

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, February 21, 2017 – 3:00 p.m.

Colorado Bar Association Offices
1900 Grant Street, 9th Floor
Denver, Colorado

1. Call to Order

Ms. Nies called the meeting to order at 3:02 p.m.

2. Introduction of Guests

Heidi Ray, Amy Sreenan and Vince O'Brien, the new Executive Director of the CBA-CLE, were present.

3. Approval of January Minutes

The proposed minutes of the January meeting were approved, as amended.

4. Financial Report

Ms. Decker reported that the current balance in the Real Estate Section's account is \$59,420.84.

ACTION ITEMS:

5. Section Dues

Ms. Nies discussed the dues in other CBA Sections and whether the Real Estate Section should increase its fees. After discussion, Council members decided that dues should not be increased at this time.

6. Title Standard 9.1.2 Amendment – Evidence of Name Change

Ms. Nies reported that the purpose of this amendment is to simplify the process for showing that a property owner's name changed. Mr. Sweetser moved to approve the amendment to Title Standard 9.1.2, the motion was seconded by Ms. Arnold, and the Council voted unanimously to approve the motion. The Board of Governors will review the amendment on May 6, 2017.

REPORTS AND INFORMATIONAL ITEMS:

7. 2017 Legislation

- Construction Defect Legislation
 - HB17-1169: Ms. Arnold reported that this bill addresses the right for a builder to repair. The Council will continue to monitor this bill.
 - SB17-045: Ms. Arnold reported that this bill addresses the equitable allocation of defense costs and will likely pass. The Council will continue to monitor this bill.
 - SB17-155: Ms. Arnold reported that this bill revises the definition of construction defect. The Council will continue to monitor this bill.
 - SB17-156: Ms. Arnold reported that this bill addresses dispute resolution and includes provisions that conflict with the Uniform Arbitration Act. Ms. Arnold made a motion that Mr. Toft present the arbitration issue to the Legislative Policy Committee, the motion was seconded by Ms. Leff, and the Council voted unanimously to approve the motion.
 - SB17-157: Ms. Leff reported that this bill is very similar to the bill last year. It includes requirements that must be met before an owners' association can bring suit against a builder on behalf of unit owners. The bill also limits the amount and type of contact a builder that is potentially subject to a lawsuit may have with individual unit owners while the owners' association is seeking their approval for the lawsuit. The Council will continue to monitor this bill. Mr. Schupbach reported that this bill should be a high priority on the Council's monitoring list.
- Torrens Title Registration Legislation
 - SB17-140: Mr. Schupbach reported that no major issues have been raised with this bill, and it will likely pass.
- Mortgage Loan Originator Legislation
 - SB17-127: Mr. Sweetser reported that no major issues have been raised with this bill, and it will likely pass.
- Vacated Alleys Presume Included In All Deeds Legislation
 - SB17-097: Mr. Schupbach reported that no major issues have been raised with this bill, and it will likely pass.

- Access To and From Public Highways Legislation
 - HB17-1166: Ms. Alderman reported her concerns regarding the inconsistency of this bill with eminent domain law. CDOT and CML are opposed to this bill. Mr. Schupbach reported that he doesn't believe this will pass.
- Certificate of Trust Legislation
 - HB17-1157: Mr. Schupbach reported that this bill will likely pass.
- Notarial Acts Legislation
 - SB17-132: Ms. Dunn reported that there is a company, Notary.com, that is behind this legislation that, if amended as proposed, would allow remote notarization. Similar legislation has been approved in Virginia and Montana. The Secretary of State, CAR, LTAC and CMLA are opposed to the bill. At the Senate Committee hearing in the next couple weeks, the Committee will consider whether to include the amendment. The Legislative Policy Committee voted to oppose the bill on February 17, 2017. Ms. Dunn will provide a summary of issues related to the bill for Mr. Schupbach. A motion was made by Ms. Dunn to oppose the bill with the amendment to allow remote notarization, the motion was seconded by Mr. Alt, and the Council unanimously approved the motion.
- Address Confidentiality Program Legislation: Ms. Nies reported that there is no legislation proposed at this time, and that Mr. Calvin and Mr. Sweetser attended a meeting on the topic. At that meeting, CMLA relayed that as long as title insurance can be provided, then the program would be acceptable. However, title industry representatives at the meeting didn't see how title insurance could be provided under the program. Mr. Calvin further reported that the nominee approach does not work and that the way to accomplish this program is through a trust, which has costs associated with its establishment. It also has to be maintained and has liabilities with regard to land ownership. Mr. Calvin explained that one possibility to address those issues is to create a statutory trustee to define liabilities and budgetary resources. The Council will not take any action at this time.

