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Testimony of Matthew Cholewa
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IN OPPOSITION

SB 1161

AAC A Property Owner's Failure To Record A Conveyance Of Real Estate On The Land Records

April 15, 2013
Judiciary Committee

Sen. Coleman, Rep. Fox, members of the Judiciary Committee:

My name is Matt Cholewa and I am submitting this written testimony on behalf of the Real Property Section of the Connecticut Bar Association in our **OPPOSITION to SB1161**, An Act Concerning A Property Owner's Failure To Record A Conveyance Of Real Estate On The Land Records.

We oppose SB1161 because it is unnecessary, it is poorly drafted, and imposes a potentially exorbitant and punitive lien upon real property for no discernible purpose.

The bill is unnecessary. The provisions of our current recording statute, C.G.S. 47-10, adequately protect third parties to any real estate transactions. Under the statute and at the common law, if a grantee of real estate fails to record their deed within a reasonable time (under case law, generally a few to several days), they do so at their own peril and subject their title to being divested by a deed to a third party from their grantor.

What underlying problem is this bill attempting to address? As of the preparation of this testimony, the only party to submit testimony in favor of the legislation did not identify any wrong that SB1161 is supposedly designed to address. If a real and discernible problem is identified by the proponents of this bill, the Connecticut Bar Association would gladly assist to develop a reasonable solution to the problem.

The bill is poorly drafted. It would impose a lien upon "conveyances" not recorded within thirty days of the "date of conveyance." First, it is unclear whether "conveyances" is intended to refer to only deeds to land, or also to easement, mortgages, easements and assignments of mortgage. Second, the term date of conveyance is ambiguous. Under Connecticut law, a conveyance does not occur until the delivery of a deed from a grantor to the grantee. Yet, this date appears nowhere on the instrument. Would municipalities attempt to enforce this lien by the date on the face of a deed or the date that a deed is signed, neither of which determines the date of conveyance?

There is no means provided to establish the date of delivery for purposes of computing the delay. There is a range of other circumstances that could lead to disputes between municipalities and parties seeking to record documents about whether the date an assignment is executed is the same as the date when it was delivered or made effective and how large a penalty is due.

There are legitimate reasons not to immediately record a validly executed and delivered conveyance instrument, including,

- (1) an intra-family transfer;
- (2) deeds held in escrow for a legitimate reason, such as estate planning purposes;
- (3) where properties are assembled for development, deeds are often held until the project is viable;
- (4) business reasons for not recording an instrument;
- (5) many Towns require developers to submit deeds for subdivision public improvements (roads, drainage, conservation easements, etc.) long before the Town is willing to record; and
- (6) a deed may be re-recorded because a page was missing when it was originally recorded.

Or, a deed may simply be recorded late through simple inadvertence.

The proposed fines, which constitute a lien against the property, are exorbitant, punitive and not supported by any reasonable rationale. The bill imposes a \$100/day fine for a deed that is recorded more than 30 days after the “date of conveyance.” For example, a deed recorded one year late would result in a \$33,500 lien. Consider an intra-family deed where the grantee fails to record the deed either through inadvertence or for legitimate estate planning purposes. Imagine the surprise, and horror, when the grantee goes to record the deed only to find that the town has a \$33,500 lien on the property, which lien the town would undoubtedly contend it does not have the discretion to forgive.

The Section is strongly opposed to legislation that unnecessarily interferes with or imposes additional burdens on the normal conveyancing of property in this State. Our system of land records currently permits a title examiner to rely upon the recorded documents on the land records and our statutes and case law provide for timely recording of conveyance instruments. Failure to timely record is a private party issue that puts the grantee at risk, with no impact on government, and should not be an avenue for additional income for the town or state. The proposed bill seems like an attempt for additional funding on the part of municipalities at the expense of unsuspecting property owners.