



Chapter 2

State Securities Laws

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Registration: Vermont as a Case Study

Those seeking alternative capital should consider state securities laws, in addition to federal laws. Where all acts essential to a sale or transfer of securities takes place within state borders, the transactions are exempt from federal regulations. **However, in these “intrastate offerings,” state regulations still apply.** In Vermont, the Vermont Securities Act governs transactions that are administered by the Securities Division of the Department of Banking, Insurance, and Health Care (“Securities Division”). State statutes enacted to regulate and control the traffic in securities are commonly referred to as “Blue Sky Laws.”¹⁰

An essential consideration for intrastate offerings exempted from federal registration requirements is whether or not registration is required under the Vermont’s Securities Act. **Under the Vermont Securities Act, securities must be registered, although registration exemptions apply to financial offerings or transactions that meet certain criteria** (See below, “Securities Registration Exemptions Applicable to Farms”). The term “securities” includes a wide range of instruments, such as notes, stocks, bonds and investment contracts. As with federal law, Vermont’s definition of investment contracts functions as a catch-all.

Under Vermont law, unless exempt, a security must be registered with the Securities Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration. There are several methods of registration. Registration by notification applies only to federal covered securities, such as investment companies.¹¹ Registration by coordination is available for securities registered under federal securities law.¹² Registration by qualification is the most common form of registration for businesses offering or selling securities within Vermont.

Below is some of the information required for registration by qualification, in addition to payment of a \$600 filing fee:

- The name, address and form of organization of the person selling the security, including the state in which the business was established.
- The date it was established, and the general character of the business.
- Basic information for each person playing a significant role in the business, the number of securities they hold, and a description of transactions between the business offering the security and any of its owners.
- The aggregate amount paid to the persons playing a significant role in the business, and a description of how the business is capitalized, whether through equity or long-term debt.¹³

Offerings are reviewed to ensure they are fair to investors. Small Corporate Offering Registration is a streamlined form of registration for small businesses which is submitted to the Securities Division for merit review.

Securities Registration Exemptions Applicable to Farms

The Vermont Securities Act exempts particular securities and transactions from the registration requirement. Exempting a security means a particular type of security or instrument will always be exempt from security registration. These would include those transactions that would occur within the state or intrastate, and also those securities that are offered to a limited number of investors. Both of these are explained further below. Exempt transactions are slightly different from exempt securities. They pertain only to one transaction between an investor and the business offering the security. Whereas a particular security that is exempt will always be exempt as long as that security is involved, an exempt transaction is not such a blanket exemption. The exemption of a particular security remains with that security as long as the security exists, whereas the exemption of a transaction applies only to the qualifying transaction and does not automatically apply to any secondary distribution.

Common Question: *“This all seems pretty complicated. Is there any way I can avoid or cut down on legal fees?”*

Consultation with an attorney is an indispensable part of reducing risk of liability when it comes to interpretation of the legal implications of securities transactions. Determining whether you have a security, and then if you qualify for an exemption, and what must be done to comply with the terms of a particular exemption should be done with the assistance of an attorney. You can, however, reduce the number of hours necessarily spent on your case. One way is by contacting the state securities divisions or equivalent agencies. Depending on the circumstances, it may be better to make this call anonymously.

The state securities division may provide information that gives you some idea as to what you need to do. Alternating between the securities division and the attorney may allow you to get a better grasp of the situation in the eyes of the securities laws. While this should not be in the place of legal advice, a better understanding of the case may in some cases allow for streamlining and economizing of legal services.

¹⁰ Such legislation is called “Blue Sky Laws” because it tends to stop the sale of stock that represents nothing but blue sky, nothing terrestrial or tangible. It pertains to speculative schemes which have no more basis than so many feet of blue sky. Its violators became so barefaced that it was stated that they would sell building lots in the blue sky in fee simple. Cal.—People v. Yant, 26 Cal. App. 2d 725, 80 P.2d 506 (2d Dist. 1938).

¹¹ 15 USCS § 77r (b) (2). Certain “covered securities” are regulated exclusively by the federal government. They are exempt from state regulations. These include securities issued by investment companies registered under the Investment Company Act of 1940.

¹² 9 V.S.A. § 5303.

¹³ See 9 V.S.A. §§ 5304 and 5305 for all the required information.



