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## Testimony the Connecticut Bar Association Real Property Section

### OPPOSES

#### HB5436, "An Act Concerning Adverse Possession."

The proposed bill would eliminate the doctrine of adverse possession altogether. Adverse possession is a concept that has been around since the Roman Empire and was recognized in the English common law. The bill would eliminate the possibility of adversely possessing property when the owner pays the property taxes on the land in question. The requirements for adverse possession vary somewhat from jurisdiction to jurisdiction but are generally known to anyone who studied for the bar exam: continuous possession for the limitations period (15 years), hostile to the interests of the true owner, open and notorious, actual and exclusive possession.

Connecticut does not have a requirement that the adverse possessor either have a deed to the property or have paid the taxes on it. To impose a prohibition against adversely possessing property where the true owner has paid the taxes on the property would, in effect, virtually eliminate the concept of adverse possession. In most cases, the true owner has paid the taxes.

There are a number of policy reasons behind the doctrine of adverse possession:

- Want to encourage productive use of property
- Discourage people from sleeping on their property rights
- Efficient way to settle boundary disputes
- Create incentive for property owners to check boundaries and eject trespassers
- Promotes security of investment and consistent with vested expectations of property owners

We believe the last policy reason is the most important one and can best be illustrated through a simple example.

Suppose a couple were to buy a home that has a long driveway leading to the public road, a detached garage and a large, fenced in, carefully manicured backyard. All of the improvements have been in place for over twenty years. The neighboring property is a large vacant parcel. Five years after purchasing the home, the neighboring property owner has a survey of their property done in connection with a proposed subdivision. The survey shows that the driveway and the detached garage both sit partly on the neighboring lot and the fenced in area of the backyard is, on average, five feet over the property line. What is the better policy choice, to force the homeowner to move his driveway, garage and fence, or allow the improvements to stay

in place and, after a judicial determination, find that title has passed to the homeowner in the disputed areas and allow the improvements to remain? We believe it is the latter, as the homeowners thought they were paying for the property as they viewed it. That is, allowing the property to be obtained through adverse possession is most consistent with the parties' vested expectations, and the neighboring property owned contributed to the problem by allowing the situation to exist for so long (more than 15 years).

To prohibit adverse possession where the true owner has paid taxes on the property (which would have been the case in our example), would be to eliminate the doctrine altogether. For this reason, we oppose this bill.