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To: Members of the Insurance and Real Estate Committee

From: Richard Hogan, Legislative and Regulatory Counsel – CATIC

Re: Raised Bill – 859 - AN ACT CONCERNING THE REGULATION OF PRIVATE TRANSFER FEES

This testimony is submitted on behalf of Connecticut Attorneys Title Insurance Company and the Real Property Section of the Connecticut Bar Association. The Real Property Section consists primarily of attorneys in private practice who represent consumers, businesses, lenders and others in real estate transactions. Our members have a great interest in legislation pertaining to the title to real property.

Private Transfer Fees are a new and controversial financial scheme in which, developers, in consultation with Wall Street advisers, are attempting to add language to home purchase contracts requiring that a percentage of the sales price be paid to the original corporate owner of a property every time the property is sold, typically for 99 years. The fees, which include a securitization element, infringe on property rights, and require homeowners to pay a large fee to sell their homes. They are, in effect, an attempt to impose a private conveyance tax that solely benefits the developer.

These Private Transfer Fees may:

• Increase the costs of homeownership and reduce liquidity in both primary and secondary mortgage markets;

• Limit property transfers or render them legally uncertain;

• Impose an unreasonable restraint on alienation and make properties burdened by such restrictions difficult to sell;

• Detract from the stability of the secondary mortgage market if such fees will be securitized;

• Expose lenders, title companies and secondary market participants to risks from unknown potential liens and title defects;

• Reduce transparency for consumers because Private Transfer Fees often are not disclosed by sellers and are difficult to discover through customary title searches.

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At the state level, over 40 states have bans or restrictions in place on Private Transfer Fees.

A few years ago, the Federal Housing Finance Agency (FHFA) proposed a rule that would limit Fannie Mae, Freddie Mac and the Federal Home Loan Bank from investing in mortgages encumbered by Private Transfer Fee covenants. The FHFA took an important step by submitting a rule that limits the spread of this predatory scheme, which adversely impacts the stability of the housing and mortgage market. The proposed rule excludes fees paid to homeowner associations, condominiums, cooperatives and certain tax-exempt organizations that use Private Transfer Fees proceeds to benefit the property.