

## CBA LPRC POSITION REQUEST FORM

The CBA Real Property Section **position request** is as follows:

1) Proposed legislative or regulatory concept:

To OPPOSE 5373, an Act Concerning Real Estate Abutting a Way. The Bill would construe any instrument conveying real property to include grantor's fee interest in a way abutting the real property, subject to certain conditions.

2) Explanation and rationale for advancing this position:

The bill is unnecessary.

- There is already a rebuttable presumption that owners of properties abutting a public roadway own to the center of the road. There is an equally strong presumption that the fee interest in the land under the public roadway is conveyed whenever there is a conveyance of the abutting property, based on the idea that there is no reason for the grantor to withhold his interest in the roadway after conveying the abutting property.
- Unlike property owners who abut a public roadway, landowners who abut a private right of way are not presumed to own the fee interest in any part of the way. The rationale for not presuming ownership in private roads by abutting landowners is that the grantor of a private easement may have legitimate reasons for retaining fee title to the private right of way.

For a full explanation of the above concepts and case citations, please see *The Highway and the Right of Way: An Analysis of the Decisional Law in Connecticut Concerning Public, Private and Proposed Roads from Establishment to Abandonment*, 61 Conn. Bar Journal No. 6 (December 1987).

These common law presumptions make sense and have worked for generations. The proposed bill is unnecessary, and furthermore, part of the bill would turn the common law presumptions on their head. In the third exception listed in the bill, the bill provides that a conveyance of an abutting lot would not convey the fee interest in the roadway if there is written evidence that the roadway was dedicated to the municipality. That is,

- for lots abutting public roadways, deeds to lot would not convey the fee interest in the roadway, and
- for lots abutting private roadways, the fee interest of the grantor would be included in the conveyance.

These results are the exact opposite of the common law presumptions, and there is no reasonable reason to reverse long standing common in this area.

Further, in the case of a grantor owning a fee interest in multiple parcels as well as the fee interest in a commonly used private way (for example in a

newly created sub-division with private roads), the proposed Bill would create potential issues by including the grantor's fee interest in the way when a lot is sold, potentially to the exclusion of later purchasers of other parcels that would have to make use of the same way.

- 3) Is draft regulation, legislation or proposed bill included?

See above

- 4) What is the date of any legislative hearing, if known? N/A

- 5) Was this position previously approved by the CBA? If so, when does/did it expire?

No

- 6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position? No

- 7) Potential or actual CBA opposition from another CBA section or committee? None expected

- 8) Strength of section position (including process and results of section vote taken on issue):

Pursuant to its bylaws, the Executive Committee was polled in between meetings of the Section. Support for this position was unanimous in those responding to the poll (thirteen responses).

- 9) Fiscal impact (on the state): None.

- 10) Are you seeking "fast-track" approval? Yes

Section 47-36aa

(c) Defect with respect to a power of attorney. (1) Any deed, mortgage, lease, power of attorney, release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this state recorded after January 1, 1997, which instrument is executed pursuant to a recorded power of attorney and contains any one or more of the following defects, is as valid as if it had been executed without the defect unless an action challenging the validity of that instrument is commenced and a notice of lis pendens is recorded in the land records of the town or towns where the instrument is recorded within two years after the instrument is recorded:

[(1)] (A) The instrument was executed by an attorney-in-fact but was signed or acknowledged by the attorney-in-fact without reference

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to his or her capacity;

~~[(2)] (B)~~ The instrument was executed by an attorney-in-fact but does not reference the power of attorney;

~~[(3)] (C)~~ The power of attorney was effective at the time the instrument was executed but is recorded after the instrument is recorded.

(2) Any deed, mortgage, lease, release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this state recorded after January 1, 1997, which instrument is executed pursuant to a power of attorney, but which power of attorney is not recorded on the land records of the town or towns where the instrument is recorded, is as valid as if the power of attorney had been recorded, unless (A) an action is commenced to avoid and set aside such instrument and a notice of lis pendens is recorded in the land records of the town or towns where the instrument is recorded within fifteen years from the date of recording of such instrument, or (B) such instrument fails to state the consideration reflecting fair market value. The provisions of this subdivision shall not apply to any conveyance where any deed, mortgage, lease, release, assignment or other instrument is executed by a fiduciary and the fiduciary is the grantee, mortgagee, leasee, releasee or assignee designated in such instrument.