

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, October 15, 2019 – 3:00 p.m.

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

- Call to Order - 3:00 p.m.** Suzanne Leff
1. **Introduction of Guests**..... Suzanne Leff
- Lindsey O’Connell as a guest of Mr. Meseck and a presenter at the Fall Update on property pre-nuptial agreements
 - Andrew Toft
2. **Approval of September Minutes** Suzanne Leff
- Minutes approved by unanimous vote
3. **Financial Report** (\$99,426.52 as of September 30, 2019)Melinda Pasquini
- Discussion regarding a comparison to prior year and balance approximately \$10,000 more than prior year at same time.
 - Ms. Ham notified the Section that there will be \$5/member increase in the annual CBA administrative fee charged to the sections.
4. **Chair’s Report**..... Suzanne Leff
- a. Holiday Party – December 12th, 2019..... Suzanne Leff
- b. Boulder County Bar CCIOA Update Suzanne Leff
- October 30th, 2019, Boulder County Bar Association offices, 4:30 – 5:30 p.m. followed by cocktail party
- c. Title Standards Committee Suzanne Leff
- Meets monthly to review updates to the Colorado Title Standards.
 - It has been acknowledged that a trust and estate attorney on the Title Standards Committee would be helpful for assistance on title matters.
 - Accordingly, Ms. Leff appointed Heidi Gassman as the newest member to the Title Standards Committee.

ACTION ITEMS

5. **Proposed New Comment to Title Standard 5.2.2**Suzanne Leff
- Ms. Leff described the Title Standards Committee’s proposed revision to Section 5.2.2 of the Colorado Title Standards in connection with the uniform power of attorney act that clarifies what should be reviewed with respect to powers of attorney in connection with real estate transactions.
 - Ms. Arnold made a motion to approve the proposed revision to Section 5.2.2 of the Colorado Title Standards
 - Second by Ms. Brimah
 - Approved Unanimously by Real Estate Section Council
 - The revision now goes to the CBA Executive Council for final approval

REPORTS AND INFORMATIONAL ITEMS

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

Ms. Hance reported that the Title Standards Committee is evaluating whether a title standard is needed on the order of recording documents. The current law in Colorado is that one looks to the intent of the parties if there is a question regarding recording order of a batch of documents recorded together. There will be additional updates from the title Standards Committee on this issue in the future.

7. **FD Interests v. Fairways at Buffalo Run HOA**Suzanne Leff

Ms. Leff described a recent case decided by the Colorado Court of Appeals on the validity of a declaration recorded by a party who is not a property owner. The trial court found the declaration valid by reformation. The Colorado Court of Appeals held that the declaration is valid without reformation. There was discussion on what actions, if any, RESC should take on this published Court of Appeals opinion that sets precedent in conflict with basic real estate principles. RESC evaluated the various procedural steps available and Ms. Leff indicated that the CBA Amicus Brief Committee and Executive Council (collectively, “CBA”) would need to approve any Amicus Briefs filed by RESC.

Mr. Jung made a motion to explore with CBA the possibility of filing an Amicus Brief for extension of time to file a petition for rehearing to correct the court of appeals decision or withdraw from publication. Alternatively, if the parties to the case file a petition for certiorari, RESC would pursue approval from CBA on filing an Amicus Brief on the petition for certiorari with Supreme Court in order to correct the case law to be more consistent with basic real estate principles. **The motion was approved by the RESC with one abstention by Ms. Dowling**

8. **In the News** – New Proposed Voucher Rules Jean Arnold

- Ms. Arnold highlighted this news item and commented that this may be a preview of a forthcoming legislative issue.

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

- Mr. Calvin reported on the following topics discussed at the Uniform Law Commission Meeting:
 - Uniform Notarial Act and Bar Supported Notarial Act

- The Uniform Law Commissioners decided to not pursue the introduction of a bill on the Uniform Remote Notarial Act this legislative year. The Uniform Law Commissioners are working on amending prior bill versions to include additional privacy and security protections. LTAC and CMLA are still considering proposing a version of the bill this legislative season and Mr. Calvin will attend the associated meetings to propose staying this bill until the Uniform Law Commissioners decide whether or not to move forward with an amendment to address privacy and security issues.
 - Uniform Partition of Heirs Property Act
 - This bill was originally proposed in 2010 to counteract individuals taking advantage of the current Partition of Heirs Property Act to gain ownership of property with severed ownership due to multiple potential heirs.
 - RESC has not looked at this bill. The Uniform Law Commission has not decided whether to introduce a bill related to this issue this legislative season. If they do, they will want RESC and the Colorado Bar Association to weigh in.
 - Mr. Anderson, Ms. Kube and Ms. Arnold will assist Mr. Calvin in reviewing partition issues in Colorado.

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

Mr. Payne reported that the DORA Stakeholder meetings requested by the Governor have been completed. DORA expects to issue a report in October on whether the HOA manager requirement should sunset or whether additional requirements should be added. In January, DORA expects to issue a report to the Governor advising on the results of the broader HOA stakeholder meetings.

