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

**FROM:** Paul J. Knierim  
Probate Court Administrator

**RE:** RB 117, An Act Concerning the Adoption of the Uniform Real  
Property Transfer on Death Act

**DATE:** February 24, 2016

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Thank you for the opportunity to testify on Raised Bill 117, An Act Concerning the Adoption of the Uniform Real Property Transfer on Death Act. This testimony is to identify several areas of concern with the bill.

Section 15 addresses the circumstances under which a decedent's creditors, surviving spouse or children may seek recourse against real property that is conveyed to a third party through a transfer on death deed. This provision is inconsistent with existing Connecticut law in two significant ways. First, it limits the liability of a transferee of real estate to the deceased owner's debts and a spousal or family allowance. It fails to make provision for other necessary expenses of a deceased owner's estate, including funeral expenses, expenses of administration and taxes. Second, the bill establishes an 18-month statute of limitations on bringing suit to enforce claims, in contrast to the two-year statute of limitations applicable to decedents' estates. This creates the potential for real estate to pass to a designated beneficiary before valid debts of the deceased owner have been resolved.

We are also concerned that there is significant potential for confusion and unintended consequences associated with transfer on death deeds. For example, a property owner may execute a transfer on death deed in favor of a beneficiary and, years later, execute a will that purports to give the same

real estate to another person. Unless the owner revokes the transfer on death deed, his or her intent to change the beneficiary will be thwarted.

Another area of potential confusion concerns the burden of estate taxes and probate fees associated with property that passes outside of probate. Because most wills direct the executor to pay all estate taxes and administration expenses, the residuary beneficiaries of the probate estate may bear the burden of taxes, probate fees and other expenses associated with property they do not receive.

The boilerplate language "Probate is not required" on the statutory form for a transfer on death deed (section 16 of the bill) is misleading. Current law requires that an estate tax return be filed in the Probate Court for every decedent who dies owning property, whether or not an estate is opened. Property that is the subject of a transfer on death deed must be reported on an estate tax return. The value of the property will be included in the calculation of the probate fee and, if the total estate is greater than \$2 million, the estate tax. Failure to file an estate tax return and pay the probate fee and/or estate tax may result in interest and penalties. In addition, the property will be subject to liens for the estate tax and probate fee that are released as part of the probate process. At a minimum, the form should be revised to alert the owner and beneficiaries of the requirement of an estate tax return and the obligation to pay the probate fee and any applicable estate tax. The form should also include a statement that the transferee may be liable for the decedent's debts.

Section 13 (a) sets forth the effects of transfer on death deeds. By excepting the provisions of several existing statutes, section 13 attempts to harmonize the act with statutes relating to estate settlement, including provisions that address the effect of marriage after a will is executed (section 45a-257c), the right of a spouse to elect a share of the estate (section 45a-236), the effect of simultaneous death (section 45a-440), the right of descendants to receive property when an ancestor named in a will predeceases the testator (section 45a-441) and the termination of a beneficiary's right to receive property when the beneficiary is convicted of certain crimes (section 45a-447). We note, however, that this language may not be effective without amending the underlying statutes to address transfer on death deeds.

In light of the inconsistencies with existing Connecticut law and the prospect of consumer confusion about the consequences of using a transfer on death deed, we recommend against adoption of the act.

Thank you for your consideration.