It is often within the best interests of a farm engaged in community financing to stay within the bounds of the exemption criteria, as securities registration can be expensive and time consuming. The following are the most common exemptions available in Vermont:

The following requirements must be present for the **Limited Offering Exemption**¹⁴ to apply:

- The security is sold to no more than 25 persons in Vermont in a 12-month period. Investors/lenders of money would be limited to residing within state borders, otherwise the transaction might be regulated by Federal securities laws.
- The buyers purchase the security for investment purposes with no intent to distribute the security. For example, the investor or lender does not transfer the investment to other parties after the security is purchased.
- General advertising is not made in connection with the security. For example, a farmer would not be able to put an advertisement in a newspaper asking members of the general public to invest or loan money to the farm operation.
- Nobody was paid to solicit prospective buyers, with a few exceptions.

Vermont's Small Business Offering Exemption ("VSBOE") allows you to raise \$500,000 in an offering to 50 or fewer purchasers. Requirements of this exemption are:

- The seller's principal place of business and the majority of its employees must be in Vermont.
- General solicitation is permitted but you must submit the advertising material to the Securities Division.
- Each prospective investor must receive an investment brochure containing specified material, and a notice has to be filed with the state Securities Division.

"O.K., I'm a farmer and I'm pretty sure my fundraising effort amounts to transacting a security. But I'm also pretty sure the transaction would meet the criteria for allowing me to be exempt from registration with the state securities division. Is there anything further to take into consideration?"

It is important to take the next step and consult an attorney, even if one believes he/she qualifies for an exemption. Qualifying for an exemption may free the farmer from registering the security, but there remain a number of key considerations. Each exemption has its own set of criteria. It is necessary to know what exemption applies in order to keep appropriate records that demonstrate your compliance. Documentary support for each condition needed to qualify under an exemption can be time consuming, but it is well worth the effort should suspicion or contention ever arise. Among the details to include in your records are the name and residence of each individual investor or funder, the amount of each individual financial exchange, and the total of all of the investments combined. Exactly what details to include depends on the exemption applicable to your specific circumstances.

Regardless of whether or not the offering is exempt from registration, if it is a security, it remains subject to the antifraud provisions of the Securities laws. To stay in compliance with these provisions, it is generally prudent to keep documents that disclose the description of the business, specific risks related to the investment, and any other material terms or limitations associated with the offering. Disclosure documents that are provided to each funder will considerably reduce the risk of adverse claims.

The Uniform Limited Offering Exemption¹⁵ applies to businesses that meet the following requirements:

- The business may raise \$5,000,000 from 35 non-accredited investors, and an unlimited amount from those purchasers deemed "accredited" investors.¹⁶
- This exemption requires filing of a Form D with the federal Securities and Exchange Commission as well as filing of a copy of the Form D with the state Securities Division.
- To take advantage of this exemption, issuers must provide an offering document to investors setting forth considerable information about the company.

The Vermont Securities Division now permits an unlimited number of sales to accredited investors under the Vermont **Accredited Investor Exemption**. Accredited investors include banks, 501(c)(3) non-profits and natural persons whose net worth, or joint net worth exceeds \$1,000,000, among others. General announcements are allowed in a prescribed format. No registration of the offering is required, but the issuer must file a notice of transaction with the Securities Division. The information required to be submitted includes name, address, and telephone number of the business or person selling the securities; brief description of the security being offered; and, a brief description of the business. Further basic information is necessary.

Another exemption applies to an isolated non-issuer transaction. The "isolated transaction" exemption requires several features. Sales are not repeated and successive, separate sales are not made within such a period of time that they appear connected. Multiple sales will disqualify one from this exemption if they are for the same general purpose.

Any doubt as to the availability of a particular exemption should be taken seriously, and, in most instances, you may present the facts and your particular circumstances to the Securities Division for an informal administrative interpretation. The Securities Division then reviews the facts as provided and gives an opinion based upon the information supplied. Unfortunately, this determination does not represent a conclusion of law and the Securities Division is not bound by it.

¹⁴ 9 V.S.A. § 5202 (14) – This is the Vermont statute authorizing the Limited Offering Exemption.

¹⁵ The Uniform Limited Offering Exemption follows the federal exemption under Regulation D of the Securities Act of 1933.

¹⁶ Accredited investors are purchasers who meet certain income or net worth standards prescribed by federal law.



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