

**STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2010**

**Order Promulgating Amendments to the Vermont Rules of Civil and Environmental Court
Procedure**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 62(a)(3) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

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(3) Orders for Possession.

(A) No order for possession shall issue upon a final judgment for possession of ~~real estate or~~ a chattel, nor shall proceedings be taken for enforcement of the judgment for 10 days after its entry; provided that on motion made during the 10-day period the court may stay any such writ for a further period of 20 days or until the time for appeal from the judgment as extended by ~~Rule 80.1(m) or~~ Appellate Rule 4 has expired.

(B) A writ of possession shall issue on the date on which a final judgment for possession of real estate is entered, provided that on motion made within 10 days after entry of judgment the court may stay any such writ for a period of 20 days or until the time for appeal from the judgment as extended by Rule 80.1(m) or Appellate Rule 4 has expired.

(C) Any stay shall be granted upon such terms as the court considers necessary to protect the interests of any party. A timely motion for a stay acts as a further stay until the motion can be heard and determined, which shall be at the earliest possible time.

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Reporter's Notes—2010 Amendment

Rule 62(a) is amended for consistency with 12 V.S.A. § 4854, as amended by Act 176 of 2007 (Adj. Sess.), § 52. The statutory amendment provided that the writ of possession in action of ejectment under 12 V.S.A.

§§ 4851-4856 should issue on the date of entry of judgment, rather than ten days thereafter as previously provided, unless a stay is ordered for good cause. The amendment also extends the date after which the sheriff is to put the plaintiff in possession from five to ten days after the writ is served.

The amendment divides Rule 62(a)(3) into subparagraphs (A)-(C). For reasons outlined in the Reporter's Notes to the 1996 addition of paragraph (3), subparagraph (A) preserves the language of the existing rule covering orders for possession of a chattel. Subparagraph (B) adapts the provisions of the amended statute to the structure of the rule, preserving the ten-day period after entry of judgment in which a motion for a stay may be made. Subparagraph (C) preserves the language of the present rule concerning the terms of a stay and the effect of a motion for judgments for possession of both real property and chattels.

2. That Rule 3(9) of the Vermont Rules for Environmental Court Proceedings be designated as Rule 3(10) and new Rule 3(9) be added to read as follows (deleted matter struck through; new matter underlined):

RULE 3. CIVIL ACTIONS

The following actions within the original jurisdiction of the Environmental Court shall be commenced and conducted as civil actions under the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure, so far as those rules are applicable and except as they may be modified by subdivisions (b)-(e) of Rule 2:

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(9) Actions by municipalities to revoke a municipal land use permit issued under 24 V.S.A. chapter 117, as provided in 24 V.S.A. § 4455.

(10) Any other original action concerning a subject matter within the jurisdiction of the Environmental Court in which the relief sought is not available under other provisions of these rules or by action pursuant to paragraphs (1)-(89) of this rule.

Reporter's Notes—2010 Amendment

Present Rule 3(9) is renumbered as Rule 3(10), and new Rule 3(9) is added to include municipal actions authorized by 24 V.S.A. § 4455, added by Act 54 of 2009, § 47, to revoke land use permits where the terms of the permit have been violated or the permit was obtained based on a misrepresentation of material facts.

3. That these rules, as adopted or amended, are prescribed and promulgated to become effective on July 26, 2010. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 20th day of May, 2010.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice