

MINUTES

CBA Real Estate Law Section Council
Date: Thursday, April 19, 2018 – 3:00 p.m.

University of Colorado Law School
Wolf Law Building, Room 301
2450 Kittredge Loop Road
Boulder, Colorado 80309

Attendance: See attendance sheet attached hereto.

1. Call to Order

Mr. Calvin called the meeting to order at 3:05 pm.

2. Welcome and Introduction of Guests

Mr. Calvin welcomed Council members, liaisons, and guests and invited everyone to introduce themselves. Guests included Prof. Richard Collins (CU Law), Greg Notarianni (Notarianni & Notarianni), Ron Jung (Jung & Associates, P.C.), Sarah Sicotte (Goodspeed & Merrill), Miro Kovacevic (Goodspeed & Merrill), Scott Peterson (Colorado Association of Realtors).

3. Approval of March Minutes

Mr. Cox offered revisions to the Minutes. Ms. Kube moved to approve the March Minutes as amended, and Mr. Cox seconded the motion. The motion was unanimously approved.

4. Financial Report

Ms. Leff reported a balance of \$66,851.10 in the Real Estate Section account as of March 31, 2018.

5. Chair's Report

a. Brief Overview of Real Estate Section Council Activities

Mr. Calvin provided an overview of the Section Council's activities. He explained that the Council spends time focused on lawyers helping lawyers, which includes planning real estate CLEs in the spring and fall of each year, monthly topical CLE luncheons, and the annual Real Estate Symposium. The Section also hosts the *High Altitude* listserv that provides a resource for Section members, including student members. Mr. Calvin encouraged members to sign up for the listserv. Mr. Calvin explained that one of Council's most important roles involves helping lawyers represent their clients, both through the judiciary and the legislature. The Bar is actively involved in legislative issues, with as much defense as offense in the process. The Council meets monthly, except for July, when the Real Estate Symposium is held, and December.

b. Title Standards Liaisons

Mr. Calvin announced Mr. Anderson as a new RESC Title Standards Committee liaison. Mr. Anderson will serve as liaison with Ms. Hance.

c. Approval of Title Standard 9.2.4

Mr. Calvin reported that Title Standard 9.2.4 received approval.

ACTION ITEMS

Real Estate Section Council Nominees

Ms. Leff presented the Nominating Committee's slate of Council members for consideration. The slate includes Brianna Dowling, Ronald Jung, James Meseck, and Robin Nolan. The Nominating Committee also nominated Jean Arnold as Secretary of the Section. Mr. Tueller moved to approve the slate, and Ms. Brimah seconded. Discussion included comments about the interesting background of the nominees. The motion carried.

Travel Reimbursement Policy

Mr. Calvin explained that this agenda item is a subset of the budget process but an important piece to discuss separately. Mr. Lubinski reminded Council of the draft policy distributed at last month's meeting. He highlighted the components that the policy addresses as a means of budgetary planning. A question was raised about the potential for reimbursement for today's off-site meeting. Historically, no specific distances have defined a person's right to reimbursement. Mr. Tueller noted that the policy seems to capture the status quo. Mr. Lubinski introduced the idea of including liaisons within the reimbursement policy. Mr. Tueller asked about policies from other CBA sections. Ms. Sreenen said that some sections follow ABA policies but most do not have their own policies. Mr. Lubinski noted that a lot of the provisions in this proposed policy come from Virginia, California, and other bar associations with written policies. Mr. Calvin expressed his preference for including liaisons within the scope of the policy. Ms. Arnold moved to amend the policy to include liaisons, and Ms. Alderman seconded the motion. The motion passed unanimously. Ms. Arnold moved to approve, and Mr. Schwartz seconded, a motion to adopt the policy as amended. The motion passed unanimously. Mr. Calvin will revise the policy and provide to Ms. Sreenen for posting on the website.

