve the captive insurance industry.

2. What is a Captive Insurance Company?

A captive insurer, with some exceptions, is an insurance company that is organized and controlled by its policyholders. This may take the form of a subsidiary of a parent corporation that provides insurance to the parent and its affiliates, a mutual or stock insurer owned by a group of companies in the same industry, or a mutual or stock insurer owned by an association of similar businesses, such as an association of accounting firms. Captives may also be formed as reciprocal insurance exchanges, which can be beneficial to tax-exempt owners in some situations. Offshore captive insurers can establish branch offices in Vermont. An insurer may be formed as a sponsored or so-called "protected cell company," which gives smaller companies access to the benefits of captive insurance without having to meet the usual capitalization requirements of a captive insurer. Vermont has recently authorized the formation of "agency captives," which may be controlled by an insurance agency or brokerage to reinsure a traditional insurer, provided that certain disclosures are made to the policy holders.

3. What are Risk Retention Groups?

Vermont also allows the organization of "risk retention groups," which are insurance companies licensed in one state and, pursuant to the Federal Liability Risk Retention Act, allowed to operate nationwide upon registration in other states in which they transact insurance. As a result, risk retention groups do not have to obtain approval before transacting the business of insurance in other states. Risk retention groups organized in Vermont as captives are exempt from most of the regulations that apply to conventional insurers transacting business in other states. Vermont is the leading domicile for risk retention groups.

4. Benefits of a Captive

Captives can provide insurance coverage that might otherwise be unavailable at any cost, as was the case during the hard insurance market of the mid-1980s and after the terrorist attacks of September 11, 2001. But aside from providing coverage that may not be available in the commercial market, captives can offer significant financial and business advantages, including:

(1) customized coverage with greater control over claims and smaller deductibles for operating units;
(2) reduced operating costs and improved cash flow;
(3) direct access to "wholesale" reinsurance and excess insurance markets; and
(4) greater leverage with underwriters and fronting carriers.

5. Regulation of Captives

Captives are subject to modest regulation as compared to commercial insurance companies. Some examples of the flexibility of Vermont's regulations include:

(1) captives may offer coverage for virtually all commercial insurance lines;
(2) reduced minimum capitalization, which may be met through a letter of credit or "marketable securities;"
(3) no requirement that the captive demonstrate that the insurance is otherwise unavailable;
(4) no minimum premium;
(5) no approval of premium rates or insurance policy forms;
(6) no requirement that the captive participate in risk pools or guaranty associations;
(7) in general, exemption from investment restrictions applicable to commercial insurers; and
(8) modest premium taxes.

Unless the captive is authorized to transact business as an insurer in another state, it must transact its insurance business exclusively within Vermont. Most captives contract with an approved management firm in Vermont to conduct their insurance business.

CHAPTER 6: REAL ESTATE

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1. Purchase And Sale of Real Estate

Vermont law governing the purchase and sale of real estate does not vary significantly from the law in the other northeastern states. There are, however, important differences relating to state-level regulation of land use and development, and to taxation of land transfers. Vermont real estate transactions follow a number of well-established customs and practices that are observed throughout the State.

1.1 Brokers and Consultants

With their understanding of Vermont customs and practices, real estate brokers and consultants offer valuable services in real estate transactions. Most companies retain a real estate broker for the purchase or lease of real property. The broker usually serves as agent for and is compensated by the seller of listed properties, but the broker also may work with a prospective purchaser to identify suitable properties. A purchaser who retains a real estate broker or consultant as agent is responsible for the broker's compensation. Dual agency, or representation of both the purchaser and the seller by a single broker, is prohibited in Vermont. The Vermont Real Estate Commission requires brokers to make a written disclosure of agency status to all purchasers and sellers with whom they have significant contact while conducting real estate business. Signing an Agency Relationship Disclosure received from a broker does not create a contract with that broker but is simply an acknowledgement that the disclosure has been received and understood.

1.2 Typical Contract Terms

The majority of Vermont residential real estate transactions use a standard form of Purchase and Sale Contract published by the Vermont Association of Realtors. The standard Contract reflects the customary division of closing costs and responsibilities between buyer and seller.

The standard Contract provides that the purchaser's attorney shall examine title. The seller is responsible for preparation of the deed and other transfer documents. The standard Contract contains a printed financing contingency, which must be completed by the parties if the obligation to purchase depends on the buyer obtaining financing. The standard Contract contains no special provisions for professional inspection, environmental site assessment, survey, or other professional evaluations, but the form contemplates addenda incorporating these protections and conditions. Most real estate brokers can supply special rider forms incorporating additional terms and conditions. Where commercial property is involved, each side should consult an attorney before signing a contract. Commercial transactions more frequently use a tailored form of contract that may utilize broader representations, warranties and diligence periods.

1.3 Title Opinions and Insurance

Traditionally, purchasers of real property and mortgage lenders in Vermont relied solely on an attorney's title opinion for assurance that the seller had marketable title. With the advent of a national market for mortgage financing, Vermont lenders now require title insurance using the current American Land Title Association (ATLA) loan policy form. Real estate professionals strongly advise that purchasers spend the small additional premium (over the cost of a loan

policy) to obtain an owner's title insurance policy. The issuance of title insurance normally requires a title examination and report to the title insurance company by the purchaser's attorney.

The forms of title insurance policies and endorsements available in Vermont vary from one title company to another. All policy forms must be approved by the Vermont Department of Banking, Insurance, Securities and Health Care Administration. Title companies operating in Vermont offer most of the standard endorsements available in other states, including the basic ALTA endorsement forms (Forms 1 through 9).

1.4 Real Estate Closings

Real estate closings in Vermont normally involve an in-person meeting of the parties to sign and deliver the transfer documents and to tender the purchase price. Most closings are held at the offices of the lender or the purchaser's attorney. Escrow closings using title company intermediaries are rare.

Real estate is normally transferred by Warranty Deed. Although no statutory form is prescribed, a standard form of Warranty Deed has evolved through custom and practice. In addition to the Warranty Deed, basic transfer documents usually include a Vermont Property Transfer Tax Return, and may include Vermont Land Gains Tax and Withholding Returns, a Vermont Real Estate Withholding Return, or an Act 250 Disclosure Statement (see discussion below).

Conveyances and devises of land, whether for years, for life or in fee, made to 2 or more persons are construed to create a tenancy in common and not joint tenancy, unless it is expressly stated that the grantees or devisees shall take the lands jointly or unless the conveyance is made in trust or to a husband and wife and the intent to create a joint tenancy is manifest. Joint tenancies may be created in which the interests of the joint tenants are equal or unequal.

Land records in Vermont are maintained by town clerks. Deeds and other conveyance instruments must be signed, notarized, and recorded in the clerk's office to be effective against persons other than the grantor. A written power of attorney may be used to authorize an agent to convey real estate. Such written power of attorney shall specifically identify the real estate that is to be conveyed and explicitly provide the agent with the authority to convey the land. The written power of attorney must be signed by the principal in the presence of at least one witness and notarized. If the duration of the power of attorney exceeds 90 days, the witness and the notary public are required to be different persons, and the agent must accept such appointment. After closing, the written power of attorney is to be recorded in the applicable town clerk's office with the deed. If a deed refers to a survey to describe the land to be transferred, a copy of the survey must also be recorded.

1.5 Registration and Regulation

Aside from the taxation and land use regulation issues discussed below, there are few regulations imposed on the purchase and sale of real estate at the state or local level in Vermont. Foreign corporations, limited liability companies and other entities are required to obtain a certificate of authority from the Secretary of State before doing business in Vermont (see Chapter 2, regarding Trade Regulation). In general, however, a non-Vermont company is not "doing business" if the company is simply holding title to real property.

