

FEBRUARY MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, February 18, 2020 – 3:00 p.m.

Colorado Bar Association
1290 Broadway, Ste. 1700
Denver, Colorado 80203

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1. **Call to Order 3:04 p.m.**..... Suzanne Leff
 2. **Introduction of Guests**..... Suzanne Leff
See attached attendance.
Guests:
Eric Snyder, interested in becoming a member of Council
Ruth Moore, Appellate subsection to discuss *Evans v. Evans*.
 3. **Approval of January Minutes** Suzanne Leff
Amend: January attendance roster should say 2020. Minutes with amendment approved.
 4. **Financial Report** (\$89,846.10 as of January 31, 2020)Melinda Pasquini
 5. **Chair's Report**..... Suzanne Leff
 - a. CBA Executive Director Update– Amy Larson will be the new Executive Director
 - b. RESC Nominations – Due March 15, 2020.
 - c. Offsite Meeting– May in Fort Collins. Following up on dates for the offsite meeting. Information to follow.
 - d. Case Law Update: Fairways at Buffalo Run and Evans v. Evans

Nothing new on *Fairways at Buffalo Run* – waiting for Colorado Supreme Court to rule on the petition for certiorari.

Evans v. Evans – Ruth Moore has filed a Petition for Certiorari for the Petitioner. She requests an amicus in favor of the petition. There is a 7-day deadline from today to file in support of the petition for cert.

Underlying opinion addresses a family law procedure issue and a real estate issue. Only issue raised in the petition is on real estate issue:
 - Interpretation of recording statute; and the spurious lien statute. When the statute says you can file a “certified copy,” that is what you must file. The Petitioner takes the position that you cannot file your own interpretation of the Court’s order. Doing so injects uncertainty and “fuzziness” into the real estate records.
 - Spurious lien statute. The Petition discusses the difference between a spurious document and a spurious lien. A lien should be set aside. The Court of Appeals

did not get to the question of whether the lien was invalid. The Petitioner could not refinance the property due to the recording. If a lien is invalid, it can it be set aside under the spurious lien statute, or do you have to do a quiet title? This statute was supposed to be an efficient way to knock off spurious liens from title. Now the ruling in *Evans* undermines the statutory purpose and procedure for getting rid of invalid liens.

Ms. Moore handed out the Petition filed today.

The Council asked questions and Ms. Leff advised Ms. Moore that the RESC is not taking action until (and if) the Petition is granted.

ACTION ITEMS

- a. Marketing Items Budget Suzanne Leff

Jess Ham investigated “swag” for future outreach tables at different events. Name tags for Council Members are \$108 for 15 name tags; and 1-2 weeks for delivery of name tags.

Motion to order name tags. Second. Banner / tabletop banner / retractable banner. Amend the motion to include ordering a banner for future tables. Motion as amended passed.

Ms. Leff listed an assortment of “swag” items. Mr. Jung pointed out that RESC needs to consider why we are choosing the swag – sustainable. Is the item useful? Does it meet a purpose that ties to the RESC? Ms. Leff delegated to the Membership Committee a review of these issues. Depending on their recommendations, the RESC can build money into the budget for 2020/2021. Perhaps choose a nice “swag” give and have drawings at the Symposium.

- b. Legislative Items Suzanne Leff, Chris Payne

- i. HB 20-1200 – HOA Sunset Bill

Mr. Payne reported on sunset bill that includes expansion of information office and expanded arbitration and enforcement rights. 2013 expand scope of office for complaints referred to arbitrators. At that time increase fee for referral to 3rd party arbitrators. 2013 bill did not pass, largely because of fiscal notes.

Significant Expansion of Information Office: HOA information office expansion – larger database for associations – i.e. Board members, governing documents, all available online. DORA – accept, investigate consumer complaints. Subpoena power, offer some arbitration/mediation services. Violations and enforcement, advocate for DORA positions through ALJ. NO administrative exhaustion. Scope of enforcement significantly increased. Includes HOA, board member, agents or “any other person alleged to commit violation of CCIOA” (i.e. custodians of records and possibly attorneys). Giving DORA quasi-judicial authority, which could be unconstitutional.