REPORTS AND INFORMATIONAL ITEMS

6. 2018-19 RESC Budget Presentation

Mr. Lubinski presented an overview of the proposed budget for 2018-19, with some history of revenue and expenses over the past few years. Ms. Alderman asked about increasing the topical luncheon cost to \$25 as an additional source of revenue. Others noted the likelihood that a small cost increase would not impact attendance. Ms. Brimah asked about how the \$10,000 sponsorship of the Symposium gets spent. Discussion ensued about the benefits of partnering with CLE Colorado to host the Symposium and the flexibility that our partnering affords us in planning and opportunities for participants. Mr. Calvin recognized this perennial discussion that should evaluate the circumstances on an ongoing basis. Ms. Pasquini asked about the overall CBA membership numbers. Ms. Sreenen and Mr. Lubinski explained the trends in membership decline at the ABA and other state levels. Ms. Pasquini offered comments about how to get more people involved in the Section by engaging more members through committee activities. Mr. Lubinski acknowledged the importance of identifying how to motivate participation. Discussion continued with comments and questions about membership development. Ron Jung offered perspective from Boulder and noted his interest in involving more local bar associations to increase engagement. He suggested a topical luncheon option in locations other than downtown Denver and the DTC. Mr. Lubinski

suggested that focusing on affinity bar associations may serve as a good starting point because those members already see the benefits of bar involvement generally. Ms. Brimah asked about how to publicize to CBA members beyond the Real Estate Section, with an idea posed to notify other section chairs about Real Estate Section events. Ms. Alderman suggested increasing the focus on membership through subcommittee work and additional Council or micro-volunteer participation. Ms. Arnold suggested working with liaisons, and Mr. Lubinski introduced the idea of creating a liaison position for the Sam Cary Bar, as an example. Mr. Calvin emphasized the need to on-board new members, as part of the CBA Best Practices push, without spreading ourselves and our budget too thin. Mr. Lubinski encouraged everyone to review the budget before May and offer comments.

7. Denver Affordable Housing Program

Mr. Lubinski introduced the Denver Affordable Housing Program's recently identified problems with properties dropping off the rolls and getting transferred at market value in violation of the applicable covenants pertaining to property appreciation and owner income caps. No tracking or enforcement has occurred through Denver. About 1800 homes are part of the program, and approximately 300 homes are out of compliance. Denver sent letters to all owners of these properties. Mr. Tueller expressed interest in this topic as a predominant issue in Telluride where some properties are subject to multiple covenants on properties and variations exist across properties. Ms. Kube noted that this issue arises in a unique way but is not unique in and of itself. She mentioned that this topic came up in Interprofessional Committee. She also explained that one particular development in North Boulder encountered problems with this issue, resulting in the approach of recording a mortgage to help prevent ongoing violations. Mr. Calvin suggested that the broader nature of this issue warrants a task force to determine whether the Section, as a group, can do anything to address concerns. Ms. Brimah supported the idea of appointing a task force to address this issue. Mr. Calvin appointed Mr. Tueller, Mr. Cox, Ms. Kube, and Mr. Lubinski. Mr. Lubinski posed the idea of developing a white paper. Ms. Kube suggested that the affordable housing community is working to address this and that the Section should not reinvent the wheel but that Council may offer ways to avoid this situation in the future, with an emphasis on the consumer side. Mr. Calvin asked for Mr. Anderson's participation to offer the form contract and title standards perspectives.

8. 2018 Real Estate Symposium

Mr. Lubinski continues to wait for publication of the brochure, which is ready but not printed for distribution. The schedule of topics and speakers is available online. Mr. Lubinski encourages Council members to register as soon as possible.

9. Legislative Update

a. Foreclosure Statutes (HB18-1254)

Mr. Lubinski reported that the foreclosure statute amendments have passed with all of the Bar's priority changes incorporated. The new law is largely cleanup legislation.

b. Remote Notarization (SB18-109)

The Bar and CMLA recognize the inevitability of remote notarization. But the Bar and CMLA want to ensure that remote notarization does not take the place of face-to-face notarization and substitute for the solemnity and review of competence that face-to-face notarization affords. Concerns relate to the proprietary nature of the remote notary platforms currently in existence and the broad release of personal

data that such platforms require. The coalition working on this issue acknowledges but does not fully embrace the concerns expressed by the Bar.

