

NOVEMBER MINUTES

CBA Real Estate Law Section Council

Date: Tuesday, November 19, 2019 – 3:00 p.m.

Colorado Bar Association

1290 Broadway, Ste. 1700

Denver, Colorado 80203

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- Call to Order** 3:04 p.m. Suzanne Leff
1. **Introduction of Guests**..... Suzanne Leff
2. **Approval of October Minutes** Suzanne Leff
- Minutes unanimously approved with corrections to and attachment of attendance roster.
3. **Financial Report** (\$98,607.31 as of October 31, 2019) Melinda Pasquini
4. **Chair's Report**..... Suzanne Leff
- a. Holiday Party – December 12th, 2019..... Suzanne Leff
- b. Annual Off-Site Meeting Suzanne Leff
- Please provide any input on location and timing to Ms. Leff.
- c. New CBA Director of Legislative Relations and CBA Announcements Amy Larson
- Ms. Larson reported on:
- CBA Executive Director Patrick Flaherty tendered his resignation effective January 2, 2020. M. Larson will be serving as the interim Executive Director during the national search for a new CBA Executive Director.
 - New Legislative Director Andy White as of December 3rd, 2019. Mr. White formerly was a lobbyist for CSU department of natural resources, has worked within the State Senate offices, worked in Tokyo, oil and gas legislation and regulatory for First solar. Mr. White will be at the legislative training on December 13th.
 - Legislative Update
 - With regard to HOA and CCIOA legislation, CBA established an interbar cross section task force that includes the Mediation and Consumer Protection Sections. A bill should come out in January in response to a report prepared by that task force, concerning expenses related to required

dispute resolution. With regard to Manager licensing and mandatory certification of managers, there is a split within CAI.

- Realtors/CAI looking at a bill regarding transparency of fees. With regard to rental fees there is currently a class action lawsuit so a bill may be premature.
- Recording fee bill has not resurfaced at this point.
- Legislators encouraging non-controversial bills this season due to election year.

ACTION ITEMS

- a. **Colorado Title Standard 1.1.3 – Comment 3** Suzanne Leff

Title Standard 1.1.3 illustrates the issue of searching for a date of recording on instruments recorded on a particular day. The title standard requires searching for the entire day, specifically, and reflects a duty to search as of the day, not as of the time of recording of a group of instruments. There was discussion regarding examples and limited applicability of comment. No motion at this time. Referred back to title standards committee to provide additional information regarding applicable case law and how this does not expand race-notice statute.

- b. Access to Justice Liaison Suzanne Leff

Ms. Leff proposed a new RESC liaison position to work with CBA and Supreme Court initiatives related to access to justice. RESC would be the first section to appoint a liaison position. Mr. Toft has looked at these initiatives and determined there is a lot of overlap with real estate, such as Landlord Tenant law and pro se parties in eviction cases. Ms. Leff proposes appointing Mr. Toft to further develop this position and work with committees and section members on access to justice initiatives. Ms. Arnold moved to establish this new Liaison and appoint Mr. Toft. Ms. Nolan seconded. Approved Unanimously.

REPORTS AND INFORMATIONAL ITEMS

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

See discussion above, under Action Items, regarding Title Standard 1.1.3

6. **FD Interests v. Fairways at Buffalo Run HOA: Petition for Certiorari and Amicus Brief** Jean Arnold

Section members discussed draft petition to file amicus brief by CBA RESC and next steps. Mr. Meseck, Ms. Nolan and the Officers will continue working through this process with CBA and coordinate filing, if appropriate.

7. **In the News** – HOA Information and Resource Center..... Suzanne Leff

Ms. Leff presented on current homeowner discussions regarding the ADR resolution process for HOA's.

8. **CCIOA Task Force Update**..... Christopher Payne

Mr. Payne reported that there are no current bills to review. There are three potential bills:

1. HOA information officer;
2. HOA management licensing and certification; and
3. Fiscal transparency bill regarding fees.

