

**Vermont Housing Registry
Design
Task Force Report**

December 12, 2000

Forward

The Issues

There are serious trends currently challenging the citizens of Vermont, underscoring the need for creating a State Housing Registry and Inspection System. These trends are: (1) an acute shortage of safe and affordable housing to meet the needs of Vermonters; (2) pressures causing under-utilization of our traditional town centers; and (3) the prevalence of sprawl development affecting large areas of the state. The issues of safety and decency for Vermonters in rental housing is therefore seen, not only as a compelling and undeniable issue in its own right, but as an issue encompassing these other broad issues confronting our communities and very way of life.

While the recommendations of this report focus on safety and habitability, we also wish to recognize and acknowledge that these challenges are intermingled, and the solution to these Vermont problems intertwined.

The Principle

We believe that to not have accurate information about the rental housing stock in our state is unacceptable in this day and age. Decision makers must have accurate information to enact public policy, allocate resources, target services, and protect the public good. The ramifications are enormous.

The Reality

It is estimated that at least one-third of Vermonters live in rental housing. Such housing exists throughout the state and in significant numbers in town centers. Fire safety is dismally substandard. The public generally does not know that fire represents the single most common environmental threat to Vermonters both in the waste of lost lives as well as in the loss of millions of dollars in property damage annually. The fire-loss lesson in St. Johnsbury in recent years is a tragic reminder.

The Response

Identifying and protecting our housing stock makes sense. It means preserving lives and preserving our tax base. It means protecting our traditional town centers from fire, dilapidation, and blight, thereby making them attractive to live in and support. It means supporting the legendary quality of life and environment that tourists spend millions of dollars to experience.

The Program

A program that protects people's lives and their investments is sound economic policy and sound public-safety policy. Rental housing is a vital business activity that represents millions of dollars of cash flow annually and is unique in that it directly affects people's fundamental need for decent and safe shelter. We hope you will give serious consideration to our recommendations.

Scope of Report

The scope of this report includes our findings and conclusions to date. The Task Force wishes to reserve the right to produce and submit an amended report, if necessary, once the Labor & Industry final draft is made available for review.

Synopsis of Report Findings

- Clarification of scope of work – the design is to include both registry and routine inspection, pg. 4
- Recommendation of title of report – the title should identify the report as addressing a registry and inspection program, pg. 4
- Calculations for staffing levels and registration costs must be as accurate as possible, and additional review of these points should be made, pg. 4
- Public education/ technical assistance provisions should be a strong and prominent part of the Registry design. Without these, the Registry is likely to create an inefficient system, and to create undue hardships on both landlords and tenants, pg 4
- Strong provisions for tenant responsibility and accountability are necessary for tenant-generated sub-standard conditions. Enforcement tools are imperative, pg 4
- Liability protection for landlords who meet codes should be explored, and provided if feasible, pg 5
- The program must be carefully phased in, to avoid creating undue hardship or even crisis, pg 5
- The inspection cycle would optimally be 3 years, but should definitely be no longer than 5 years, pg 6
- The design should shift habitability code enforcement should be shifted as directed by the Legislature, with a timetable for accomplishing this task. Recommendations are made for the delineation of responsibilities between the Health Dept. and Labor & Industry, pg 6
- Co-ordination of data fields with lead poisoning prevention data is encouraged, pg 7
- Exemptions of certain properties should be explored, pg 7
- Access must be provided to the public for Registry information, pg 7
- Financial assistance program in support of rental property rehabilitation must be fostered and supported, pg 7
- A certificate of habitability should be posted in each inspected property, pg 8
- The computer system and database should be carefully designed to provide maximum efficiency to the program and strong evaluation tools, pg 8
- The municipal programs portion of the Registry must provide structured and objective overview of programs, with delegated jurisdiction agreements and the transfer of Registry funds back to communities contingent upon demonstration that the municipality meets program standards, pg 8
- Self-certification by landlords presents difficulties in oversight, and should be used sparingly and with caution, pg 8
- At least one Assistant Attorney General should be provided in support of the Registry and its functions, pg 8

Findings and Recommendations

Clarification of scope of work.

A clarification of the scope of the legislative charge was first addressed. By review of last year's housing study and the knowledge of those involved in last year's legislative effort, it was apparent to all members that the charge of the Legislature was to design a housing registry and a plan for extending its inspection program to systematically include all rental housing, incorporating habitability code enforcement.

Recommended title of Labor & Industry report

The Task Force encourages the Department of Labor & Industry to consider titling its report Vermont Rental Housing Registry and Inspection Program Report, to add clarity to the purpose and scope of the report. If this is not possible, the Task Force recommends that a subtitle be added to the report title "A Rental Housing Registry and Inspection Program".

