

MINUTES FROM

AGENDA

CBA Real Estate Law Section Council
Date: Tuesday, February 19, 2019 – 3:00 p.m.

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

Call to Order - Joey Lubinski 3:02 p.m.

1. **Introduction of guests** - Joey Lubinski

Julie Waggoner and Chad Rounds who will be serving as the Trusts and Estates Liaison

2. **Approval of January Minutes** - Joey Lubinski

Motion to revise reference to Robyn Kube to Robin Nolan – edit made and minutes approved as edited.

3. **Financial Report** (\$80,300.03 as of January 31, 2019) - Jean Arnold

4. **Chair's Report** – Joey Lubinski

a. RESC/YLD Happy Hour

A happy hour is happening this week with the Environmental Law Section and YLD. YLD is sponsoring 8 young lawyers for one of the Real Estate Section's March Topical Lunch on the Top Ten Mistakes in Real Estate Transactions – the spots are already filled. Discussed a joint happy hour event for either the end of May or June, 2019. Lis will flow up.

b. Spring Offsite Meeting

Will be meeting at DU. Details to come. Tuesday **April 16, 2019** – is the tentative date.

e. Reminder: **Council Nominations:** Due 3-15-19. Advertised in Section newsletter. Amy Sreenen will resend notice. So far a few nominations have come in.

ACTION ITEMS

5. **Revision to §38-35-101.**

Catherine Hance

Purpose: Changes tie into provisions under the Uniform Notary Act passed in the 2018 Legislative Session. In response to comments last week, Title Standards made a few “clean up” changes. For review are the cumulative changes – December, January and February (last week). The legislation ties in how a notary determines the person is known or identified. Section 2

changed the form of the acknowledgement. Section 3 says that if the acknowledgement conforms, and the acknowledgement was made as required in Section 1, then the presumptions apply. This legislation is necessary to conform with the Uniform Notary Acknowledgement Act and to conform with the provisions and make the presumptions conform.

Title Standards is asking Section Council for comments; if this proposed legislation is approved, then send to LPC for comment and approval. Next, a sponsor will be needed – maybe for next 2020. Catherine Hance, Julie Waggoner and Geoff Anderson thank RESC for working on this legislation over several months. The proposed legislation is a necessary fix because of the passage of the Uniform Notary Bill in 2018. Doug Tueller moves to approve the proposed legislation and to ask LPC to endorse. Damian Cox seconds. Discussed occurred about whether to approve now or wait until next Session. The consensus was to approve now so that a sponsor can be found. Vote: unanimous to approve and refer to LPC. Title Standards (Catherine Hance) will present to LPC

- 6. Real Estate Course will be completed March 12, 2019. Last year, RES sponsored a celebration and happy hour. Course ends March 12, 2019 at 6:15 p.m. \$500 will be needed to sponsor. Robyn Kube moves and Damian Cox seconds the motion. Passed. Joey Lubinski reminds member to attend.

- 7. HB19-1108 Special Districts Joey Lubinski

Doug Tueller described the legislation and the proposal of voting by non-resident electors. Mr. Tueller described the legislation in the Town of Mountain Village, Telluride. This bill was vetoed last year by the Governor. Jeremy Schupbach will research.

Mr. Schupbach reports that he talked to Michael Valdez. The House made amendments to the Bill and passed it 34-28. He will forward the amended version for review by Mr. Tueller and Robin Nolan. Passage is tenuous at best. The Bill's scope is narrowed. The Clerks opposed and added a poison pill to include a verification process that is so onerous that no one will do it. Special Districts are against it. Fire Fighters are against it. The Bill will pass the Senate in the next few days. It is on the Consent calendar. So there will be no further amendments. The amended bill narrows the board of directors and is an "opt in" statute. The Clerk and Recorder does not have to handle the elections. There is also an income verification process. The verification amendment is 5 pages long. Valdez would request and oppose. Week of March 4 the Bill will be in the Senate. LPC meets on March 1, 2019 so we have time to review and go to LPC next Friday if needed. Robin Nolan will review the Reingrossed version forwarded by Jeremy.

REPORTS AND INFORMATIONAL ITEMS

- 8. **Legislative Update** Jeremy Schupbach
 - A. Bill Track 50 – Spreadsheet, assignments and comments Jean Arnold
 - B. Updates Jeremy Schupbach/Joey Lubinski

SB19-107 Broad Band Infrastructure (In committee) Brianna Dowling/Jeremy Schupbach

Amendments to SB19-107 expected. Definitely a topic at the bar. John Vaught's Bill. Reviewed Brianna Dowling summary. Jean Arnold will forward Brianna's email to Jeremy. Counties and providers are reviewing sections. Monitor for now. Mr. Schupbach expects changes to the Bill.

SB017 CDOT Eminent Domain (Amend – Crossed over).

SB047 Remove Unauthorized Persons from Vacant Land (Oppose – Dead/Failed)

HB19-1098 Deed Bill (Monitor – Crossed over) Amended. Voted in the fall to endorse a previous iteration. Did not bring up for another vote. RESC did not take a position. Members of RESC assisted in drafting. Some of the issues were addressed in the amendments: (1) Title company liability – cannot disclaim for negligence when prepare deed; (2) Title Company can only prepare a deed in connection with issuing a title policy; (3) Location of where reference to “statutory exceptions” appeared in deed form was changed a “blank;” and (4) Later in the statute, the “statutory exceptions” language appears, but is not the default in the form.