2. Land Use and Development

2.1 General Regulation of Development

Act 250 is Vermont's comprehensive state-level land use and development law. The Act applies to multi-lot subdivisions and large commercial developments, and requires developers to obtain a permit from the local District Environmental Commission prior to the sale of lots or commencement of construction. In processing an application for an Act 250 permit, the Commission must consider factors including: air and water pollution; water supply; soil erosion; traffic congestion; burdens on schools and municipal services; aesthetic impact; and conformity with local and regional plans.

Vermont also has other state regulatory programs administered by the Agency of Natural Resources that may affect a real estate purchaser. For example, the Agency imposes subdivision permitting requirements and the Agency's water supply/wastewater disposal permit requirements apply to all commercial buildings. The Agency provides a permit specialist in each Regional Office to assist with questions regarding state permit programs.

Except for a few large cities, construction code compliance in Vermont for public buildings is administered by the Vermont Department of Public Safety. All buildings except for owner occupied single-family dwellings, registered home day cares, and working farms are public buildings. New construction, alterations, the installation of new equipment and any changed use of a public building may require a permit.

In addition to the state-level requirements, land use and development is also regulated in Vermont at the municipal level under traditional zoning and subdivision regimes. Anyone contemplating acquisition of commercial real estate in Vermont should contact local planning and zoning officials to determine whether any local approvals are required for the present or anticipated use and development of the property. Under the Vermont Marketable Title Act, neither a failure to obtain a required municipal land use permit, nor a failure to comply with the terms and conditions of a required municipal land use permit, constitutes an encumbrance on record marketable title. Existing violations of municipal permit requirements become exempt from the commencement of any enforcement action, except for matters involving public risk or hazards, 15 years after the failure to obtain or comply with the terms and conditions of a municipal land use permit first occurred. See also Chapter 9 for more information about Act 250.

2.2 State Subdivision Compliance

Under a Vermont Supreme Court decision, *Hunter Broadcasting, Inc. v. City of Burlington*, 164 Vt. 391 (1995), a failure to obtain a required State subdivision permit constitutes an encumbrance on title. While the court's holding in *Hunter* applied to the requirements of the old State subdivision regulations authorized by 18 V.S.A. § 1218, Footnote 2 of the court's decision suggested that a failure to obtain a permit for the subdivision under Act 250, 10 V.S.A. § 6081, would also constitute an encumbrance on title. 164 Vt. at 394.

The Vermont Legislature adopted a comprehensive revision of the law governing State subdivision permits effective June 13, 2002, adding a new Chapter 64 to Title 10 of the Vermont Statutes. 2002 Vt. Laws No. 133. The former law (18 V.S.A. § 1218) required a State subdivision permit for any subdivision of land that created a parcel of less than ten acres. Chapter 64 requires a "wastewater system and potable water supply permit" for all subdivisions

creating one or more lots, regardless of lot size. 10 V.S.A. § 1973(a)(1). Under both the old law and the new law, a subdivision may result from the conveyance of a parcel or the filing of plat, plan or deed in town records. A failure to obtain a required wastewater system and potable water supply permit would constitute an encumbrance on title under the theory of the *Hunter* decision.

The Vermont Legislature amended Chapter 64, effective May 18, 2007, to provide that all improved and unimproved lots that were in existence before January 1, 2007 are exempt from the wastewater system and potable water supply permit requirement. 2007 Vt. Laws No. 32 (amending 10 V.S.A. § 1974). According to the Vermont Department of Environmental Conservation, this so-called "clean slate exemption" excuses a failure to obtain a required State subdivision permit or wastewater system and potable water supply permit for a subdivision that occurred prior to January 1, 2007; it does not excuse a failure to obtain a required Act 250 subdivision permit or a municipal subdivision permit, as described below.

Under Chapter 64, no wastewater system and potable water supply permit is valid until an as-built certification has been submitted to the Regional Office of the Agency of Natural Resources. 10 V.S.A. § 1973(e); copies of the as-built certification, and of the design certification submitted to obtain the permit, must also be recorded in the land records. 10 V.S.A. § 1973(h). State subdivision permits issued under the old State subdivision regulations also typically contain a condition requiring the filing of a post-construction engineer's certification with the Regional Office.

Act 250 permits under 10 V.S.A. § 6081 are presently required where any "person" subdivides a tract or tracts of land into more than ten lots within a jurisdictional area, or within a five-mile radius, within a period of five years. 10 V.S.A. § 6001(19). An Act 250 subdivision may result from the sale or offer to sell of one lot with the intention to sell at least ten (or six) lots in total, from the filing of plot plan on town records or an application for a zoning, subdivision or potable water supply and wastewater system permit, or from the sale or offer to sell of the tenth lot. Environmental Board Rule 2(B). Under the amendments to Environmental Board Rule 2(B) effective January 15, 2003, an Act 250 permit is also required for a subdivision of six or more lots in a municipality without duly adopted permanent zoning and subdivision bylaws. Prior to 1984, a permit was required for creation of ten lots each less than ten acres in size. See 1984 Vt. Acts No. 114, § 1. Effective October 1, 1991, the subdivider or seller of a subdivided parcel was required to record in the land records an Act 250 Disclosure Statement, providing information with respect to the total number of parcels subdivided within the jurisdictional area. 1991 Vt. Acts No. 111, § 7.

2.3 Municipal Land Use Permit Compliance

Under a Vermont Supreme Court decision, *Bianchi v. Lorenz,* 166 Vt. 555 (1997), if the applicable municipal zoning ordinance requires the issuance of a certificate of occupancy prior to the occupancy of the buildings and other improvements presently located thereon, the lack of a certificate of occupancy constitutes an encumbrance on title. We believe that the Vermont Supreme Court would also hold under the reasoning of *Bianchi* that, absent legislation to the contrary, the lack of any other required municipal permits, approvals and certificates constitutes an encumbrance.

The Vermont Legislature passed curative legislation in response to the *Bianchi* decision in 1998, and retroactively amended the curative legislation to resolve ambiguities in both 1999 and 2000. 1998 Vt. Laws No. 125; 1999 Vt. Laws No. 46; H. 601, 65th Biennial Session, Adjourned

Session (2000). The amended curative legislation adds a section to the Vermont Marketable Title Act, providing that neither a failure to obtain a required municipal land use permit, nor a failure to comply with the terms and conditions of a required municipal land use permit, constitutes an encumbrance on record marketable title. 27 V.S.A. § 612(a). The term "municipal land use permit" includes municipal zoning, subdivision, site plan and building permits and approvals, wastewater system permits, and certificates of occupancy and compliance. 24 V.S.A. § 4303(11).

Note: Effective July 1, 2007, the State wastewater system and potable water supply permit requirements discussed above under "State Subdivision Compliance" supersede municipal ordinances regulating potable water supplies and wastewater systems. 10 V.S.A. § 1976(b).

The amended curative legislation also establishes a statute of limitations, requiring commencement of an enforcement action within fifteen years after the failure to obtain or comply with the terms and conditions of a municipal land use permit first occurred. 24 V.S.A. § 4496(a). The amended curative legislation preserves the right of the municipality to bring an enforcement action to abate or remove public health risks or hazards. 24 V.S.A. § 4496(c).

While the failure to obtain or comply with municipal land use permits no longer constitutes an encumbrance on title, the possibility of an enforcement action for a recent violation or for a public health risk or hazard may impair the value of the property.

