



Senate

General Assembly

File No. 432

February Session, 2016

Substitute Senate Bill No. 248

Senate, April 4, 2016

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO STATUTES AFFECTING TITLE TO REAL PROPERTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 45a-583 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2016*):

4 (d) A disclaimer under this section shall be effective if made in the
5 following manner: (1) A disclaimer of a present interest shall be
6 delivered not later than the date which is nine months after the later of
7 (A) the effective date of the nontestamentary instrument, or (B) if the
8 disclaimer is made by or on behalf of a natural person, the day on
9 which such person attains the age of eighteen years or, if such person
10 does not survive to the age of eighteen years, the day on which such
11 person dies. (2) A disclaimer of a future interest shall be delivered not
12 later than the date which is nine months after the later of (A) the event
13 determining that the taker of the interest is finally ascertained and
14 such interest is indefeasibly vested or (B) if the disclaimer is made by

15 or on behalf of a natural person, the day on which such person attains
16 the age of eighteen years or, if such person does not survive to the age
17 of eighteen years, the day on which such person dies. (3) If the
18 disclaimant, or the person on whose behalf the disclaimer is made,
19 does not have actual knowledge of the existence of the interest, the
20 disclaimer shall be delivered not later than the date which is nine
21 months after the later of (A) the date on which the disclaimant, or the
22 person on whose behalf the disclaimer is made, first has actual
23 knowledge of the existence of the interest or (B) if the disclaimer is
24 made by or on behalf of a natural person, the day on which such
25 person attains the age of eighteen years or, if such person does not
26 survive to the age of eighteen years, the day on which such person
27 dies. (4) The disclaimer shall be delivered to the transferor of the
28 interest, the transferor's legal representative or the holder of the legal
29 title to the property to which such interest relates. (5) If an interest in
30 real property is disclaimed, a copy of such disclaimer shall also be
31 recorded in the office of the town clerk in which the real property is
32 situated. [within such nine-month period, and if a copy of such
33 disclaimer is not so recorded, it shall be ineffective against any person
34 other than the disclaimant, or the person on whose behalf such
35 disclaimer is made, but only as to such real property interest] As to
36 such real property interest, such disclaimer shall not be effective
37 against any person other than the disclaimant, the person on whose
38 behalf such disclaimer is made or any person having actual knowledge
39 of such disclaimer until the time of recording. For the purposes of this
40 section, the effective date of a nontestamentary instrument is the date
41 on which the maker no longer has power to revoke it or to transfer to
42 the maker or another the entire legal and equitable ownership of the
43 interest.

44 Sec. 2. Subsection (b) of section 47-12a of the general statutes is
45 repealed and the following is substituted in lieu thereof (*Effective*
46 *October 1, 2016*):

47 (b) The affidavits provided for in this section may relate to the
48 following matters: Age, sex, birth, death, capacity, relationship, family

49 history, heirship, names, identity of parties, marital status, possession
50 or adverse possession, adverse use, residence, service in the armed
51 forces, conflicts and ambiguities in description of land in recorded
52 instruments, [and] the happening of any condition or event which may
53 terminate an estate or interest and any other state of facts affecting title
54 to real property.

55 Sec. 3. Section 49-9a of the general statutes is repealed and the
56 following is substituted in lieu thereof (*Effective October 1, 2016*):

57 (a) Notwithstanding the provisions of this chapter, a release of
58 mortgage executed by any person other than an individual that is
59 invalid because it is not issued or executed by, or fails to appear in the
60 name of the record holder of the mortgage on one, two, three or four-
61 family residential real property located in this state, including, but not
62 limited to, a residential unit in any common interest community, as
63 defined in section 47-202, shall be as valid as if it had been issued or
64 executed by, or appeared in the name of, the record holder of the
65 mortgage unless an action challenging the validity of the release is
66 commenced and a notice of lis pendens is recorded in the land records
67 of the town where the release is recorded within five years after the
68 release is recorded, provided an affidavit is recorded in the land
69 records of the town where the mortgage was recorded which states the
70 following:

71 (1) The affiant has been and remains the record owner or the
72 personal representative of the record owner of the real property
73 described in the mortgage for at least two years prior to and as of the
74 date of the affidavit;

75 (2) The recording information for the mortgage, any assignment of
76 the mortgage and the release;

77 (3) Since the date of the recording of the release, the affiant has
78 received no demand for payment of all or any portion of the debt
79 secured by the mortgage and has received no notice or communication
80 that would indicate that all or any portion of the mortgage debt

81 remains due and owing; and

82 (4) To the best of the affiant's knowledge and belief, the mortgage
83 debt has been paid in full.

