

Legislative History for Connecticut Act

PA 02-66

Act Number:	66	Year:	2002
Bill Number:	556		
Senate Pages:	952-959, 1020-1023		12
House Pages:	2196-2200, 3015-3018		9
Committee:	Judiciary: 1617-1621, 1875-1878		9
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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S-467

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2002

VOL. 45

PART 3

701-1054

kmg

68 000952

Senate

Wednesday, April 17, 2002

SEN. JEPSEN:

And I move this item to the Committee on Government Administration and Elections.

THE CHAIR:

Without objection it's being referred to the GAE Committee.

SEN. JEPSEN:

Madam President?

THE CHAIR:

Senator Jepsen.

SEN. JEPSEN:

Earlier today we recommitted a bill, that was Page 10, Calendar 145. I was on the prevailing side of that motion and I move at this time reconsideration of the Motion to Reconsider. I'm sorry; to recommit.

THE CHAIR:

The motion is for reconsideration. Without objection, so ordered. Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. I would mark this item PR.

THE CHAIR:

This item will be marked PR.

THE CLERK:

Returning to Calendar Page 11, Calendar 178, File

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Senate

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No. 251, SB556 AN ACT CONCERNING CERTAIN LAND RECORDS.

Favorable report of the Committee on Judiciary. Clerk is in possession of Amendments.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

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

THE CHAIR:

Question is on passage. Will you remark?

SEN. COLEMAN:

Madam President, this bill seeks to do two things. First, it provides that a instrument conveying property, if properly executed and properly recorded, and that instrument is at some subsequent point in time digitally recorded or electronically filed, or if it is lost or destroyed, that those circumstances would be of no consequences.

That is again, if the instrument was properly executed and properly recorded on the land records of the town clerk in the jurisdiction where the property is located. The bill also provides that with respect to a grant or assignment of a mortgage to a party designated as a nominee acting in behalf of another, that that

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person who is the nominee the name of that person would be entered in the appropriate index of the town clerk's office. There is an Amendment which I would request that the Clerk call. LCO-3161.

THE CLERK:

LCO-3161, which will be designated Senate Amendment Schedule A. It is offered by Senator Coleman of the 2nd district.

SEN. COLEMAN:

Madam President, I request that the Clerk read the Amendment.

THE CHAIR:

Mr. Clerk.

THE CLERK:

An Act Concerning certain land records, strike line 10 in its entirety and insert the following in lieu thereof "Subsection B, any conveyance that is otherwise effective and properly recorded before, on, or after the effective date of this Section."

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you, Madam President. I move adoption of the Amendment.

THE CHAIR:

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Question is on adoption, will you remark?

SEN. COLEMAN:

The effect of this Amendment, Madam President, is to clarify that even those instruments that are recorded prior to the effective date of this bill should this bill pass, would in effect be validated. And according to the underlying bill it would be of no consequence if the original instrument were lost or destroyed, or if the instrument was converted to digital or electronic form. I urge the adoption of the Amendment, Madam President.

THE CHAIR:

Question is on adoption, will you remark? Senator Smith.

SEN. SMITH:

Thank you, Madam President. Question through you to the proponent of the Amendment.

THE CHAIR:

Please proceed.

SEN. SMITH:

Madam President, my question is, is this Amendment that you noted was just for clarification purposes then. It's your understanding that the state of the law right now is it for documents otherwise validly executed and recorded without respect to whether or not the originals

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are lost or damaged, they are effective under the law as it exists today. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, I'm not aware of any specific statute that addresses the situation. But I do know that the current practice is that for any documents that are recorded for the purpose of conveying land, if the original of those documents are lost after recording is accomplished, it is of no consequence. Through you, Madam President.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Madam President. Yes, that's my understanding of the law as well. I just want to confirm that we're not by implication in the need for this Amendment referencing the fact that there might be some flaw in properly executed and recorded documents and that here we're only having a clarification and not intended in any way to change the law as it exists today, but merely create a statute where there's a legal presumption.

THE CHAIR:

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Senator Coleman.

