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Testimony of
Real Property Section
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In SUPPORT of

SB 427, "AAC Smoke and Carbon Monoxide Detectors in Certain Residential Buildings at the Time the Title Is Transferred"

Planning and Development Committee

My name is Elton B. Harvey, III and I am the Chair of the Connecticut Bar Association Real Property Section. The Connecticut Bar Association has taken an official position in support of the *proposed amendment to PA 13-272*, and urges the Legislature to make the changes necessary to accomplish the intended purpose of the law, which is to protect buyers and sellers of residential real property in Connecticut.

On its face, PA 13-272 is a good thing, a law designed to protect people and especially children by requiring working smoke detectors and carbon monoxide detectors in every home. However, when we take a look at this law, we can see where it becomes unworkable and needs amending.

First and foremost, unlike the Residential Property Condition Disclosure Report, required in most sales, there is no safe harbor that provides that the representations are not warranties and are only made to the best of the seller's knowledge and belief.

Few sellers have the technical knowledge or expertise necessary to ensure that the smoke or carbon monoxide detectors have been installed in accordance with the manufacturer's instructions, do not exceed the standards under which they were tested and approved, and whether the carbon monoxide detector measures in parts per million. If they did not install the smoke detectors or carbon monoxide detectors but only acquired them through subsequent purchase, they cannot make the above statements with any degree of certainty.

Accordingly, when faced with the necessity of "certifying" to the above items, even if the client is willing to guess, as the lawyer representing their interests in a sale, my fellow attorneys and I will advise our clients that the liability risk that they run for making a false statement, even if innocently made, far outweighs the penalty of $250.00 for refusing to make such representation. Accordingly, the law, as written, provides a disincentive for homeowner's to purchase and install working smoke detectors and carbon monoxide detectors, in favor of paying a penalty and not installing the same.

Additionally, in the case of a strict foreclosure, foreclosure by sale, or relocation sale, where the Seller has not actually occupied the home, such representations are similarly problematic. In "short sales", we face similar issues wherein any financial expenditure must go through lengthy lender review, and we have found that lenders will not allow the credit to buyers from Seller or even permit the Seller to contribute their own funds to pay the penalty.

On behalf of the Connecticut Bar Association, I would urge the Legislature to support Senate Bill No. 427, "An Act Concerning Smoke and Carbon Monoxide Detectors in Certain Residential Buildings at the Time the Title Is Transferred" which makes it clear that the representations of the Seller will not be construed to create any new implied or express warranties and expands the list of exempted transfers to include short sales, strict foreclosures, foreclosures by sale, and relocation sales, and does not require sellers of homes to make certifications about subjects for which they are not qualified.

Thank you for your consideration, and we would be happy to talk to the Committee and the bill's sponsors.