

# Legislative History for Connecticut Act

## PA 16-194

SB248

Senate	1729-1733, 1835-1836	7
Judiciary	991-994, 1088-1092	9
House Transcripts have not been received. They are available on CGA website, but are not the Official copy. Contact House Clerk for assistance (860) 240-0400		<b>16</b>

**Transcripts from the Joint Standing Committee Public  
Hearing(s) and/or Senate and House of Representatives  
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**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2016**

**VOL. 59  
PART 6  
1704 – 2057**

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SENATE

26  
April 29, 2016

Thank you, Madam President. Madam President, would the Clerk please call Calendar Page 5, Calendar 290, S.B. No. 248?

THE CHAIR:

Mr. Clerk.

THE CLERK:

Substitute for S.B. No. 248, AN ACT CONCERNING REVISIONS TO THE STATUTES AFFECTING THE TITLE TO REAL PROPERTY.

THE CHAIR:

Senator Coleman, good afternoon, sir.

SENATOR COLEMAN (2ND):

Good afternoon, Madam President, how are you?

THE CHAIR:

Fantastic and you?

SENATOR COLEMAN (2ND):

I'm not quite fantastic, but I'm doing well in any event.

THE CHAIR:

Good.

SENATOR COLEMAN (2ND):

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SENATE

27  
April 29, 2016

If I could do as well as you all the time, I'd be in really good shape.

THE CHAIR:

You can. You can.

SENATOR COLEMAN (2ND):

Madam President, I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark, sir?

SENATOR COLEMAN (2ND):

Madam President, would the Clerk please call LCO 5242?

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 5242, which will be designated Senate Amendment Schedule "A".

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN (2ND):

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SENATE

28  
April 29, 2016

Thank you, Madam President. I move adoption of this amendment.

THE CHAIR:

Motion is on adoption. Will you remark further, sir?

SENATOR COLEMAN (2ND):

Madam President, this amendment strikes Section 5 of the underlying bill which has to do with granting certain priorities to private water company liens.

There's a little bit of hesitancy about proceeding in this manner, and it probably deserves a bit more research and study.

I'd ask my colleagues to adopt the amendment.

THE CHAIR:

Will you remark further on the amendment? Senator Kissel.

SENATOR KISSEL (7TH):

Thank you very much, Madam President. I rise in support of the amendment.

Frankly, when I looked at this part of the bill, I was surprised that water company liens would, by virtue of this proposed legislation, be second only to tax liens, as opposed to anything else out there, and would certainly change the priorities when one looks like a chain -- at a chain of title.

So, happy to support the amendment, thank you.

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SENATE

29  
April 29, 2016

THE CHAIR:

Will you remark further on the amendment? Will you  
remark further on the amendment?

If not, I will try your minds. All those in favor  
of Senate "A" please say Aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? Senate "A" is adopted. Senator Coleman.

SENATOR COLEMAN (2ND):

Thank you, Madam President. On the bill as amended,  
this bill would make various changes concerning  
title to real property, and including specifying  
that unrecorded disclaimers of certain real property  
interests are effective against people who have  
actual knowledge of the disclaimer.

It also validates any conveyances of interest in  
land made to a trust rather than to the trustee.

And finally, the bill makes minor clarifying changes  
concerning affidavits related to real estate;  
certain mortgage releases, mechanics' liens and real  
property judgment liens arising from Small Claims  
cases.

I urge passage of the bill, Madam President.

THE CHAIR:

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SENATE

30  
April 29, 2016

Will you remark on the bill? Will you remark on the bill? Senator Kissel.

SENATOR KISSEL (7TH):

Thank you very much, Madam President. I'm happy to support this legislation and commend Senator Coleman for bringing it forward.

It's my understanding that practitioners would appreciate this legislation, and that the Real Estate Bar of the Connecticut Bar Association is in full support of this proposal as well. Thank you.

THE CHAIR:

Thank you. Will you remark further on the bill? Will you remark further on the bill? Senator Coleman.

SENATOR COLEMAN (2ND):

Madam President, if there are no further remarks to be made, and if there are no objections, I would move this item to our Consent Calendar.

THE CHAIR:

Seeing -- seeing no objection, so ordered. Senator Duff.

SENATOR DUFF (25TH):

Thank you, Madam President. If the Clerk can now please call Calendar Page 7, Calendar 353, S.B. No. 142.

