

**MINUTES**

**CBA Real Estate Law Section Council**

**Date: Tuesday, February 15, 2022 – 3:00 p.m.**

**In Person/Zoom**

**Colorado Bar Association**

1290 Broadway, Ste. 1700

Denver, Colorado 80203

**Call to Order** 3:05 ..... Melinda Pasquini

**1. Introduction of Guests**..... Melinda Pasquini

Ms. Pasquini welcomed all guests including Johna Vartay, Sarah Schofield, Charles Cook, Harrick Lidstone, and Holly Ryan. Past members Brianna Dowling and Chris Payne were introduced.

**2. Approval of January Minutes**..... Melinda Pasquini

The January 2022 Minutes were unanimously approved after a motion and second.

**3. Financial Report** ..... Jim Meseck

Mr. Jim Meseck reported that the Section Council’s account has a balance of \$98,002.84 as of January 31, 2021

**4. Chair’s Report**..... Melinda Pasquini

a. April Meeting – Devil’s Thumb Ranch (April 27-29, 2022)..... Melinda Pasquini

Ms. Pasquini announced that plans are nearly finalized for the April Meeting at Devil’s Thumb Ranch. There will be a virtual option for people to attend. Rooms, some meals and an activity will be paid for Section Council members. Members need to give notice of in-person attendance. Wednesday will have a dinner starting at 6 pm. Thursday morning will be the meeting followed by a lunch and an activity session in the afternoon with a dinner in the evening. Check out is Friday morning. Ms. Pasquini thanked Ms. Jess Ham for her efforts in making this event happen to allow people to meet in person. Ms. Pasquini raised the possibility of reaching out to the local community of real estate attorneys.

b. ALTA Policies .....Brianna Dowling

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Ms. Brianna Dowling introduced the Alta Title Policies that went into effect in January of 2021. There are new policies that replace the 2006 policies. Ms. Dowling advised that it takes a lot of work to upload and train on new policies. Redline versions were provided along with final drafts. The most important factor to keep in mind during the transition period from using the prior version to the new version is to keep in mind which version was in use at the time. Ms. Dowling advised that the best practice is to check your policy jacket to ensure you know which version you are using. Ms. Dowling highlighted important changes. For instance, the definition of insured was expanded, such as spouses who acquire title through divorce. Ms. Dowling asked that attorneys please pay close attention to the definition section and changes in newly defined terms that have an impact on covered risks and exclusions. There are new references to remote notary changes in the law. There is a disclaimer provision to make it clear that the policies are not intended to provide a legal opinion or title abstract. Ms. Dowling further pointed out that the date of valuation is critical for coverage reasons and that the amount of insurance in instances of litigation increases to 15% in the event the insured prevails. Mr. Chris Payne pointed out the arbitration provision as a significant change. Everyone was reminded of the copyright provision.

c. Title Standards Committee Recommendations (Bankruptcy/Foreclosure)

Ms. Pasquini informed the Section Council of possible openings on the Title Standards Committee, specifically looking for expertise in bankruptcy and foreclosure matters. Firm size is not currently a qualifying factor. The qualified candidate will have experience and knowledge in this area of the law. Ms. Ryan mentioned she had several firms and candidates for consideration.

d. Guidelines on Denver Landlord License .....Deanne Stodden

Ms. Deanna Stodden provided a report on what the City and County of Denver is requiring of landlords to obtain a landlord license in the future. Ms. Stodden explained that the plan is to introduce changes in phases. Tenant Rights and Resources are to be provided to the tenant at the time the lease is signed and when there is a demand for rent as part of Phase I. Phase II is to allow for an opt in for a reduced license fee and to have the property inspected for habitability. Phase III is to require full licensing for landlords owning more than one property. Phase IV requires full licensing for a single rentable unit. Ms. Julie Waggoner asked whether the Interprofessional Committee and real estate brokers are aware as they will be most impacted. Mr. Damian Cox suggested distributing the guidelines to the Colorado Association of Realtors. It was clarified that these new regulations were for long term rentals. Mr. Amy Brimah pointed out there is a separate license for short term rentals. Ms. Pasquini shared that home inspectors have not yet been approved as vendors but that standard inspections currently used by buyers will likely be acceptable. Ms. Stodden agreed to provide updates as information becomes available to her.