84 (b) The provisions of subsection (a) of this section shall not apply to
85 any release obtained by forgery or fraud.

86 Sec. 4. Section 49-39 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2016*):

88 A mechanic's lien shall not continue in force for a longer period than
89 one year after the lien has been perfected, unless the party claiming the
90 lien commences an action to foreclose it, by complaint, cross-complaint
91 or counterclaim, and records a notice of lis pendens in evidence thereof
92 on the land records of the town in which the lien is recorded within
93 one year from the date the lien was recorded or within sixty days of
94 any final disposition of an application made pursuant to section 49-
95 35a, including any appeal taken with respect thereto in accordance
96 with section 49-35c, whichever is later. Each such lien, after the
97 expiration of the one-year period or sixty-day period, as the case may
98 be, without action commenced and notice thereof filed as aforesaid,
99 shall be invalid and discharged as a matter of law. An action to
100 foreclose a mechanic's lien shall be privileged in respect to assignment
101 for trial. With respect to any such lien which was validated in
102 accordance with the provisions of section 49-37a, the one-year period
103 or sixty-day period, as the case may be, shall toll from the date of the
104 validation.

105 Sec. 5. Section 49-72 of the general statutes is repealed and the
106 following is substituted in lieu thereof (*Effective October 1, 2016*):

107 Any private water company which is owed rates or charges for
108 connection with or for the use of its water system and such rates or
109 charges are not paid when due has a lien on the real estate served and
110 a charge against the owners of such real estate from the date the rates
111 or charges were due, provided the owner of such real estate when the

112 lien is recorded is the party that owes such rates or charges. The lien
113 and charge shall bear interest at the rate of eighteen per cent per
114 annum so long as the rates or charges remain unpaid. The lien may be
115 recorded and released in the manner provided for recording and
116 releasing tax liens. The lien shall not continue for more than one year
117 after the date the rates or charges were due, unless the secretary of the
118 company, before the expiration of that year, has filed a certificate of
119 continuation of the lien in the manner provided by law for the
120 continuance of tax liens. When continued the lien shall be valid for
121 fourteen years thereafter. The lien shall take precedence over all other
122 [subsequently] recorded liens or encumbrances except taxes and liens
123 for assessments filed by an association of a common interest
124 community under section 47-258 and may be foreclosed against the lot
125 or building served in the same manner as a lien for taxes.

126 Sec. 6. Subsection (c) of section 52-380a of the general statutes is
127 repealed and the following is substituted in lieu thereof (*Effective*
128 *October 1, 2016*):

129 (c) A judgment lien on real property may be foreclosed or redeemed
130 in the same manner as mortgages on the same property. In the case of
131 a consumer judgment, the complaint shall indicate whether, pursuant
132 to an installment payment order under subsection (b) of section 52-
133 356d, the court has entered a stay of execution and, if such a stay was
134 entered, shall allege any default on an installment payment order
135 which is a precondition to foreclosure. No action to foreclose a
136 judgment lien filed pursuant to this section may be commenced unless
137 an execution may issue pursuant to section 52-356a. The judgment lien
138 shall expire twenty years after the judgment was rendered, except any
139 judgment lien recorded with respect to a small claims action shall
140 expire ten years after the judgment was rendered, unless the party
141 claiming the lien commences an action to foreclose it within that
142 period of time and records a notice of lis pendens in evidence thereof
143 on the land records of the town in which the real property is located.

