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February 16, 2007

Senator Andrew McDonald
Judiciary Committee (Chairman)
Legislative Office Building
Room 2500
Hartford, CT 06106-1591

Representative Mike Lawlor
Judiciary Committee (Chairman)
Legislative Office Building
Room 2500
Hartford, CT 06106-1591

RE: Raised H.B. No. 6675
An Act Concerning the Sale or Mortgage of Specifically Devised Real Property
In Solvent and Insolvent Estates

Public Hearing February 16, 2007
Paul Zanoni Appearing in Support of the Proposed Bill to Repeal **C.G.S. Sec. 45a-428**

Dear Sirs:

The proposed Bill provides for the repeal of **C.G.S. 45a-428** on the basis that C.G.S. 45a-428 has become obsolete.

Sub Sec. 45a-428a directs the Probate Court to give personal notice to the devisee of the pendency of an application for a decree authorizing the sale of specifically devised real property.

Although the statute does not contain words to the effect that the Probate Court was authorized to issue such an order, the Appellate Court, assumed a legislative role and on its own initiative found that the authority is implied by **C.G.S. Sec. 45a-428a**.

The only reason the Probate Court should be authorized to order the sale of specifically devised real property is to provide funds to pay obligations of the estate. However, **C.G.S. Sec. 45a-368 Liability of Beneficiaries** provides that the beneficiary

of an estate is liable for any unpaid obligations. **C.G.S. Sec. 45a-368** goes on to say that the liability is limited to the fair market value of specifically devised real property at the time of death of the devisor. **Sec. 45a-368** satisfies the policy that the obligations of the estate be satisfied while preserving the rights of creditors and devisee(s). **Sec. 45a-368** was passed in 1987 and made it completely unnecessary for the Probate Court to confiscate specifically devised real property to meet the obligations of the estate.

In the event that the Probate Court's order results in the sale of specifically devised property the administrative expenses and usual discount at auction would leave both the devisee(s) and creditors in a diminished financial position.

Sub Sec. §45a-428b provides that the Probate Court must obtain the written permission of the devisee to sell property in a solvent estate. This subsection is entirely useless since: 1) title to real property passes to the devisee at the time of death, and (2) specifically devised real property is never taken to pay obligations of the estate so long as other assets sufficient to meet the obligations of the estate exist.

We also call the Committee's attention to **C.G.S. Sec. 45a-164 to 45a-169**, which permits the Probate Court to order the sale of real property upon a finding that the sale would be in the best interest of the parties in interest. There is nothing to prohibit the beneficiaries of real property from petitioning the Probate Court to order sale of the property by the fiduciary if it suits their convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Zanoni", written over a horizontal line.

Paul Zanoni

A handwritten signature in cursive script, appearing to read "Rosalie Benny Zanoni", written over a horizontal line.

Rosalie Benny Zanoni