

MINUTES

CBA Real Estate Section Council
August 16, 2016 – 3:00 p.m.

Colorado Bar Association Offices
1900 Grant Street, 9th Floor
Denver, Colorado 80203

1. Call to Order

Ms. Nies called the meeting to order at 3:03 p.m.

2. Introduction of Guests and New RESC Members

3. Minutes

The proposed minutes of the June 21, 2016 meeting were approved, as amended.

4. Financial Report

Ms. Decker reported that the current balance in the Real Estate Section's account is \$77,437.62.

ACTION ITEMS

5. New Committee Appointments

Ms. Nies reported that she considered the committee preference forms submitted by Council members and made committee appointments based on such forms.

6. 2016 Uniform Acts for Colorado

Ms. Nies reported that there are several new uniform laws being proposed this year and that task forces will need to be formed to review those that affect real estate and provide comments to the Colorado Commission on Uniform State Laws at the September meeting. The task forces and Council members who have agreed to serve on them are:

- Uniform Employee and Student Online Privacy Protection Act - Mr. Alt and Mr. Calvin
- Amendment to Revised Uniform Law on Notarial Acts - Ms. Dunn and Mr. Payne
- Revised Uniform Unclaimed Property Act - Ms. Pasquini and Mr. Cox
- Uniform Residential Landlord Tenant Act - Ms. Alderman, Mr. Sweetser and Ms. Arnold
- Uniform Commercial Real Property Receivership Act - Mr. Calvin and Mr. Lubinski:

7. Mortgage Loan Origination Statute – Task Force

Ms. Nies reported that Mr. Sweetser is heading the mortgage loan origination task force in legislative efforts to amend the mortgage loan origination statute, expanding the licensing exemption that the Colorado Mortgage Lenders Association accomplished last

year with its SAFE Act legislation. The goal would be to put forth an amendment that would expand the parent/child loan exemption under the mortgage loan origination statute, consistent with the federal SAFE Act. Mr. Sweetser will work with Mr. Schupach, DORA, CAR, CMLA and CAMP.

8. Liaison to Business Law Section

Ms. Nies reported that Mr. Bergstrom resigned as the Business Law Section liaison. Mr. Payne will serve as the new liaison.

9. Title Standard 3.3.3

Ms. Nies reported that the Title Standards Committee withdrew from the Council's consideration the proposed new Title Standard 3.3.3 to allow for further discussion.

10. *Gary Lensky v. DiDomenico et al.*

Ms. Nies relayed a request from Todd Kettelkamp for the RESC to consider filing an amicus brief in connection with this case. Because a petition for certiorari has not yet been filed, the Council determined that the request was premature.

11. Table of Contents – 2016 edition of *Basye: Clearing Land Titles*

Ms. Nies reported that last year the Council provided approval to the editors of the 2015 edition of *Basye: Clearing Land Titles* to publish the link to the Colorado Real Estate Title Standards on the CBA website. This year another request has been submitted to publish in the 2016 edition of *Basye: Clearing Land Titles* the full table of contents of the Colorado Real Estate Title Standards, as well as the link. Upon motion made by Mr. Calvin and second by Ms. Dunn, the Council members voted to approve the publishing of the table of contents and the link, with a copyright notice.

12. Subject Matter Index for Real Estate Symposium

Ms. Nies reported that the subject matter index included in the materials for Willis Carpenter's class were not prepared for 2015 and 2016. Due to the multiple requests for the index, Mr. Sweetser volunteered to draft the subject matter index for 2015 and 2016.

13. Real Estate Section Mixer with YLD – ViewHouse

Mr. Osborn reported that 46 people have already RSVP'd for the event on August 25. The YLD requested that the Council contribute \$1,500 to the event cost. Mr. Payne made a motion to pay the \$1,500 balance now and be reimbursed by YLD so that the cost is split 50/50, and Mr. Calvin amended the motion for the Council to contribute up to \$1,000. Ms. Leff seconded the amended motion, and the Council members voted to approve the contribution.

REPORTS AND INFORMATIONAL ITEMS

14. Exposure Draft of the Statement of Opinion Practices

Ms. Nies reported that the Working Group on Legal Opinions and the Legal Opinions Committee of the American Bar Association's Business Law Section formed a project committee to revise the statement of opinion practices and is requesting that state bar associations approve it in an effort to foster a national opinion practice that will be widely recognized and endorsed. Mr. Payne reported that the project committee is taking three prior documents adopted in 1998, 2002 and 2008 and condensing them into one. The Real Estate Section adopted the 2008 document. The American College of Real Estate Lawyers is reviewing the revised statement in September and will vote in October. If there are major comments, they will come from other sources. The Council has been asked to approve the revised statement at its next meeting.

15. Title 12 Recodification Study

Ms. Nies reported that there is a task force that is considering the recodification of Title 12 with the goal of pooling common provisions. There will be stakeholder meetings on Wednesday, August 17 (Title 12) and Thursday, August 18 (non-Title 12). Mr. Cox will attend the meeting on August 17. Mr. Schupbach reported that the study is being driven by the drafting office, which does not want to make substantial or controversial changes. Mr. Schupbach further stated that this is a long-term project that will take an entire year to work through.

16. Electronic Recording Technology Board Appointment

Ms. Nies reported that the Electronic Recording Technology Board is a nine-member board that includes one member from the Real Estate Section of the CBA. Mr. Starritt was appointed by the Governor as the member from the Real Estate Section. Mr. Starritt reported that one of the Board's obligations is to manage a fund generated by the surcharge for electronic recording. The first meeting of the Electronic Recording Technology Board will be held September 2.

