

AUGUST 2020 MINUTES

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

Colorado Bar Association – Remote Meeting

1290 Broadway, Ste. 1700

Denver, Colorado 80203

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1. **Call to Order 3:01 p.m.**..... Jean Arnold
 2. **Approval of June Minutes**..... Jean Arnold
Approved Unanimously
 3. **Financial Report** (\$85,483.29 as of July 31, 2020).....Amy Brimah
 4. **Chair’s Report**..... Jean Arnold

a. Updates

i. Symposium Update: Part 2 - September 2-4, 2020.

The first day of the Symposium was July 17, 2020. Ms. Bridgett Moore discussed how effective it was to have the first day online with RESC support. 269 are registered for the live Symposium and 30 have pre-ordered home study. 75% of registrants are for the live attendance for virtual programming, which is very encouraging. The first 200 to register will be receiving a swag box. Ms. Jean Arnold thanked Ms. Moore for all of her work. Ms. Arnold thanked the speakers and Mr. Payne for the jazz music that will be on September 2, 2020 which will include a chocolate tasting from 4:30 to 6.

Action Center School Supply Drive at Symposium- Ms. Arnold commented that the school supply drive has raised \$1,115.07 for the Action Center and there also were many donations of school supplies.

Support for Metro Volunteer Lawyers and Colorado Legal Services through the golf outing in a scramble format. If one donates to CLC please email Ms. Jessica Ham so that the Section can count the donations. Golf outings: Foothills Golf Course on Friday September 4, 2020 18 holes, scramble format and Putters Pride 9-4 through 9-7 (located at Kipling and Hampden), \$5 putt-putt, just say “Association” for the discount.

ii. *In Memoriam Jim King.*

Ms. Arnold asked for a 30 second pause in memory of Mr. King. Ms. Julie Waggoner and Mr. Geoff Anderson spoke about knowing and

practicing with Mr. King.

- iii. CBA President's message: Lawyer's as Leaders (Jessica Brown and Justice Gabriel).
Ms. Arnold discussed that Justice Gabriel is travelling with Jessica Brown and going to each one of the bar association's as lawyers as leaders. Justice Gabriel also teaches in COBALT. Ms. Arnold thanked Ms. Leff for being such an excellent leader for the Section.
- iv. Theme for this year 2020-2021: Wellbeing and Inclusion: The Link between Well Being and Inclusion.
Ms. Arnold thanked Ms. Suzanne Leff for her leadership and attributed her own theme of wellness to Ms. Leff. Ms. Arnold explained why she decided to pick wellness as a theme and decided that education and inclusion were critical as was Ms. Powell's article expressing the importance of being inclusive. Ms. Arnold commented on the number of women that leave the practice of law. Ms. Arnold asked that everyone read Ms. Powell's article.
- v. Committee Appointments (Section 7.3 of Bylaws). [see below for appointments]
Ms. Arnold went over the list of appointments. Ms. Arnold thanked prior committee chairs. She noted that Section Council has allocated money to community service. Ms. Arnold thanked Mr. Chris Payne for being the liaison to Business Section and Section Council will be looking for a replacement. Other vacancies include Cannabis Committee, Ethics Committee and the Supreme Court Rules Committee.

Ms. Arnold asked that each of the new Section Council Members introduce themselves. Mr. Eric Snyder, Mr. Zak Kessler, Ms. Marjorie Sant and Ms. Lowery-Graber each introduced themselves.
- vi. Liaison Positions: Business Law Section; Ethics Committee; Cannabis Committee; and Supreme Court Rules Committee.
Section Council will be making these appointments.
- vii. Section Nonrenewals.
Renewals are lower this year, but people may be behind in renewing.
- viii. Fairways at Buffalo Run Amicus Brief (Due 10-6-2020 – extended deadline).
Ms. Arnold asked Mr. James Meseck to provide an update on the petition. Mr. Meseck provided an update on the underlying case and noted that the petitioner/cross respondent requested an extension and an additional extension to file their opening brief. Mr. Meseck reported that the opening brief is now due October 6, 2020. Mr. Meseck stated that the committee has put together a petition to file an amicus brief. Ms. Arnold thanked the

team and the leadership of Mr. Meseck in the brief and for working on the brief. Mr. Meseck noted that the brief will only be filed after the opening brief is filed. Ms. Arnold thanked Mr. Meseck for all of his hard work who in turn thanked the entire committee and Ms. Cati Shadakofsky for their help.

- b. **Action Items**..... None
- 5. **In the News: Private rights vs. public Interest**..... Jean Arnold

Ms. Arnold discussed the Speer neighborhood condo building that is the latest front in Denver’s historic preservation tug of war (Denver Post August 9, 2020).

- 6. **Removal of race-based restrictive covenants from the public records.** Brianna Dowling

Ms. Brianna Dowling discussed the fact that many older HOAs still have race based restrictive covenants which appear in both the covenants and title, even though they are no longer enforceable. This situation was brought to Ms. Dowling’s attention by a consumer who asked a City Council person how to change the racist covenants and in turn reached out to LTGC as to what could change and what redaction would look like. Ms. Dowling noted that in the particular instance, the covenants would be amended under CCIOA. Ms. Dowling discussed whether there could be a possible legislative fix or a recording fix. There was a discussion if covenants can actually be removed. Ms. Dowling suggested that a possibility to address the racist covenants might be CRS §§38-31-169-170 which provides a process for attorneys or title companies to record and remove documents.