2.4 State and Federal Stormwater Discharge Permit Compliance

The Vermont Department of Environmental Conservation regulates stormwater runoff within the State of Vermont, under the authority of state law. 10 V.S.A. §§ 1264 and 1264a. The Department also administers the federal National Pollutant Discharge Elimination System ("NPDES") permit program for discharges of stormwater runoff within the State of Vermont, pursuant to a delegation of authority under the federal Clean Water Act, 33 U.S.C. § 1295 *et seq.* The Department's regulations generally require a permit for discharges of stormwater runoff to public waters from impervious surfaces, from construction activities, and from certain industrial and municipal facilities. The requirements for issuance of a permit are significantly stricter for discharges to receiving waters that fail to comply with State water quality standards because of stormwater runoff.

The regulation of stormwater runoff in Vermont has been the subject of extensive administrative and court litigation in recent years. The Vermont Legislature adopted major amendments to the State statutes authorizing regulation of stormwater runoff in 2002 (Vt. Acts No. 109) and again in 2004 (Vt. Acts No. 140), and additional amendments each year from 2005 through 2008. The decisions issued in the litigation and the statutory amendments mandated major changes in the way that the Department of Environmental Conservation regulates stormwater runoff. The changes have caused significant uncertainty as to the stormwater regulatory requirements applicable to some real estate developments, particularly those that discharge to stormwater-impaired waters. The uncertainty has, in some cases, inhibited sales of real property with potential stormwater regulatory issues.

A stormwater discharge permit compliance problem may constitute an encumbrance on title. Act 140 added a section to the Vermont Marketable Title Act (27 V.S.A. § 613) providing that a failure to obtain, renew or comply with the terms and conditions of a permit for a discharge to a stormwater-impaired water will not constitute an encumbrance on title if the owner of the

property takes certain steps to defer compliance with permit requirements. The enactment of Section 613 implied that other stormwater discharge permit compliance problems may constitute an encumbrance on title. Section 613 expired on January 15, 2012. Presumably, after that date all stormwater discharge permit compliance problems may constitute an encumbrance on title.

3. Taxes

Most transfers of real property in Vermont are subject to a real property transfer tax (see Chapter 4). The real property transfer tax replaced the traditional stamp taxes for recording of deeds. By statute, the purchaser is liable for the tax unless the parties agree otherwise. The transfer tax is due at the time the deed is delivered to the town clerk for recording. The purchaser and seller must also file with the town clerk a Vermont Property Transfer Tax Return, containing detailed information regarding the property, including certifications as to compliance with land use and subdivision regulations.

A land use change tax may also become due at the time of sale if the land is classified as agricultural or managed forest land and enrolled under Vermont's Use Value Appraisal Program. For enrolled lands, a land use change tax equal to 10% of the full fair market value of the land must be paid upon the development of the enrolled land. If only a portion of a parcel is developed or withdrawn, that portion will be valued as a separate parcel and the 10% tax rate will apply to that portion of the parcel. The recording of a state approved use value appraisal in the land records at the time of enrollment constitutes a lien securing payment of this land use change tax. If enrolled land is conveyed and is to remain in the Use Value Appraisal Program without triggering the land use change tax, a notice and application must be forwarded to the State within 30 days after the conveyance of the property.

Vermont also imposes a tax on gains from the sale of land held less than 6 years. There are a number of exemptions from this tax, including sale of up to ten acres of land in connection with the sale of a principal residence of the buyer or seller. The Vermont statute also adopts the nonrecognition provisions of federal law, such as nonrecognition of a tax-deferred exchange of 2 parcels of land located in Vermont. Payment of the tax is the responsibility of the seller unless otherwise provided by contract; however, the statute imposes a duty on the purchaser to withhold part of the purchase price and to file a withholding return if the transaction is not exempt.

In addition to the land gains and transfer taxes, Vermont also has an income tax withholding requirement if the seller is not a resident of Vermont. Unless a withholding certificate is issued by the Vermont Commissioner of Taxes in advance of the closing, the purchaser is required to withhold 2.5% of the total purchase price and file a withholding tax return.

4. Leasing

Vermont leasing practice is similar to other states. There are no standardized forms of lease in use throughout the State of Vermont. Landlords may use any of the variety of standard printed forms available on the market, or a customized form prepared by or for the landlord.

Leases with a term longer than 1 year must satisfy all the formalities for a deed, including recording, in order to be effective against persons other than the landlord. The Vermont recording statute allows a notice or memorandum of lease to be recorded instead of the entire lease.

Vermont law regulates residential landlord-tenant relations. By statute, all residential leases include an implied warranty of habitability that insures such necessities as heat, water and

sanitary plumbing. The statute also limits the landlord's right to terminate the lease, and requires a prompt return of security deposits. Local municipal requirements may further regulate residential landlord-tenant relations.

Long-term ground leases in Vermont are subject to subdivision regulation and taxation in much the same manner as outright transfers of title to real property. A ground lease with a term exceeding 50 years (including optional renewal and extension terms) is subject to the land gains tax and to the subdivision regulations of Act 250 and Act 249.

CHAPTER 7: EMPLOYMENT LAW

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1. General Employment Policy and Practice

Vermont employment law is set against a backdrop of federal laws designed to protect individual rights in the job setting. These federal laws include Title VII of the Civil Rights Act, the Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), and the Family and Medical Leave Act ("FMLA"). The Vermont Fair Employment Practices Act ("FEPA") provides additional protection to employees. When read together, these laws prohibit discrimination in employment against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or HIV status. Discrimination against an individual with an actual or perceived disability is also prohibited, when that individual can perform a job regardless of a disability, or with reasonable accommodation.

Employers are further prohibited from retaliating against an employee through discharge, unfair treatment, or other adverse employment actions because the employee has filed a complaint of discrimination or has cooperated in an investigation of discrimination. This prohibition also applies when discharge or discriminatory treatment is due to the employer's belief that the employee may lodge a complaint or cooperate with officials in such an investigation. Under FEPA, supervisors may be held individually liable. Vermont law also prohibits retaliation against employees because they file a claim for Workers' Compensation, use parental and family leave, use paid sick leave, or take leave for military service.

These laws also prohibit sexual harassment in the workplace, which is considered a form of discrimination based on sex. The term "sexual harassment" includes unwelcome sexual advances, requests for sexual favors, and other conduct creating a hostile working environment. All employers must ensure a workplace free of sexual harassment, adopt a policy against sexual harassment, prominently post in the workplace a document providing, at a minimum, the elements of the employer's sexual harassment policy, and provide to all employees an individual written copy of the policy.

Both employers and individual supervisors may be held liable for engaging in discriminatory or retaliatory conduct. However, these laws are not designed to prevent an employer from discharging or otherwise disciplining employees for good cause shown, and exceptions to the laws exist for bona fide occupational qualifications.

Finally, it is important to take note of the Fair Labor Standards Act ("FLSA"), which establishes wage and hour requirements, and the Occupational Safety and Health Act ("OSHA"), which governs health and safety in the workplace. Vermont law also has its own wage and hour standards, and has imposed additional workplace health and safety requirements. To ensure compliance with these laws, both the federal government and the Vermont Department of Labor are vested with authority to investigate alleged violations and issue necessary orders. Moreover, if an employee files a complaint regarding an alleged violation, the law prohibits employers from engaging in retaliation.

2. Terms and Conditions of Employment

2.1 Wages

Minimum Wage and Overtime

Effective January 1, 2017, Vermont's minimum wage rate is $10.00 per hour. The rate is scheduled to increase to $10.50 in 2018. Beginning in 2019, the rate will be indexed to inflation, but no annual increase will be greater than 5%. In the tourism and restaurant industries, service employees who earn more than $120.00 a month in tips may be paid a minimum wage of half that of other employees, or $5.00 in 2017 and $5.25 in 2018. With some exceptions, employers must pay each non-exempt employee at least one and one half times the regular rate of pay for any hours worked by the employee in excess of 40 hours during a workweek.

