



TO: Senate Co-Chair Fonfara
House Co-Chair Berger
Honorable Members of the Committee on Finance, Revenue and Bonding

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

RE: Governor's Bill No. 13, An Act Reducing Certain Probate Court Fees

DATE: February 25, 2016

I appreciate the opportunity to testify on Governor's Bill No. 13, An Act Reducing Certain Probate Court Fees. I am a title counsel with Connecticut Attorneys Title Insurance Company ("CATIC"). While CATIC takes no position on the substance of SB 13, generally, that bill does impact HB 5345, An Act Concerning the Imposition of Fee Liens in Certain Probate Court Matters, an act which CATIC supports and on which CATIC has provided testimony to the Judiciary Committee on February 24, 2016. (See attached written testimony.)

To the extent that SB 13 is seeking, in Section 2 thereof, to amend Conn. Gen. Stat. § 45a-107b, which is the codified version of last year's Section 454 of Public Act 15-05 (June Special Session), which created a probate fee lien, it is important to call to the Committee's attention what HB 5345 seeks to accomplish by way of revising 45a-107b.

HB 5345, for the reasons set forth in the attached testimony, seeks to clarify 45a-107b by making the lien created thereby limited to those estates in which the decedent died on or after January 1, 2015. Therefore, it would eliminate reference to sections (c) and (d) under existing 45a-107 (which would become sections (d) and (e) under SB 13), because those sections deal with probate fees on estates dealing with time periods on decedents' estates prior to January 1, 2015 and going back as far as 1998.

We simply propose that, taking into account HB 5345, Section 2 of SB 13 should refer to sections (b) and (c) only of Section 45a-107, as amended by SB 13, and eliminate reference to sections (d) and (e).

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CATIC Corporate Office, 101 Corporate Place, Rocky Hill, CT 06067-1895 T (860) 529-8855 Toll Free (800) 842-2216 F (860) 563-4633

In addition, in the event the Committee determines to approve the substance of SB 13, its text should refer to Subsection (b) of 45a-107b, rather than Subsection (a). Under HB 5345, former section (a) has been redesignated as section (b) and there is a new subsection (a) that contains definitions of protected parties. Finally, former section (b) of 45a-107(b) has been redesignated as subsection (c), under HB 5345.

Thank you for your consideration of these requests in order for HB 5345 to work in conformity with SB 13, if SB 13 is enacted, such that both bills create a consistent, workable revision to Section 45a-107(b).

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: 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

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.

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,

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