SEN. COLEMAN:

Through you, Madam President. That would be my intent.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark further? Will you remark further? If not, I will try your minds. All those in favor indicate by saying aye?

SENATORS:

Aye.

THE CHAIR:

Opposed nay? The aye's have it. Senate A is adopted. Will you remark further on the bill as amended?

Senator Coleman.

SEN. COLEMAN:

Madam President, the Clerk should also have LCO-3412. I'd ask the Clerk please call that Amendment and request permission to summarize the Amendment.

THE CLERK:

LCO-3412, which will be designated Senate Amendment Schedule B. It is offered by Senator Coleman of the 2nd

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district et al.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

I move adoption of the Amendment, Madam President.

THE CHAIR:

Question is on adoption, will you remark?

SEN. COLEMAN:

Madam President, what this Amendment seeks to do is to provide that any land that is owned by investor-owned water companies would not be subject to adverse possession. And that is that no other person could acquire any interests in the property merely by possession, use or occupancy of that land. The effect of this Amendment would be to bring investor-owned water company land into conformity and in consistence with land owned by public water companies. I urge adoption of the Amendment, Madam President.

THE CHAIR:

Question is on adoption, will you remark? Will you remark? If not, I will try your minds. All those in favor indicate by saying aye?

SENATORS:

Aye.

THE CHAIR:

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Ellington.

And they've been here with us all afternoon and they've had a lot of questions for me on what was going on in the Senate and in the Chamber throughout the day. And the interesting part about them is they were here about six weeks ago. And they did something most kids don't do. They came back. So, I would like everybody to give them a round of applause.

(APPLAUSE)

SEN. GUGLIELMO:

Thank you, Madam President.

THE CHAIR:

Thank you, Senator. Senator Jepsen. Senator Jepsen.

SEN. JEPSEN:

Madam President, if the Clerk could call the Consent Calendar at this time.

THE CHAIR:

Mr. Clerk, would you first announce a roll call vote on the Consent Calendar and then we'll call.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the chamber.

Madam President, first Consent Calendar begins on
Calendar Page 6, Calendar 284, HJR190.

Calendar 285, HJR191.

Calendar 286, HJR192.

Calendar 287, HJR193.

Calendar 288, HJR194.

Calendar 289, HJR195.

Calendar 290, HJR196.

Calendar 291, HJR197.

Calendar Page 8, Calendar 70, Substitute for SB352.

Calendar Page 11, Calendar 178, SB556.

Calendar Page 12, Calendar 221, Substitute for

HB5542.

Calendar 230, Substitute for SB486.

Calendar 235, SB407.

Calendar Page 13, Calendar 238, SB555.

Calendar 239, Substitute for SB591.

Calendar Page 16, Calendar 275, Substitute for

SB315.

Calendar 280, Substitute for SB412.

Calendar Page 17, Calendar 292, Substitute for

HB5203.

Calendar 293, HB5077.

Calendar 295, HB5067.

Calendar Page 18, Calendar 296, HB5074.

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Calendar 300, HB5076.,

Calendar Page 25, Calendar 72, SB88.,

Calendar Page 26, Calendar 90, SB396.,

Calendar Page 29, Calendar 127, Substitute for
SB80.,

Calendar Page 31, Calendar 157, Substitute for
SB302.,

Madam President, that completes the first Consent
Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a
roll call vote on the Consent Calendar. The machine will
be opened.

THE CLERK:

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to the
Chamber. The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to the
Chamber.

THE CHAIR:

If all members have voted the machine will be
locked. Clerk, please announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total Number Voting

36

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Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar is adopted. Senator Jepsen.

SEN. JEPSEN:

If Clerk could call the Order of the Day.

THE CLERK:

Turning to Calendar Page 12, matter previously marked Order of the Day.

~~Calendar~~ 211, File No. 326, Substitute for SB383,

AN ACT CONCERNING QUASI-PUBLIC AGENCIES. Favorable report of the Committee on Government Administration and Elections. Clerk is in possession of Amendments.

THE CHAIR:

Senator Fonfara. Excuse me. Senator Fonfara, Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President. Madam President, pursuant to Rule 15, I will be recusing from this matter.