Administration

Both the United States and Vermont departments of labor have oversight authority for wage and hour issues. This includes the right to examine and inspect books and records at the employer's place of business to determine compliance with the minimum wage and overtime provisions.

Employers' Records/Posting

Every employer subject to the overtime and minimum wage provisions must keep accurate records regarding the number of hours worked by each employee and the wages paid to each employee. A notice of any law or order concerning minimum wage that pertains to its employees must be posted conspicuously in the workplace.

Manner of Payment

Employees must be paid on a weekly basis, except that after written notice, an employer may pay bi-weekly or semi-monthly. An employer must pay employees who were absent on the regular scheduled pay day upon demand. An employer may pay wages by deposit through electronic funds transfer or other direct deposit system, provided it has written employee permission to do so.

Garnishment

Garnishment of employee wages is limited. Court orders to withhold wages may be issued to employers for assessment against a particular employee's earnings. An employer may not discharge or discipline any employee on account of a wage withholding order issued to an employer against earnings. Any employee so discharged or disciplined can bring an action in superior court for reinstatement, back wages, and damages. If the employee prevails, the court will also award costs and may award reasonable attorney's fees.

2.2 Vermont Parental and Family Leave ("VPFL") and the Family and Medical Leave Act ("FMLA")

"Parental leave" is available to eligible employees for either the birth of an employee's child or the initial placement of a child 16 years of age or younger in the employee's home for the purpose of adoption. To be entitled to parental leave, an employee must work for an employer that has at least 10 employees who annually work an average of 30 hours or more per week, and the employee must have been continuously working for the same employer for a period of one year in which he or she individually worked an average of at least 30 hours per week.

"Family leave" is a leave of absence due to a serious illness of the employee or the employee's family member, including a child, stepchild or ward who lives with the employee, foster child, parent, spouse or parent of the employee's spouse. Family leave is equally available to care for same-sex spouses or civil union partners. A serious illness is defined as an accident, disease, or physical or mental condition that poses imminent danger of death, that requires inpatient care in a hospital, or that requires continuing in-home care under the direction of a physician. To be entitled to family leave, an employee must work for an employer that has at least 15 employees who annually work an average of 30 hours or more per week, and, as with parental leave, the employee must have been continuously working for the same employer for a period of one year in which he or she individually worked an average of at least 30 hours per week.

During any 12-month period, an eligible employee is entitled to take unpaid parental or family leave not to exceed 12 weeks. For parental leave, the time period applies during the employee's pregnancy and following the birth of the employee's child, or within a year following the initial placement of a child for adoption. For family leave, the 12-week period applies at any time during the course of the serious illness at issue. The employee must give reasonable written notice of intent to take leave, indicating the expected start date and duration. In cases of serious illness, an employer may require certification from a physician to verify the condition, the necessity that an employee take leave, and the amount of time necessary.

Employees may choose to use accrued paid leave to run concurrently with their parental or family leave. Employers must continue any insurance coverage for the duration of the leave, but may require that the employee contribute to the costs at the existing rate of contribution. Generally speaking, upon return from leave, an employee must be reinstated to his or her same job, or a comparable position, with the same level of compensation, employment benefits, and seniority that existed when the leave began. Exceptions exist when layoffs occur for reasons unrelated to the leave, and when the retention of a replacement employee is necessary.

2.3 Short-term Family Leave

In addition to regular parental and family leave, an employee is entitled to take up to 4 hours of unpaid leave in any 30-day period to participate in school activities that directly relate to the academic advancement of the employee's child, to attend or accompany the employee's child, spouse, parent, or parent-in-law to routine medical or dental appointments, to accompany the employee's spouse, parent, or parent-in-law to other appointments for professional services related to care and well-being, or to respond to a medical emergency involving the employee's child, spouse, parent, or parent-in-law. As with regular parental and family leave, the definition of a child includes any stepchild or ward who lives with the employee, or any foster child.

An employee may not take more than 24 hours of short-term family leave in any 12-month period. The employee must also make a reasonable effort to schedule leave for non-work hours. Notice of an employee's intent to take short-term leave is required at least 7 days in advance, except in emergency situations. Moreover, an employer may require that employees take leave in 2-hour segments.

2.4 Paid Sick Leave

As of January 1, 2017, Vermont employers with more than five employees are required to provide employees with paid sick leave. This law will extend to small employers with five or less employees as of January 1, 2018. Thereafter, new employers must comply with the law no

later than one year after hiring their first employee. Whereas many employers are likely to come into compliance with the law by making adjustments to their current leave policies, it is important that employers ensure that their policies are in line with the law's numerous requirements.

The law's broad provisions extend to all employers doing business in Vermont and cover all employees working an average of at least 18 hours per week. The law does not distinguish between full-time and part-time employees. There are limited exceptions, however, including but not limited to seasonal or temporary workers, sole proprietors, certain per diem employees, federal employees, and individuals under the age of 18.

Covered employees must earn one hour of paid sick time for every 52 hours worked. In 2017 and 2018, employees must be permitted to accrue at least three paid sick days (or 24 hours) per year. Starting in 2019, employees must be permitted to accrue at least five paid sick days (or 40 hours) per year. Employers can either allow employees to accrue time throughout the year or can provide a lump sum upfront.

Employees must be allowed to use earned sick time for any of the following reasons: (1) for the employee's own illness or injury, or to obtain preventive medical care; (2) to care for immediate family members who are sick or injured, or to assist them with obtaining preventive medical care; (3) to care for immediate family members when the family member's school or business is closed for public health or safety reasons (snow days, for example); or (4) to arrange for social or legal services, or to obtain medical care or counseling when the employee or an immediate family member is a victim of domestic violence, sexual assault or stalking.

At the end of each 12-month period, employers will have two options for any sick time that remains unused: (1) Carry over at least as many hours as the employee is allowed to accrue (i.e., at least 24 hours in 2017 and 2018, and at least 40 hours in 2019 and thereafter); or (2) Cash the days out.

Generally speaking most employers have two options to comply with the law. First, an employer can modify an existing paid time off ("PTO"), combined time off ("CTO"), or similar leave policy by ensuring that: the policy extends to all employees covered under the law; enough time is earned under the policy; time is accrued at a proper rate; time can be used for the reasons outlined under the law; time can be used in small enough increments; and employees carryover the right amount of time. Alternatively, an employer can create a separate policy for paid sick time that complies with the provisions outlined above.

Employers must update applicable handbook provisions to reflect new leave policies. Additionally, the Vermont Department of Labor has published a mandatory poster for workplaces. The Vermont Department of Labor will be charged with enforcing the law. If employees believe their employer is not in compliance, they may report an alleged violation to the State and employers may not retaliate against an employee for doing so.

2.5 Other Absences

Jury Duty

An employer may not discharge, penalize or discriminate against an employee because that employee is summonsed to serve as a juror. All employees are considered in the service of their employer while serving as jurors for purposes of determining seniority, fringe benefits,

credit toward paid leave and other rights, privileges, and benefits of employment. Vermont law does not require employers to pay employees while they are performing jury service.

Appearance as a Witness

An employer may not discharge, penalize or discriminate against an employee because that employee is absent from work while serving as a witness pursuant to a summons issued and served in any matter addressed by the law. While appearing as a witness, the employee is considered in the service of the employer for purposes of determining seniority, fringe benefits, credit toward paid leave and other rights, privileges, and benefits of employment.

