

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, February 20, 2018 – 3:00 p.m.

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

Attendance: See attendance sheet attached hereto.

1. Call to Order

Mr. Calvin called the meeting to order at 3:04 pm.

2. Introduction of Guests

No guests were present.

3. Approval of November and January Minutes

Per Ms. Arnold, Item 13 on the November minutes identifies the book as Jack Greenwald's book. The book is actually a re-write of Mr. Greenwald's book, edited by Gilbert Egly (with Ms. Arnold as a co-author).

Mr. Cox moved, and Mr. Tueller seconded the motion, to approve the November minutes as amended.

Mr. Schwartz moved, and Mr. Brimah seconded the motion, to approve the January minutes.

4. Financial Report

Ms. Leff reported that the current balance in the Real Estate Section's account as of January 31, 2018, is \$70,706.54.

5. Chair's Report

a. Bylaws Revision Update

Mr. Calvin asked whether everyone received the updates to the Bylaws as approved at the January meeting. Ms. Leff indicated that she had not distributed the amended Bylaws but will send this document to the full Council. The Bylaws, as amended, are not expected to receive approval from the Executive Council until the April meeting. But we can proceed with elections under the new Bylaws.

b. Call for Nominations to Council

Mr. Calvin reminded Council members that nominations for new members are due by March 15th and asked that members encourage people to submit applications and nominations.

c. Liaisons Update

Mr. Calvin explained that, in the past, Council has had liaisons to and from the Title Standards Committee. Julie Waggoner is transitioning to ADR practice and is resigning from the Title Standards Committee liaison position. People interested in serving in this capacity should let Mr. Calvin know.

d. April Meeting

Traditionally, Council has held an off-site meeting in April. The intention of the off-site meeting has been to encourage attendance at a Council meeting by Section members who may not otherwise regularly attend and to give Council members an opportunity to gather for a reception and dinner. Attendance by non-Council members at these off-site meetings has been insignificant in recent years and not commensurate with the cost to the Section. This year, the Section is looking to have the off-site meeting in Boulder either at a law firm's office or the University of Colorado, in either case at a place where no facility fees would be payable. Additionally, it is expected there will be a reception following the meeting for all attendees, but no dinner for the Council.

REPORTS AND INFORMATIONAL ITEMS

6. Legislative Update

Mr. Calvin reported that discussion is occurring during the RESC meeting with Senator Gardner and stakeholders, including Legislative Policy Committee ("LPC") members, concerning the remote notarization bill. Bar representatives are not optimistic about adoption of Bar recommendations. The Bar has prepared proposed language for an alternate bill that may move forward if a sponsor will support it.

Dialogue with the Assessors continues concerning a possible bill to support records updates to reflect name changes not requiring title corrections.

Senate Bill 120, which would have offered additional time for a tenant to cure a payment default, was postponed indefinitely. The Real Estate Section Council opposed this bill unless amended, and the Legislative Policy Committee supported the RESC position.

Ms. Kube asked about action on Senate Bill 90, which would modernize the married woman property ownership statutes to reflect both genders. Ms. Kube expressed concern about the proposed changes on real property and questioned whether RESC would seek amendments. Ms. Leff explained that the bill underwent review and discussion by the officers, and no action was identified as necessary. The officers will consider Ms. Kube's concerns and check with Mr. Schupbach on the politics of the bill.

Senate Bill 15, a bill to allow expedited evictions from properties occupied by apparent squatters, went to the "kill committee." The Colorado Association of Realtors ("CAR") supports this bill concept and brought it back with a new name this year.

Mr. C. Payne asked about RESC's position on the data breach bill that would impose requirements on businesses to create document retention policies and purge certain person information maintained in paper and electronic records. The bill would require extensive notification of consumers in the event of a data breach, with strict timelines for compliance. Several stakeholder groups, including other CBA sections, are against this bill. The bill would extend to governmental entities, and school districts now oppose the bill too. RESC has not taken a formal position to date.

Ms. Leff generally discussed the process for identifying bills of interest and responding to requests for positions on bills. At this point in the legislative session, Mr. Schupbach submits bills to the officers for preliminary review and statements of position before the bills go on the spreadsheet circulated to Council.

