

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, March 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 3:05 pm.

2. Introduction of Guests

Mr. Calvin introduced the guests from CBA/CLE. Susan Hoyt offered Council members spare copies of the Land Measurement Manual that had originally been obtained for distribution to attendees of the Real Estate Fundamentals course.

3. Approval of February Minutes

Mr. Cox moved to approve the February meeting minutes, and Ms. Kube seconded the motion. Council unanimously approved the minutes.

4. Financial Report

Ms. Leff reported a balance of \$69,241.59 in the Real Estate Section account as of February 28, 2018.

5. Chair's Report

a. CBA Best Practices – Travel Reimbursement Policy

Mr. Calvin introduced the CBA Best Practices focus on budgeting and financial affairs. For example, we now have a Treasurer of the Section, who is also the Vice Chair. In the process of reviewing Section financials, the officers have recognized that some Section funds go towards travel for Council members who live outside of the Denver Metro region. The policy for reimbursing these Council members remains unwritten. A draft policy that largely reflects the unwritten policy was distributed to Council with the meeting agenda. At least two Council members currently qualify under this policy for travel reimbursement. Mr. Lubinski explained that no CBA travel reimbursement policy exists, but other bar associations' policies were reviewed when preparing this draft policy. Mr. Calvin noted the intent of inclusiveness and fairness in drafting this policy and asked Council to consider the policy more fully in advance of budget discussions at next month's meeting.

b. April Meeting – Thursday, April 19th, in Boulder

Mr. Calvin explained that, for planning purposes, the officers want people to know the date and location of the April meeting. The meeting will take place in Boulder, with the University of Colorado School of Law as the anticipated location, on April 19th. The April meeting historically seeks to engage attorneys

from a location-specific local bar associations. An announcement for this meeting will go out through CBA emails. Boulder Bar Association will facilitate this announcement process as well. The venue remains subject to change as the officers work to identify a student organization that may sponsor the meeting with Council at the law school.

ACTION ITEMS

Title Standard 9.2.4

Mr. Calvin reminded Council of the process for title standard approval. Ms. Hance explained that the existing standard 9.2.4 includes a requirement that the notary indicate the county where the notary is located, which the statutes have not required for years. The revised standard addresses the situation where the notary certificate does not contain the name of the county in which the acknowledgement was taken. The standard states a best practice of reflecting the county but recognizes that failure to state the county does not affect the validity of the instrument or certificate of acknowledgement. Mr. Calvin elaborated that the previous standard dealt with two situations: (1) the omission of the county; and (2) an inaccurate county. This revised standard only addresses the omission of the county because a question of how one would know about the inaccuracy calls the other situation into question. No questions were raised. Ms. Arnold moved to approve the proposed change in Title Standard 9.2.4. Mr. Schwartz seconded. The motion unanimously passed.

REPORTS AND INFORMATIONAL ITEMS

6. 2018 Real Estate Symposium

Mr. Lubinski announced that the Symposium is July 19th to the 21st at the Vail Marriott. The brochure is in the works now and will get circulated soon. Mr. Lubinski will ask Council members to “like” and “share” social media posts as we get closer to the event. The speakers are all lined up. Mr. Anderson will do a piece on toll roads. Ms. Stodden and Mr. Starritt will speak as part of the recurring 15 minute drill. Ms. Leff and Mr. Schupbach will speak about legislation. Rashmi Airan will come and speak about ethics, drawing from her representation of a developer and later imprisonment; as an aside, bringing Ms. Airan to the Symposium represents the only time Ms. Ray has written a letter to a parole officer as part of a speaker invitation. Darrell Jones from Denver International Airport will talk about development around the airport. Mr. Lubinski asked that the charity committee provide him with information as soon as possible (within 24 hours) to include details about the charity event in the Symposium brochure. Ms. Arnold asked about scholarships for law students to attend the Symposium. Per Mr. Lubinski, the law student in question could probably attend at no cost. Ms. Ray indicated that she will need to discuss this with CBA-CLE and determine how to welcome law students to a mountain conference without making the event cost prohibitive. Ms. Alderman suggested that this information may make sense to announce at the April meeting if students attend. Ms. Ray explained that no law student rate exists but that some CBA Sections underwrite a certain number of law students. On-site CLEs are typically open to law students at no cost. Ms. Deline asked about ways to encourage young lawyer attendance with reduced rates. The Real Estate Section’s coupon for young lawyers was mentioned. Ms. Deline asked for further entertainment of a YLD rate for the Symposium.