144 Sec. 7. (NEW) (*Effective October 1, 2016*) Any conveyance of an

145 interest in land to a trust rather than the trustee or trustees of the trust
146 shall constitute a valid and enforceable transfer of that interest. Any
147 conveyance by the trust, which conveyance is signed by a duly
148 authorized trustee of such trust, shall be treated as if the conveyance
149 was made by the trustee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	45a-583(d)
Sec. 2	<i>October 1, 2016</i>	47-12a(b)
Sec. 3	<i>October 1, 2016</i>	49-9a
Sec. 4	<i>October 1, 2016</i>	49-39
Sec. 5	<i>October 1, 2016</i>	49-72
Sec. 6	<i>October 1, 2016</i>	52-380a(c)
Sec. 7	<i>October 1, 2016</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which makes various changes to real property and real estate, does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 248****AN ACT CONCERNING REVISIONS TO STATUTES AFFECTING TITLE TO REAL PROPERTY.****SUMMARY:**

This bill makes various changes concerning title to real property and related matters. For example, it (1) specifies that unrecorded disclaimers of certain real property interests are effective against people with actual knowledge of the disclaimer, (2) specifies that private water company liens take priority over most prior liens, and (3) validates any conveyance of interest in land made to a trust itself rather than the trustee.

The bill also makes minor or clarifying changes concerning affidavits related to real estate, certain mortgage releases, mechanic's liens, and real property judgment liens arising from small claims cases.

EFFECTIVE DATE: October 1, 2016

§ 1 – RECORDING OF DISCLAIMER OF REAL PROPERTY

By law, if someone disclaims (refuses to accept) an interest in real property that passed under a nontestamentary instrument (i.e., not a will), a copy of the disclaimer must be recorded in the town clerk's office in the town where the property is located.

Under current law, if the disclaimer is not recorded within a specified nine-month period, the disclaimer is ineffective against anyone other than the disclaimant or the person on whose behalf the disclaimer was made. The bill instead provides that, until the disclaimer is recorded, it is not effective against anyone other than such people or anyone having actual knowledge of the disclaimer.

§ 2 – AFFIDAVIT RELATED TO REAL ESTATE

The law allows individuals with knowledge of facts potentially affecting an interest in, or title to, real property to record an affidavit stating such facts. If the affiant is not available to testify at a court proceeding relating to the property interest or title, the affidavit is admissible as prima facie evidence of the facts stated.

Current law lists several matters that may be included in such an affidavit, such as certain identifying information about the parties and the occurrence of an event which may terminate an estate or property interest. The bill specifies that the affidavits may contain any other facts affecting title to real property.

§ 3 – MORTGAGE RELEASES BY ENTITIES

Under specified circumstances, existing law validates residential mortgage releases executed by corporations or other entities that would otherwise be invalid because they were not issued or executed by, or the entities failed to appear in the name of, the record holder of the mortgage.

For the release to be valid, the person executing the release must record in the land records an affidavit with certain information, including that the person has been the record owner of the property described in the mortgage for at least two years before the affidavit date. The bill specifies that the person must be the record owner, or personal representative of the owner, on the affidavit date.

§ 4 – MECHANIC’S LIENS

Current law prohibits a mechanic’s lien from continuing in force for beyond a year after the lien was perfected, unless the party claiming the lien begins an action to foreclose it and records a notice of lis pendens on the town’s land records within the later of (1) one year from the date the lien was recorded or (2) 60 days of any final disposition of an appeal from a proceeding brought by the land owner to discharge or reduce the lien.

The bill specifies that if there is no such appeal, the 60-day period applies to the final disposition of the proceeding by the land owner to

challenge the lien.

§ 5 – PRIVATE WATER COMPANY LIENS

The bill specifies that liens by private water companies for unpaid charges have priority over all other liens (including existing liens), except for tax and common interest community association liens. Under current law, this priority only applies as to subsequently recorded liens.

§ 6 – JUDGMENT LIENS WITH RESPECT TO SMALL CLAIMS ACTIONS

The bill resolves a statutory ambiguity by specifying that real property judgment liens for small claims actions expire 10 years after the judgment was rendered, unless the party claiming the lien begins an action to foreclose it within that period and records a notice of lis pendens on the town's land records.

§ 7 – CONVEYANCE OF LAND TO TRUSTS

The bill provides that any conveyance of an interest in land to a trust, rather than to the trustee or trustees, is a valid and enforceable transfer of that interest. Under the bill, if a conveyance by the trust is signed by a duly authorized trustee, it must be treated as if made by the trustee.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/16/2016)