THE CHAIR:

The Journal will so note, sir. Senator Fonfara.

SEN. FONFARA:

Thank you, Madam President. Madam President, the

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HOUSE

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House of Representatives

Thursday, April 25, 2002

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not Voting	5

DEPUTY SPEAKER HYSLOP:

The bill passes, in concurrence with the Senate.

Clerk, please call Calendar 371.

CLERK:

On page 15, Calendar 371, S.B. 556, AN ACT
 CONCERNING CERTAIN LAND RECORDS. Favorable Report of
 the Committee on Judiciary.

DEPUTY SPEAKER HYSLOP:

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Mr. Speaker. Mr. Speaker, I move for
 acceptance of the joint committee's favorable report and
 passage of the bill, in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

The question is on acceptance and passage, in
 concurrence with the Senate.

Will you remark?

REP. FONTANA: (87TH)

Yes. Thank you, Mr. Speaker. Mr. Speaker, this
 bill specifies that a real estate conveyance that is

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otherwise effective and properly recorded, is not invalid or enforceable merely because the original documents evidencing it are converted into digital or electronic form, lost or destroyed after the Town Clerk records it.

The bill also specifies that any nominee in a grant or assignment of a mortgage be deemed to be the grantee of such mortgage or assignment and be recorded in the grantee index.

Mr. Speaker, the Clerk has an amendment, LCO 3161. I ask that he call it and that I receive permission to summarize.

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO 3161, previously designated Senate Amendment "A" and the Representative has asked leave to summarize.

CLERK:

LCO number 3161, Senate "A" offered by Senator Coleman.

DEPUTY SPEAKER HYSLOP:

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Mr. Speaker. Mr. Speaker, this amendment clarifies that the bill's provisions regarding validity and enforceability of conveyances applies to

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those that are recorded before, on, or after October 1, 2002.

I move for its adoption.

DEPUTY SPEAKER HYSLOP:

The question is on adoption of Senate "A". Will you remark on Senate "A"? Will you remark on Senate "A"?

If not, we'll try your minds.

All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed. The ayes have it. Senate "A" is adopted.

Will you remark further on the bill, as amended?

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk has an amendment, LCO 3412. I ask that he call it and I receive permission to summarize.

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO 3412, previously designated Senate Amendment "B" and the Representative has asked leave to summarize.

CLERK:

LCO number 3412, Senate "B" offered by Senators

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Thursday, April 25, 2002

Sullivan, Jepsen, et al.:

DEPUTY SPEAKER HYSLOP:

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Mr. Speaker. This amendment adds certain provisions to the underlying bill concerning adverse possession claims to certain lands owned by investor owned water companies. It specifies that the prohibition on adverse possession claims does not take effect - does not effect any adverse claims in or to the land acquired before October 1 of 2002.

I move for adoption.

DEPUTY SPEAKER HYSLOP:

The question is on adoption of Senate "B". Will you remark on Senate "B"?

Representative Farr.

REP. FARR: (19TH)

Thank you, Mr. Speaker. Mr. Speaker, this was essentially a bill that I believe came out of Judiciary. I don't know what happened to the bill, it got lost somewhere along the way. I don't think there's any problems in Judiciary with it and I would support the amendment.

DEPUTY SPEAKER HYSLOP:

Will you remark further on Senate "B"? Will you

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remark further on Senate "B"?

If not, I will try your minds.

All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed. The ayes have it. Senate "B" is adopted.

Representative Merrill.

REP. MERRILL: (54TH)

Thank you, Mr. Speaker. I would make a motion that we refer this bill to the Environment Committee.

DEPUTY SPEAKER HYSLOP:

The motion is to refer to Environment. Seeing no objection, so ordered.

The Chamber will stand at ease.

(Chamber at ease.)

DEPUTY SPEAKER HYSLOP:

The Chamber will come back to order.

Clerk, please call Calendar 317.