e. Change in Eviction Forms ..... Angie Schmitz

Ms. Angie Schmitz updated the Section Council that matters have been put off until a future meeting. A subcommittee has been formed and led by Judge Alex Espinoza to address strong opinions by proponents for both landlords and tenants. Currently, counties are using their own forms until there is a standardized set of forms.

f. Section Council Applications ..... Jim Meseck

Mr. Meseck explained that an announcement soliciting applications to become members of the Section Council will be distributed soon. Section Council members wanting to apply for the officer track position are also asked to apply by the deadline. The deadline for submission of applications is March 18, 2022. The Nominating Committee will then review the application materials upon receipt and make their report. Section Council members are asked to identify and encourage potentially qualified applicants to apply.

g. CBA CODACC Kickoff Happy Hour

When: February 24, 2022

Where: History Colorado Center

Time: 5:30-7:30

Ms. Pasquini announced the CBA CODACC Kickoff Happy Hour that will take place on February 24, 2022 at the History Colorado Center starting at 5:30. Ms. Pasquini encouraged members to specifically support this event and CODACC in general.

h. Happy Hour at Pints Pub

Ms. Pasquini invited today's attendees and members to join her for a happy hour at Pints Pub following today's meeting.

**ACTION ITEMS:**

**5. SB22-122 Colorado Uniform Voidable Transactions Act ..... Andy Toft**

Mr. Andy Toft introduced SB22-122 and recommended a support position. Mr. Toft explained that the bill is back for its 7<sup>th</sup> appearance. The current version was passed in 2014. Past efforts to change the bill have been objected to because of the choice of law provisions and references to series entities. This year, it was decided to remove reference to series entities and choice of law provisions to accommodate past objections. With those changes, Mr. Toft was recommending support for the bill. Mr. Toft did share that the definition of "insider" was amended by the Business Law section to delete the word "means" to be replaced by "includes". Mr. Toft agreed with the proposed change based on case law. Mr. Toft referred to his memo that was previously circulated, such as amendments to "insolvency" definition and clarify "proof". Ms. Robin Nolan requested an update to the memo. Mr. Toft agreed.

A motion was made to support SB22-122 by Ms. Joan Fritsche and seconded by Mr. Adam Aldrich subject to the amendment to the definition of "insider" to replace "means" with "included". The motion was approved by a vote of 15 yay, 1 nay, and 2 members were absent and did not vote. Comments against the SB22-122 were requested in order to share with LPC.

**6. Legislative ..... Robin Nolan/Jim Meseck/Tyler Mounsey**

a. Assignment Communications ..... Jim Meseck

Mr. Meseck reviewed the legislative bill review process. Overall, the procedure using taskforces, small groups or individual attorneys for review has gone well. Mr. Meseck expressed appreciation for all the volunteers and their gracious allowance of their time and sharing of expertise. Mr. Meseck asked that everyone continue to be vigilant, continue to check emails for review assignments, coordinate with fellow bill-reviewers, continue drafting quality memos, timely submitting memos, and voting quickly as needed when bills are ripe. Also, Mr. Meseck requested that members please be prepared to testify before

legislative committees when called upon to do so. The effectiveness of the Section Council depends on an army of volunteers each doing their part.

- b. LPO Report.....Robin Nolan
  - i. Legislative Report.....Tyler Mounsey

Mr. Tyler Mounsey provided his legislative report. Mr. Mounsey gave an update on SB22-060 that it was laid over and no longer needs to be monitored. HB22-1040 was considered by the LPC, after which concerns were shared with legislators. HB22-1040 has not been assigned to a committee yet. HB22-1036 is being discussed and moving forward. Mr. Mounsey thanked Mr. Cox for providing support and information as part of an attempt being made to reach out to land surveyors and their lobbyist to have a conversation on the differing points of view. Mr. Cox provided background on a new update to HB22-1036 regarding concerns over homeowners not understanding surveys and differences between an ILC. Changes are being considered to the forms approved by the Colorado Real Estate Commission to allow for an ILC option. Mr. Mounsey stressed that the important guiding factor is the greater good. Ms. Pasquini asked what was being changed on the closing and settlement statement as part of HB22-1036. Ms. Nolan asked about HB22-1041. Mr. Mounsey responded that he has no concerns about HB22-1041.

