

MINUTES

AGENDA

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

Colorado Bar Association
Colorado Supreme Court Conference Room
1300 Broadway 4th Floor
Denver, Colorado 80203

1. **Call to Order 3:01 p.m.** – Joey Lubinski
2. **Introduction of guests** - Joey Lubinski
Chad Rounds – Trust and Estate Section – Possible Liaison
Attendance attached.
3. **Approval of November Minutes** - Joey Lubinski
Approved.
4. **Financial Report** (\$85,495.89 as of November 30, 2018; \$82,482.52 as of December 31, 2018) - Jean Arnold
5. **Chair’s Report – we must conclude this meeting by 5:00 p.m.** - Joey Lubinski
 - a. **Status: *In re Diann Marie Cates* – Amicus – 10th Cir. attached.**
Thank you to Dan Sweetser, Andy Toft and Lindsay Miller. The brief was submitted December 14, 2018. The Court would not give a time extension. LTAC filed a brief as well.
Geoff Anderson drafted the brief for LTAC and focused on how the recording act works.
 - b. **Revised: Deed Form and Legislation.** LTAC Revised Deed Form and Report – attached. Drafting update HB19-0418.
The Bill is now live bill and in the form last circulated with some non-substantive changes. LTAC’s position paper and request for support is included with the agenda. LTAC would like RESC to support the bill in front of committee and sign-on to position paper. Does RESC want to support or take no position? This is an action item we will discuss in a few minutes.
 - c. **RESC Holiday Party:** Thank you to Catherine Hance. Excellent party and venue.
 - d. **Amicus Brief – Security Credit Services LLC v. Hulterstrom** – Status: Pending.

e. **CBA Community** – Launch of Higher Logic website. The launch has gone well. There may be fewer people on the list serve. Or it may be better organized. CBA will send out information about the list serve. Mr. Lubinski will check with Professor Collins at CU as to his impressions and experience so far.

f. **CU Visit** (with Suzanne Leff). Turnout was low – about 40. Worth going, but RESC does not need to send 2 people. The students had not started classes yet. Real property is a 2nd semester class at CU and 1L students did not know what Real Estate Practice would entail.

ACTION ITEMS

6. **Nominations Committee:** Jean Arnold, Robin Nolan and Amy Brimah

Due 3-15-19. Approval and April meeting.

Motion to approve the appointees named above. Approved.

7. **Real Estate Section Fees.** Joey Lubinski

There is not a need in the budget to increase fees. However, there is a new fact: “parking” cost with the new space. Do we have enough in the budget – should we offer reimbursement for parking? With 10 council meetings and Title Standards RESC would need about \$2500 to cover parking per year in the budget. RESC is expecting a surplus of \$1400 if we stay on budget. We will have to dip into reserves for parking. The historic norm at the old space was reimbursement for parking.

Title standards wants to receive reimbursement for parking. Comment: You can find a meter down here.

Ethics meets 9-noon on Saturday and that was a challenge for them for parking.

The Council needs to try to keep meetings at 2 hours or less to minimize the financial hit and cost of parking.

CBA sent out a notice that CBE will no longer reimburse for parking.

Don’t need to decide about parking reimbursement right now. We will put on agenda again for decision on that issue. At this time, we need to decide whether to increase dues. The summary of dues charged by section appears below.

Motion to keep dues at \$30. Passed.

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|--------------------------------|----|----------------------------|----|
| Agricultural & Rural Law | 15 | Construction Law | 20 |
| Alternative Dispute Resolution | 25 | Criminal Law | 25 |
| Business Law | 30 | Disability Law | 15 |
| Civil Rights Section | 20 | Elder Law | 30 |
| Communications & Technology | 10 | Entertainment & Sports Law | 15 |

| | | | |
|------------------------|----|--------------------------------|-----------|
| Environmental Law | 20 | Litigation | 25 |
| Family Law | 30 | Military Law | 15 |
| Government Counsel | 15 | Natural Resources & Energy Law | 25 |
| Health Law | 15 | Real Estate | 30 |
| Immigration | 25 | Solo/Small Firm Practice | 15 |
| Intellectual Property | 40 | Taxation Law | 25 |
| International Law | 20 | Trust & Estate | 30 |
| Judicial Liaison | 15 | Water Law | 20 |
| Juvenile Law | 20 | Worker's Compensation | 25 |
| Labor & Employment Law | 20 | | |

8. **HB1050 Xeriscape – Suzanne Leff**

Recommend – **Monitor** and possibly Amend. Expect the CCIOA issue to be addressed. No need to take to LPC this week.

