

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, May 15, 2018 – 3:00 p.m.

Colorado Bar Association
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 3:03 PM.

2. Welcome and Introduction of Guests

Mr. Calvin welcomed guests Ron Jung, Jim Meseck, Brianna Dowling, and Dan Sweetser. Heidi Ray introduced Bridgett Shephard as the new Program Attorney working with RESC on programs.

3. Approval of April Minutes

Ms. Kube motioned, and Ms. Dunn seconded, to approve the minutes with amendments. Council unanimously approved the minutes with amendments.

4. Financial Report

Ms. Leff reported a balance of \$63,855.79 as of April 30, 2018. Mr. Calvin confirmed with Ms. Sreenen that the balance does not yet reflect expenses from the April offsite meeting.

5. Chair's Report

a. University of Colorado Real Estate Center

Mr. Calvin reported that the officers met with Curtis Sears at the CU Real Estate Center and discussed opportunities for engaging with the Center through micro-volunteering efforts. One option involves guest speakers at Real Estate Center classes or events. This connection with the Real Estate Center could serve as a good opportunity for Real Estate Section members to practice presenting CLE materials to a ready audience.

b. CBA "Do I Need a Lawyer?" Online Resource

Mr. Calvin explained that Ms. Sreenen alerted the officers to a link on the CBA website called "Do I Need a Lawyer?" and raised questions about whether the material remains current and relevant. The date on the site is 2001. Mr. Calvin suggested that the information warrants review and updating. Discussion ensued about ways the general public can identify attorneys to assist with limited scope engagements on residential real estate transactions. Mr. Lubinski noted that the CBA site provides a search option for residential real estate transactions. Mr. Calvin asked Liz Deline to engage YLD on assisting with the process of updating the article on the Section site. Ms. Deline suggested a periodic volunteer opportunity

for young lawyers to assist with real estate questions. Mr. Calvin stressed the need for updates to the article as a first priority. Ms. Kube, Ms. Deline, and Mr. Cox expressed interest in assisting with this project.

c. Comments on New FinCEN Geographic Targeting Order

Mr. Calvin reported that he read an ACREL email recently with the latest update from FinCEN. FinCEN directs title companies and certain geographic areas to report cash transactions in residential real estate deals. No place in Colorado is included on the list at this time. The GTO purported to be confidential, except for certain individuals/entities identified in the order. (That list of parties did not include ACREL.) The order covers properties bought by trusts, lower dollar amounts, and expanded geographic areas. Although Mr. Calvin questioned the source of the information about the confidentiality of the order, he did not receive a clear answer. The message here is for Section members to know that FinCEN continues to tighten oversight on certain residential transactions.

ACTION ITEMS

Student Pricing for CLE Topical Luncheons

Mr. Lubinski explained that the officers fielded a request for student rates at the CLE topical luncheons hosted by the Section. The specific request came from an undergraduate who was writing a paper on the Green Roof ordinance. A question was similarly raised about Symposium rates. Mr. Lubinski posed the question to Council about offering student rates for luncheons in particular. Ms. Deline indicated that some law school groups may have budgets to fund events like the Symposium. She suggested that a young lawyer rate may benefit students too. Ms. Arnold indicated that rates for students and even undergrads could help break down the industry silos that may otherwise exist. Council members expressed support for extending a young lawyer rate to students. Right now, the meals cost the Section \$17 per person, plus taxes and gratuity, which means the Section essentially breaks even with the \$22 member price. Mr. C. Payne said that BLS and CBA-CLE offer a group of classes at a reduced rate as part of a package deal. He acknowledged that BLS benefits from student organizations focused on business, while Real Estate Section does not have the same focused student groups at the law schools. Mr. C. Payne committed to giving the officers more details on this package for students. Mr. Calvin proposed at \$30 non-member/\$25 member/\$20 young lawyer/student price structure for the topical luncheons. Ms. Sreenen said some other sections offer a student rate with a cap on the number of students per class; those sections never hit the cap. Ms. Arnold moved to approve a \$30 non-member/\$25 member/\$20 price structure, with the \$20 rate extended to students and YLD members. Mr. Jung reported that Boulder charges \$25 for a CLE without lunch, with a \$15 student rate. Ms. Kube said the Boulder Bar is challenged to find a restaurant that can accommodate luncheons at a break-even price point. Ms. Sreenen said this new price structure will allow for the MP3s to stay at \$15. Ms. Alderman seconded the motion. Council unanimously approved the motion.