17. Title Company Preparation of Deeds/Off-Record Matters

The Council discussed issues related to the preparation of deeds by title companies in Colorado, as well as certain related provisions in the CREC Contract to Buy/Sell Real Estate regarding off-record matters. To further consider the issues and possibly come up with a resolution, the Council agreed to establish a task force. Mr. Tueller (Chair), Ms. Kube, Ms. Alderman, Mr. Cox and Mr. Sweetser volunteered to serve on the task force.

18. CBA/RESC Portal Proposal

Ms. Waggener discussed creating a portal where people can report incidents and issues that arise or relate to provisions contained in the CREC standard form contracts, so that problems are identified and documented. Mr. Calvin commented that a passive portal won't be helpful because people won't use it, unless there is a reminder or trigger to use the portal. Ms. Sreenan agreed to assist in creating an email reporting system. Ms. Waggener and Mr. Tueller volunteered to assist with reading the emails.

19. Mortgage Investments Enterprises LLC

Mr. Calvin provided a synopsis of the *Mortgage Investments Enterprises LLC v. Oakwood Holdings* case wherein the Court held that junior lienholders do not have an absolute right to redeem if a senior lienholder pays the debt secured by the junior lien before the junior lienholder's statutory redemption period begins. The Council discussed the positions of the parties and related policy arguments.

20. FinCEN Press Release

Ms. Nies reported that title companies' obligations to track beneficial ownership of high-end residential purchases has expanded to a number of new areas, beyond Manhattan and Miami-Dade as originally specified by FinCen. The expanded geographic scope of the targeting orders now includes Los Angeles County, California, three counties in the San Francisco area (San Francisco, San Mateo and Santa Clara Counties), San Diego County, California, and the county that includes San Antonio, Texas (Bexar County).

21. 2016 Symposium Update

Ms. Nies reported that the 2016 Real Estate Symposium was very successful and there were 404 attendees. Attendees provided positive feedback regarding Symposium topics and presenters, but less favorable feedback about the venue. The next Real Estate Symposium will be held July 13-15, 2017 at the Vail Marriott.

22. Legislative Forecast

Mr. Schupach reported that the uniform laws, mortgage loan origination statute legislation and address confidentiality legislation are possibly on the legislative horizon. Overall, he will not have much to report until November.

23. CBA Ethics Committee Liaison

Ms. Stodden reported that there was no new information to report. The ethics conference was held at the same time as the Symposium. The Ethics Committee is continuing its work on Opinion 80, and a draft will be ready by September.

24. Forms

Mr. Anderson reported that the revised CREC forms will be effective January 1, 2017. The Real Estate Commission, made up of three brokers and two attorneys, is up for sunset review in January 2017. Ms. Nies stated that DORA will be asking for feedback regarding the Commission and its purposes. It was suggested that the sunset review be referenced in the RESC newsletter with a link to the portal for feedback.

25. Title Standards Committee

Ms. Waggener reported that proposed Title Standard 3.3.3 is still under consideration.

26. Publications/Newsletter, Website, Discussion Group

Mr. Lubinski reported that the newsletter is ready to be distributed this week. The website is in the process of being updated, and Ms. Sreenan is working on this project.

27. Education/CLE

Ms. Leff reported that the Fall Update "Cycle of a Commercial Real Estate Development" will be held on October 13. The Real Estate Section is also co-sponsoring an HOA Update on September 30.

28. Education/Topical Lunch

Ms. Alderman reported that the next topical lunch will be held September 1 at the DTC Maggiano's, with the topic "Contract Terms and Disputes, a Litigator's Perspective". There is no longer a call-in for topical lunch presentations, but a recording can be ordered at the call-in price.

29. Business Law Section Liaison

Mr. Payne reported that the Business Law Section conference will be held September 15-16, and the next meeting will be in October.

30. Interprofessional Meeting

Ms. Leff reported that the Interprofessional Committee had not met yet this month.

31. Publications/Colorado Lawyer

Mr. Lubinski reported that Mr. Clark is working with an author on an article, and Mr. Osborn may be interested in writing an article for the *Colorado Lawyer*.

32. Trusts and Estates

Mr. Kirsch reported that the Trust and Estates Section is working on a revised form of supplementary affidavit with respect to joint tenancies. The revised affidavit is needed to conform to recent legislation. The proposed supplementary affidavit form will be reviewed by the Trusts and Estates Forms Committee and then provided to the Council for review.

33. Young Lawyers Division Committee

Mr. Osborn discussed the mixer being held on August 25, and requested that Council members attend and promote it.

34. Community Service/Charitable Committee

Ms. Nies reported that Lawline 9 is coming up on August 31 and will send an email requesting volunteers.

35. Tax Section Liaison

Mr. Murray reported that the Tax Committee met in June. Its next meeting will be September 4.

36. Cannabis Law Committee

Ms. Dunn circulated minutes of the August meeting of the Cannabis Law Committee. The Committee is putting together an omnibus article for the *Colorado Lawyer*, with each member writing 300 words on a cannabis-related topic.

INACTIVE ITEMS

- 37. Legislative Policy Committee
- 38. Tax Section Liaison
- 39. Board of Governors
- 40. Eminent Domain Committee
- 41. Colorado Housing Council
- 42. Supreme Court Civil Rules Committee Liaison – Rule 120 Update

NEW MATTERS

None.

ADJOURN

There being no further business, the meeting was adjourned at 4:40 p.m.