

MINUTES

CBA Real Estate Law Section Council

Date: Tuesday, October 19, 2021 – 3:00 p.m.

Colorado Bar Association

1290 Broadway, Ste. 1700

Denver, Colorado 80203

Call to Order- 3:08 Melinda Pasquini

1. Introduction of Guests Melinda Pasquini

None.

2. Approval of September Minutes..... Melinda Pasquini

The September Minutes were unanimously approved.

3. Financial Report (\$122,860.00 as of September 30, 2021) Jim Meseck

4. Chair's Report..... Melinda Pasquini

a. Committees/Liaisons/Taskforces

Ms. Pasquini discussed the intended purpose and organization of the committees, the roles of the liaisons and the *ad hoc* role of the taskforces. The legislative taskforces were created this year to start to proactively address legislative matters as they come up. Committees are to meet every month. Colorado Housing Council is considered a committee. Liaisons interact with the different sections of the real estate industry groups and within the Bar. Ms. Pasquini indicated that taskforces do not need to be currently meeting every month, although the taskforces are welcomed to do so as they see fit. Ms. Robin Nolan, the LPO, will let the taskforces know if there is an issue for a specific taskforce to direct their attention toward and address.

b. Removal of Race-Based Restrictive Covenants Chair Appointment

Ms. Pasquini appointed Mr. Eric Nesbitt as chair of the Removal of Race-Based Restrictive Covenants Taskforce. Mr. Nesbitt accepted the assignment. The taskforce will look at whether legislation is necessary and build off the previous work done to date.

c. Housing Colorado Conference Report

Ms. Pasquini and Ms. Erin Clark recently co-chaired and attended the Housing Colorado Conference at Beaver Run. The Conference was well attended in-person and remotely by industry leaders working to develop solutions to affordable housing. Those solutions and outcomes will depend on federal policy, legislation and available funds.

- d. *Walters v. Cates*, Fed.R.App.P. 32.1 (10th Cir. 2021)..... Geoff Anderson

Mr. Geoff Anderson was involved in the appellate amicus briefing in the *Walters* case that was before the Tenth Circuit Court of Appeals. Mr. Anderson provided a brief summary of the factual and procedural background, the decision made by the bankruptcy court, the respective appellate positions, and the Tenth Circuit's decision. Mr. Anderson explained this is an important case because it clarifies when the recording act applies, when title examiners should be on notice and when to inquire in transactions involving a quit claim deed. A quit claim deed does not require closer examination or investigation in Colorado. The decision is not officially published.

- e. Update – Evictions/Rent & Foreclosure Relief Status

Ms. Pasquini provided an update on current federal and Colorado eviction, rent and foreclosure relief efforts. Ms. Pasquini shared with the Council that there was an update on October 1, 2021 regarding these matters that is currently being studied. Mr. Andy Toft reported that new rules were approved effective October 3, 2021, by the Colorado Supreme Court and there are new forms consistent with legislative changes. Eviction moratoriums are concluded and courts are proceeding with evictions. The anecdotal evidence is that the floodgates on evictions have not been opened as expected. Greater Colorado, outside the metro area, is still experiencing a need for legal assistance on eviction matters. Members who want to get involved are encouraged to come forward. New efforts will be made to find Spanish speaking lawyers to assist with eviction matters given the need.

- f. Report from The New West: Art, Real Estate and the Law.....Doug Tueller

Mr. Doug Tueller summarized the recent presentation on September 24th in Telluride, Colorado involving special districts. The presentation was well attended and even more well received by the public, including the attorneys who went. The presentation included a full day seminar which was the third of three presentations to try to reach broadly across Colorado in effort to create fun and enjoyment with poetry, art, and multi-cultural components. Continuing education credit was offered for attorneys and brokers through distinguished speakers. Mr. Tueller shared that there is an outpouring of funds for different real estate related projects including arts districts and affordable housing. Speakers included Ms. Erin Clark who presented on diversity and inclusion issues as well as provided an update on different Denver real estate projects. A banking representative addressed the issue of how to fund arts projects. Everything came together for a successful presentation. Mr. Anderson provided photos of the event that were distributed with the October Agenda.

- g. Holiday Party – Thursday December 2, 2021

Ms. Pasquini reminded everyone that the Council's annual holiday party is set for Thursday December 2, 2021. More information will be forthcoming about the event.

- h. Happy Hour – Pints Pub – Members and Fall Update CLE Participants

Ms. Pasquini announced that there will be a happy hour following today's Council meeting. Invited are the in-person attendees of the annual Fall Update CLE. All are welcome to attend.