2018-2019 Real Estate Section Budget

Mr. Lubinski asked about comments and suggested changes for the proposed 2018-19 budget. The topical luncheons will get updated based on the new price structure approved by Council. The budget incorporates a \$10,000 Symposium contribution. Ms. Kube moved to approve the budget as included with the agenda. Mr. Cox seconded the motion. Ms. Arnold expressed appreciation for the budget presentation in April. Ms. Sreenen indicated the amount of review by Mr. Lubinski in preparing the budget included stacks of financials from past years. Council unanimously approved the 2018-19 budget.

REPORTS AND INFORMATIONAL ITEMS

6. Affordable Housing Task Force

Mr. Calvin introduced the task force's role as not one of solving affordable housing throughout the state but as offering constructive options for avoiding the Denver problem of homes dropping off the rolls and violating the covenants in the future. Ms. Kube presented options of moving the covenants from Schedule B-2 to Schedule B-1 of the title commitments and including seller disclosures at the time of contracting. Mr. Calvin noted that Denver knows about the task force. Mr. Lubinski stated that the Denver situation prompts the need for a best practices approach to this project by Council. Denver has asked the Real Estate Commission to update the disclosures, seller's property disclosures, and the listing contract to include any affordable housing covenants. Mr. Cox indicated that this request presents a timing issue for the Commission and seems to only affect 1500 homes in Denver without solving the problem. Ms. Pasquini presented her concerns about the Denver situation that did not get enforced for 14 years and now faces trouble. In her experience, Denver has taken the position that organizations not request or provide documentation from renters and owners. She recognizes the consumer issues in these transactions and expressed reluctance to help Denver specifically. Ms. Kube reiterated the need to educate and find best practice recommendations rather than solve the Denver problem. Ms. Kube suggested a pool of volunteers to help people facing enforcement action due to lack of understanding of this home ownership issue. Mr. Jung asked about a title standard approach. Ms. Brimah said this seems akin to methamphetamine disclosures. Ms. Arnold recognized the helpfulness of the water provisions in the contract. Mr. Calvin expressed reserved skepticism about contract changes solving the problem. Ms. Dowling raised a timing issue in that the contract gives an early indication of the covenant, while a title commitment occurs later in the process. The need for more affordable housing programs will make this issue more widespread. Partnering with Denver now may benefit more people in the long run. LTAC voted to support a contract change, as circulated to Council, at the June 5th Real Estate Commission meeting. Mr. Lubinski reframed the discussion with the following questions about the focus of this RESC task force: (1) What should the task force plan to produce as work product? (2) Should the Section attend the Commission meeting and take a position on the proposed contract changes related to affordable housing? Ms. Pasquini stated the public policy concerns. Ms. Kube said this is not a seller issue alone; refinances occur without notice, and owners owe more than the resale amount for properties. Assessor-level issues were raised too. Ms. Dowling said the City and County of Denver is looking at the Assessor side of the issue. Mr. C. Payne recognized the political gravity of the City and County of Denver's role in this process. Mr. Calvin suggested that maybe the Commission would delay the decision on this issue or consider an amendment out of the normal cycle. Mr. Cox said the issue will take more time to address from a Forms Committee perspective. Ms. Kube proposed that the Council express support without committing to the specific changes. Ms. Pasquini offered the need for a process similar to assessment liens in HOAs. Separate concerns were introduced about stigmatizing owners of affordable units. Mr. Calvin summarized that Council cannot yet take a position on specific proposals to the Commission but that the task force should remain on task to offer a best practice analysis.