Military Leave

Any employee who is a member of the reserve component of the armed forces, the ready reserves, or the National Guard is entitled to an unpaid leave of absence for a total of fifteen (15) days in any calendar year for military drill, training, or other temporary duty under military authority. Leave may be with or without pay, as determined by the employer. Upon completion of leave, any permanent employee must be reinstated to his or her previous position, with the same status, pay, and seniority, including seniority that accrued during the period of absence. Moreover, military leave may not affect an employee's normal vacation or sick leave benefits, bonuses, or other advantages of employment. An employer may not retaliate against an employee because the employee took qualifying military leave.

The Vermont military leave statute also provides that an employee returning from National Guard service is entitled to all reemployment rights established by the federal Uniformed Services Employment and Reemployment Rights Act ("USERRA").

Legislative Leave

In some circumstances, employers must allow an employee who serves as a member of the Vermont General Assembly to take a leave of absence for the purpose of allowing the employee to perform any official duty in connection with the elected office. The leave of absence cannot cause loss of job status, seniority, or the right to participate in insurance or other benefits.

Leave for Town Hall Meetings

An employee who notifies his/her employer at least seven days prior to the date of his or her town hall meeting, may take unpaid leave to attend such meeting, so long as attendance does not conflict with the essential operation of the business. An employer is prohibited from discharging or in any other manner retaliating against an employee for exercising this right.

2.6 Smoking in the Workplace

Smoking is prohibited inside all areas of the "workplace," which is defined as an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure to which the employee is assigned. Except for schools, a "workplace" does not include areas commonly open to the public or any portion of a structure that also serves as the employee's or employer's personal residence.

2.7 Employment Conditions

An employer must provide employees with safe and healthy working conditions, free from recognized hazards that are causing or likely to cause significant physical harm.

In addition, an employer must provide employees "reasonable opportunities during work periods to eat and use toilet facilities in order to protect the health and hygiene of the employee."

2.8 Nursing Mothers

An employer must provide an employee who is a nursing mother, with reasonable paid or unpaid time throughout the day, to express milk for her nursing child for three years after the birth of the child. The decision to pay the employee during this time is at the sole discretion of the employer. The employer further must make a reasonable accommodation for nursing mothers by providing them with an appropriate private space that is not a bathroom stall, for expressing breast milk. An employer may be exempted from these requirements if providing time or an appropriate private space would substantially disrupt the employer's operations. Additionally, employers are prohibited from retaliating or discriminating against a nursing mother for exercising these rights.

2.9 "Ban the Box"

With limited exceptions, Vermont employers are no longer permitted to request criminal history record information on initial employment applications. Employers may still inquire about an applicant's criminal history during the interview process, but the applicant must also be afforded an opportunity to explain the circumstances surrounding any conviction.

3. Employment Termination

With significant exceptions, Vermont recognizes at-will employment, in which employment may be terminated "for good reason, bad reason, or no reason at all." Among exceptions to the at-will doctrine are the nondiscrimination and other statutory provisions of federal and Vermont law. In addition, a discharge may be found to be wrongful in the following situations:

Breach of Contract: if it breaches either an expressed or implied contract of employment. A contract may be expressed in a formal written agreement, or it may be implied from informal "promises" made verbally by a manager or supervisor, statements made in employee handbooks or personnel policies, or other standard employment practices.

Breach of Public Policy: if discharge contravenes some public policy not specifically set forth in statute. For example, it may breach public policy to discharge an employee because he or she refused to help an executive hide embezzlement.

Tort: the discharge occurs in an outrageous or offensive manner, violates privacy interests, or includes the publication of defamatory statements.

3.1 Receipt of Termination Pay

An employee who voluntarily resigns must be paid on the last regular pay day, or if there is no regular pay day, the following Friday. An employee who is discharged must be paid within 72 hours of termination.

3.2 Group Health Insurance

With certain exceptions, all group health insurance policies, including hospital, medical, and dental, must allow a person to continue coverage after loss of employment, at the individual's cost. Employers must notify employees of this right within 30 days of the loss of employment. The term "loss of employment" includes a reduction in the employee's hours that results in ineligibility for employer-sponsored coverage.

Contributions from a discharged or reduced-hours employee may not exceed 102% of the group rate for the insurance being continued. Generally, continuation of coverage lasts for 18 months. Extended coverage is not required, though, if the discharged or reduced-hours employee is not insured under the group policy on the date of the loss of employment, is covered by Medicare, or is discharged due to gross misconduct.

3.3 Non-Compete and Non-Solicitation Agreements, and Confidentiality of Trade Secrets

Generally, non-compete, non-solicitation, and confidentiality agreements are enforceable in Vermont so long as they are reasonably tailored to protect the legitimate interests of the employer. Protectable interests include the securing of proprietary confidential information, good will, relationships with customers, and investments in special training. In determining whether a non-compete or non-solicitation agreement is reasonably tailored to protect employer interests, courts will consider whether the duration of the agreement and any geographic restrictions on reemployment are greater than necessary. This analysis may focus on (i) whether the former employee's departure was voluntary or involuntary; (ii) the level of training received from the former employer; (iii) the former employee's knowledge of the employer's confidential information; and (iv) whether the former employee is able to find other employment.

Both the offering of initial employment and continued employment will serve as sufficient consideration for an employee to enter into a restrictive covenant in Vermont. In some jurisdictions, courts will uphold challenged agreements with overly broad restrictions by reforming the restrictive terms. Presently, it is unclear whether Vermont courts will adopt this practice of reformation.

Both Vermont and federal laws also extend protections to an employer's trade secrets. See Chapter 8 (Intellectual Property), for more information on trade secrets law. Under these laws, if a trade secret is acquired by improper means or otherwise disclosed without consent, employers may seek injunctive relief against actual or threatened misappropriation, and damages for actual losses caused by any misappropriation, unjust enrichment, and reasonable royalties. Additionally, in the event of willful or malicious misappropriation, the federal Defense of Trade Secrets Act ("DTSA") now permits businesses to seek reasonable attorneys' fees and supplemental damages up to two times the amount of actual damages.

Employers should be aware, however, that the DTSA also provides new whistleblower protections for individuals who disclose a trade secret in confidence to a government official or attorney, as long as the disclosure is made for the purposes of reporting a violation of law. The law requires that when a business engages an employee, contractor, or consultant in work that involves the use of trade secrets or other confidential information, the business must provide the individual with written notice of his or her whistleblower immunity protections. This notice can be incorporated into the individual's contract, an employee handbook, or a separate policy document provided to the individual. If a business fails to provide proper notice, it will foreclose its right to seek supplemental damages and attorneys' fees, even if a trade secret is misappropriated in a willful and malicious manner.

4. Miscellaneous Provisions

4.1 Workers' Compensation

Vermont law provides compensation for employees who suffer injuries arising out of and in the course of employment. Employers must secure their obligation to compensate employees and often do so through workers' compensation insurance. The law prohibits discrimination or retaliation against an employee who files a workers' compensation claim. If an employee recovers from his or her injury within 2 years, the employer must reinstate the employee to the same position or an alternatively suitable post.

4.2 Unemployment Compensation

Vermont's unemployment laws provide economic assistance to employees who are laid off or terminated under circumstances beyond their control. The unemployment insurance system is administered by the Vermont Department of Labor and funded by employer-paid taxes. At this time, employees who meet all eligibility requirements may receive unemployment benefits for as many as 26 weeks.

4.3 Drug Testing

Applicants

An employer may require applicants to submit to a drug test only where a job offer is conditioned on a negative test result. To proceed with any test, an employer must give applicants written notice of the testing procedure, the drugs to be tested for, and a statement that therapeutic levels of prescribed drugs will not be reported.