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SENATE

132  
April 29, 2016

SENATOR DUFF (25TH):

Thank you, Madam President. If the Clerk can now please call the items on the Consent Calendar, followed by a vote of the Consent Calendar, please.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calling from today, Consent Calendar No. 1.  
Calendar 75, S.B. No. 81. Page 5, S.B. No. 248.  
Page 5, S.B. No. 379. Page 7, S.B. No. 142. Page  
32, S.B. No. 76. Page 39, S.B. No. 349. Page 41,  
H.J. Resolution 37.

THE CHAIR:

Mr. Clerk, will you please call for a roll call vote and the machine will be open with the Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the Consent Calendar. Immediate roll call has been ordered in the Senate on the Consent Calendar.

THE CHAIR:

If all members have voted? All members have voted?  
The machine will be closed.

Mr. Clerk, please call the tally on the Consent Calendar.



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SENATE

133  
April 29, 2016

THE CLERK:

Total Number of Voting	36
Those Voting Yea	36
Those Voting Nay	0
Absent and Not Voting	0

THE CHAIR:

The Consent Calendar passes. (Gavel) Senator Duff.

SENATOR DUFF (25TH):

Thank you, Madam President. Madam President, is the Clerk in possession of Senate Agenda No. 2?

THE CHAIR:

Mr. Clerk.

THE CLERK:

Yes, Madam President, the Clerk is in possession of Senate Agenda No. 2 dated Friday, April 29, 2016.

THE CHAIR:

Mr. Clerk -- I mean -- sorry, Senator Duff.

SENATOR DUFF (25TH):

Thank you, Madam President. I move that all items on the Senate Agenda No. 2 dated Friday, April 29, 2016 be acted upon as indicated by -- and

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 3  
902 – 1382**

**2016**

procedures, and forms so that educational programs can take place so that practitioners are aware of the changes in the act, that the Bar Association would have an opportunity to put on seminars and educate both the users of the statute and the lawyers who advise many of the users as to the changes in the law so that by the time it gets to being used everybody's fully familiar with it and on the same page.

REP. STAFSTROM (129TH): Similar to what we did with the power of attorney act last year.

BARRY HAWKINS: Pardon?

REP. STAFSTROM (129TH): Similar to what we did with the power of attorney act last year.

BARRY HAWKINS: Yes. Similar to what we've done on the power of attorney. Again, because it, it's not a single easy fix, it's something that people need to anticipate and plan for and not be surprised when the rules change.

REP. STAFSTROM (129TH): Thanks again for being here and for your advocacy on this.

REP. TONG (147TH): Further questions? Thank you.

BARRY HAWKINS: Thank you very much.

REP. TONG (147TH): Al Garafolo. Good morning sir.

AL GARAFOLO: Good morning, Senator Coleman, Representative Tong, distinguished members of the Judiciary Committee, thank you for the opportunity for appearing today. This is on behalf of Senate bill 248, an act concerning revisions to statutes

affecting title to real property. I am Alfred Garafolo. I'm speaking on behalf of the Connecticut Title Association as its duly authorized representative. The CTA is a non-stock corporation organized under the laws of the state of Connecticut, the primary purposes of which is to promote the common business interest of title insurance companies in the science and skill of underwriting and educating it's members.

Preliminarily, it should be noted that the objective of the bill that is presented today is to create no radical changes to the law of the State of Connecticut. The genesis of the bill is the experience of underwriters and claims counsel in dealing with various provisions of the general statutes concerning real property that have left some questions, have generated some debate, and the attempt here is simply to clarify not necessarily favoring one position over the other but simply to clarify. Most of these issues have been raised or are confronted during the course of underwriting a transaction or resolving a title claim. The sum of these provisions are encountered more frequently than others, and I will spend my time focusing on them.

Of primary importance is probably the provision of 44A-428, which has evoked quite a bit of discussion and debate between members of the probate and real estate bar. The Connecticut standards of title on this section is unequivocal saying the title to specifically devised property conveyed by a fiduciary with unlimited testamentary powers and without order of court should be considered marketable. The battle that one gets into under 45A-428 is when you have specifically devised property does a specific power to a fiduciary to

sell without power of report trump that? The statute is silent on it. I believe that the probate bar probably takes one reading of it whereas the real estate bar takes another. So what we are suggesting is simply to insert into the statute the provision that if there is a fiduciary who has unlimited power of sale that that trumps the specific device.

The proposed amendment to 45A-583 is simply a situation where if you have a valid disclaimer that has been initiated and perfected during the nine months required by the statute that the effect is not deluded by failing to report it within nine months. There are two very important sections. One has to do with the time limit for the foreclosing of small claims judgement liens, which has been a source of contention for quite some time. We believe that the idea behind the statute is to mirror the time periods given to superior court liens where you have 20 years to foreclose, 25 to bring an action. The statutes say you've got 15 years to bring an action on a small claims and only 10 years to bring and execution; therefore, we think that the appropriate time for a small claims judgment should be 10 years to foreclose.