Calculations for staffing levels and registration costs

The Task Force would underscore the importance of the best possible accuracy in calculations for staffing levels and registration costs. It was pointed out that Burlington has determined that a \$50 inspection fee (absent other inspection related fees) is needed simply to fund a 10-year inspection cycle. Furthermore, Burlington does not face the challenge of extended travel times for inspectors to remotely located properties. The Task Force asks Labor & Industry to review its calculations, and to provide documentation and justification for its figures.

Public education and technical assistance

Public education and technical assistance are seen as very much a part of any workable Registry system. Without these, the Registry is likely to create an inefficient system fraught with serious difficulties in obtaining and maintaining code compliance. It will also inevitably create undue hardships on both landlords and tenants. The Registry should seek to provide a user and consumer friendly organization, and the elements of public education and technical assistance are key elements of such an approach. This fact was emphatically recognized in the Sussman report, and was reflected in recommendations of that report.

Tenant responsibility and accountability

There must be an acknowledgement that at times it is tenants who create or contribute to unsafe conditions in rental housing. In those cases where tenants are responsible for code violations, routes to achieving compliance must include tenant-targeted actions by officials. This will require a variety of provisions: education of tenants as to their responsibilities and the possible consequences; education of inspection personnel and support of L&I administration in holding tenants accountable, and the evaluation of currently available enforcement tools toward this end.

Effective enforcement tools are imperative. Alternate enforcement tools may need to be developed, and the ability to issue tickets such as is done in Burlington is recommended as an additional tool that might be effective in this and other situations. Necessary provisions to facilitate such ability should be explored and enacted.

It was found that the Vermont Fire Prevention and Building Code already provides for some degree of this assessment of responsibility, but it is seldom enforced. NFPA 1: 1-12.1, adopted by the Vermont Code, reads “The owner, operator, **or occupant** shall be responsible for compliance with this code...” NFPA 1: 1-12.3 reads “The owner, operator **or occupant** of a building that is deemed unsafe by the authority having jurisdiction shall abate, through corrective action approved by the authority having jurisdiction, the condition causing the building to be unsafe...” The foundation for holding tenants responsible for the creation of substandard conditions within a building seems to be present, and should be evaluated and built upon as necessary.

Liability protection for landlords who meet codes.

An assessment of the language included in the Vermont Lead Poisoning Prevention law as it relates to liability protection for landlords is recommended. Section 1761 of that law addresses reasonable care, negligence, and liability language. Legal review could assess its applicability for inclusion as an incentive and benefit to landlords who maintain safe and decent housing through compliance with the codes as documented by Registry inspections.

Phase-in of the program.

Phase-in is very much needed. The program should allow the first 3-4 year period to focus on education, technical assistance, the establishment of property rehabilitation assistance programs, and the logistics of the registry.

It is also emphasized, however, that even with such a timetable, an anticipated increase in requests for inspections will likely occur from early on

in the Registry. People will become informed on situations that constitute safety risks, and on where they may go for assistance, and so will turn for help. That help must be available. Increased inspection staffing will therefore be necessary in the early years of the Registry, prior to the beginning of the first routine inspection cycle, to field and respond to such requests.

The first routine inspection cycle of the Registry should begin in year 4 or 5 of the program.

Recommendation on inspection cycle.

The inspection cycle would optimally be 3 years, but should definitely be no longer than 5 years. Prioritization of inspections is encouraged, so that some properties would be inspected more often within this time frame, with the safest properties being inspected at perhaps 5 year or slightly greater intervals.

Habitability code enforcement

The Task Force considered the issue of habitability code enforcement. While it was agreed that the ideal situation would provide one agency to address all rental housing code enforcement, full enforcement of the habitability code by Labor & Industry through the Registry was not found to be workable. Difficulties lay in part in the diverse areas of expertise, and in part to other concerns held by Labor & Industry.

A review of over-lapping areas of the codes was conducted. It is recommended by the Task Force that the Department of Labor & Industry assume rental housing code enforcement in all areas except the following: surfacing sewage, water quality and purity, garbage disposal, and infestation of pests and rodents. A copy of the draft from our sub-committee is attached, amended as per our 3rd meeting.

While the Task Force found this distribution of responsibilities acceptable, it also wished to clearly note that the equation will provide few resources to improve the difficulties described with the Town Health Officer (THO) program in the Sussman report. The great majority of complaints currently received by the Department of Health, and responded to by Town Health Officers, fall into the four categories which will remain with the THO program. The regular inspection of buildings will, however, address many of the structural, electrical, heating and plumbing issues that fall under or closely correlate with current L&I jurisdiction, and will clarify jurisdiction.