Employees

Generally, the law does not restrict an employer's authority to prohibit the non-prescribed use of drugs or alcohol during work hours, or restrict an employer's authority to discipline, suspend, or dismiss an employee for being under the influence of drugs or alcohol during work hours. Except under limited circumstances, though, an employer may not request or require that an employee submit to a drug test, or administer or attempt to administer such a test. The exception to this standard is met only if all of the following conditions are met: (i) the employer has reasonable cause to believe the employee is using or is under the influence of a drugs; (ii) the employer has an employee assistance program ("EAP") available that provides for drug rehabilitation; and (iii) if the drug test is positive, an employee will not be discharged if they agree to participate in and successfully complete the EAP rehabilitation program. The employee may then be discharged if, after completion of the EAP program, he or she is tested again in compliance with the law and tests positive for drug use. In connection with the administration of any drug test, Vermont law provides employees with certain rights, including but not limited to receipt of a written policy outlining the test requirements, the designation of a non-employee to collect an employee's specimens, and the opportunity to request retesting of the specimen at the employee's expense.

4.4 Background Checks

When making personnel decisions, employers sometimes want to consider the backgrounds of applicants and employees. Except for certain restrictions related to medical and genetic information, and the "ban the box" provision discussed above, it is not illegal for an employer to ask questions about an applicant's or employee's background, or to require a background check.

However, any time an employer uses an applicant's or employee's background information to make an employment decision, employers must comply with federal laws that protect applicants and employees from discrimination. The U.S. Equal Employment Opportunity Commission ("EEOC") has published guidance that particularly cautions employers about basing employment decisions on arrest records.

Additionally, if an employer runs background checks through a third-party company in the business of compiling background information, the employer must comply with the federal Fair Credit Reporting Act ("FCRA"). Compliance with the FCRA requires that employers preliminarily disclose to an applicant or employee that a background check may be procured and obtain the applicant's or employee's written authorization. If a subsequent adverse action is based on the background check (for example, not hiring an applicant), the FCRA requires that employers provide notice of the action, a copy of the background check, and an opportunity to review and respond to any negative information.

4.5 HIV Testing

It is unlawful for any employer to request or require an employee, applicant, or prospective employee to have an HIV-related blood test as a condition of employment, classification, placement or referral.

4.6 Genetic Testing

Vermont law prohibits employers from discriminating on the basis of genetic test results or genetic information related to an employee or applicant, or a member of the employee's or applicant's family. Employers may not require genetic testing as a condition of, or to affect the terms, conditions or privileges of employment. It is also unlawful for any person to disclose to an employer the genetic testing results or genetic information related to an employee or applicant.

4.7 Polygraph Testing

With limited exceptions, employers may not request or require that employees or applicants submit to a polygraph examination. Employers also may not threaten an employee with a polygraph test. This prohibition extends to preclude any polygraph tests intended to serve as a condition for employment, a change in status of employment, or the provision of a benefit or privilege of employment. An employer may not refuse to hire or promote, or change the status of an employee or applicant because he or she refuses to take a polygraph examination.

4.8 Medical Marijuana

Medical marijuana may be legally prescribed in Vermont for a growing list of health conditions. To date, no Vermont court has weighed-in on whether employers must accommodate medical marijuana use under State and federal laws that prohibit disability-based discrimination. In other states that have addressed this issue, the consensus appears to be that employers are not required to accommodate an activity that remains illegal under federal law. This consensus may shift, though, as legal restrictions on marijuana use continue to be relaxed. In any event, just as with the use of prescribed narcotic drugs, employers should not be required to accommodate employees being under the influence of medical marijuana during working hours.

4.9 Employment of Children and Undocumented Workers

Children

A child under 16 years of age may not be employed in any gainful occupation unless the employer has been provided a certificate from the Commissioner of Vermont Department of Labor that permits such work. Children may not work more than 8 hours in any one day or more than 40 hours in any one week. Exceptions to these provisions exist, however, for agricultural positions, newspaper carriers, positions in domestic service, children employed by their parents, and child actors and performers.

Employment of Undocumented Workers

Employers may not knowingly recruit, solicit, refer for employment, or employ an undocumented worker. Before hiring a person that the employer knows is not a citizen of the United States, the employer must determine that the federal government has provided that individual the necessary authorization to work in the position he or she is being considered for.

CHAPTER 8: INTELLECTUAL PROPERTY

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In general, federal law is the source of most protection of rights to intellectual and intangible property, but Vermont law also offers protection to holders of such rights. This Chapter briefly covers the most important aspects of intellectual property law.

1. Patents

The U.S. Constitution (Art. I, § 8, cl. 8) gives Congress the power "to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their discoveries." Accordingly, federal law governs the grant of patents for inventions that are novel, useful and nonobvious, in title 35 of the United States Code. A U.S. patent confers the right to exclude others from making, using, offering to sell or selling the patented invention in the U.S., or importing the patented invention into the U.S. For utility patents (i.e., a patent covering a process, a machine, an article of manufacture or a composition of matter), this right generally extends for a term of 20 years from when the patent is filed. In the case of a design patent (i.e., a patent covering an ornamental design embodied in an article of manufacture), the right to exclude extends for a term of 15 years from when the patent issues. In exchange for such exclusive rights, the patentee discloses the invention to the public, which is free to use the invention after the patent term expires. Information pertaining to patents and the United States Patent and Trademark Office can be found at the U.S. Patent and Trademark Office (USPTO) website at www.uspto.gov.

Vermont state law does not apply to the granting of patents, since this power is reserved by the federal government. Once a patent issues, however, it is a form of property that can be contractually assigned, licensed or sold, including assignment as collateral for a loan. In this regard, the state law of contracts generally applies.

2. Trademarks and Service Marks

Vermont has adopted the Model State Trademark Act with some variations. As a general rule, a person who adopts and uses any trademark for the purpose of designating, making known and distinguishing its goods offered for sale in the state may register the mark with the Vermont Secretary of State and obtain legal protection of that mark. Service marks are not registrable in Vermont. In general, the best way to protect a trademark, service mark or other mark that is used in interstate commerce is to register that mark with the U.S. Patent and Trademark Office rather than with the state. However, if your mark is used for goods and the use is solely within the state, it is advisable to register with the Vermont Secretary of State.

The Vermont Secretary of State will not register a trademark that is (i) immoral, deceptive or scandalous; (ii) disparaging or falsely suggestive of a connection to persons, institutions, beliefs or national symbols; (iii) a coat of arms or other insignia of a municipality, state or nation; (iv) merely descriptive of the goods it identifies; or (v) identical to, or closely resembles, any trademark previously used or registered and is likely to cause confusion or mistake or to deceive purchasers.

Applications for registration are filed with the Vermont Secretary of State. The application must be made on forms prescribed by the Vermont Secretary of State. The applicant must indicate on

the application the nature of its business, a description of the goods to be identified by the mark, an explanation of how the mark is used in connection with the goods, a specimen or facsimile of the mark, and the date the trademark was first used. The applicant must also certify in a signed statement that no other person has the right to use the trademark. The filing fee is $20.

The Vermont statute does not provide for reservation of a trademark based on an intent to use it in the future. Use within Vermont, however, is not a prerequisite for registration.

Registrations are effective for 10 years, and may be renewed for additional 10 year periods within one year prior to the expiration of the initial term. The renewal fee is $20.

The owner of a registered trademark may seek injunctive relief and/or damages against an infringer who uses the registered owner's trademark. The statute authorizes an award of the infringer's profits derived from a "knowing and willful" violation of the statute. Even if you do not own a state or federal trademark registration, you may still be able to obtain injunctive relief and/or damages for infringement under the Lanham Act, which is the federal trademark and unfair competition statute.