Ms. Arnold asked for comments. There was a discussion that a vote by the community can be a negative experience for a variety of reasons. It is not clear what a resolution might look like. Mr. Andy Toft is putting together a panel for the ABA on a similar topic- the Color of Law and how laws have been used to keep communities segregated. Ms. Dowling stated that in the current standard exception language, race, religion, ethnicity are excluded; however, the new commitment in 2021 will go further. Ms. Arnold suggested that we have a CLE to educate people. There was a discussion on how explicitly racist covenants have been replaced with code words and other ways of creating “other” that appear to be race-neutral, but create barriers to inclusion. Ms. Arnold suggested we start with conversation and reach out to create a legislative solution. Ms. Arnold asked that Ms. Dowling discuss with CLE and education committee to discuss having a CLE. Ms. Dowling, Mr. Toft, Ms. Clark, Ms. Brimah, Ms. Katy Dunn and Mr. Ron Jung agreed to be on the task force. Mr. Jung suggested it be named Barriers to Inclusion.

- 7. **Education/Topical Lunches Committee**Amy Brimah

Ms. Brimah reported on the lunches and thanked all of the Section Council members who have contributed to the lunches. The lunches will remain online and free through the end of the year.

- 8. **Communications**Brianna Dowling

Ms. Dowling reported that the committee met and that they are looking for topics for the newsletter.

9. **Education/CLE Committee**..... Angie Schmidt

Ms. Schmidt reported that other than the Symposium there are no additional updates.

10. **Colorado Lawyer Committee**..... Robin Nolan

Ms. Nolan reported that every issue in the *Colorado Lawyer* has had an article related to real estate, and Ms. Nolan has articles lined up through December. Ms. Nolan is looking for additional topics to put into place for 2021. The upcoming articles slated for the remainder of this year are :1) Small Planned Communities by Ben Doyle and Suzanne Leff; 2) Cannabis Law in the Context of Commercial Real Estate by Ben Leonard and Brett Williams; and 3) potentially a case law update.

11. **Community Service/Charitable Committee**Erin Clark

Ms. Clark reported that the committee will have regular meetings going forward. Ms. Clark is working with Mr. Toft to understand the eviction resources that already exist and how the committee can assist. Eviction defense organizations across the state spreadsheet has been prepared by a Kutak Rock lawyer and the committee will determine what organizations need to engage members and Council. Ms. Clark would like to survey the membership in where to focus energy.

12. **Interprofessional Committee** James Meseck

Mr. Meseck reported that the CBA chairs the Committee until the end of the year. He noted that the legislative process is a year-long process so other members of the committee are already discussing what will be seen next year. Mr. Meseck reported that the Committee helps identify topics that may be in the legislature.

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

Ms. Catherine Hance and Mr. Anderson reported on Standard 1.1.3 (attached) and an adverse possession issue. The adverse possession issue came up in Title Standard Committee meeting. It was raised that the sessions laws when the modifications were implemented there was a note related to the Effective Date of for CRS 38-41-101 (3)(a). When it was put into the statute book the note was not included, so there is not a clear reference with regard to payment of compensation to only to apply to adverse possession matters when title vested after the modification of the statute was made. Is there a way to get the statues be corrected to conform to the session law? Is the Section concerned with it? Mr. Anderson reported that this issue came up in connection with a 2009 case but it was too soon after the statute passed so it didn't make a difference in the case. Mr. Anderson reported that a key provision to be a part of the statute was related to when compensation can and cannot be paid, but that provision did not make it into the statute and is only in the session laws.

Ms. Hance reported on Standard 1.1.13 addressing the proposed comment to search period and if it was entire day or just up to moment of recording. Title Standard committee addressed questions raised by the RESC. Title Standards have now made changes in the body of the standard itself and have added the termination for period of search should cover the entire day and have added that it will end on the day of conveyance. Mr. Anderson reported that the committee added the concept that the search covers entire day of recording and end at the end of the day for conveyance. The Title Standard does not address priority- it only addresses the search. There is a case regarding the conveyance of mineral interests' in the Court of Appeals that demonstrates the difficulty of when there is a mistake in the order of recording on the same day. Mr. Anderson commented that parties are at the mercy of the clerk's office that may record documents in the wrong order. Mr. Anderson noted that the Title Standard is to address that a proper search includes the whole day. Ms. Arnold asked for a discussion. There was an extensive discussion regarding the proposed Title Standard. Standard 1.1.3 will be voted on in September. There will be a further discussion of adverse possession in September.

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

Mr. Rounds reported that the real estate related forms were presented at their last meeting and the Section would vote on approval in September.

15. **CBA Forms Committee** Damian Cox

Mr. Cox reported that the Post-Closing Occupancy Agreement would be updated. He also reported that the manufactured home contract will be presented to and voted on by the committee.