7. Legislative Update

a. Foreclosure Statutes (HB18-1254)

Mr. Lubinski explained that House Bill 18-1254, which proposes changes to the foreclosure statutes, is the outgrowth of discussions with stakeholders last fall. The bill, as introduced, was more robust than expected. CBA was prepared to oppose the bill, but the sponsors agreed to amendments that address concerns raised by the Real Estate Section. One small amendment concerning credit bids by the foreclosing party remains unresolved. RESC expects the sponsors to address this other amendment separately. RESC also expects more foreclosure legislation in future sessions to address more substantive items from the stakeholder group.

b. Remote Notarization (SB18-109)

Mr. Calvin updated Council on the remote notarization bill. He explained that, as the remote notarization bill moved into the House, the CBA's allies seemed to dissipate. Those allies actually remain with the CBA, but CBA stands at the forefront in addressing concerns. CMLA and the Bar have worked together and have amendments that may allow the Bar to go neutral on this bill. Land Title (the company, not the trade association) has some amendments to propose as well.

c. Name Change in Assessor Records

Mr. Calvin reported that the Section hoped to push legislation allowing owners to change their names in assessor records without needing to deed properties to themselves as assessor personnel may recommend. The county assessors do not seem as excited about this proposal as the officers initially perceived. The Property Tax Administrator supports the Section's ideas in principle, but the assessors seem lukewarm and have expressed administrative concerns. Someone from RESC was invited to speak to the issue at an assessor conference in June. The officers are still considering whether to accept this invitation.

Mr. Schupbach spoke about the two most interesting bills for the Bar right now, which are HB18-1261 and HB18-1262. These bills both focus on arbitration and encountered a lot of opposition from the Bar's ADR section. The Legislative Policy Committee took the position of opposing the bills unless amended. Politically, these bills do not seem well positioned this session. But these two bills, plus a third dealing with contracts of adhesion, are likely to resurface in working groups over the summer. The proponents are more committed to the concepts than the words and have pointed to 13 other states, including California, that have supported these concepts. Mr. Calvin noted that, except in the construction defect arena, the Section does not likely have a lot of interest. Mr. Cox noted that the Colorado Association of Realtors ("CAR") will oppose the bills due to arbitration provisions in broker agreements. Mr. Calvin committed the Section to help as needed over the summer. Mr. Schupbach asked for Section input to the extent these bills impact case law precedent for real estate practitioners and risk opening arbitration decisions to collateral attack.

8. Board of Governors

The next Board of Governors meeting is May 3rd. Ms. Dunn cannot attend, but Dan Sweetser will attend in her place.

9. Education/Topical Lunches Committee

Ms. Brimah announced that the next CLE lunch will cover First Amendment rights. Ms. Alderman described the topic as addressing how to keep clients from getting sued for defamation, with a focus on websites and social media. The lunch is scheduled for Thursday, April 5th, at the Maggiano's in the Tech Center. The Committee does not currently have a May topic but is working on scheduling a speaker to discuss subdivision regulations in different jurisdictions. An ethics topic is expected in June.