3. Copyrights

Protection of copyrights is governed by the federal Copyright Act of 1976. The text of this law is available on the web at www.copyright.gov/title17. Additional information regarding copyright protection may be obtained from the United States Copyright Office on its website at www.copyright.gov. Vermont has no copyright statutes, and in virtually all cases, any Vermont common law copyright protection that may have existed before enactment of the Copyright Act of 1976 has been preempted.

4. Trade Secrets

Vermont has adopted the Uniform Trade Secrets Act (9 V.S.A. §4601 *et. seq.*) to protect ownership of a "trade secret," which is defined as "information, including a formula, pattern, compilation, program, device, method, technique, or process" that:

(1) "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use" (§4601(3)(A)); and

(2) "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy" (§4601(3)(B)).

This definition includes information that may not be protected by copyright or patent. For example, a customer list or supplier list may be protectable as a trade secret, under certain circumstances.

The Trade Secrets Act provides a variety of remedies to protect confidential information against misappropriation by "improper means," which is defined in 9 V.S.A. §4601(1) as including "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." The remedies available include:

(1) injunctions against actual or threatened misappropriation (§4602(a));

(2) injunctions directing affirmative acts to protect a trade secret, in appropriate circumstances (§4602(c));

(3) monetary damages, measured by the actual loss of the trade secret and/or the misappropriator's unjust enrichment (§4603(a)(2)), or if neither actual losses or unjust enrichment are provable, a reasonable royalty (§4603(a)(3)); and

(4) punitive damages for malicious misappropriation (§4603(b)).

In addition to these permanent remedies, the Vermont Superior Court is required to take measures to preserve the secrecy of a trade secret while a suit is pending, by issuing protective orders and temporary injunctions. (V.R.C.P. Rule 26(c)).

Vermont state law was amended in 2014 to include the following:

- 9 V.S.A. §4603(a), new subsection (4): "A court shall award a substantially prevailing party his or her costs and fees, including reasonable attorney's fees, in an action brought pursuant to this chapter."
- 12 V.S.A.§523 now states that plaintiffs can commence an action for misappropriation of trade secrets under 9 V.S.A. §4601 et. seq. within six years after "the date the misappropriation was discovered or reasonably should have been discovered." The previous limit was three years. The Vermont Trade Secrets Act does not displace any contractual or criminal remedies available for misappropriation. For example, if an employee violates a confidentiality agreement, the company may sue the employee not only for violation of the Vermont Trade Secrets Act (if appropriate), but also for breach of contract.

As of 2016, trade secret misappropriation claims can also be asserted in Federal Court under the Defend Trade Secrets Act of 2016 (DTSA) (codified at 18 U.S.C. § 1836, et seq.). The DTSA creates a federal cause of action for trade secret misappropriation and provides a uniform statute than can be applied in any state. The DTSA does not preempt existing state trade secret laws. See Chapter 7 (Employment Law)] for more information on the DTSA, including information on the new whistleblower immunity and an employer's obligation to provide notice of such immunity in a confidentiality agreement.

5. Tax Incentives

Vermont companies may qualify for special income tax incentives, such as research and development income tax credits for R&D expenditures that result in the creation of intellectual property.

CHAPTER 9: ENVIRONMENTAL LAW

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Since the late 1960s, Vermont has been very aggressive in passing laws and regulations that are protective of Vermont's working landscape, natural environment and quality of life.

1. Environmental Agency and Law Enforcement

The Vermont Agency of Natural Resources ("ANR"), through the Department of Environmental Conservation ("DEC"), issues State and Federal pollution control permits and enforces State and Federal environmental statutes and regulations. The ANR homepage at www.anr.state.vt.us is a good source of information on Vermont's environmental laws and regulations, with links to the DEC and its divisions.

DEC has broad authority to notify parties of environmental violations, to order abatement of such violations and to seek penalties. This work is done by environmental enforcement officers. If an imminent environmental hazard is present, DEC has authority to undertake emergency cleanup itself and recover costs incurred from the responsible party. Game wardens also enforce certain environmental statutes and regulations for the Department of Fish & Wildlife ("DFW").

A special Environmental Court has jurisdiction over Vermont's environmental statutes and regulations, as well as municipal zoning appeals. The Vermont Environmental Court's web site can be found at www.vermontjudiciary.org.

There are three types of enforcement tools available to DEC. First, when a violation of an environmental law occurs (a violation is or will likely occur), the Secretary of ANR may issue a notice of alleged violation ("NOAV"). Second, the Secretary may issue an Administrative Order ("AO") when the Secretary knows a violation exists and order abatement. The alleged offender or respondent has a choice of actions that can be taken in response to an AO. The Order may include, inter alia, penalties covering costs of enforcement, the time the violation has existed, and economic benefit. The Respondent can fight the allegations in environmental court. Third, as an alternative to administrative or judicial proceedings or as a way of resolving proceedings in progress, a respondent to an environmental offense may enter into an assurance of discontinuance ("AOD"), which may include contribution to other projects as a remedy. The AOD is in essence a settlement agreement. Pending permits can be stayed if a Respondent is non-compliant with an existing AOD. Collection actions may be brought in Superior Court for failure to pay penalties.

2. Land Use and Zoning

2.1 Act 250

Significant commercial developments require approval under Vermont's state-wide land use law known as Act 250. This includes development involving more than one acre of land or ten acres of land, depending on whether the town in which the development is located has adopted a

zoning ordinance, or projects involving subdivision of 10 or more development lots or housing units.

To obtain an Act 250 Permit, a project must comply with the following criteria (and numerous sub-criteria) intended to determine the project's impact on:

(1) air and water quality;
(2) water supply;
(3) waste disposal;
(4) floodways;
(5) streams and shorelines;
(6) wetlands;
(7) soil erosion;
(8) traffic;
(9) educational and municipal services;
(10) aesthetics;
(11) historical sites;
(12) natural areas;
(13) wildlife habitat and endangered species;
(14) growth;
(15) agricultural and forestry soils;
(16) earth resources;
(17) energy conservation;
(18) utility services; and
(19) local and regional planning initiatives including zoning and subdivision regulations.

Act 250 is administered by the nine regional District Environmental Commissions, under the direction and supervision of Vermont Natural Resources Board. District Environmental Commission decisions may be appealed by the developer, pertinent governmental entities, or other qualified parties to the Vermont Environmental Court. Parties before the Environmental Court may then appeal that court's decision to the Vermont Supreme Court. The Land Use Panel's Act 250 website may be found at www.nrb.state.vt.us/.

2.2 Zoning

In addition to Act 250 permits for significant commercial development, zoning permits and approvals are required at the local level. Most, but not all, towns in Vermont have town plans which enable local zoning and subdivision regulations. Local zoning permits and approvals are administered by the City or Town Planning Director or Zoning Administrator.

3. Air Pollution

Vermont has adopted a State implementation plan in conformity with the Federal Clean Air Act. Various approvals are necessary from the DEC's Air Quality and Climate Division for sources of air contaminants. These approvals can be divided into three categories: (i) permits to construct or modify; (ii) permits to operate; and (iii) certificates of registration. Air Pollution Control Permits are required for stationary sources of air contaminants or modifications to existing stationary sources such as incinerators, industrial processes, fuel burning equipment and mineral processing operations. These permits ensure continuous compliance with air pollution requirements such as the above stationary sources. Permits to construct are valid for the life of the project. Operating permits are valid for 5 years. In addition, each facility subject to air

regulations must apply for a Certificate of Registration for the operation of the air contaminant source and its resulting emissions. The Certificates are issued for the period beginning the first day of July through the last day of June of the following calendar year. Indirect sources of air contaminants which either provide significant amounts of parking for motor vehicles or draw a large volume of vehicular activity must also obtain an Air Pollution Construction Permit. The Air Quality and Climate Division's website can be found at http://dec.vermont.gov/air-quality.