16. **CBA Tax Section** Bobbie Collins

Ms. Collins reported that the lodging tax can be returned to the 2% level.

17. **CBA Ethics Committee**..... Deanne Stodden

Ms. Stodden provided two ABA opinions and her report in the agenda.

INACTIVE

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

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

20. **Regional Liaison** Doug Tueller

21. **CBA Business Section** Chris Payne

22. **Colorado Housing Council** Robin Nolan

23. **Board of Governors** Katy Dunn

- 24. CCIOA Task Force Committee Chris Payne
- 25. CBA Cannabis Law CommitteeTBD
- 26. CBA ADR/Mediation CommitteeGeoff Anderson
- 27. CBA Eminent Domain Committee Jody Alderman

NEW MATTERS

ADJOURN 4:58 P.M.

ATTENDANCE ROSTER
Real Estate Law Section Council
August 18, 2020
COLORADO BAR ASSOCIATION
Remote Meeting

NAME	PRESENT	EXCUSED	ABSENT
Officers:			
Jean Arnold – Chair	X		
Melinda Pasquini – Vice Chair	X		
-Amy Brimah- Secretary	X		
Katy Dunn – Board of Governors Representative	X		
Members:			
Adam Aldrich (2022)	X		
Amy Brimah (2020)	X		
Erin Clark (2022)	X		
Brianna Dowling (2021)	X		
Cindy Lowery-Graber (2023)	X		
Ron Jung (2021)	X		
Zak Kessler (2023)	X		
Jim Meseck (2021)	X		
Robin Nolan (2021)	X		
Marjorie Sant (2023)	X		
Angela Schmitz (2022)	X		
Eric Snyder (2023)	X		
Jeremy Syz (2022)	X		
Committees / Liaisons:			
Chuck Calvin – Legislative Policy Committee Liaison			X
Chad Rounds – Trusts and Estate Liaison	X		
Damian Cox –CAR 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		
Bobbie Collins – Tax Section Liaison	X		
Liz Deline – YLD Liaison			X
Diana Mendez - YLD Liaison			X
Catherine Hance –RE Title Standard Committee	X		
Suzanne Leff – 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
Suzanne Leff, Past Chair RESC	X		

**CBA Real Estate Section Council
Committee, Liaison & Taskforce Appointments
2020-2021**

Committees: (Chairs and co-chairs designated in bold/red)

Annual Symposium Committee (2021) – **Melinda Pasquini** (Section Vice Chair)

Budget Committee – **Melinda Pasquini** (Section Vice Chair); Suzanne Leff (Immediate Past Chair), Jean Arnold (Section Chair), Amy Brimah (Section Secretary)

Community Service and Charitable Committee – **Erin Clark**, Ron Jung and Eric Snyder

Communications Director – **Brianna Dowling**

Communications Committee (Web Page COBar / Newsletter / Web Discussion Group)

– **Brianna Dowling**, Angie Schmitz, Zak Kessler

Publications Committee (CO Lawyer) – **Robin Nolan**, Adam Aldrich, Jeremy Syz, Eric Snyder

Education Committee

CLE – **Ron Jung**, Angie Schmitz, Marjorie Sant

Topical Lunches – **James Meseck**, Jeremy Syz, Cynthia Lowrey-Graber

Interprofessional Committee: **James Meseck, Angie Schmitz**

Membership and Practice Development Committee – **Adam Aldrich**, Zak Kessler, Cynthia Lowrey-Graber

Liaisons:

CBA Board of Governors (voting): Katy Dunn (voting member of RESC)

CBA Business Section: Andy Toft

CBA Cannabis Law Section: TBD

CBA Ethics Committee: TBA (Deanne Stodden until successor chosen)

CBA Legislative Policy Committee: Amy Brimah (Section Secretary)

CBA Legislative Policy Committee Member: Chuck Calvin

CBA Taxation Law Section (appointed by the Tax Section): Bobbie Collins and Tyler Murray

CBA Trust and Estate Section (appointed by the T&E Section): Chad Rounds

CBA Young Lawyers Division (appointed by YLD Section): Liz Deline and Diana Mendez

Colorado Association of Realtors (CAR): Damian Cox

Colorado Housing Council (2 can attend each month): Erin Clark, Robin Nolan and Marjorie Sant

Colorado Real Estate Commission (CREC) Forms Committee: Geoff Anderson

Colorado Supreme Court Civil Rules Committee: Angie Schmitz (applying to CO Supreme Ct.)

Eminent Domain Committee: Jody Alderman

MVL / Access to Justice: Andy Toft

Regional: Doug Tueller

Title Standards: Catherine Hance (Member); Geoff Anderson (pro tem)

Diversity and Inclusion: Eric Nesbit

Taskforces:

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

CCIOA – **Chris Payne**, Amy Brimah, Robin Nolan, Suzanne Leff

Fairways at Buffalo Run (Amicus/Legislative) – **Jim Meseck**, Robyn Kube, Robin Nolan, Andy Toft

Inclusion (and barriers to inclusion) – Amy Brimah, Andy Toft, Katy Dunn, Erin Clark

- Removal of race-based restrictive covenants from public records – Brianna Dowling; with Inclusion task force.