10. Interprofessional Committee

Mr. Cox provided a summary of the last Interprofessional Committee meeting. Highlights include the following: CAR is looking at municipal growth ordinances, licensing requirements, and the squatters bill (SB18-015). CMLA is interested in the fiduciary duties bill (SB18-125). The Division of Real Estate is focused on several sunset bills, including five conservation easement bills, a couple of which have already failed. The Division is working on rule-making for appraiser qualifications. People expressed uncertainty about what will happen with the Community Association Manager sunset bill. LTAC has some issues with the public trustee foreclosure bill. Clerk and Records are looking how to address deed recording requirements for protected parties. Denver apparently lost track of 400 homes in the affordable housing program. Appraisers are watching conservation easement and insurance appraiser bills.

11. Communications Committee

Mr. Starritt explained that no newsletter committee meeting convened over the past one and a half to two months. However, Fred Skillern will write an article about public trustee foreclosures. The committee needs another author and a deadline for the spring newsletter. Mr. Lubinski indicated that the spring newsletter should go out in April, with a summer newsletter in June to advertise the Symposium. Ms. Arnold said she will prepare an article on Ethics Opinion 130.

12. Education/CLE Committee

Ms. Arnold announced that the Spring Update, “WHAT’S NEW in Colorado Real Estate?” is scheduled for next week. The green roofs topic will headline the CLE, with folks from the Mayor’s Office presenting.

13. Colorado Housing Council

Ms. Pasquini reported that Michael Rosser presented on his book about the history of mortgage banking at last month’s Housing Council meeting. Mr. Rosser spoke about the first lenders, who were private parties from England. The book covers farm lending, and Mr. Rosser talked about underwriters who used to ride horses around the countryside, evaluate income, and interview neighbors and townspeople about farmers. The presentation emphasized mortgage lending as an historically risky business with different practices evolving over time, from the time to maturity of a loan to the terms that have changed with FHA’s involvement. Mr. Rosser continues to serve on the CMLA board and is a third generation mortgage lender. Ms. Pasquini noted that she learned about Sears mail order houses during this conversation.

14. *Colorado Lawyer* Committee

Ms. Arnold needs comments back from the officers on the “Which Deed?” article to submit to *TCL*. Ms. Arnold then needs instructions for the next steps to get the article published.

15. Community Service/Charitable Committee

Ms. Kube explained that the committee has not met since the February meeting, but a meeting will occur after the Council meeting to determine donation collection efforts for the Symposium. The current plan is to collect school supplies for JeffCo Action Center. Mr. Schwartz also recommends collecting for Outdoor Lab, which is a JeffCo-specific organization that permits all JeffCo 6th graders to go to Outdoor Lab. Ms. Arnold indicated that a quick turnaround for the Symposium probably weighs in favor of collecting school supplies. The committee will also prepare a list of volunteer activities to include in the spring newsletter.

16. Membership and Practice Development Committee

Ms. Mowry provided an overview of an April 10th Member Meet and Greet event originally discussed at the March RESC meeting. April 10th is the last date of the real estate course. All Section members, and especially Council members and officers, are encouraged to attend. Council has committed to contributing \$1000 toward this event. The meet and greet will occur on the 3rd floor outside of the CBA-CLE classrooms. Mr. Calvin stressed the importance of Council members attending. Ms. Alderman asked about a motion to fund this event. Ms. Alderman moved to spend up to \$1000 on this event. Mr. Cox seconded this motion. Mr. Calvin indicated that CBA-CLE will provide alcohol. The Section will contribute toward appetizers and champagne. Ms. Stodden noted that classroom attendance is relatively low (15 to 20 people) and often includes brokers and paralegals in person. Many people attend via webcast. Faculty and staff will make announcements over the next couple of weeks to encourage attendance. Receipt of the affidavit is one incentive for people to attend the last class. The motion to spend up to \$1000 on this event carried unanimously. Council members were asked to let Ms. Sreenen know if they plan to attend.