CLERK:

On page 12, Calendar 317, S.B. 312, AN ACT CONCERNING THE SALE OF PROPERTY IN THE CITY OF NORWALK FOR AN ADULT DAY CARE CENTER. Favorable Report of the Committee on Planning and Development.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

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2965-3297

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House of Representatives

Tuesday, April 30, 2002

CLERK:

On page 30, Calendar 371, S.B. 556, AN ACT
CONCERNING CERTAIN LAND RECORDS. Favorable Report of
the Committee on Environment. The House adopted Senate
Amendment Schedules "A", "B", and the committee
recommends passage with Senate Amendments "A" and "B".

DEPUTY SPEAKER HYSLOP:

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Mr. Speaker. And good afternoon to you.

DEPUTY SPEAKER HYSLOP:

Good afternoon, sir.

REP. FONTANA: (87TH)

Mr. Speaker, I move for acceptance of the joint
committee's favorable report and passage of the bill, in
concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

The question is on acceptance and passage, in
concurrence with the Senate.

Will you remark?

REP. FONTANA: (87TH)

Thank you, Mr. Speaker. Mr. Speaker, as the Clerk
indicated, the House previously adopted Senate
Amendments "A" and "B" and then referred the amended
bill to the Environment Committee.

Now, that it's come back from there, I urge passage.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill? Will you remark further on the bill?

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker, Mr. Speaker, excuse me.

DEPUTY SPEAKER HYSLOP:

That's why we were going slow, so we wouldn't make mistakes.

REP. PRELLI: (63RD)

Well then, Mr. Speaker, maybe we should slow this bill down so we don't make a mistake on it because, Mr. Speaker, I think we are making a mistake with Senate "B".

I don't understand why we're giving water companies any more rights than we're giving any other citizen. Why can't, in Senate "B", water companies check their boundary lines just like regular citizens do?

Why, when somebody has been using land, mostly by mistake, probably, might have a garage like sitting six inches over a boundary line, why shouldn't they have the same rights to adverse possession that everyone else has? But no, instead, in Senate "B" we are now saying

that no matter what's happened in the past, no matter how long this has been going on, if it's on water company property, we're not going to allow it.

As I was talking to one other State Representative, it was pointed out that most water company owners can probably afford the attorneys to check their lines. They can probably afford the staff to check their lines. Where we, as regular property owners, can't.

This is the wrong direction on this. We shouldn't be giving them that extra right. And they should have known all along and stopped it before the adverse possession took over.

Because of this amendment, this is not necessary and I don't believe we should pass this bill and hopefully by going slow, we will have all thought about that and then maybe not vote so quickly to just give - to take away rights of individuals.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill? Will you remark further on the bill?

If not, staff and guests to the Well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by roll

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call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER HYSLOP:

Representative Nardello.

Have all members voted? If all members have voted, please check the board to make sure your vote is properly recorded.

The machine will be locked and the Clerk will take a tally.

The Clerk will announce the tally.

CLERK:

S.B. 556, as amended by Senate Amendment Schedules "A" and "B", in concurrence with the Senate

Total Number Voting	140
Necessary for Passage	71
Those voting Yea	134
Those voting Nay	6
Those absent and not Voting	11

DEPUTY SPEAKER HYSLOP:

The bill passes, in concurrence with the Senate.

Are there any announcements or points of personal privileges?

Representative Gerratana.

REP. GERRATANA: (23RD)

Thank you, Mr. Speaker. For a point of personal

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still here?

UNIDENTIFIED SPEAKER FROM THE AUDIENCE: He's left.

REP. LAWLOR: Okay. Jim Papillo, is he still here?
He's here. Okay. You'll be next, Jim. Next, after
this.

JONATHAN ANDERSON: Thank you. My name is John Anderson.
I'm Title Counsel at Connecticut Attorneys Title
Insurance Company. That's CATIC in Rocky Hill and
I'm here representing CATIC in support of AN ACT
CONCERNING CERTAIN LAND RECORDS.

SB556

And this bill does two things. One, it adds an
additional subsection to the existing statute, 47-
10 that addresses the requirements for executing
and recording a particular instrument on the land
records.

