



**TO:** Senate Co-Chair Eric Coleman  
House Co-Chair William Tong  
Senate Ranking Member John Kissel  
House Ranking Member Rosa Rebinbas  
Honorable Members of the Judiciary Committee

**FROM:** Richard I. Sellman, Esq.  
Title Counsel, Connecticut Attorneys Title Insurance Company

**RE:** Raised Bill 5345, An Act Concerning the Imposition of Fee Liens in Certain  
Probate Court Matters. We support the proposal.

**DATE:** February 24, 2016

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I appreciate the opportunity to testify on Raised Bill 5345, An Act Concerning the Imposition of Fee Liens in Certain Probate Matters. I am a title counsel with Connecticut Attorneys Title Insurance Company ("CATIC"). CATIC supports the proposal, as does the Real Property Section of the Connecticut Bar Association, of which I am a member of its executive committee.

Section 454 of Public Act 15-05 (June 2015 Special Session), now codified as Conn. Gen. Stat. § 45a-107b, established for the first time that probate fees on a decedent's estate shall be a lien on real property formerly owned by the decedent.

The lien section made reference to Section 448 of the Act, which section revised the probate fee statute, still currently codified as 45a-107, in thereby identifying which decedents' estates would be subject to the lien.

The effect of the lien section as written in Section 454 was to make the creation of the probate fee lien retroactive to estates going back as far as 1998 and became a serious concern to real property practitioners, as well as title underwriters. CATIC did not think that effect was the intent of the legislation. That thought was confirmed to us by the probate court administrator. Rather, CATIC believed that the intent was for the lien to be effective only with respect to the estates of persons dying on or after January 1, 2015. Again, the probate court administrator confirmed that belief to us.

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Therefore, the current bill would clarify that the lien applies only to probate fees on the estates of decedents dying on or after January 1, 2015.

CATIC has recently become aware of S.B. 13, which would amend Section 448 of Public Act 15-05 (June Special Session), still currently codified as 45a-107, by creating a new schedule of probate fees for estates of persons dying on or after July 1, 2016. Essentially, for those persons, there would be a cap of \$40,000.00 on probate fees for large estates. If that bill is enacted, the current bill (5345) would then refer to both sections (b) and (c) of Section 45a-107, as amended by S.B. 13, as the operative provision.

As written, the lien arises and attaches to the real property formerly owned by the decedent from the due date of the probate fees, even though not recorded in the land records. In that regard, it is quite similar to the Connecticut estate tax lien, created under Conn. Gen. Stat. § 12-398(d).

The act carves out an exception to the effectiveness of the unrecorded lien with respect to "any lienor, mortgagee, judgment creditor or bona fide purchaser," until it is recorded in the land records. However, those terms were not defined in the act. The estate tax lien, as well as a number of other state liens, has the benefit of definitions of those terms by virtue of Conn. Gen. Stat. § 12-35b, which specifically ties in definitions of protected parties to those lien statutes. Section 12-35b circumscribes the benefitted parties to those parties who lack "actual, implied or constructive notice" [of a tax delinquency].

Bill 5345 similarly defines the protected parties with the same type of limitation as is set forth in Section 12-35b. Therefore, such parties will be protected from an unrecorded probate fee lien only if they have neither actual, constructive or implied notice that a former owner died while owning the property or died after transferring the property to the trustee(s) of a revocable trust. As a practical matter, it is extremely unlikely that such parties would be protected, as there will be, in most cases, evidence of the death either in the land records or in such persons' interaction with the property in question and/or the current owner of the property from whom they seek to purchase or encumber the property. Title professionals will be acutely aware of the probate fee lien.

Thank you for your consideration of this bill.

Respectfully submitted,

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