c. Squatter Evictions (SB18-015)

Mr. Calvin reported that Senate Bill 18-015 is one bill thought unlikely to pass and now likely to pass. Mr. Calvin gave the background on the bill, which would offer an expedited process for removing certain unauthorized occupants of residential property, and the trend for similar legislation in other states. The Section has actively worked to address due process deficiencies in the bill as introduced. Due to amendments to the bill in the House with the Bar's involvement, the bill will go to conference committee for discussion of the changes between the House and Senate. Mr. Calvin provided additional context to help Council understand the political negotiations involved in this process.

d. Data breach, CAM licensing, Other

Mr. Calvin reported that the data breach bill is in House Appropriations and that both arbitration bills failed. Ms. Leff reported that community association manager licensing failed on a 3-2 party line vote in the Senate.

10. Board of Governors

Ms. Dunn stated that the Board of Governors meets at the beginning of May and that the only item of note is the Section's support of Andy Toft's reappointment to Legislative Policy Committee.

11. Education/Topical Lunches Committee

Ms. Brimah announced that Ms. Arnold will speak in May on the Denver Green Roofs ordinance. Ms. Stodden will speak about recent ethics opinions in June.

12. Interprofessional Committee

Ms. Kube provided the report from the Interprofessional Committee meeting earlier in the day. A lot of discussion occurred in the committee around community association manager licensing. Conservation easements were also discussed at length, including the possibility of creating a new, small division in DORA to address conservation easements. Several bills already failed. The only bill that remains active is the conservation easement program sunset bill, which may die in the Senate.

13. Communications Committee

Mr. Starritt reported that the committee met and has topics ready for the newsletter that will go out later this month. Fred Skillern wrote about Rule 120. Mr. Starritt wrote about Ethics Opinion 130. The newsletter may include the Council slate, as well as a blurb about the school supply drive planned for the Real Estate Symposium in July.

14. Education/CLE Committee

Ms. Arnold reported that a new person is taking over for Heidi Ray to help with the spring and fall CLEs. The committee will begin work to get the fall CLE ready.

15. Colorado Housing Council

Mr. Sonnenshein attended the March Housing Council meeting where Rick Lipple presented on tax deductions. The April meeting was a follow up on the March tax presentation. Ms. Pasquini attended the April meeting and will provide materials from that meeting for the May Council agenda.

16. *Colorado Lawyer* Committee

Ms. Arnold reported that she and the officers will discuss the *Colorado Lawyer* article on “Which Deed?” based on comments from the officers. The committee has another draft article queued up for review as well.

17. Community Service/Charitable Committee

Ms. Kube reported that the committee met and discussed the options for providing information to members about community service opportunities and Real Estate Section members’ involvement in such activities. The committee as about ways to provide pictures and other announcements to members. Discussion ensued about the merits of a Facebook page or other social media option, as well as the CBA positions on these issues.

18. Membership and Practice Development Committee

Mr. Tueller announced that the committee could use additional members to help with recruitment efforts as discussed earlier in the meeting during the budget presentation.

19. CBA ADR/Mediation Committee

Mr. Anderson reported that he submitted Council comments to the ADR/Mediation committee. He extended thanks to Mr. Tueller and his partner, Andy Gibb, for offering comments. The committee is considering breaking the 75 page ADR/mediation guide into smaller pieces as a result of feedback received.

20. CBA Cannabis Law Committee

Ms. Dunn covered for Mr. Sonnenshein at the most recent Cannabis Law Committee meeting. Ms. Dunn reported that an interesting matter arose concerning deportation proceedings against people with green cards who are otherwise legally involved with cannabis-related businesses under state law. An example was presented of a person with a green card who performed bookkeeping for her husband who works in the cannabis industry.

21. CBA Title Standards Committee

Mr. Anderson reported that Title Standards Committee would like to see the title standards updated on the website. Also, the title standards are difficult to find through an online search. Mr. Anderson asked if someone could help make the standards more accessible online.

ADJOURN

The meeting adjourned at 5:07 pm.