ACTION ITEMS: None

5. **Legislative**.....Robin Nolan/Andy White/Jim Meseck

- a. LPO Report.....Robin Nolan

1. Proposed legislation - Fairways at Buffalo Run

Ms. Robin Nolan reported that LPC approved the draft bill with no changes. The next step will be to find legislative sponsorship. Ms. Nolan and Mr. Andy White are seeking potential sponsors to gain critical support to secure the approval and passage of the proposed bill. The LPC's questions centered on problems of wild deeds and fraudulent deeds. Ms. Nolan explained that the idea was to keep the legislation limited in scope this year. However, the issue of wild deeds and whether more needs to be done will be explored next year. Ms. Pasquini suggested consulting with Amy Mowry given her experience in oil and gas matters where wild deeds are encountered with some frequency.

In other matters, Ms. Nolan reported that she spoke with Mr. Nesbitt about potential legislation on removing race based restrictive covenants. Ms. Nolan will be addressing this issue in the near future.

Ms. Clark was congratulated for receiving the CREW Trailblazer Award.

Mr. White explained that he was gearing up for the upcoming legislative session, including proactive matters with the various business statutes and probate code matters. All CBA members are invited to participate. DORA completed its sunrise review and are recommending renewing the Community Association Manager ("CAM") licensing requirements. Mr. White expects incremental changes to be proposed relating to CCIOA. Mr. White predicted there will be attempts to modify procedures and place additional requirements on arbitrators and ethical requirements for arbitrators. It is unknown what the full scope of these proposals will look like at this time. Mr. White thanked everyone for keeping their ears open and sharing information.

Ms. Clark shared that there will be future opportunities for public testimony on how to use public funds for affordable housing purposes. There is a taskforce in place to address the issue.

Mr. Nesbitt described the 2 options he sees on how to address the race-based covenant restriction issues. The first option is to propose legislation that all race-based covenants are not enforceable and have no effect. The other option is to provide homeowners a path to remove race-based covenants by ordering HOAs to amend their covenants and bylaws, with consequences if they do not, and for title companies to physically redact offensive covenants. This second option would require certain participants to incur costs and risk exposure to consequences if timelines are not met. Mr. Nesbitt shared the example of California's procedure for property owners to make a request to the county attorney that changes be made. Ms. Nesbitt requested feedback from the members, especially as to unintended consequences.

REPORTS AND INFORMATIONAL ITEMS

6. Membership and Practice Development Adam Aldrich, Zak Kessler, Joan Fritsche

Mr. Aldrich reported on the membership mixer hosted at his firm's offices on October 14, 2021. Mr. Aldrich and Ms. Jess Ham reported that the meeting was successful given the number of attendees and feedback, especially as to the number of young attorneys, new members and the variety of experience and practice areas. There were approximately 30-40 attendees.

7. Interprofessional Committee Angie Schmitz, Eric Snyder, Reagan Larkin

A report was provided. Ms. Pasquini suggested that the issue of how the public funds ought to be used be brought up and discussed at the next meeting of the Interprofessional Committee.

8. Education CLE Committee Angie Schmitz, Marjorie Sant, Steve Nagy

The all-day annual Fall Update CLE was scheduled for today. The focus or theme of the CLE was how real estate law cuts across, is connected to and impacts a large variety of disciplines and other areas of practice.

9. Education/Topical Lunches Committee..... Jeremy Syz, Marjorie Sant, Cindy Lowery-Graber, Deanne Stodden

Mr. Jeremy Syz reported that since the Council's last meeting, the Committee organized and facilitated two more presentations. On September 23, 2021, Mr. Peter Griffiths and Ms. Brianna Dowling gave a presentation entitled "Changes to the American Land Title Association Base Policy Forms". On October 7, 2021, Ms. Crystal McDonough gave a presentation entitled "Property Due Diligence: Real Estate". Both presentations were well attended. The Committee submitted their report regarding past speakers and future presentations, including for November and December of 2021. Potential topics and speakers are identified for 2022 as well. Per Mr. Syz, the Committee is continuing to explore options and ideas on how to resume and make in-person presentations with a virtual option work. A survey was suggested with ideas on how to be able to generate useful feedback.

The Committee is looking into using Sonesta's facilities for hybrid presentations. The initial feedback is that the presentation would need 50 attendees at \$36/person to break even. This number of attendees is higher than in-person CBA events are currently generating. An effort will be made to reach out to Maggiano's to see what they can offer. Ms. Amy Brimah reported that POETS was split on whether to return to in-person and hybrid presentations. Most speakers have expressed an interest to speak in person. A test run with in-person attendance will be investigated for December.