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

- Notary: Mr. Calvin reported on the stakeholder meeting with legislators. The meeting included those who potentially support the Uniform Notary bill (CBA/CMLA/CLTA) provided the proper privacy protections are included. The alternative is a separate data privacy bill, which will address holes in the Uniform remote notary bill. The strategy for the non-Uniform notary bill would be to start the non-Uniform bill right at the beginning of the legislative session.
- Mr. Calvin reported on the Colorado Commission on Uniform State Laws – Uniform Partition of Heirs Property Act. Despite what appears to be broad support in response to horror stories lacking procedural protections, there does appear to be some issues that remain to be addressed in Colorado. There is a lot of momentum around this issue, likely due to the Atlantic and New Yorker articles, and the Uniform Law Commission is really pushing this bill this year.

What the bill does:

1. Provides for procedural protections such as posting and service, although it is not clear who the actual parties are;
2. Provides for appraisal of property so court is informed of fair market value; and
3. Currently there is a presumption in favor of petitioner and if partition by sale, then needs to be with a broker not affiliated with parties and proceeds distributed among heirs.

Possible Concerns:

1. Ambiguity with how it replaces existing law. For example, it does not address potential encumbrances such as mortgages and the existing law already deals with this. This bill may not address these encumbrances in the allocation process.
2. Some co-tenants may have been using the property, such as leasing, crops, or other uses. Court can require heirs to contribute to costs, but this bill does not adequately address heirs rights to occupy and benefit from property equally.
3. Is this even an issue in Colorado that needs to be addressed or does current law already provide the necessary protections.

4. The Definition of heir is two or more who received from a relative, which may be too broad of a definition for heirs requiring such safeguards. If only two or three heirs Colorado law likely sufficient. If dozens of heirs, such additional protections may be needed.

Next Steps:

Ms. Arnold will have an attorney she works with review in comparison to other states. Ms. Arnold will attend the December 9th meeting. Mr. Anderson, Ms. Arnold and Mr. Calvin will meet before Dec. 9th meeting.

Trust and Estate Section indicated they would defer to RESC, since more of a real estate issue, but want to be sure we are getting involved.

10. **Colorado Association of Realtors Liaison** Damian Cox

- Mr. Cox reported that there are two potential bills CAR is considering introducing:
 1. Licensing of Home Inspectors. Since the Sunrise report concluded that non-licensed home inspectors do not cause harm this bill will probably not be introduced by CAR.
 2. First time homebuyers savings account. Mr. Cox will ask a copy for RESC review before CAR submits so if RESC has any comments they can be addressed early.

11. **CBA Forms Committee** Damian Cox

- Mr. Cox reported on the following Forms to Recommend to Colorado Real Estate Commission: Post-Closing Occupancy Agreement (Lease) and Purchase and Sale form update for Manufactured Housing, specifically regarding leased land.
- Mr. Cox reported that it would be a good idea to have a RESC Liaison serving on Forms Committee and that Ms. Waters is the one that makes appointments. Discussion surrounding whether Mr. Anderson would be interested in serving as this Liaison and presenting proposed Liaison to Ms. Waters.

12. **Communications**.....Director – Brianna Dowling

- **Communications Committee (RE Section Web Page (COBAR)/Newsletter/ Web Discussion Group)** Brianna Dowling, Angie Schmitz, Adam Aldrich
Ms. Dowling reported that the Winter newsletter is set to go out in December.
- **Colorado Lawyer Committee** Robin Nolan, Bryan Schwartz, Adam Aldrich
Ms. Nolan reported on the upcoming Colorado Lawyer articles for real estate:
January – Condominium Obsolescence
February – Financing for Affordable Housing
Potential March – Bonding off Mechanic's Liens