All code provisions except those covering the four excluded areas should be combined into a single revised code to be enforced by the Department of Labor & Industry through a system of regular inspections and complaint

based response. The necessary regulatory and/or statutory changes related to such a transfer should be made. Town Health Officer (THO) authority should not be impacted in any other respects by such change.

A formal referral system should be established so that Town Health Officers will have regular clear and direct communications with Labor and Industry rental housing inspectors regarding any possible rental housing code violations that may come to their attention.

Coordination of data fields with lead poisoning prevention data needs

Registry data categories tracking the age of the building should be developed in conjunction with the Vermont Lead Poisoning Prevention Program, so that facilitation of this information for their use will be enhanced.

Possible exemptions of properties

An evaluation should be made regarding the exemption of certain rental housing properties from payment of Registry fees, and/or from the inspections themselves. These properties might include non-profit housing. A recommendation to exempt Housing Authorities was particularly suggested. It was agreed, however, that the exemption would need to correlate with safeguards to insure that minimum safety standards were being provided in the housing stock, perhaps through an enhancement of the scope of the routine inspections already provided in this type of housing. Without adequate safeguards, no exemption should be offered.

Public access to records

Public access to registration and inspection records must be provided, as is required under public records laws and provisions. Access to records should be made readily available. Publication of the registration information on the web was recommended by several.

Financial assistance in support of rental property rehabilitation

The financial programs for assistance with required rehabilitation and upgrading have been very much a part of the focus of the Task Force to date. The Task Force strongly recommends that the Legislature lend support to existing avenues of providing financial relief for landlords, and to the development of new resources. Without such efforts, an unfair impact will be levied onto rental property owners, affordability of apartments will become even more troublesome, and rental housing units may be lost in this already very tight housing market. We do not want to create more homeless individuals or families. Once again, reference is made to the Sussman report and the strong emphasis placed on the need for such programs therein.

Relocation of tenants

Funding and assistance must be built into the system for relocation of any tenants that are displaced as a result of Registry inspections. Without such a safety net, not only will hardship fall to these tenants through perhaps no fault of their own, but also tenants may become reluctant to report even very serious safety violations.

Certificate of habitability

A certificate of habitability, occupancy, or some other like designation should be issued for each unit once it is inspected and found to be in compliance. Posting of the certificate should be required within the building, visible to tenants and prospective tenants. This certificate should also contain information on who to contact if unsafe conditions develop in the building requiring further inspection or action by the authority having jurisdiction.

Computer system and database

The computer system and database should include a GIS system to maintain integrity of information and the ability to uniquely identify rental properties, receive and share information with other databases and computers, and streamline notification functions to enhance productivity of inspectors. It would serve as a tool for evaluation of problems in the rental housing stock, and for the planning of inspections and other outreach as well as many other important functions. Experience shows that efficiency and enhanced effectiveness will be the outcome of an investment in such an information system.

Oversight of municipal programs

The municipal programs portion of the Registry design needs to be carefully reviewed, with structured and objective overview of programs provided within the Registry design. Standards should exist for both inspectors and programs, and the compliance with standards should be a requirement for delegated (or continued delegated) jurisdiction.

Sub-registry of accessible housing

The creation of a database for accessible rental housing is an important provision of the registry. It will enable disabled Vermonters to locate accessible housing, and will assist in planning future accessible housing as well as other services. The Task Force expresses its strong support for the inclusion of the sub-registry of accessible units, and appreciates the strong groundwork that the L&I design lays for this function.

The issue of self-certification

Self-certification by landlords was discussed, and though it is an idea that holds merit, the difficulty in overseeing such a program and assuring its integrity seems to outweigh the potential benefits. Self-certification may, however, be an option for certifying that corrective measures have been provided after the initial inspection by Registry staff. Both Labor & Industry and the City of Burlington currently allow this avenue in limited circumstances.

- At least one full time Assistant Attorney General, whose responsibility lies in support of the Registry, and particularly its enforcement functions, should be provided as per the Sussman recommendations.