10. Communications Committee..... Zak Kessler, Jeremy Syz, Eric Snyder, Joan Fritsche

Mr. Zak Kessler referred to the report submitted by the Committee. The Committee is hoping to get out the newsletter on time. Content was solicited to be included in the newsletter. Progress is being made on the website. Ms. Ham was thanked for her work.

11. Publications Committee..... Adam Aldrich, Eric Snyder, Reagan Larkin

Mr. Aldrich provided an update referring to the most recent report. Articles are prepared or in the works for the next several months. Mr. Aldrich invited members to submit new topics and articles for 2022.

12. Community Service Committee... Cindy Lowery-Graber, Erin Clark, Marjorie Sant, Steve Nagy

The Committee has not been able to meet due to scheduling conflicts. Mr. White has provided information on opportunities to volunteer to review ground leases and help with people who are closing on real estate transactions to ensure consumer understanding. Ms. Pasquini requested contact information to let attorneys know of *pro bono* opportunities.

13. Land Board Liaison Erin Clark

Ms. Clark reported she has been involved with traveling across Colorado learning about the different state lands and uses, including ranching, mining and recreational uses, such as Colorado's newest state park Fischer Peak. Investment is happening across the state to develop tourism through the use of real estate assets.

14. CBA Trust and Estate Section Chad Rounds

Mr. Rounds referred to his submitted report. Mr. Rounds pointed out that the Section is addressing recent court decisions regarding beneficiaries and when the grantee is to be a trust.

15. CBA Title Standards..... Catherine Hance and Geoff Anderson

Mr. Anderson reported that Title Standards met last week and continue to ruminate on standards. There was nothing else to report at this time.

16. CBA Business Section Liaison Andy Toft

Mr. Andy Toft explained that proposed legislation was approved by LPC to clean up parts of the business entity acts. Nothing controversial is expected. A hybrid presentation intended for in-house attorneys is scheduled. Smaller CLE programs are also scheduled.

17. Forms Committee Liaison..... Geoff Anderson

Mr. Anderson shared with the Council that the Forms Committee has not yet met.

18. Diversity and Inclusion Liaison Eric Nesbitt

Mr. Eric Nesbitt expects to have more to report next month.

19. Regional Membership LiaisonDoug Tueller

See Mr. Tueller's comment above.

20. Access to Justice Liaison Andy Toft

Mr. Toft reminded everyone that next week is *Pro Bono* Week. Volunteers will be recognized and groups that provide *pro bono* services will be acknowledged.

INACTIVE

21. Colorado Housing Council

**22. Multifamily and Affordable Housing Taskforce.....Erin Clark, Jeremy Syz, Zak Kessler,
Eric Snyder, Eric Nesbitt, and Jean Arnold**

**23. Amendment to Revised Uniform Law on Notarial Acts Taskforce..... Adam Aldrich
Chuck Calvin, Andy Toft, Joey Lubinski, and Brianna Dowling**

**24. CCIOA Taskforce Joey Lubinski, Amy Brimah, Suzanne Leff, Chuck Calvin, Joan Fritsche,
and Ron Jung**

**25. Landlord/Tenant and Foreclosure Taskforce Angie Schmitz, Cindy Lowery-Graber,
Deanne Stodden, Zak Kessler, Reagan Larkin, and Andy Toft**

**26. Oil and Gas, Water & Natural Resources Taskforce . Amy Mowry, Marjorie Sant, Steve Nagy,
and Robyn Kube**

27. Eminent Domain Taskforce Jody Alderman, Steve Nagy, and Ron Jung

**28. Removal of Race-Based Restrictive Covenants Taskforce Eric Nesbitt, Brianna Dowling,
Katy Dunn, and Erin Clark**

29. Special Districts Taskforce.....Joan Fritsche, and Marjorie L. Sant

- 30. **CBA Young Lawyers Division** Liz Williams and Diana Mendez
- 31. **CAR Liaison** Damian Cox
- 32. **CBA Tax Section Liaisons**..... Tyler Murray and Bobbie Collins
- 33. **Board of Governors**Katy Dunn
- 34. **CBA Cannabis Law Committee Liaison**..... Eric Jaworski
- 35. **CBA Ethics Committee Liaison**..... Kate Strauss

NEW MATTERS None.

ADJOURN 4:47 p.m.