13. **Education/CLE Committee** Amy Mowry, Bryan Schwartz, Angie Schmitz
- Ms. Mowry reported that they are working on identifying speakers on commercial development projects for the Spring CLE and to pass any recommended speakers on the topic on to her.
14. **Education/Topical Lunches Committee** Amy Brimah, Ron Jung, Jeremy Syz
- Ms. Brimah reported that the November Mechanic’s Lien topical lunch went well and that Mr. Goodman will be presenting in December on pressure points in Colorado State Forms (co-sponsored with YLD). There is no topical lunch in January due to the holidays.
15. **Community Service/Charitable Committee** Robyn Kube, Jim Meseck, Erin Clark
- RESC members discussed various ideas for the Committee to evaluate as initiatives to focus on as well as coordinating with Mr. Toft on the Access to Justice issues. Mr. Payne pointed out that this Committee is a core aspect of the bylaws but has historically been a challenge. Mr. Payne suggested reaching out to other Sections to identify what has been successful for them. Mr. Lubinski offered to assist in connecting ABA law day opportunities. Ms. Leff asked Committee to include officers, Mr. Toft and Mr. Lubinski in Committee calls once scheduled.
16. **Membership and Practice Development Committee**..... Amy Mowry, Ron Jung, Erin Clark
- Ms. Mowry reported on the Committee’s meeting in October where they put together language for a welcome letter, which will also be posted on the website. The Committee also discussed mentorship ideas and began solicitation for mentoring program with one potential mentee responding so far. CBA refers to this as the Ambassadors program in best practices. Mr. Jung discussed concept of how free legal clinics tie in with Charitable Committee as a great way for members to contribute without a large time commitment.
17. **Interprofessional Committee** Amy Brimah, Jim Meseck
- Mr. Meseck reported on the Interprofessional Committee members discussing upcoming legislative session and next meeting bring your lobbyist.
18. **Business Law Section** Chris Payne
- Mr. Payne reported that the Business Law Section is evaluating whether to put a group together for purposes of amending the nonprofit act based on prior amendment success with the limited liability act. They are also considering an amicus brief on the topic of the continuation and transfer of attorney client privilege when an entity has been sold.
19. **CBA Trust and Estate Section** Chad Rounds
- Mr. Rounds reported that the Trust and Estate Section is looking at bill that would no longer requiring witnesses for living wills. There are concerns that this could increase fraud and abuse. The Trust and Estate Section is also continuing its work with updating forms. There was a discussion regarding whether or not the date should be left on notary blocks since the Colorado notary law requires stamps to have dates on it. The general consensus from RESC was that date lines should be left since not all forms are notarized in Colorado.

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

Mr. Levkulich reported on the January case law update January 8th at Brownstein, in connection with Trust and Estate, Business Law and Real Estate Sections. They are currently looking for a presenter to replace Fred Skillern and Ms. Arnold recommended Nate Osborn, Paul Sachs (Steamboat) and Lindsey Miller as potential replacements.

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

Next Board of Governor's meeting scheduled for December 6th, 2019.

22. **CBA Ethics Committee**Deanne Stodden

Ms. Stodden reported that the Ethics Committee just approved two opinions: a revision to Opinion 133 and another opinion concerning data breach. The Ethics Committee is working on possible opinions regarding withdrawal of representation and litigation finance issues. Next year, the Ethics Committee would like to focus on education, events, and walk-in booths (i.e. at Real Estate Symposium).

INACTIVE

23. **Colorado Housing Council** Robin Nolan, Jeremy Syz

24. **Regional Liaison** Doug Tueller

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

26. **CBA Cannabis Law Committee** TBD

27. **CBA ADR/Mediation Committee** Geoff Anderson

28. **CBA Eminent Domain Committee** Jody Alderman

ADJOURN 5:19 p.m.

ATTENDANCE ROSTER
Real Estate Law Section Council
November 19, 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 (by phone)		
Erin Clark (2022)	X		
Brianna Dowling (2021)	X		
Ron Jung (2021)	X (by phone)		
Robyn Kube (2020)	X (by phone)		
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
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 (by phone)		
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
Chris Levkulich – Tax Section Liaison	X		
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 (by phone)		
Staff & Guests:			
Jess Ham	X		
Amy Sreenen (CBA)			X
Amy Larson (CBA)	X		
Bridgett Moore(CLE)	X		
Julie Waggoner, Past Chair RESC	X (by phone)		X
Dan Sweetser, Past Chair RESC			X
Chuck Calvin, Past Chair RESC	X		
Andrew Toft		X	