Concern is that the law as drafted, would allow owners to install Xeriscape on common areas. Would also extend to Special Districts. Could create chaos in CCIOA – prohibits associations from *prohibiting* Xeriscaping within the common elements. Other sections extend the public policy provision that say any covenant the requires turf grass is against public policy – and extends the provision to special district. Water conversation and drought mitigation is the basis for the policy. If turf grass is mandated, wholly or partially – the provision is unenforceable.

Expect the bill to be amended on Thursday (1-17-19) to address the issue.

9. **SB017 CDOT Eminent Domain – Jody Alderman**

Recommend – **Amend.**

CDOT has powers of condemnation. The Dept. of Transportation used to do the condemnations, but then delegated the power to the chief engineer with CDOT. The CO Supreme Court said – cannot delegate the power to CDOT. So since the *Americo* case, the Commission has been giving CDOT authority to negotiate; and then Commission condemns if cannot reach agreement through negotiation.

1. Makes clear CDOT does not have to go to the Commission to negotiate. Only have to go to the Commission to condemn. OK

2. Gets rid of the jury. OK.

RECOMMEND: 3. Add notice provisions so that the property owners can participate at the Commission level. Other condemning authorities don't have to do this. This is a good time to give the property owner notice.

Chris Payne asks: Did CDOT have a notice procedure when it was acting? Historically the Bar has had difficulty taking a position when there are two sides. In the Land Use area, the failure to

provide notice is the biggest basis for bringing suit. CDOT would be nervous about adding a notice requirement. May undercut a series of subsequent decisions.

Ms. Alderman. The way it works is you are on the agenda, but you do not have to give notice. This is a change from what other condemning authorities have to do. Here, the Commission has to make findings. And so this is different.

Brianna Dowling – what do the property owner’s contribute? The land owner may not be thinking about the public interest.

Joey Lubinski – maybe we should suggest to the legislator the amendment. But the RESC won’t oppose the bill if it is not amended.

Mr. Payne – Our mission is to protect clarity of title and transferability of title. An unnoticed action for taking someone’s property is part of why the RESC exists. The amendment of this Bill to provide notice makes sense.

Motion by Doug Tueller: Amend SB017 to add a notice provision: A requirement that the property owner receive notice of the transportation commission meeting at which authorization to file a petition in condemnation against particular property is being considered (otherwise the legislation permits the transportation commission to merely “rubber stamp” the chief engineer’s report and map and adopt the necessary resolution).

Motion Passes.

10. **SB047 Remove Unauthorized Persons from Vacant Land** – Suzanne Leff

Recommend – **Oppose.**

SB015 (2018 Session) – was known as the squatters bill. The CBA was able to get the Bill amended to take away the on-the-street trial by sheriff. The amendments added an expedited process to evict where the person never had permission to occupy the space.

SB047 brings the same idea back – and applies the process to vacant land. But it extends beyond residential property. And any portion of the residential lot that is vacant – the Bill adds the original procedure.

Last year’s reason for SB015 was military personnel returning and finding that their homes were occupied by squatters.

This vacant land bill – does not have the same public policy concern. It is just trying to extend the expedited process to vacant land. SB047 is an unnecessary extension of the law.

The previous bill was supported by CAR (El Paso County). Who is supporting this bill? Not sure. What problem are we trying to solve? We do not know.

Joey Lubinski – We need to understand why is the Bill proposed? And we need to oppose. Opposed but for the amendments and the amendments do not apply in the same way to vacant land. Someone is concerned about squatters in the woods, perhaps.

Maybe this bill is trying to address the “right to survive” ordinance that is being proposed in the City and County of Denver.

This is still a trespass and this Bill is not needed.

Motion by Robin Nolan. Move to oppose based on no reason for supporting an expedited process. Motion Passed.