The last section that I will speak on directly, because the rest are covered --

REP. TONG (147TH): Mr. Garafolo, if you could wrap up please.

AL GARAFOLO: Yes.

REP. TONG (147TH): Thank you.

AL GARAFOLO: The last section is on the conveyance to a trust where we would recognized the conveyance to the trust rather than to the trustee. Quite often in a number of instances the conveyance goes to the trust, which is an ineffective conveyance until it's validated by the validating act, and then that requires a certain conveyance back out. Thank you for your time. I am happy to answer any questions.

REP. TONG (147TH): Thank you. Any questions? Thank you very much.

AL GARAFOLO: Thank you.

REP. TONG (147TH): Raphael Podolsky. Good morning sir.

RAPHAEL PODOLSKY: Good morning, Mr. Chairman. Thank you. My name is Raphael Podolsky. I'm a lawyer with the Legal Assistance Resource Center, which is part of the legal aid and legal services programs. I'm here to testify very briefly on two basically small bills that deal with eviction process. Senate bill 249 and House Bill 5401. Senate bill 249, you've actually had before. This is a bill that's now I think in its fourth year. It came out of originally the planning and development committee a couple years ago. It deals with how a landlord without necessarily having to go through summary process can figure out what to do if the only tenant who's living in an apartment died. There is a statute that goes back 10 or 15 years. It turned out there's a little glitch in the wording of the statute. This bill was worked out in a working group that had representatives as landlords, tenants, probate court clerks, marshalls. The bill is long, but it's almost all a restatement with



STATE OF CONNECTICUT

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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 248, An Act Concerning Revisions to Statutes Affecting Title to Real Property

**DATE:** February 29, 2016

Thank you for the opportunity to testify on Raised Bill 248, An Act Concerning Revisions to Statutes Affecting Title to Real Property. Our input on this bill relates exclusively to section 1, which we oppose.

It is our position that section 1 would amend C.G.S. section 45a-428 in a way that defeats the purpose of the statute. The goal of section 45a-428 is both straightforward and longstanding: when a person's will designates specific beneficiaries to receive a parcel of real estate, those beneficiaries should in fact receive the real estate. Under current law, an executor can sell or mortgage real estate that is given to specified beneficiaries, rather than distributing it to them, only if: (1) the beneficiaries consent to the sale, (2) the Probate Court finds that the estate is insolvent, or (3) the Probate Court finds that the estate is solvent but there are no other assets to satisfy the decedent's debts, taxes and the expenses of administering the estate.

The bill would create an additional exception to the right of beneficiaries to receive real estate specifically given to them by permitting sale when the will contains a general provision that authorizes the executor to sell real estate. The problem is that the power to sell real property is "boilerplate" language that is found in almost all wills. On the other hand, a dispositive provision that gives a parcel of real property to specific beneficiaries (or that prohibits the sale of a particular parcel) is not boilerplate. It is, instead, a very specific expression of the decedent's intent. A statute that permits sale of the property on the basis of the boilerplate language would effectively thwart the decedent's intent. For that reason, we urge the committee to reject section 1.

Thank you for your consideration.

PAGE 1  
LINE 11

Testimony of Alfred J. Garofolo,  
Member of the Connecticut Title Association

Senate Bill No. 248 An Act Concerning Revisions to Statutes Affecting Title to Real  
Property

Judiciary Committee  
February 29, 2016

Senator Coleman, Representative Tong and distinguished members of the Judiciary Committee, thank you for the opportunity to appear before the committee to comment in support of Senate Bill No. 248.

I am Alfred J. Garofolo, and I am speaking on behalf of the Connecticut Title Association (CTA) as its duly authorized representative. CTA is a nonstock corporation organized under the laws of the State of Connecticut. CTA's primary purposes are to promote the common business interests of title insurance companies licensed in the State of Connecticut and the science and skill of underwriting to educate its members, lenders and other entities about the nature, uses and benefits of title insurance. CTA **supports** Senate Bill No. 248.

Preliminarily, it should be noted that the objective of this Bill is to clarify various statutory provisions which, over the course of time and practice, have generated questions as to their meaning and have, in some cases, presented issues of conflicting interpretation. In most instances, the proposed changes do not alter the generally accepted application of the statute but merely remove potential ambiguities. Because of the uncomplicated nature of each suggested change, I will address each section briefly and highlight the basis therefor.