Concerns from the surveyors were addressed: if the statutory exception is for off record matters – ILC may be used but does not meet the statutory exceptions required: Only matters that show up in a full survey. No exception for things the Seller did and knew about, but failed to disclose.

Status of covenants grantor should include: heirs, successors and assigns; page 6, line 26. The word “successors” was left out. RESC has taken no position on the bill. Send the language to LTAC – Peter Griffith. The “successors” language was missed. Mr. Schupbach reminds RESC of the Procedure – since RESC did not take a possession. This Bill is very close to the Governor's desk. To add the “successors” language, it may have to go back through 4 votes. RESC wants the issues fixed, but the best way is through LTAC or a cleanup bill in the 2020 Session.

SB19-084 Uniform Remote Notarization (Monitor – Dead/Failed)

HB1118 – Lease Cure Period (Amend – In committee). The amendment requested is approved: carve-out for commercial property. The notice time frame is still under debate.

HB1145 – Primary Residence Exempt from Liens for Medical Debt (Oppose) – Suzanne Leff. Remove “shall” from the statutory amendment. Opens up the whole section of the statute and may address *Huddlestrom*. RESC has voted to oppose. Jeremy Schupbach will check on availability of LPC for a vote before Thursday's hearing. Jean Arnold can attend if needed.

Note: evening follow up. No need for memo before Friday's LPC meeting. Hold until Jeremy Schupbach gets back to RESC as to next deadline.

HB1167 – Remote Notary Bill (Support – In committee) – Chuck Calvin attended a half day hearing. The Bill got half way through the house and February 25 the Bill will advance through the second half. CBA did a good job of supporting the bill. Notarize claims to have never shared data, but wants to have the right to do so. Legislators are telling CBA to compromise. Notarize is not interested in any compromise except “their” way. Terms of service

have been “updated” by Notarize. The passage of bill with Notarize’s determined opposition is tenuous at best. Notarize now opposes all the parts they agreed to last year. Notarize’s forms were removed from the Bill. Service of process was amended to be on the Registered Agent with the Secretary of State. For the past 2 ½ years CBA has shown good faith. SOS is threatening a fiscal note (none yet). SOS is taking a very aggressive line on anything that may have the SOS spending money.

HB 1170 Warranty of Habitability. Joey Lubinski has provided thoughts on the Bill. The Bill was heard in committee on Friday (2-15-19). Some of the requested amendments were made. Mr. Lubinski will review what came out of the House and decide whether to go to LPC this Friday. Be prepared for an electronic vote this week before LPC’s Friday meeting. Amendments include: (1) Definition of mold; (2) Addition of appliances as part of the WHO; (3) Hotel accommodations; (4) Appliances does not flow through to the remedies section. CBA Opposed last year. The sponsor want the CBA to reach a neutral position.

9. **Colorado Housing Council** Melinda Pasquini (Jed Sonnenshein)

See attached email from Jed Sonnenshein.

Opportunity zones. Technical and the benefit is temporary. Non-lawyers are not excited about this. Will have a topical lunch on the issue in April. There are enterprising Plaintiff’s lawyers – if an attorney does not bring the existence of an opportunity zone to their client’s attention then malpractice. There is a State website where the location of an opportunity zone can be seen.

10. **Affordable Housing Task Force** Doug Tueller

Colorado Lawyer. Six authors are lined up with publication to start in July and there may be eight authors. The first article will be about attorneys and developers meeting with planners and then case studies. The a series about different approaches to affordable housing. And a wrap up article on financing. We can’t tackle everything or solve the affordable housing problem, but the articles will educate and give ideas of what is going on. By finding authors in the topic areas, the series will range geographically around the State.

11. **Education/Topical Lunches Committee** Melinda Pasquini (Amy Brimah, Ron Jung)

Schedule attached.

February 55 attended and 17 on phone. Go – no go. Common Interest Conundrums.

March 7 Chris Payne with YLD sponsoring 8 spots. Top 10 mistakes in real estate.

April 9 Bar Louie Real Estate Litigation. How to present evidence.

April Accountants talking about opportunity zones. Lawyers are reacting but the CPAs have to follow the regulations. Warning for lawyers to watch for opportunity zones.

May Oil and gas for real estate attorneys.

June Legislative update.

September Affordable housing. Bob Monroe.

12. **Interprofessional Committee** Robyn Kube (Jed Sonnenshein, Robin Nolan)

Robin Nolin reports: Realtors are working on a housing study – innovation and how CO can expand on it.

CAR and LTAC deed bill were discussed. Deed legislation is fast-tracked. Crossed over. Passed out of Senate – back to House for amendments.

Damian Cox reported on a Section of the new Real Estate Contract that affects HOAs and timely supplying documents. Legislation may be introduced to deal with how long it takes the HOA to get the documents requested.

Forms committee needs to conform the documents to real estate law changes.