7. Denver Green Roofs Ordinance Update

Mr. Calvin introduced the Green Roofs topic. Ms. Arnold directed Council members to the proposals from the Green Roof task force, as provided with the agenda materials. She explained the original options provided in the ordinance. Single-story retail buildings got a lot of attention in the task force review due to the high percentage of green roof required on these structures. Proposed changes will need approval by nine of 13 Denver Council members. Ms. Arnold provided an overview of what constitutes a green roof and what roofs can accommodate these modifications. Only three options are available under the original ordinance: green roofing, solar, or buyout. The ordinance is based on a law passed in Toronto. But

different circumstances exist in Toronto where more rain aids with the watering of the green roofs and the law only extends to new buildings. Denver's ordinance applies more broadly to existing buildings too. The task force presented proposals related to financial contributions for offsite green roofing. Solar panels are not necessarily required to go on the roofs in the new proposals. Task force recommendations would make energy efficiency levels meet the LEEDS Gold Standard. Cool roofs that reflect heat are part of the task force recommendations. These recommendations will go to City Council in July. Lots of debate is anticipated. Repeal is not expected. Fifty-four percent (54%) of voters supported this ordinance, and the proposals from the task force reduce costs while retaining the intended benefits. The task force will present its proposals to City Council in early June for review, with hearings in July and a vote in July or August. A clear need for action exists to allow construction to proceed with clarity on how the ordinance applies. The existing ordinance promotes new building at four-stories or lower because an exemption applies to those structures.

8. 2018 Real Estate Symposium

Mr. Lubinski reported that Symposium brochures are ready and available. Some included the insert for school supplies and others did not. CBA-CLE is working to recirculate the brochure to ensure that people know about the school supply drive. Mr. Lubinski will circulate the insert to Council members.

9. Legislative Update

Mr. Schupbach reported that the 2018 legislative session is over. Senate Bill 109 (remote notarization) died, but some people will go to Lexington, Kentucky, to read the bill out loud with amendments at the Uniform Laws convention in July. Senate Bill 15 (squatter evictions) passed with amendments. That new law is now all over the news. The bill includes due process and will serve as a solution to squatter issues all over the state. Landlord warranties of habitability, HB 1397, died in the Senate as expected.

10. Board of Governors

Mr. Sweetser presented news that Andy Toft was reappointed to the LPC. He also summarized the most recent Board of Governors meeting. Expect a \$10 increase to the CBA dues. CBA is showing an \$86,000 profit going into next year. The Bar was successful in 16 out of 17 bills that CBA weighed in on at the legislature. CBA support at the federal courts is well-received. Justice Coates will take over as Chief Justice of the Supreme Court. Greg Martin is retiring from CBA. CBA is currently interviewing the last three or four of approximately 100 applicants for Mr. Martin's position. Dick Gast, Real Estate Section member, is currently President of the CBA. Consultant Alli Gerkman presented some interesting statistics that suggest lawyers need to re-think their services/products. For example, seventy percent (70%) of state court cases have pro se parties.

11. Education/Topical Lunches Committee

Ms. Brimah said that Ms. Stodden will present at the June topical luncheon on the recent ethics opinions. Looking ahead to next year, the Committee wants to present on the Economic Opportunity Zones in August, with a possible combined topic including affordable housing. The Committee is open to ideas for next year. Please offer suggestions.

12. Communications Committee

Ms. Arnold reported that two articles are ready for the newsletter. One addresses ethics and the other discusses Rule 120. The Committee intends to separate the articles into two separate newsletters to allow

for a May newsletter and another one in June before the Symposium. Mr. Calvin suggested that Ethics Opinion 130 seems more critical for the Bar right now. Ms. Arnold suggested that the June newsletter will include a school supply drive article too.

13. Education/CLE Committee

Ms. Arnold reported that Ms. Shephard has already circulated the proposed agenda with speakers for the Fall Update CLE. The Committee currently has more ideas than what the full-day CLE can accommodate. The theme and focus is “Changing Landscapes” and will include sessions on green roofs, Geoff Anderson providing historical perspectives, and the anticipated effects of changes to I-70 in future years.