Section 1 re: C.G.S. Sec. 45a-428. This statutory provision has evoked some debate between members of the Probate and Real Estate sections of the bar. The Connecticut Standards of Title Section 13.4, Comment 2 is unequivocal: "Title to specifically devised property conveyed by an executor under an unlimited testamentary power to convey and without an order of the court of probate authorizing such sale should be considered marketable, whether or not there has been written consent of the specific devisees." The proposed change would be in accord with the position of the Standards and would remove any issue as to the power of the fiduciary.

Section 2 re: C.G.S. Sec. 45a-583. The existing statute would render ineffective a disclaimer of a real property interest unless the same is recorded within the same 9-month period required to assert a disclaimer in other instances. The proposed bill would eliminate this result and make the disclaimer effective upon recording. Prior to recording, the disclaimer would be effective against the disclaimant, the person on whose behalf the disclaimer is made and persons having actual knowledge of the disclaimer.

Section 3 re: C.G.S. Sec. 47-12a. This change would merely clarify that the list of matters in C.G.S. Sec. 47-12a(b) is not intended to be exclusive.

Section 4 re: C.G.S. Sec. 49-9a. Presently, the statute could be read as allowing a prior owner of the property to provide the necessary affidavit. The proposed change requires that the affidavit must be from a present owner or the personal representative (fiduciary) thereof.

Section 5 re: C.G.S. Sec. 49-39. The existing statute is confusing because it "extends" the time to commence an action to within 60 days of the final disposition of an appeal taken pursuant to C.G.S. Sec. 49-35c. Left unanswered is the effect of a pending application to

discharge. The proposal makes it clear that the 60 day period applies to the application proceeding even in the absence of an appeal therefrom.

Section 6 re: C.G.S. Sec. 49-72. Issues have arisen with respect to this provision as to the extent of the priority to be given to a private water company lien. The language of the statute generally mirrors that for municipal tax liens thereby leading to some support for the proposition that the lien has a special priority. OLR Bill Analysis for P.A. 95-353 Sec. 3 gave as the reason for the language that it “gives private water companies a 15-year lien on unpaid connection charges ... and gives these liens precedence over all but tax and common interest ownership (condominium) association liens....” On the other hand, the statute appears to limit the priority only to matters *subsequently* recorded. If the intent of the statute is to confer lien priority similar to that for municipal tax liens and public water/sewer liens, then the proposed change accomplishes that result.

Section 7 re: C.G.S. Sec. 52-380a. This provision makes it clear that a judgment lien recorded with respect to a small claims judgment expires 10 years after the date the judgment is rendered. Under the existing statute, an action to foreclose a judgment lien cannot be “commenced unless an execution may issue pursuant to section 52-356a.” Unfortunately, 52-356a does not provide any reference to time limitations; however, section 52-598 does. Section 52-598(a) provides, in part, that “[n]o execution to enforce a judgment for money damages rendered in any court of this state may be issued after the expiration of twenty years from the date the judgment was entered and no action based upon such a judgment may be instituted after the expiration of twenty-five years from the date the judgment was entered....” This 20 year period ties directly into that same period set forth in 52-380a. Section 52-598(b) provides that “[n]o execution to enforce a judgment for money damages rendered in a small claims session

may be issued *after the expiration of ten years* from the date the judgment was entered, and no action based upon any such judgment may be instituted after the expiration of fifteen years from the date the judgment was entered. (emphasis added.) The proposed amendment to 52-380a is consistent with this time frame and removes any ambiguity concerning the foreclosure of small claims judgment liens.

Section 8 re: new section. Under existing law, a conveyance to a trust is ineffective as it is to a grantee not recognized by law to have the capacity to hold title to real property. A proper conveyance would be to the trustee of the trust. While C.G.S. Sec. 47-36aa(a)(4) validates the conveyance if there is no action challenging the validity of the deed within 2 years from the date of recording, it is necessary to deed out the property in the name of the same grantee, i.e., the trust. See, Connecticut Standards of Title Sec. 7.3 Comment 4. The proposed section would immediately recognize the validity of a deed into a trust rather than a trustee as well as the validity of any conveyance by the trust when signed by the duly authorized trustee.

For the foregoing reasons, the CTA **supports** Senate Bill No. 248. Accordingly, on behalf of the Connecticut Title Association, I respectfully request that the Judiciary Committee accept Senate Bill No. 248 and vote it out of committee.

Thank you for giving me the opportunity to appear before the Committee. At this time, I would be pleased to answer any questions you may have.