4. Hazardous Waste Management

Vermont has enacted the Vermont Hazardous Waste Management Act, which is comparable to the federal Resource Conservation and Recovery Act ("RCRA"). The Vermont Hazardous Waste Management Act, as implemented through the Vermont Hazardous Waste Management Regulations which were last updated in 2016, regulates the treatment, storage and handling of hazardous wastes and provides penalties for violations. Persons generating, transporting or storing hazardous waste within Vermont must report those actions to the Hazardous Materials Section of the DEC, along with specific information about the waste and its storage and disposal. Discharges of hazardous wastes must be promptly reported and abated. The Hazardous Waste Management Section's website can be found at http://dec.vermont.gov/waste-management/hazardous

5. Hazardous Waste Sites

The Vermont Hazardous Waste Management Act also provides the State's counterpart to the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA", or "Superfund"). A modest Environmental Contingency Fund has been created to finance the cleanup of State hazardous waste sites similar to the CERCLA Superfund provisions. Under the Act, DEC has adopted an Investigation and Remediation of Contaminated Properties Rule that applies to a wide spectrum of hazardous substances, including those routinely disposed of by commercial entities and—unlike CERCLA—petroleum products. Cost recovery for cleanup actions can be imposed against past and present owners or operators of hazardous waste sites, as well as those persons contributing hazardous substances to a site by transporting, generating or arranging for the disposal of hazardous substances. The investigation and remediation of hazardous waste sites is administered by the DEC's Sites Management Section pursuant to the Investigation and Remediation of Contaminated Properties Rule. The Section also administers the Petroleum Cleanup Fund (see below under Section 7). The Sites Management Section's web site can be found at http://dec.vermont.gov/waste-management/contaminated-sites

The Vermont Hazardous Waste Management Act also includes the Brownfields Reuse and Environmental Liability Limitation Program. This program encourages the voluntary cleanup of qualifying contaminated, underutilized industrial and commercial sites ("Brownfields") by providing liability releases from existing contamination to qualified redevelopers who agree to perform pre-approved remedial work. The Brownfields program manages a number of incentive programs available to clean up and re-use sites. More information about this program referred to in Vermont as "BRELLA" is available at http://dec.vermont.gov/waste-management/contaminated-sites/brownfields/BRELLA.

The Vermont Hazardous Waste Management Act also generally protects lenders from liability for contaminated sites on which they hold mortgages. In order to avoid liability upon foreclosure, however, the lender must negotiate a pre-foreclosure agreement with the DEC.

6. Solid Waste

Solid waste storage, collection, transportation, processing, transfer and disposal are regulated at the State level by the Solid Waste Section of the DEC Waste Management and Prevention Division, with a focus on diverting mandated recyclables, leaf and yard waste and food waste from landfills. The Solid Waste Section's website can be found at http://dec.vermont.gov/waste-management/solid. Facilities and activities subject to such regulation include sanitary landfills, industrial landfills, dry waste disposal facilities, resource recovery facilities, transfer stations and the handling of special wastes. Solid waste facilities are regulated by a permitting procedure that includes a public hearing phase for new sites. The Solid Waste Regulations also specify the minimum environmental protection requirements for landfills and other disposal sites.

7. Underground Storage Tanks

The Vermont Underground Storage Tank Act regulates the installation, operation and abandonment of underground storage tanks, to prevent the leakage of petroleum products and other hazardous liquids that threaten groundwater quality. Excepted from the Act are septic and manure storage tanks, wastewater/hazardous waste storage and treatment tanks, storm water and wastewater collection systems, storage tanks in an underground area if the tanks are situated upon or above the surface of the floor, pipeline facilities regulated by federal law and liquid petroleum gas storage tanks. The Act is implemented by the Vermont Underground Storage Tank Regulations. The DEC's Underground Storage Tank Section administers Vermont's UST and above-ground storage tank ("AST") programs. The Underground Storage Tank Section's website can be found at: http://dec.vermont.gov/waste-management/storage-tanks.

Vermont has a Petroleum Cleanup Fund which is available to reimburse owners of permitted underground storage tanks for costs incurred in investigating and remediating releases from an underground storage tank. The Petroleum Cleanup Fund provides limited coverage for releases from above-ground storage tanks as well. There are other funding programs in place to facilitate compliance with this law.

8. Water Quality

Vermont has instituted a water quality permit program consistent with the regulations, guidelines and priorities of the Federal Clean Water Act as well as State water quality policy. The DEC Watershed Management Division oversees water permit issuance, as well as compliance, monitoring and enforcement under the permit program. The DEC Watershed Management Division, the federal EPA and the United States Army Corps of Engineers cooperate to review jointly considered permit applications. Water quality standards and permit procedures are regulated by the State's Water Pollution Control Regulations under duly adopted Vermont Water Quality Standards and are enforced by the DEC's Watershed Management Division and environmental enforcement officers. Vermont's water quality programs are administered by the DEC's Watershed Management Division. The Watershed Management Division's website can be found at www.vtwaterquality.org. Appeals from decisions of the Secretary or DEC related to water quality are generally appealed to the Environmental Court.

Water systems serving the public, operation of wastewater treatment facilities, discharge of stormwater and pollution of water by oil discharge are all separately regulated by the DEC.

Stormwater regulation in recent years has become a major focus of the DEC's efforts. In addition to overseeing the National Pollutant Discharge Elimination System permitting program,

DEC administers state statutes and regulations to address post-construction and agricultural stormwater runoff. Depending on the location of the runoff source, compliance with stormwater regulations can affect conveyances of real property.

Vermont also has a Groundwater Protection Act that provides a private right of action to any person for the pollution of the State's groundwater.

9. Wetlands

The Vermont Wetlands Act was enacted to prevent the loss of State wetlands to unregulated activities. This Act sets forth a review and approval system designed to preserve remaining Vermont wetlands. Many of Vermont's significant Wetland areas have been mapped, and activities such as construction, draining and dredging in the wetlands may only be commenced after approval by the DEC wetlands program pursuant to a general or individual permit. There is a Wetlands program which is part of the Watershed Management Division. They have developed an interactive mapping system on their website which shows identified wetlands in the State, however unmapped wetlands may also be jurisdictional depending on whether they exhibit the functions and values of mapped wetlands. The DEC Watershed Management Division, EPA and the Army Corps of Engineers are both involved in the review of proposed projects in wetlands areas. The DEC Wetlands Section website can be found at http://dec.vermont.gov/watershed/wetlands. The EPA Wetland's Division web page can be found at www.epa.gov/owow/wetlands. The website for the New England District office of the Army Corps of Engineers can be found at www.nae.usace.army.mil.

10. Spill Reporting

State law mandates that any person who causes or contributes to the discharge of an air contaminant into the air, a pollutant into surface water or groundwater or onto land, or the disposal of solid waste in excess of any quantity must report such an incident to DEC at the earliest opportunity after the discharge has occurred. This requirement is in addition to any reporting requirement under federal law. Enforcement is handled by the respective department and/or division.

11. Fish and Wildlife

The Department of Fish and Wildlife is another ANR Department. Its website is www.vtfishandwildlife.com. Its programs monitor and enforce issues related to wildlife, hunting and trapping, fishing, fisheries programs, conservation, and law enforcement. The Department's game wardens are in charge of that enforcement. While their programs are not typically considered a part of the permitting process per se, they do figure in Act 250 with respect to threatened, rare and endangered species, fisheries and public lands.