14. Colorado Housing Council

Ms. Pasquini reported that Housing Council has focused on affordable housing issues. This past month’s presentation was provided by Bob Munroe for Solvera Affording Housing Advisors. He described his experience as “whiplash on a roller-coaster.” He talked about tax reform in 2017, local issues and renewal of the state tax credit, along with CHFA’s funding from HUD that will help to fill the gap from the 2017 tax reform impacts on affordable housing. Much of the tax reform changes impact the four-percent funding program that funds about 30% of project costs. The new law retains private activity bonds but decreases corporate tax rates, resulting in lower demand for corporate affordable housing tax credits. Local level programs will help fill gaps too. Separately, the state budget bill included short-term increases until 2022 of the LIHTC and a HUD increase. Also, LIHTC is typically between 30 and 60% AMI but the budget bill allows for an average that allows up to 80% AMI. The May presentation will focus on Denver’s affordable housing program. Mr. C. Payne commented that Denver is working above 80% AMI, which is a challenge worth pursuing. This seems like a time for RESC to leverage Housing Council. For example, can other Housing Council participants assist with a white paper on affordable housing best practices?

15. Community Service/Charitable Committee

Ms. Kube recognized that the affordable housing task force seems to fall within this committee’s purview, along with the “Do I Need A Lawyer?” brochure. The Committee is also working on the school supply drive. The CU Real Estate Center contact may provide additional opportunities for community service by real estate attorneys.

16. CBA Cannabis Law Committee

Mr. Sonnenshein reported that Small Business Administration funding cannot go toward cannabis businesses. The feds have issued other guidance to borrowers and lenders that project-based funds cannot apply to cannabis businesses.

17. CBA Ethics Committee

Ms. Stodden reported on revised Ethics Opinion 89. Highlights include office sharing representations about law firm relationships. As more office sharing occurs, the more confidentiality concerns exist. Conflicts only arise if relationships exist. If sharing, then run conflicts and get waivers if shared resources create overlap.

18. CBA Forms Committee

Mr. Cox presented an update from the Forms Committee on Section 13 of the standard form real estate contract to buy and sell. The new language would offer checkbox options for the deed form. Ms. Kube asked about how the options address exceptions. Mr. Cox explained that the last part of the language in the draft form circulated to Council member, which states, “described by reference ...,” addresses this concern and seems like a decent solution by allowing the parties to the transaction to make decisions. The June 5th Commission meeting will include a full agenda of affordable housing and Sections 13 and 7 of the standard form contract.

19. CBA Legislative Policy Committee

Mr. Toft reiterated Mr. Schupbach’s report: We’re done with the 2018 session. Mr. Toft stated that he wants people to know how hard Mr. Schupbach works, especially on SB 109. Mr. Calvin did an incredible job on SB 109 as well. Mr. Calvin was the clear leader from CBA on 109. The outcome on SB 109 was certainly the right thing for the consumers and the state. The speed and clarity of Mr. Calvin’s amendments to the bill was astounding.

20. CBA Trust and Estate Section

Mr. Kirch reported that the Rules and Forms Committee is working on practitioners’ deeds. He noted that the RESC has not taken any official action on who could review the forms. Mr. Calvin said that one hang-up has been the bargain and sale deed and whether consideration is needed under the Statute of Uses. He is still looking for the text of the Statute of Uses. Mr. Calvin expressed support for involving the title standards committee on this issue. Mr. Calvin requested that Mr. Kirch send forms to Mr. Calvin, Mr. Anderson, and Ms. Hance. Mr. Kirch proposed that a title standard indicating no need for consideration when using bargain and sale deed could assist practitioners.

21. Young Lawyers Division

Ms. Deline reported that the YLD is in the process of bringing on new board members and does not have anything substantive to report at this time.

ADJOURN

5:07 PM