- ii. Release of Deed of Trust Proposed Legislation.....Deanne Stodden

Ms. Nolan introduced the topic of proposed legislation regarding the Deed of Trust Proposal made by the Colorado Clerks and Recorders. Ms. Nolan invited Ms. Ryan to share her thoughts. Ms. Ryan has met with Ms. Stodden. One change to the proposed legislation that was discussed and being considered with goal of cutting down on fraud is to require e-filing in order to use the proposed form to ensure more checks and balances. Ms. Ryan has been in contact with the sponsors of the bill. The sponsors are looking for bipartisan support.

## 7. In the News

- a. Marshall Fire.....Jeremy Syz, Cindy Lowery-Graber, Ron Jung
  - i. <https://www.cobar.org/Marshall-Fire-Resources>
  - ii. <https://www.boulder-bar.org/>
  - iii. <https://www.boulder-bar.org/Marshallfireresources>

Ms. Stodden provided an update including that 4 topical lunches were planned on the legal issues relating to and arising out of the Marshall Fire. Ms. Suzanne Leff, Mr. Joey Lubinski, Joe Ramirez, and Ben Pearlman or another government attorney will speak about rebuilding issues in March and April as part of the CLE luncheon series.

## REPORTS AND INFORMATIONAL ITEMS

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

Mr. Aldrich explained that a Rockies game is being planned for late May or early June during the middle of the week. Feedback was asked for regarding social events, ticket locations, and the cost per person. Mr. Aldrich explained his preference is to have a social mixer. A poll will be circulated. Ms. Pasquini expressed her preference for a social event and possibly expand to include other sections, specifically the Business Section. Ms. Pasquini asked about in-person events and how well such events are attended. Per Ms. Ham, outdoor events are better attended than indoor events. Pricing and budgeting options were discussed. Enthusiasm for the event was expressed. Ms. Pasquini expressed her thought in

favor to subsidize some of the cost as a way to increase membership. Ms. Ham discussed other options on seats and section location, including a suite. Ms. Pasquini asked the Committee to formulate a proposal to submit in March for a vote.

**9. Interprofessional Committee** .....Angie Schmitz, Eric Snyder, Reagan Larkin

Mr. Snyder referred to the Committee’s report that covers a lot of pending legislation and the different positions being taken. Mr. Snyder specifically stated that HB22-1036 is universally opposed.

**10. Education CLE Committee** .....Angie Schmitz, Marjorie Sant, Steve Nagy

Ms. Schmitz announced that the spring update theme is the real estate market in Colorado. The update will be in late April or early May. The intent is to cover urban and rural real estate market issues, including recent downtown Denver real estate concerns.

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

Ms. Marjorie Sant explained that other topics are being developed and planned other than the Marshall Fire issues previously discussed.

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

Mr. Zak Kessler explained the Committee is a week behind but has a lot to communicate on the Marshall Fire, the speakers being lined up and other relevant topics. The newsletter will be coming out in early March.

**13. Publications Committee**.....Adam Aldrich, Eric Snyder, Reagan Larkin

Mr. Adlrich explained articles are lined up through the summer but ideas are welcome for the fall. The goal is to submit an article to the Colorado Lawyer once a month. Mr. Aldrich plans to reach out on Marshall Fire article ideas.

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

Mr. Meseck provided comments from Ms. Cindy Lowery-Graber, including that the Section Council raised a total of \$4,228 for the Salvation Army Giving Project for the year 2021 which beat the prior donation for 2020 by almost \$200. Ms. Lowery-Graber wanted everyone to know how appreciated the contributions are and what a great effort. Ms. Lower-Graber also wanted to ensure that the Section Council will meet its match and if she needs to do anything to make sure that the match happens. Per Ms. Lowery-Graber, the intention was to match half from the 2021 budget and half from the 2022 budget, not to exceed \$5,000 total in matching funds.

Mr. Meseck moved to contribute the full \$5,000. The motion was seconded by Mr. Reagan Larkin. The motion was unanimously approved.

Ms. Lowery-Graber also wanted the Section Council to know that the Committee plans to meet in the next week or two to discuss additional opportunities. In the meantime, a survey will be sent out shortly in the hopes that RESC members will notify the Committee regarding any community service opportunities they are aware of.

**15. CBA Trust and Estate Section** .....Chad Rounds

Mr. Chad Rounds referred to his report.

**16. Colorado Housing Council** .....Cindy Lowery-Graber and Deanne Stodden

Ms. Nolan referred to her memo. Ms. Nolan explained that the issue of short-term rental tax rates would be proposed to tax such properties as commercial which generated much dialogue in the Colorado Housing Council.