Associations object but may not be a fiscal note because funded through:

- (1) Removal of cap on association fees (under rules to be promulgated) and penalties for failing to renew up to \$5,000 and (2) penalties against all

respondents up to \$5,000/day. These would be lienable against common elements. Cannot pursue indemnities to pass through to owners as common expense.

RESC main objections:

- (1) Lien against common elements
- (2) High likelihood multiple actions at same time, so multiple interpretations (arbitration, DORA, ALJ or judicial process) – Can DORA make legally binding decisions? If not, any association with adverse decisions from DORA would be appealed.
- (3) Expansive number of respondents and liability facing board members, employees, attorneys.

LPC Memo, CAI and other opponents looking to amend rather than flat out oppose. In light of consumer protection and ability of DORA to enforce it would be difficult to oppose concept of HOA Information Office.

If amend: CAI following other states – only 5 other states. Have to exhaust governing documents first. Then, only a referral agency, but DORA not arbitrator/mediator. One state – Delaware will make more of a decision because run through AG’s office. Florida has a captive set of arbitrators through separate office.

Our proposed amendment:

- (1) Get rid of lien rights
- (2) Get rid of multiple respondents
- (3) First exhaust arbitration required under association documents, then referral only.

Ms. Arnold make motion to amend bill and give task force authority to recommend amendments it sees fit. Ms. Brimah second. Discussion, see below. One opposed. All rest approved amendment.

Violations of CCIOA, regulations, division orders or program. Another concern: self-funded through violations and violations too broad.

All this affects property values, ability to sell, ability to finance.

Important to remember consumer protections and opposing bill would be opposing sunset bill and

Mr. White relayed that sponsor of bill has invited comment from interested parties. We can begin present concerns with caveat that we do not have official position until after LPC approval of RESC recommendation. Also, may have some cross section interest in this bill (ADR and Consumer Committee).

REPORTS AND INFORMATIONAL ITEMS

6. **In the News** – Seattle Winter Eviction Ban Melinda Pasquini

7. **Legislative Update**..... Andy White, Melinda Pasquini
- b. Active Bill Updates
- i. HB20-1009 – Suppressing Court Records for Eviction Cases
<https://leg.colorado.gov/bills/hb20-1009>
Mr. White met with CCLP and they are not interested in RESC proposed amendment. Mr. White meeting with other stakeholders and meeting with sponsor.
 - ii. SB20-093 – Consumer Arbitration Bill <https://leg.colorado.gov/bills/sb20-093> - CBA formal opposition view. Mr. White reported that the bill passed through committee and is on floor, but is one vote short on the Senate floor. Mr. White scheduled meetings with House leadership to address House concerns as well.
 - iii. HB20-1046 – Payments on Construction Requirements
<https://leg.colorado.gov/bills/hb20-1046>
Mr. White reported that this bill was withdrawn today in committee. Stakeholders will work through potential revisions to this bill in the interim.
 - iv. SB20-012 – Transmission of Renewable Energy through Transmission Lines Crossing Property Subject to Conservation Easements
<https://leg.colorado.gov/bills/sb20-012>
Mr. White reported that this bill was withdrawn in committee and did not advance.
 - v. HB20-1096 – Series LLC’s <https://leg.colorado.gov/bills/hb20-1096>
CBA formally opposed. Mr. White reported that the House sponsor is not withdrawing this bill and it is becoming a partisan discussion between parties.
 - vi. SB20-096 – Remote Notary <https://leg.colorado.gov/bills/sb20-096>
Mr. White reported that this bill passed through senate committee. Mr. Calvin testified to start discussions since there may be an opening in the House to work with one of the sponsors on recommended CBA amendments.
- c. Bills Under Consideration/Currently Monitoring:
- i. **SB 20-138** – Construction Defect Statute of Limitations
<https://leg.colorado.gov/bills/sb20-138>
 - ii. HB20-1233 – Basic Life Functions in Public Spaces (Camping Ban)
<https://leg.colorado.gov/bills/hb20-1233>
 - iii. SB20-157 – Payment for Vacation of Roadways
<https://leg.colorado.gov/bills/sb20-157>
 - iv. HB20-1141 – Fees Charged by Landlords <https://leg.colorado.gov/bills/hb20-1141>
Mr. White reported this bill is up next week but this is another consumer protection by Democrats so fair chance of advancing. Fair number of opponents – so we will see how this plays out.
 - v. SB20-108 – Landlord Prohibition on Citizenship Status
<https://leg.colorado.gov/bills/sb20-108>