It adds a subsection that reads, "a conveyance that
is otherwise effective and properly recorded in
accordance with Subsection (a) shall not be invalid
or unenforceable because the original documentation
evidencing such conveyance is converted into
digital or electronic form or is lost or destroyed
at any time after recordation."

And the company feels that this addition to the
statute is necessary because of the increasing
frequency of electronic transactions. And even
though we don't anticipate that land transfers and
mortgages will be represented completely or taken
over completely by electronic transmission, we do
believe that we will see a prevalence, an
increasing prevalence of let's call the hybrid
transaction where some of the documentation is
converted into electronic form and then other
documents such as a deed will still be in paper
form and will be signed, executed, and recorded
just as it always has been.

We just want to make it clear in this particular
section, we want to confirm what we believe is the
existing law that what is necessary to make an
interest valid is to have it signed by the grantor,
to have it delivered to the grantee, and then to

have it recorded on the land records.

If something happens to the document after that, that is if it is subsequently lost or destroyed, even if that destruction is intentional, we do not want that to, in any way, impact on the validity of the transaction.

And again, the reason that's important with regard to electronic transactions is that we anticipate what will happen is that many of the documents that are recorded on the land records, once they are reproduced by the town clerk and subsequently returned to the parties, will be scanned into electronic format and then they may be subsequently destroyed.

The other proposal that I'm here to speak about in support is an existing change, an addition to the existing section 725 of the General Statutes and the reason we think this section is necessary is because we believe that the town clerks need some additional direction on how to index certain transactions that are conveyed to a certain party as nominee for a lender.

So the (inaudible) section would read, "if such instrument is a grant or assignment of a mortgage to a party designated as nominee for another, such nominee shall be deemed to be the grantee of such mortgage or assignment for purposes of this section."

Again, with the introduction of the mortgage electronic registration system or MERS, we're seeing more documents being recorded in the land records to MERS as nominee for a particular lender.

We've received reports from various town clerks that they're uncomfortable with having that designation on the land records in the sense they don't know exactly how to index that particular instrument in the grantor/grantee index and this bill will let them know that it should be indexed under the name of MERS and that will be completely acceptable.

Does anybody have any questions?

REP. LAWLOR: Thank you. Representative Farr.

REP. FARR: Just on the last one. They're going to be indexed just under MERS? And not under both?

JONATHAN ANDERSON: That's correct unless there was a particular instruction to have it indexed under both. The intention of this bill would be to make it so that town clerks could just index the bill -- index the mortgage, rather, or assignment under the name of MERS.

REP. FARR: Okay. I'm just trying to think for a second.

JONATHAN ANDERSON: That would be MERS as grantees. So it would be -- if John and Mary Smith had granted a mortgage to MERS as nominee for Fleet Bank, for example, the bill would allow the town clerk to index the grantor index under the names of John and Mary Smith and then the grantee would be MERS. It would simply be MERS, the mortgagee electronic registration system.

REP. FARR: And then when that release comes, it will be coming from some nominee for MERS, but it maybe anybody because the nature of MERS is that it - the mortgage can then be assigned without recording the assignment.

JONATHAN ANDERSON: Right. The whole purpose of the mortgage electronic registration system is to allow the ownership of the mortgage to be transferred and for that transfer to be recorded in the electronic registry, not to be represented by a paper document that's recorded in the land records. And that saves on some administrative costs for the lender and the way that you remain -- the way that you keep this continuity between the mortgagee on the land records and the party releasing on behalf of the mortgagee is to have that party continuously and consistently designated as MERS. So the mortgage would be going to MERS or the mortgage electronic registration system and the release would also be from MERS even though, perhaps, between the time of the mortgage was originally granted and the time

the mortgage was released, the ownership of that mortgage could have been transferred any number of times without those assignments or transfers of ownership being represented by anything on the land records.

REP. FARR: Okay. I was just trying to think for a second whether or not there would be any benefit to have them indexed under both.

JONATHAN ANDERSON: Do you mean as nominee for a particular lender?

REP. FARR: Yeah.

JONATHAN ANDERSON: Well, the reason that might be problematic is that if you say, for example, that the mortgage is being granted to MERS as nominee for Fleet Bank and then the release comes through MERS as nominee for Countrywide, then people will wonder, well why is Countrywide being named in the release when Fleet was the original mortgagee?