8. 2017 Uniform Acts for Colorado Task Forces

- Uniform Commercial Receiverships Act: Ms. Nies reported that no action will be taken on this Act this year.
- Revised Uniform Residential Landlord Tenant Act: Ms. Nies reported no action will be taken on this Act this year.

9. Task Force Reports:

- Sunset Review Recommendations Task Force
 - Real Estate Brokers: Ms. Nies reported that the language in the proposed legislation relating to Recommendation 2 addressing standard forms was removed. The task force provided proposed language for the definition of a standard form for re-inclusion in the legislation to CAR for consideration, and the task force will continue to work with CAR on a resolution.
- Deed Form Task Force: Ms. Nies reported that the Council's recommended revisions to the deed form will be reviewed by CREC next year.

10. Sunset Reviews

Community Association Manager Licensing Program: Ms. Leff reported that Vivienne Belmont at DORA is gathering the information and will write the sunset report. She is accepting comments until the end of April.

11. Real Estate Section Patron Application

Ms. Nies reported that a patron application was submitted for consideration. After discussion among Council members, it was decided that Ms. Nies should approve the application.

12. PACA/PASA Liens

Mr. Calvin reported that the Perishable Agricultural Commodities Act protects agricultural produce suppliers by creating a statutory trust, whose beneficiaries are the suppliers and whose trustees are the vendors. PACA imposes fiduciary duties on vendors to hold the agricultural commodities and any inventories, receivables and proceeds derived from them in trust until the suppliers are paid in full. Title companies have indicated that PACA affidavit and indemnity agreements may be required for the sale of any property owned or leased by a potential PACA vendor.

13. CBA Ethics Committee Liaison

Ms. Stodden reported that the Ethics Committee had not met yet this month.

14. Publications/Newsletter, Website, Discussion Group

Mr. Lubinski reported that an article will be done in the next week or two.

15. Education/CLE Committee.

Ms. Ray reported that the Spring Update is scheduled for March 24, 2017.

16. Education/Topical Lunches Committee

Ms. Leff reported that the next topical lunch on Insurance Principles, Contracts and Colorado Construction Industry is scheduled for March 2nd at the downtown Maggiano's.

17. Interprofessional Committee

Ms. Pasquini and Ms. Leff reported that the Interprofessional Committee is focused on legislation. CAR is concerned about HB17-1095 addressing process servers. The Committee will continue to monitor the bill. Ms. Pasquini also reported that fraud related to title companies continues to be an issue. Ms. Leff reported that there are 45 broker complaints assigned to each caseworker, with over 300 active cases.

18. Publications/Colorado Lawyer Committee

Mr. Clark reported that there is nothing new to report.

19. CBA Trust and Estate Section Liaison

Ms. Nies reported that the supplementary affidavit form is still in process.

20. Title Standards Committee

Ms. Waggener reported that the revised title standards book should be complete by July.

21. Young Lawyers Division Liaison

Mr. Osborn reported that Binge Bar Courtroom Chat, which is an event where judges meet with young lawyers, has been popular.

22. CBA Tax Section Liaison

Mr. Murray reported that the conservation easement legislation did not pass.

23. Eminent Domain Committee

Ms. Alderman did not give an additional report.

24. Colorado Housing Council

Ms. Pasquini discussed a report given by Jessie Atkins, an architect who presented on the use of accessory dwelling units and their benefits. Over fifty percent of homes in Denver are single family.

INACTIVE ITEMS:

25. CBA Business Law Section Liaison

26. Cannabis Law Committee
27. Board of Governors
28. Forms Sub-Committee
29. Community Service/Charitable Committee
30. Membership and Practice Development Committee

NEW MATTERS

ADJOURN

Ms. Nies adjourned the meeting at 5:05 p.m.