- vi. HB20-1138 – Public Real Property Index <https://leg.colorado.gov/bills/hb20-1138>
Mr. White reported that this bill is assigned to the Capital Development committee and has bipartisan support so will likely pass.
- vii. SB20-109 – Short-Term Rentals Property Tax <https://leg.colorado.gov/bills/sb20-109>
Sen. Gardner withdrew this bill and acknowledged it is a conversation starter.
- viii. HB20-1093 – Permits Counties to Regulate Short Term Rentals <https://leg.colorado.gov/bills/hb20-1093> Mr. White reported that this bill will likely pass.

8. **CBA Legislative Policy Committee** Chuck Calvin

Mr. Calvin reported that LPC is working hard evaluating all legislative recommendations.

9. **CCIOA Task Force Committee**Chris Payne

See above on HB 1200

10. **CBA Title Standards** Catherine Hance and Geoff Anderson

11. **Community Service/Charitable Committee** Robyn Kube, Jim Meseck, Erin Clark

Ms. Kube reported that this Committee is gaining momentum. Ms. Clark Law described current May 1st Law Day efforts centered on students getting out the vote: Your vote, your voice, our democracy. Supportive of partnering with RESC for Law Day and operations for DPS and partnering with Martin Luther King School in NE Denver. Ms. Arnold and Ms. Leff have contacts for Law Day in Boulder, Denver, Aurora schools. May 1st as potential day for volunteering.

12. **CBA Ethics Committee**..... Deanne Stodden

Look at materials provided by Ms. Stodden. Three opinions to review. Ms. Stodden reported that the Committee is looking for ideas of other ethics opinions.

13. **CBA Tax Section** Tyler Murray, Chris Levkulich

14. **CBA Young Lawyers Division** Liz Deline, Diana Mendez

Ms. Deline working with Trusts and Estates Section to model after last year’s successful luncheon on basics of real estate. Bridgett reported on YLD event, coffee with judges, which was cross marketed to other sections including Real Estate.

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

Mr. Rounds reported on Amicus Brief requested by Colorado Court of Appeals. Trevino Court of Appeals case no. 19199. Mr. Calvin asked if Business Law should be involved. Mr. Rounds also reported that the Trusts and Estates Section is closely monitoring the remote notary bill and voted to oppose. Ms. Ruth Moore indicated CBA appellate practice subcommittee (subsection of litigation section) interested in volunteering to write amicus briefs and potentially partnering with Trust and Estate Section on Amicus Brief.

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

Mr. Toft reported on reaching out to possible partners on soliciting assistance of indigent clients. Mr. Toft has been in contact with the following: 12th judicial district (largest city Alamosa), Colorado Legal Service, MVL, and Colorado poverty law project, mostly about providing FED defense to indigent defendants. Colorado Legal Services: often has volunteers up front but do not have time when time comes. Mr. Jung made motion to authorize Mr. Toft to solicit volunteers. Ms. Kube second. Unanimously approved.

17. **Colorado Housing Council**Robin Nolan, Jeremy

Ms. Nolan reported that this Council is meeting tomorrow and Senator Gardner is set to speak.