The important thing is that yours is the party that's involved in both, but to require that the index also represent, as far as the grantee is concerned, that the nominee be represented, might lead to some confusion when the party for whom MERS is acting is not the same between the original mortgage and the release.

REP. FARR: And there won't be any cases where the nominee gives a release without being designated as the nominee? In other words, if you gave a mortgage to Fleet Bank as nominee for - I'm sorry. It's Fleet Bank nominee for MERS?

JONATHAN ANDERSON: No, it's MERS as nominee for Fleet Bank, right.

REP. FARR: If you gave a mortgage to MERS as a nominee for Fleet Bank, your release is always going to be from MERS.

JONATHAN ANDERSON: That's correct.

REP. FARR: You won't get a release from Fleet Bank,

under any circumstances?

JONATHAN ANDERSON: You should not, that's correct.

REP. FARR: Okay. Thank you.

JONATHAN ANDERSON: Thank you.

SEN. COLEMAN: Are there further questions for this witness? If not, thank you very much for your testimony.

JONATHAN ANDERSON: Thank you.

SEN. COLEMAN: I believe next is, I could be wrong, but according to this list, next is Beverley Brakeman.

Beverley Brakeman. James Papillo.

JAMES PAPILO: Good afternoon, Senator Coleman, members of the Judiciary Committee.

My name is James Papillo. I'm the Victim Advocate for the State of Connecticut and I'm honored once again to have this opportunity to provide testimony to you on bills that are of great importance to citizens in our State who have been victimized by crime.

With me are Merit Lajoie and Daniel Butler, staff members of the OVA.

I've submitted fairly lengthy written testimony to you on a number of bills. I wish to testify orally on some of them.

First, very briefly, I'd like you to know that I support raised S.B. 568, AN ACT APPROPRIATING FUNDS FOR PROGRAMS FOR JUVENILES CONCERNING DOMESTIC VIOLENCE. The same with respect to raised H.B. 5681, AN ACT CONCERNING A STUDY OF THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND POOR BIRTH OUTCOMES. And also raised H.B. 5692, AN ACT CONCERNING FIREARMS AND FAMILY VIOLENCE.

I strongly support raised S.B. 562, AN ACT CONCERNING AN ADDRESS CONFIDENTIALITY PROGRAM. I

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STANDING
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HEARINGS

JUDICIARY
PART 7
1837-2157

2002

C A T I C

To: Members of the Judiciary Committee
From: Jonathon Anderson
Re: S. B. 556 AAC Certain Land Records
Date: March 11, 2002

My name is Jonathan Anderson and I am a Title Counsel at Connecticut Attorneys Title Insurance Company, also known as CATIC, in Rocky Hill. This testimony addresses proposed amendments to two different statutes regarding the recording of documents on the land records. CATIC supports both proposals incorporated into S.B. 556 entitled "An Act Concerning Certain Land Records".

One proposed change involves the addition of a new subsection to the existing Section 47-10 of the general statutes. The new subsection reads "A conveyance that is otherwise effective and properly recorded in accordance with subsection (a) ... shall not be invalid or unenforceable because the original documentation evidencing such conveyance is converted into digital or electronic form or is lost or destroyed at any time after such recordation." The change is intended to confirm what CATIC believes to be the existing law that a properly recorded document provides sufficient evidence of a valid interest created or conveyed by the instrument. The subsequent loss or destruction of the document, after its recording, does not invalidate the transaction or the interest. The proposal is necessary because so-called electronic transactions involving real property financing and transfer will occur more frequently in the near future. In an electronic transaction, much of the information that has traditionally been reflected on paper is saved in electronic form. Even information that is originally drawn up on paper can be scanned and then saved in an electronic or digital format.