17. CBA ADR/Mediation Committee

Mr. Anderson invited comments on the revised draft manual, which remains 75 pages long. He provided introductory remarks about the comprehensive description of mediation that the manual offers without making itself inviting for people to read and use the information. He noted that the manual may help some judges but looks like too much for a layperson *pro se* party. The manual retains a strong domestic relations bias of earlier drafts. Comments are due by the end of the month. Ms. Arnold recommended an executive summary. Mr. Anderson indicated that another guide for people who have never mediated seems most appropriate. A question about the audience was posed. Judges and litigants are both potential audiences. Mr. Schwartz said two versions would make more sense. A one-pager of Dos and Don'ts and a checklist would help. A question was raised about whether the judicial branch will post this manual online. Mr. Tueller stated that he read the manual closely and came away with the same comments as Mr. Anderson; he will submit written feedback to Mr. Anderson. Mr. Anderson thinks official comments from the RESC could prove beneficial. He will draft and circulate comments for input from Council. Mr. Calvin indicated that this document does not seem useful for people going into mediation. Mr. Starritt asked about the origins of this manual and whether this manual stems from the ADR bills moving through the legislature.

18. CBA Cannabis Law Committee

Mr. Sonnenshein attended the last Cannabis Law Committee meeting earlier in March. That meeting involved discussion about immigration issues but nothing specific to real estate. No legislation discussion occurred at the meeting, though Mr. Sonnenshein has observed some on the listserv. Mr. Calvin asked about the marijuana delivery bill, but no updates were available.

19. CBA Ethics Committee

Ms. Stodden reported that Formal Ethics Opinion 135 came out on February 20th. Opinion 135 deals with ethical considerations of joint representation of two individuals in the same matter and builds on Opinion 58 and supersedes some of Opinion 67. The opinion addresses engagement letters and what information to outline in those letters to address joint representation. The Ethics Committee is currently working on letter responses and will vote on revised rules for the Committee at the April meeting.

20. CBA Forms Committee

Mr. Anderson provided a report on the Forms Committee meeting last week where the committee worked on a number of changes to the contract to buy and sell, including some concerns about estoppel statements and disclosure of parking and storage spaces in the common interest community (“CIC”) context due to regular confusion about these ownership rights. The committee decided to remove parking and storage items from the contract and let the buyer and seller figure out these title issues. The committee is also working to address disclosures in the CIC context. Personal property contracts for brokers are expected soon too. The next Real Estate Commission meeting is on Tuesday, April 3rd, at 1 pm. The Commission will address Section 13 of the real estate contract. Mr. Calvin will attend but is not entirely clear about the Section’s position due to confusion about contents of deeds versus effects of the deed once delivered. Mr. Cox will send a redlined version of Section 13 of the contract for review prior to the meeting. Mr. Tueller indicated that the form contract seems to leave out language about the need for the deed to reflect the terms stated in the contract. Mr. Cox indicated that the language proposed by the Section is included in the proposed language.

21. CBA Legislative Policy Committee

Mr. Toft noted that ADR, foreclosure, and remote notarization were already covered and are the most notable bills affecting Real Estate Section. He recommended that Council look at SB18-056, which would increase the jurisdiction of county court cases to \$35,000. Mr. Toft expressed surprise at the amount of discussion growing out of this bill about necessity of the changes to the jurisdictional limit. The most interesting change would involve a limit on attorney fees to those cases involving claims of \$15,000 or less. Judicial branch is not clearly in support of the bill at this point.

22. CBA Tax Section

Mr. Griffin was unable to attend, and no report was given.

23. CBA Title Standards Committee

Ms. Hance did not have additional information to report other than the update on Title Standard 9.2.4.

24. Young Lawyers Division

Ms. Deline discussed a possible opportunity for a mixer event with YLD if Council is interested in getting young lawyers involved in the Real Estate Section. YLD has planned a brunch around the Cherry Creek Sneak. She suggested that RESC could mimic that event with the Colfax Marathon and sponsor a team. YLD is putting together events around the bar exam and graduation to engage young lawyers. She should have more details by May 2nd. Mr. Calvin asked Ms. Mowry and Mr. Tueller to get together with Ms. Deline to discuss a mixer.

ADJOURN

The meeting adjourned at 5:04 pm.