18. **Communications**Director – Brianna Dowling

- **Communications Committee (RE Section Web Page (COBAR)/Newsletter/ Web Discussion Group)** Brianna Dowling, Angie Schmitz, Adam Aldrich
Working on next newsletter. Send
- **Colorado Lawyer Committee** Robin Nolan, Bryan Schwartz, Adam Aldrich
Ms. Nolan reported that they are looking for authors, but do have some potential articles in pipeline. Ms. Arnold would like Symposium presentation on the Affordable Housing Colorado Lawyer Articles for 50 minutes. Colorado Lawyer articles would be the materials, so no prep of materials.

19. **Education/CLE Committee**Amy Mowry, Bryan Schwartz, Angie Schmitz

Ms. Moore reported on Anatomy of Commercial Real Estate Transaction. Ms. Moore also reported that the Real Estate Course next Tuesday 2/25/2020 is the last class. Ms. Moore requested for Council members to arrive at 6:00 p.m. and break from 6:10 – 6:40 for wine and dessert with the attendees.

Ms. Arnold made a motion to sponsor wine and desserts up to \$200 for happy hour. Mr. Meseck second. Unanimously passed.

20. **Education/Topical Lunches Committee** Amy Brimah, Ron Jung, Jeremy Syz

Ms. Brimah reported that the Cannabis speaker very organized and great information. The March topic is Water.

21. **Membership and Practice Development Committee**Amy Mowry, Ron Jung, Erin Clark

Mr. Jung reported that they are meeting about promotional materials to be able to pass out and also are working to support the call for nominations.

INACTIVE

22. **Board of Governors**Katy Dunn, Dan Sweetser

- 23. Business Law Section Chris Payne
- 24. Interprofessional Committee Amy Brimah, Jim Meseck
- 25. Colorado Association of Realtors Liaison Damian Cox
- 26. CBA Forms Committee Damian Cox
- 27. Regional Liaison Doug Tueller
- 28. CBA Cannabis Law Committee TBD
- 29. CBA ADR/Mediation Committee Geoff Anderson
- 30. CBA Eminent Domain Committee Jody Alderman

ADJOURN

5:17 P.M

ATTENDANCE ROSTER
Real Estate Law Section Council
February 18, 2019
COLORADO BAR ASSOCIATION

NAME	PRESENT	EXCUSED	ABSENT
Officers:			
Suzanne Leff – Chair	X		
Jean Arnold – Vice Chair	X		
Melinda Pasquini - Secretary	X		
Katy Dunn – Board of Governors Representative			X
Members:			
Adam Aldrich (2022)	X		
Amy Brimah (2020)	X		
Erin Clark (2022)	X (by phone)		
Brianna Dowling (2021)	X		
Ron Jung (2021)	X		
Robyn Kube (2020)	X		
Jim Meseck (2021)	X		
Amy Mowry (2020)	X (by phone)		
Robin Nolan (2021)	X		
Angela Schmitz (2022)	X		
Bryan Schwartz (2020)	X (by phone)		
Jeremy Syz (2022)	X (by phone)		
Committees / Liaisons:			
Chuck Calvin – Legislative Policy Committee Liaison	X		
Chad Rounds – Trusts and Estate Liaison	X		
Damian Cox – Forms Committee Liaison		X	
Deanne Stodden – Ethics Committee Liaison	X		
Geoff Anderson – RE Title Standards Liaison		X	
Jody Alderman – Eminent Domain Committee Liaison			X
Chris Payne – Business Section Liaison	X		
Tyler Murray – Tax Section Liaison	X (by phone)		
Chris Levkulich – Tax Section Liaison	X (by phone)		
Liz Deline – YLD Liaison	X (by phone)		
Diana Mendez - YLD Liaison			X
Catherine Hance –RE Title Standard Committee	X (by phone)		
Joey Lubinski – Immediate Past Chair RESC			X
Doug Tueller – Regional Liaison		X	
Andrew Toft – Access to Justice Liaison	X		
Staff & Guests:			
Jess Ham	X		
Amy Sreenen (CBA)			X
Amy Larson (CBA)		X	
Bridgett Moore(CLE)	X		
Andy White (CBA)	X		
Julie Waggoner, Past Chair RESC	X		
Dan Sweetser, Past Chair RESC			X
Eric Snyder from Moye White (Guest)	X		