11. **HB1098 - Deeds Bill** – Joey Lubinski

LTAC Position attached.

Bill amends the various statutes that deal with deeds. Changes: presumption that general and SWD will be subject to “statutory exceptions” as opposed to an itemization of the permitted exceptions. Not really different than a SWD in substance.

Lays out the statutory deed forms.

Provides a mechanism to override the statutory exceptions if the parties direct otherwise. The majority of transactions will have the statutory exceptions.

Authorizes title companies to prepare deeds. Eliminates the scrivener’s fiction. Should we amend the title company language – that includes the title company’s not giving away the responsibility through indemnification?

Could prepare any deed. Is this coordinated with the contract provision? It was a Section 13 provision that motivated this legislative change.

We have been involved in the preparation. It is LTAC’s bill. Why go back? Before 2002 the norm was not to record the exceptions. The preparation of the list of exceptions gave rise to who is qualified to do the listing; some were being pasted in or there was a reference to the title commitment. Where you have real estate transactions handled without attorney involvement, we are all on notice of public record anyway.

Unrecorded matters is a tough question.

Geoff Anderson: Are there any warranty deeds if this legislation passes? Doesn’t seem right to the buyer. Title insurance would cover the issues for the Buyer and the Buyer has more insurance. Liability for title insurance companies who draft deeds needs to be looked at. Some of the mistakes are significant.

Ron Jung – Agrees with Geoff Anderson. Opinion on deed about the title; have to search what was recorded. What form of statute was in existence at the time the deed was signed to understand

“statutory exceptions?” Doesn’t think the law is broken and the “fix” could have unintended consequences. Disagrees in general.

Damian Cox – Risk allocation falls on the Seller. And the Seller and Seller’s attorney are completing exposed. Neither the seller nor seller’s attorney can rely on the title policy. It is a risk allocation issue. Buyer is the one getting the policy at closing with the most insurance.

Are there real estate commission forms that will be drawn up? Yes the forms will need to be updated. This was a reaction to the new forms.

Going back and forth between CAR and LTAC. OK with the form changes.

Chuck Calvin. Eventually, it came around to the risk allocation. Looking at buyer’s title insurance and the industry does not provide title insurance and protection for the seller. This bill recognizes the realities of the way residential and small commercial transactions are handled. Not protected by the buyer’s title commitment.

Mr. Lubinski: The original iteration use a residential grant deed. There is a blurring of the distinctions. A buyer or seller can opt in or out. The statute is structured with each deed laid out separately.

The bar was supporting because sellers and their attorneys are exposed – relying on title insurance.

General comment: If this will make things better – ok. But this bill may have unintended consequences.

Mr. Lubinski: No rush for LTAC. Do not feel beholden to have something this week. RESC helped draft the Bill. RESC was clear that it was trying to make a bill read well. That does not equate to the Section and LPC taking a position to support or oppose.

Title standards? Supports in concept.

Mr. Lubinski: Given the discussion, we all need to reflect on this Bill before taking a position (or no position). We may circulate for an email vote.

Remaining Agenda:

Joey Lubinski - We will not be able to get through the rest of agenda as we must leave the building by 5:00 p.m. the following items will be carried over to the February meeting.

ADJORN 4:57 p.m.

Carryover following agenda items to February 2019.