11. **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 Fall RESC Newsletter should go out in early November. The Newsletter Committee plans more outreach this year to get more information from committees and liaisons to include in the Newsletter. Specifically, the Newsletter Committee is expecting to include newsletter topics on charitable initiatives, health and wellness, and nuanced real estate practice issues.
- **Colorado Lawyer Committee** Robin Nolan, Bryan Schwartz, Adam Aldrich

Ms. Nolan reported that the current Affordable Housing Series is on track for the last three articles:

 - November - 50 state analysis of Affordable Housing Issues
 - December – Intersection between Affordable Housing and Healthcare
 - January – Land Trusts

The Committee is brainstorming for a new series, possibly on the topic of short term rentals and how different Colorado communities are handling short term rentals. In the meantime, Chris Bryan has proposed an article on Colorado Interest Communities.

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

- Ms. Shephard reported on the upcoming Fall Update and that 40 people are currently signed up, which is consistent with past years. This year's Fall Update focuses on residential real estate issues
- The Committee is currently planning the Spring Update for March 26, 2020 and considering a theme centering on commercial real estate issues. Julie Baird has expressed interest in speaking.

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

The Topical Lunch Committee reported that there will be a December topical lunch but not January since January would be right after New Year's. John Goodman expressed interest in presenting on the Standard Form Contract. Ms. Deline will coordinate with Ms. Brimah to see if RESC can partner with YLD for YLD to again sponsor this topical lunch or another one throughout the year.

Other ideas for upcoming topical lunches include:

- Short term rentals (Ms. Arnold recommends someone from the City of Denver)
- Landlord/Tenant updates focusing on recent changes in legislation
- Opinions
- Marijuana
- Water law
- An additional regional topical lunch in the Spring to supplement the October afternoon CCIOA CLE and cocktail party being held in partnership with the Boulder Bar Association

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

Ms. Kube reported that the committee is working on coordinating regular committee meetings. One idea the committee is considering is to coordinate a Habitat for Humanity build in Vail before or after the Symposium in addition to the school supply drive. The school supply drive next year at the symposium will also include a live link for section members to donate.

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

This committee is in the process of coordinating regular committee meetings to evaluate topics including coordination with the Community Service/Charitable Committee and communications with new members, such as welcome letters. Ms. Ham described how the Trusts and Estate Section formalized a welcome letter that goes out automatically to new members. Welcome letters and a sample template can be found in the CBA best practices handbook.

16. **Interprofessional Committee** Amy Brimah, Jim Meseck

Ms. Brimah reported that the November 21st Interprofessional Committee meeting is bringing your lobbyist day and extended an invitation to Ms. Larson and Ms. Rosen.

Industry members attending the Interprofessional Committee meetings indicate that the residential market has slowed down a bit. Everyone appears to be watching remote notary. The Interprofessional Committee also discussed the status of HOA stakeholder meetings.

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

Mr. Rounds reported that the Trust and Estate Section is evaluating membership due increases. They also still have a subcommittee working on the form for fiduciary deeds. It was mentioned that Jim Benjamin would like to coordinate with the Trust and Estate subcommittee working on this form.

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

Mr. Murray reported that the Tax Section does not expect much legislation action since 2020 is an election year and the Colorado Bar's position to not weigh in on bills that are politically motivated.

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

The next Board of Governors meeting is Dec. 6th, 2019. Please contact Katie directly with any information to be relayed during that meeting.

20. **CBA Ethics Committee** Deanne Stodden

Ms. Stodden reported on the following topics:

- New Rule 8.4(i) adopted by the Supreme Court concerning sexual harassment
- Subcommittee evaluation of whether to issue an opinion regarding whether requiring arbitration in client engagement letters is permitted.
- The Ethics Committee is working on an opinion regarding noisy withdrawal.
- The Ethics Committee is also working on revised opinion 133 concerning Rule 1.6 issues regarding disclosure of client representations. Additionally, there are some proposed changes to Rule 1.6 and the Ethics Committee requested more time to weigh in on the proposed changes.

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

Senator Woodward attended the September Housing Council meeting and the group discussed suggestions for legislation that would address housing challenges in Colorado, including the following:

- Environmentalism v. affordability issues such as not rebuilding mobile homes on flood zone and mandating green space less
- Rent control
- The impact of construction defect litigation on entry level for sale condos and making condo conversions easier
- First time home buyers
- The Amazon effect and decreased sales tax revenue
- Housing vouchers
- Senior homestead exemption

22. **Regional Liaison** Doug Tueller

Mr. Tueller reported that he has identified and started coordinating with attorney representatives from Greeley, Alamosa and Steamboat to discuss their respective interests in organizing inbound and outbound information between RESC and their regions.

INACTIVE

23. **CBA For CBA Forms Committee** Damian Cox
24. **Business Law Section**..... Chris Payne
25. **CBA Association of Realtors Liaison**..... Damian Cox
26. **CBA Young Lawyers Division** Liz Deline, Diana Mendez
27. **CBA Cannabis Law Committee** TBD
28. **CBA ADR/Mediation Committee** Geoff Anderson
29. **CBA Eminent Domain Committee** Jody Alderman

NEW MATTERS

ADJOURN 4:48 p.m.

ATTENDANCE ROSTER
 Real Estate Law Section Council
 October 15, 2019

COLORADO BAR ASSOCIATION

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