Association of Home Builders want to do condo conversions with less liability.

Remote notary was discussed.

13. **Communications** Directors: Melinda Pasquini and Doug Tueller

Communications Committee (RE Section Web Page (COBAR)/Newsletter/Web Discussion Group)

Melinda Pasquini (Amy Brimah, Brianna Dowling)

The Winter newsletter went out. It is a very robust edition and timely for nominations. The goal was every other month – but more realistic to send out quarterly. April 15 is the goal for the Spring edition. Melinda Pasquini asks for links and information if have something for the Spring newsletter.

14. **Education/CLE Committee** Damian Cox (Amy Mowry, Jim Meseck)

Bridgett Shephard – One month before the spring update. Ms. Shephard handed out the brochures – and Damian Cox note the new logo. One speaker spot is open due to a cancelation.

15. **Colorado Lawyer Committee** Doug Tueller (Bryan Schwartz, Robin Nolan)

Affordable Housing series – attached outline.

16. **Community Service/Charitable Committee** Robyn Kube (Bryan Schwartz, Brianna Dowling)

Nothing to report.

17. **Membership and Practice Development Committee** Robyn Kube (Amy Mowry, Ron Jung)

YLD events discussed above by Liz Deline. And sponsoring the happy hour celebration for completion of the Real Estate Class.

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

See above under Action Items.

19. **CBA Ethics Committee** Deanne Stodden

Notes from December and January meetings.

Opinion 108 with advisory.

Opinion 130.

20. **CBA Business Section** Chris Payne

Opinion summary got approved nationally. Business law on legislation is in good coordination. Global amendment to corporations act. Financial note - \$200,000 due to forms on website. 1800 hours of programing estimated to be needed. The Bill will be in appropriations on Friday. Stay neutral.

The Section is in the process of organizing a Business law institute.

Delaware series – amendments after August 1, 2018 LLC can divide. By statute a series is not a transfer. Lenders are upset. CO has not had an interest creating series because it is easy to create LLCs in CO. Chuck Calvin suggests that lenders should rely on financial tests and hard numbers and not technical “transfers.”

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

Huddlestrom case was decided and followed the reasoning in the *Amicus*. Now we have clarification about the process to revive judgment liens.

22. **Board of Governors** Katy Dunn

Nothing new. Need a substitute for the June 14 meeting in Manitou Springs. This is the same day the solo and small firms are meeting.

23. **CBA Young Lawyers Division** Liz Deline

See above.

24. **CBA Legislative Policy Committee** Jean Arnold

See above.

25. **CBA Cannabis Law Committee** Jed Sonnenshein

No report

26. **CBA Forms Committee**

Damian Cox

The Real Estate Commission voted to reinstate some forms that were removed.

27. **CBA Tax Section**

Tyler Murray

Mr. Murray attended by phone and reported by email (as he had to leave the meeting before he was called):

The Tax Section greatly appreciates the Real Estate Section's assistance with the speakers for our January case law update, and June legislative update luncheon CLEs. However, due to budgetary constraints, we are reevaluating these programs. The Tax Section heavily subsidizes the meals for all attendees, and members of each presenting section (Tax, Real Estate, Business, Trust & Estates) receive discounts. Due to increased costs and competition, we are looking at revamping how these luncheons are held. This includes hosting them at the CBA-CLE offices, or under CLE's banner, to reduce our costs. I will keep the Section informed, as we evaluate our options. Please feel free to reach out to me with any questions

28. **CBA Trust and Estate Section**

Chad Rounds

Revising real estate forms such as PR deeds and supplemental affidavit. The Section will send to RESC for approval and input.

INACTIVE

29. **CBA Eminent Domain Committee**

Jody Alderman

NEW MATTERS

ADJOURN 5:17 p.m.

ATTENDANCE ROSTER
Real Estate Law Section Council
February 19, 2019
COLORADO BAR ASSOCIATION

NAME	PRESENT	EXCUSED	ABSENT
Officers:			
Joey Lubinski – Chair	X		
Suzanne Leff – Vice Chair	X		
Jean Arnold – Secretary	X		
Katy Dunn – Board of Governors Representative	X		
Members:			
Amy Brimah (2020)	X		
Damian Cox (2019)	X		
Brianna Dowling (2021)	X		
Ron Jung (2021)	X		
Robyn Kube (2019)	X		
Jim Meseck (2021)		X	
Amy Mowry (2020)	X		
Robin Nolan (2021)	X		
Melinda Pasquini (2019)	X		
Bryan Schwartz (2020)	X		
Jed Sonnenshein (2020)		X	
Doug Tueller (2019)	X		
Committees / Liaisons:			
*** – Legislative Policy Committee Liaison			
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		
Elizabeth Deline – YLD Liaison - teleconference	X		
Catherine Hance – RE Title Standard Committee	X		
Chuck Calvin – Immediate Past Chair	X		
Staff & Guests:			
Amy Sreenen (CBA)	X		
Jeremy Schupbach (CBA)	X		
Bridgett Shephard (CLE)	X		
Julie Waggoner, Past Chair RESC	X		
Dan Sweetser, Past Chair RESC			X