7. Qualified Opportunity Zone

Information in the agenda provides a link to the overview of Qualified Opportunity Zones. Ms. Pasquini explained that the information on the website contains few details. The Governor's office, Office of Economic Development, CHFA, and other groups are looking at the legislation to weigh in. The Governor's office has a thirty day extension before submitting the bill to the Treasury. The language allows the Governor to define low income communities. Right now, low income communities fall within the same parameters as new market tax credit zones, but Qualified Opportunity Zones, per the legislation, can go up to 25% beyond the tax credit zones. This investment options requires the creation of a qualified opportunity company or partnership, with 180 days to create the entity. Investors can benefit from total tax deferral to 2026. Depending on how long an investor holds an interest in a zone, gains go down by ten percent. Any gain recognized by the investment is totally tax-free if held for 10 years. Ms. Arnold requested an article on this topic for the Spring newsletter, with a deadline before April 1st. This option looks like a boon for affordable housing. It fills gaps resulting from new tax laws. The Office of Economic Development seems focused on the business opportunity offered by these zones rather than affordable housing. Mr. Tueller asked about the source of funding. A partnership or corporation may hold 90% of its assets in a qualified opportunity zone, but any seller of real property who may realize gain on the property can invest in the zone. The option seems like more of a corporation-focused opportunity. Questions remain about how to divest or sell a business interest in the zone. The asset is not clearly real and personal property or real property only, and investors may pay tax if the fund sells the property or the partnership may realize the gain.

8. Standard Real Estate Contract – Section 13

Mr. Cox circulated a memo from Land Title Association of Colorado ("LTAC") that describes issues identified by LTAC with the revisions to Section 13 of the standard real estate contract proposed by RESC. LTAC will attend the April 3rd Real Estate Commission meeting to address the title company position. RESC should probably plan to attend and give Council's position. Ms. Kube is willing to attend the meeting and state the position of Council. If adding the Schedule B title exceptions to a deed constitutes the unauthorized practice of law, as suggested by LTAC, then preparation of the deed in itself could fall into the same category, and such preparation does not satisfy the requirements for general warranty deeds. RESC would rather see this done correctly. The Colorado Association of Realtors ("CAR") understands the Council's position and seems to favor it. One thing stated by LTAC at the forms committee meeting is that the title policy relies on privity of contract, so sellers cannot rely on the exceptions. But title companies create the deeds, acting as a scrivener, and then only allow the buyer to rely on the policy.

9. Board of Governors

Ms. Dunn reported that the next Board of Governors meeting will occur this spring. No other updates.

10. Education/Topical Lunches Committee

Mr. M. Payne reported that the March 1st topic will address assistance animals and fair housing, with the presentation by Mark Cron and Dan Sweetser. The committee needs a couple more topics to round out

the year. Please let Mr. M. Payne, Ms. Alderman, or Ms. Brimah know suggested topics. Mr. Calvin suggested that a tax attorney could present on the Qualified Opportunity Zone and any new regulations. Ms. Sreenen noted that the 1031 exchange luncheon was well attended last month. Mr. C. Payne recommended a luncheon addressing social media in HOAs and offered to provide a name of someone who could speak on this topic.

11. Interprofessional Committee

Ms. Kube reported on the January meeting, where the discussion focused on the sunset reviews of conservation easements, mortgage loan originators, and community association managers. The Real Estate Commission is working on language to get brokers on the same calendar year renewal schedule and how to address “employing broker” requirements. The Commission is considering experience-based criteria for employing brokers. Committee members talked about a 300% increase in real estate transaction related fraud activities from 2017 to 2018, with hacking predominantly occurring on the buyer side. FBI guidance suggests that action must occur within 24 hours of an identified loss of funds. The remote notary topic remains hot too. Other generic concerns about affordable housing initiatives and the squatter bill were expressed as well.

Mr. Cox reported that Senate Bill 18-125 concerning title companies as fiduciaries and the DORA sunset bills were discussed. Two positions on the Real Estate Commission are up for appointment. Appraiser qualification requirements are changing. New regulations no longer require appraisers to hold a bachelor’s degree. Six options exist for a person to obtain an appraise certification. A discussion of the remote notary bill occurred with different views about the proposed legislation expressed. LTAC does not object to Senate Bill 125 except for the hold on money. The forms committee approved a new seller’s property disclosure form because last year’s form contains errors.

12. Communications Committee

Ms. Arnold is writing a short article about Ethics Opinion 130. This Colorado ethics opinion takes a position contrary to that of the ABA’s opinion, which places Colorado in the minority and warrants an alert to lawyers coming from out of state to practice in Colorado. In summary, the opinion requires a client to waive confidentiality before the attorney can disclose any information. This specific waiver requirement applies before discussing a client matter openly in an education setting like a CLE. Questions came up about whether the client can waive this confidentiality in an engagement letter. The opinion raises several questions about what it means. Council members discussed the reach of the opinion and noted that attorneys can discuss information in reported cases involving their clients.

13. Education/CLE Committee

Ms. Arnold reported that Ms. Ray has helped put together the spring Real Estate CLE called “What’s NEW in Colorado Real Estate?” scheduled for March 29, 2018. The agenda will include a potpourri of topics such as green roofs, indemnification clauses, and a presentation by COLAP about how to stay sane while practicing.