Task Force Members:

The following individuals served on the Task Force and are in agreement on the contents of this report:

Byron Stookey, tenant advocate (Brattleboro Area Affordable Housing Corp)

Paul Hill, financing expert (Vermont Community Loan Fund)

Sharon Hallock, Vermont Department of Health, Community Public Health

Traci Sawyers, Vermont Department of Health

Patrick Riordan, landlord advocate (Vermont Rental Property Owners Association)

Ray O'Connor, City of Burlington Chief of Code Enforcement

Ted Wimpey, tenant advocate (Vermont Tenants/CVOEO/Affordable Housing Coalition)

Gerry Garrows, landlord advocate (Vermont Rental Property Owners Association)

John Hunt, landlord advocate, Coburn & Feeley Property Management, Burlington

Jo Ann Gibson, Vermont Centers for Independent Living

Jack McCullough, tenant advocate and attorney, Vermont Legal Aid

Input to the Task Force has been invited and is on-going from concerned individuals through-out the state, including the following:

Steve Cobel, Assistant to Task Force

Teresa Deen, Assistant to Task Force

Bruce Martin, Assistant to Task Force

Stuart Bennett

Hugh Barber

Jason Cooper

Dart Everett

Special thanks to Rod & Debbie Dion, whose beloved daughter Amy Dion died in a rental apartment fire on October 24, 1998. Their willingness to contribute to and inform the Task Force effort is especially appreciated.

**REPORT TO: TASKFORCE ON CODE ENFORCEMENT AND
RENTAL HOUSING REGISTRY DESIGN
FROM: THE RENTAL HOUSING HEALTH CODE
ENFORCEMENT SUBCOMMITTEE**

11/17/2000

Members of this subcommittee are:

Ray O'Connor, Traci Sawyers, Ted Wimpey

The charge to this subcommittee from the taskforce was to make recommendations concerning the following Legislative directive-- Act 115, Sec. 10, § (8) -- as passed by the Vermont State Legislature in the Y2000 Legislative Session:

**“Act 115, Sec. 10. STATE RENTAL HOUSING REGISTRY;
DESIGN.**

The department of labor and industry and the department of housing and community affairs shall cooperatively design a process for creating a registry of all the rental housing units in Vermont from which to create a database that will be updated regularly to provide valid contemporary information relating to each rental housing unit in the state. The design shall include an estimate of human and financial resources needed to assure the success and thoroughness of the registry. The rental housing registry design proposal shall be presented to the general assembly in a report on or before January 1, 2001. At a minimum, the report shall include:

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**(8) A process and time frame for transferring
habitability code enforcement from town health
officers to the department of labor and industry.**

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**This subcommittee has met twice and our discussions have
covered a wide array of issues related to #8 above.**

Summary of subcommittee's recommendations:

- 1) **NO CHANGES SHOULD BE MADE UNLESS** THE NEWLY FORMULATED ENFORCEMENT SYSTEM IS ADEQUATELY FUNDED AND STAFFED, AND ADEQUATE FUNDING IS REASONABLY SECURE FOR THE FORESEEABLE FUTURE.
- 2) All code provisions (excluding exceptions contained in #3 below) that are currently included in the Rental Housing Health Code should be folded into a single revised code to be enforced by the Department of Labor and Industry through a system of regular inspections and complaint based response. The necessary regulatory and/or statutory changes related to such a transfer should be made. Town Health Officer (THO) authority should not be impacted in any other respects by such change.
- 3) THO's should no longer have responsibility for rental housing code enforcement with the exception of the following two situations: a) Surfacing of sewage outside of a building. b) Issues related to safety and purity of water supply.
- 4) A formal referral system should be established so that Town Health Officers will have regular clear and direct communications with Labor and Industry rental housing inspectors regarding any possible rental housing code violations that may come to their attention.

Explanation of subcommittee's recommendations:

The subcommittee's review of the existing Rental Housing Health Code led us to the conclusion that many of the items included therein are already included in, or dovetailing with, codes currently enforced by the Department of Labor and Industry. To reformulate these codes into a single uniform code would not be difficult challenge and would increase efficiency of enforcement efforts as well as decreasing potential for confusion on the part of rental property owners and tenants alike. It would also address inconsistencies with current enforcement practices by enabling trained professionals within the Department of Labor and Industry to replace the enforcement now provided by largely volunteer THOs with a variety of backgrounds and other issues to address in their towns. However, the subcommittee also believes it would be a waste of time and energy, and in fact a step in the wrong direction, to change the current system without creating an alternative that is not only better designed but also, and especially, is adequately funded and staffed with qualified personnel.

The two areas that we feel reasonably should continue to come under the enforcement purview of the THO system are: 1) Surfacing of sewage; and 2) Issues concerning the general safety, purity and portability of water supplies. The subcommittee believes that these are public health threats of a nature that are most compatible with the other duties and responsibilities of the THOs and the Department of Health.