**17. CBA Title Standards**.....Catherine Hance, Geoff Anderson

Ms. Catherine Hance explained that work is being done to address documents marked as a copy that are recorded. The Committee is looking to add a few more members and candidates are being identified. Ms. Pasquini reminded everyone that bankruptcy and foreclosure candidates are particularly being sought for those positions.

**18. Uniform Laws - Controllable Electronic Records** ..... Andy Toft

Mr. Toft stated that revised drafts of bills regarding the Uniform Commercial Code are ongoing for introduction in 2023 with an effective date of July 1, 2024. HB22-1023 is part of that process. Mr. Toft agreed to share a draft when he can.

**19. CBA Business Section Liaison** ..... Andy Toft

The Business Section continues to review legislation and prepare for the upcoming year.

**20. CAR Liaison** ..... Damian Cox

Mr. Cox referred to his prior comments.

**21. Diversity and Inclusion Liaison** ..... Eric Nesbitt

It was made known that Mr. Eric Nesbitt is busy reaching out to other states and organizations on the issue of removing race based covenants that have been recorded. A meeting is being planned to lay further ground work for potential future legislation.

**22. Access to Justice Liaison** ..... Andy Toft

Mr. Toft discussed calls to Denver Courts regarding new eviction procedures. A new civil division is being added in Denver to help with the backlog. Mr. Toft was encouraged by the acceptance of feedback to the judges as the fallout from the pandemic is still being dealt with and felt.

**23. CBA Young Lawyers Division** .....Diana Mendez, Dani Kaiser

Ms. Dani Kaiser referred to her report based on the most recent YLD report. The report identifies upcoming events. The next event will be a “Judgment Free Zone”. CLEs are being offered. There will be an outreach event in May to the law schools. A life coach program is being offered this month along with other events, including a fund raiser and community support events, in February to promote connections. Online fitness and cooking classes are in the works for this spring.

**INACTIVE**

**24. Multifamily and Affordable Housing Taskforce**.....Erin Clark, Jeremy Syz, Zak Kessler,

Eric Snyder, Eric Nesbitt, and Jean Arnold

- 25. **Amendment to Revised Uniform Law on Notarial Acts Taskforce**..... Adam Aldrich  
Chuck Calvin, Andy Toft, Joey Lubinski, and Brianna Dowling
- 26. **CCIOA Taskforce** ..... Joey Lubinski, Amy Brimah, Suzanne Leff, Chuck Calvin, Joan Fritsche,  
and Ron Jung
- 27. **Landlord/Tenant and Foreclosure Taskforce** ..... Angie Schmitz, Cindy Lowery-Graber,  
Deanne Stodden, Zak Kessler, Reagan Larkin, and Andy Toft
- 28. **Oil and Gas, Water & Natural Resources Taskforce** . Amy Mowry, Marjorie Sant, Steve Nagy,  
and Robyn Kube
- 29. **Eminent Domain Taskforce** ..... Jody Alderman, Steve Nagy, and Ron Jung
- 30. **Removal of Race-Based Restrictive Covenants Taskforce** ..Eric Nesbitt, Brianna Dowling, and  
Erin Clark
- 31. **Special Districts Taskforce**.....Joan Fritsche, and Marjorie L. Sant
- 32. **Records Redaction Taskforce** .....Geoff Anderson, Steve Nagy, Dave Petrush
- 33. **Land Board Liaison** ..... **Erin Clark**
- 34. **Forms Committee Liaison**..... **Geoff Anderson**
- 35. **CBA Tax Section Liaisons**..... **Tyler Murray, Bobbie Collins**
- 36. **Board of Governors** ..... **Katy Dunn**
- 37. **CBA Cannabis Law Committee Liaison**..... **Eric Jaworski**
- 38. **CBA Ethics Committee Liaison**..... **Kate Strauss**
- 39. **Regional Membership Liaison** .....**Doug Tueller**

**NEW MATTERS**

Ms. Pasquini encouraged members to review their email about the upcoming symposium and reservation information. Ms. Brimah is looking to add new options, including a hike and a fly fishing outing. Mr. Steve Nagy offered to lead the fly-fishing event. The symposium will be offered as a hybrid event of both an in-person and online option.

**ADJOURN 4:53**