Although the day may come when electronic data replaces paper, paper documents are still a necessary part of a real estate transaction. The grantor must still sign the deed, then deliver the deed to the grantee, and the deed must be recorded in the appropriate land records. Once the parties complete the execution, delivery and recording of the deed, however, the town clerk will create a permanent copy of the deed and thereafter return it to an interested party. At that point, the deed may be scanned into an electronic format and stored in a database. The party in possession of the document may thereafter destroy the paper version, because there is no longer any need to retain it. This proposal confirms that the destruction of the document, even if it is intentional, will not invalidate the effect of the deed once the deed has been properly recorded.

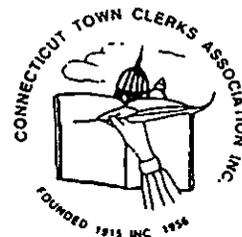
The other proposed change involves an addition to the existing Section 7-25 of the general statutes. This proposal provides additional direction to the town clerk regarding the proper method of indexing the parties to a recorded mortgage or assignment. The new provision reads: "If such instrument is a grant or assignment of a mortgage to a party designated as a nominee for another, such nominee shall be deemed to be the grantee of such mortgage or assignment for purposes of this section."

It is becoming more common for mortgages and assignments to be given to a party as nominee for another, because of the existence of the Mortgage Electronic Registration System (MERS). The electronic registry allows lenders to transfer ownership of a mortgage without the need for a paper assignment, so the lender saves on administrative costs. As part of the registration procedure, the mortgage is granted to MERS as nominee for the actual lender. Given the appearance of these different parties on the document being presented for recording, some town clerks have expressed their concern about the proper method of designating the grantee for the purposes of grantor and grantee index. This proposal provides the town clerks with a recommended course of action.

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CONNECTICUT TOWN CLERKS' ASSOCIATION LEGISLATIVE COMMITTEE



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March 11, 2002

To Members of the Judiciary Committee:

Thank you for the opportunity to present the views of the Connecticut Town Clerks Association with respect to a few bills that have raised our interest. As the Legislative Committee Chairperson, it is my goal to present to you the concerns and positions of the Association.

Raised Bill 556; An Act Concerning Certain Land Records. This bill addresses two concerns. The first is the issue of original documentation and the invalid or unenforceable nature of these documents should they be digitized or placed in electronic form or are lost or destroyed after recordation. I believe the key words are "after recordation". If we understand this to mean that this section because of this phrase does not affect technically the Town Clerks, then there is certainly no issue on our part.

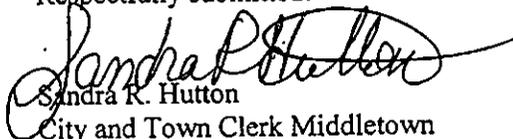
If that is not the case, then you would need to understand that Town Clerks have always held the view that the reason a document is placed onto the land records, with original signatures, is to protect the legal nature of the document in the event it does become lost, destroyed, or in this case, digitized, etc. The addition of this language is not a problem; it simply may not be necessary.

Raised Bill 562; An Act Concerning An Address Confidentiality Program. This bill is supported by the Town Clerks Association and will affect certain documents that are within our offices' jurisdiction. In past practice, most Town Clerks have accommodated requests to keep records as confidential as possible even without this legislation being adopted. It is important to note that it is not within our ability, however, to keep land records strictly confidential due to the nature of the indices themselves.

Raised Bill 561; An Act Concerning the Connecticut Uniform electronic Transactions Act. It is important to note that there is a plan to form a Committee with respect to electronic transactions in the State of Connecticut. The Association would respectfully defer specific comment on this bill to the Public Records Administrator, Eunice DiBella. Our main concern would be with the fact that currently, we are allowed to accept only original signatures for land record recordings. In addition, a complete set of guidelines would need to be established for these recordings alone. A general set of rules would not suffice. That being said, we hope the Committee consider serious consultation with not only the Public Records Administrator, but also consider restraining from passing this type of legislation before a study by a Committee commissioned to investigate this specific area is formed and has sufficient time to analyze the needs of the State of Connecticut and its respective agents.

Once again, I would like to thank the Committee for the opportunity to present the Connecticut Town Clerks Association views to you for your consideration.

Respectfully submitted:


Sandra K. Hutton
City and Town Clerk Middletown
Legislative Chairperson, C.T.C.A.