14. Colorado Housing Council

Ms. Pasquini reported that Senator Angela Williams attended the January meeting to talk about anticipated legislation. Senator Williams is concerned about the housing crisis. She sponsored the rent cure bill (SB18-120), the rent receipt bill (SB18-115), and other housing related bills. The plastic bag bill got a lot of attention among those in attendance at Housing Council.

15. *Colorado Lawyer* Committee

Ms. Arnold reported that a “Which Deed Should I Use?” article by Eben Clark was presented to officers for review prior to submission for publication. An article discussing disbursement notices from the construction side will come out later this spring. A new Rule 120 article by Fred Skillern is also in the works.

16. Community Service/Charitable Committee

Ms. Kube reported that the committee met to consider options for how to engage Section members. The committee came up with a three-tiered approach: (1) Newsletter information about options, with encouragement that Section members submit pictures and updates of activities; (2) Collection drive at the Symposium for school supplies to donate to various organizations in the mountains to get local groups involved; and (3) An event, such as a run or Habitat build, for Section member participation. Mr. Lubinski expressed support for doing something at the Symposium and including information in the Symposium materials. Ms. Brimah suggested that Council mandate a donation for entry to the annual wine event at Symposium. Mr. C. Payne recommended a “Dress for Success” type of donation. Concerns about distributing the donations after the event will need further vetting.

17. Membership and Practice Development Committee

Mr. Tueller reported that the committee met and generated two thoughts: (1) do not take an overly ambitious approach, rather find a way to make an impact; and (2) focus on newer attorneys. The committee generally favored sending invitations and holding an event. Ms. Arnold asked whether the committee has considered attaching an event to an existing class, such as the Real Estate Basics class or the CBA-CLE Basics in Marketing class. The idea of attaching an event to the Real Estate Basics class got positive response from Council. Mr. Calvin commented on how this idea would target Council funds at newer attorneys, who stand to benefit from the Section membership. The committee committed to follow-up on this option.

18. CBA ADR/Mediation Committee

Mr. Anderson reported that he will circulate a new draft of the ADR manual for Council’s review. The current draft remains 75 pages long, with a lot of detail and some repetition. The manual continues to focus on family law but reflects some revisions to include other practice areas. Comments on the latest draft are due by the end of March.

19. CBA Business Section

Mr. C. Payne provided advance notice of anticipated updates to the Business Corporations Act in 2019. The Business Law Section (“BLS”) gives intense attention to the changes proposed in this area. Due to the ripple effects of any changes to the statutes, the BLS will want additional eyes on the drafts to identify unintended consequences. The Business Law Institute will take place this year on September 12th and 13th. Mr. Calvin asked whether the BLS seeks to supplement the “brain trust” on the Business Corporations Act drafting. Mr. C. Payne indicated that interested parties can contact him about potential involvement. He also let Council know that the Business Law Institute will include classes attentive to S and C corp advantages under the new tax code, entity conversions, bylaws versus operating agreements, etc.

20. CBA Cannabis Law Committee

Mr. Sonnenschein reported that proposed legislation would permit a pilot program involving cannabis delivery services. Another bill would lower the thresholds for investors in marijuana businesses. Mr. Tueller asked about the effect of US Attorney General Sessions' position on marijuana. Mr. Cox asked about title companies not insuring properties with marijuana activities. Ms. Ray reported that a cannabis symposium CLE is scheduled for tomorrow, February 21st. US Attorney Troyer will speak and will likely cover the Cole memo and implications of its revocation. Mr. Calvin stated that the High Altitude listserv has included discussion of the title company exceptions related to marijuana activities.

21. CBA Ethics Committee

Ms. Stodden could not attend due to illness. Council members were referred to the report included with the agenda.

22. CBA Forms Committee

Mr. Anderson stated that the forms committee did not hold a meeting this past month. The Committee approved a new seller's property disclosure form.

23. CBA Legislative Policy Committee

Mr. Toft was excused to attend the meeting with Senator Gardner on the remote notarization bill. Ms. Leff talked about the LPC process and responded to a question from Mr. Calvin about other bills of interest to the Bar. LPC continues to consider a bill that would raise the jurisdictional limits for county court cases. LPC is reviewing research that informed the proposed, increased limit as part of its determination of whether to support the bill.

24. CBA Title Standards Committee

Ms. Hance said, with respect to Title Standard 9.2.3, the Committee approved the standard with revisions to make the standard gender neutral. On proposed Title Standard 9.2.4, which addresses the requirement of including a county in the notary acknowledgement, the Committee continues to work on a revised standard for presentation to Council.

25. CBA Trust and Estate Section

Mr. Kirch reported that Trust and Estate Section shares RESC's consternation with the remote notary bill.

ADJOURN

The meeting was adjourned at 4:39 pm.