REPORTS AND INFORMATIONAL ITEMS

12. Legislative Update

Jeremy Schupbach

A. Uniform Laws Update:

- Uniform Voidable Transactions Act.** Tabled for 2019. Andy Toft
- B. **Bill Track 50** – Spreadsheet, assignments and comments Jean Arnold
- C. **Affordable Housing – Final Report**
13. **Colorado Housing Council** Melinda Pasquini (Jed Sonnenshein)
See attached email from Jed Sonnenshein.
14. **Affordable Housing Task Force** Doug Tueller
15. **Education/Topical Lunches Committee** Melinda Pasquini (Amy Brimah, Ron Jung)
Schedule attached.
16. **Interprofessional Committee** Robyn Kube (Jed Sonnenshein, Robin Nolan)
17. **Communications** Directors: Melinda Pasquini and Doug Tueller
Communications Committee (RE Section Web Page (COBAR)/Newsletter/Web Discussion Group)
Melinda Pasquini (Amy Brimah, Brianna Dowling)
18. **Education/CLE Committee** Damian Cox (Amy Mowry, Jim Meseck)
19. **Colorado Lawyer Committee** Doug Tueller (Bryan Schwartz, Robin Nolan)
Affordable Housing series – attached outline.
20. **Community Service/Charitable Committee** Robyn Kube (Bryan Schwartz, Brianna Dowling)
21. **Membership and Practice Development Committee** Robyn Kube (Amy Mowry, Ron Jung)
22. **CBA Ethics Committee** Deanne Stodden
Notes from December and January meetings.
Opinion 108 with advisory.
Opinion 130.
23. **CBA Business Section** Chris Payne
24. **CBA ADR/Mediation Committee** Geoff Anderson

External website link to share with the public:

[The Mediation Guide](https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Court) or cut and past the following into your browser
https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Court

[%20Programs/ODR/Mediation%20Guide%20for%20Colorado%20Courts/Mediation%20Guide%20for%20Colorado%20Courts%20as%20Posted%20on%20Intraweb.pdf](#)

The Guide can always be found on the Office of Dispute Resolution website under Special Announcements.

25. **Board of Governors** Katy Dunn
Report attached and proposed standards – redline and clean.
26. **CBA Title Standards** Catherine Hance and Geoff Anderson
Proposed revisions to 38-35-101.
27. **CBA Young Lawyers Division** Liz Deline
28. **CBA Legislative Policy Committee** Andy Toft and Jean Arnold
29. **CBA Cannabis Law Committee** Jed Sonnenshein
30. **CBA Forms Committee** Damian Cox
31. **CBA Tax Section** Tyler Murray

INACTIVE

32. **CBA Trust and Estate Section** David Kirch
January meeting cancelled.
33. **CBA Eminent Domain Committee** Jody Alderman

NEW MATTERS

ADJOURN [See above]

ATTENDANCE ROSTER
Real Estate Law Section Council
January 15, 2019
COLORADO BAR ASSOCIATION
Colorado Supreme Court Conference Room
1300 Broadway 4th Floor
Denver, Colorado 80203
3:00 P.M.

| 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: | | | |
| Andy Toft – Legislative Policy Committee Liaison | X | | |
| David Kirch – 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 | X | | |
| Catherine Hance – RE Title Standard Committee | X | | |
| Chuck Calvin – Immediate Past Chair | X | | |
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| Staff & Guests: | | | |

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|--|---|--|---|
| Amy Sreenen (CBA) | X | | |
| Jeremy Schupbach (CBA) | X | | |
| Bridgett Shephard (CLE) | X | | |
| Chad Rounds Trust and Estates (Guest of David Kirch) | X | | |
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| Dan Sweetser, Past Chair RESC | | | X |
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ATTENDANCE ROSTER
Real Estate Law Section Council
January 30, 2019
COLORADO BAR ASSOCIATION
By conference call hosted by Chair – Joey Lubinski

HB19-1118

| 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: | | | |
| Andy Toft – Legislative Policy Committee Liaison | NA | | |
| David Kirch – Trusts and Estate Liaison | NA | | |
| Damian Cox – Forms Committee Liaison | NA | | |
| Deanne Stodden – Ethics Committee Liaison | NA | | |
| Geoff Anderson – RE Title Standards Liaison | NA | | |
| Jody Alderman – Eminent Domain Committee Liaison | NA | | |
| Chris Payne – Business Section Liaison | NA | | |
| Tyler Murray – Tax Section Liaison | NA | | |
| Elizabeth Deline – YLD Liaison | NA | | |
| Catherine Hance – RE Title Standard Committee | NA | | |
| Chuck Calvin – Immediate Past Chair | NA | | |
| Staff & Guests: | | | |
| Amy Sreenen (CBA) | NA | | |
| Jeremy Schupbach (CBA) | NA | | |
| Bridgett Shephard (CLE) | NA | | |

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| Chad Rounds Trust and Estates (Guest of David Kirch) | NA | | |
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| Dan Sweetser, Past Chair RESC | NA | | |
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