

MINUTES

CBA Real Estate Law Section Council

Date: Tuesday, November 20, 2018 – 3:00 p.m.

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

1. **Call to Order** – 3:04 p.m. Joey Lubinski

2. **Introduction of guests** - Joey Lubinski

Julie Waggoner. See Attendance Roster attached.

3. **Approval of October Minutes** - Joey Lubinski

Approved.

4. **Financial Report** (\$88,830.54 as of October 31, 2018) - Jean Arnold

5. **Chair's Report** - Joey Lubinski

This is the last meeting in this CBA location. There will be no December meeting. The next meeting in January 2019 is at new location: 1290 Broadway Ste. 1700, Denver, CO 80203. Park at the cultural arts lot is the best location to park.

a. **Status: *In re Diann Marie Cates* – Amicus – 10th Cir.**

Andy Toft, Lindsay Miller and Dan Sweetser volunteered to help. The Amicus is working through the Amicus Committee. December 14 is the filing deadline. Andy follow up. The groups is starting work now. The Chair of the Amicus Committee is in favor of filing a brief and RESC anticipates approval.

b. **Revised: Deed Form and Legislation.** LTAC Revised Deed Form and Report – attached.

The DRAFT legislation went to title standards committee – LTAC and CAR for comments the end of last week. There is general consensus on the changes. The draft should go to bill sponsor and then to drafting. Then will come back to RESC as part of the normal legislative process.

c. **RESC Holiday Party:** Friday, December 7, 2018 from 5:30 – 8:30 p.m. at Catherine Hance's Home – 1201 N. Williams Street #14C, Denver, CO 80218. RSVP through evite.

d. **Amicus Brief – Security Credit Services LLC v. Hulterstrom** – Filed. Briefs attached.

Thank you to Geoff Anderson and Greg Notarianni for drafting. We will await a decision.

e. **CBA Community** – Launch date for Higher Logic website: November 28, 2018.

Rolling out at the end of the month and start the transition.

ACTION ITEMS

6. Real Estate Section Fees.

Joey Lubinski

Amy Sreenen – other sections are not raising their dues. Suzanne Leff will be reviewing the budget and follow up next meeting to report. Parking and meetings that require parking are some of the variable costs. Also, if we have a National Speaker for Symposium, the budget is affected and could require extra funds. CBA needs to know if there will be dues increase by February, 2019. RESC will act on the dues in January. Joey Lubinski: Inclined not to change the dues for RES.

Agricultural & Rural Law	15	Intellectual Property	40
Alternative Dispute Resolution	25	International Law	20
Business Law	30	Judicial Liaison	15
Civil Rights Section	20	Juvenile Law	20
Communications & Technology	10	Labor & Employment Law	20
Construction Law	20	Litigation	25
Criminal Law	25	Military Law	15
Disability Law	15	Natural Resources & Energy Law	25
Elder Law	30	Real Estate	30
Entertainment & Sports Law	15	Solo/Small Firm Practice	15
Environmental Law	20	Taxation Law	25
Family Law	30	Trust & Estate	30
Government Counsel	15	Water Law	20
Health Law	15	Worker's Compensation	25
Immigration	25		

7. **Ratify:** Statement of Opinion Practices and Core Opinion Principals – Attached. Chris Payne

We have approval by the ABA. Approved by CBA in 2016. Guidelines apply to broad opinions and not just real estate opinions. The language of document has not changed since CBA approved in 2016. Mr. Payne asks RESC to re-affirm approval from 2 years ago. The second document is the “core opinion principals.” The intent of the core principals is to synthesize. No position on the “core principals” by Business Law.

Mr. Payne recommends no opinion on “core opinion principals” but ratify and reaffirm support for the guidelines. Adds RES to published bar groups.

Chuck Calvin: Committee on Foreign Investment in the US may be posing risks to national security. When writing an opinion, the practitioner may want to put an exclusion in their opinion.

Mr. Payne: Real Estate has recommended qualifications of opinions – these principals are broader. Common qualifications are added – such as not presumed to know all laws. Principals are to give support to an opinion giver who is being “bullied” – the practitioner can follow the “customary

practices.” The Practices is good for opinion givers and is trying to “nationalize” what is customary. There are differences by bar and by state.

Robyn Kube - Motion to reaffirm support and no opinion on core principals. Second. Passed.

REPORTS AND INFORMATIONAL ITEMS

8. Legislative Update

Jeremy Schupbach

A. Election Night Summary – Attached.

Most immediate issues is remote notary because the bill lost its sponsor as a result of the election. The remote notary bill was always strong with Republicans. CBA has an opportunity to work with Uniform Laws Commission. However, the Commission would make only minimal changes. The ULC will have to find a new Uniform Law Commissioner - maybe Rep. Matt Gray – to carry the bill. The backup would be Rep. Bueller from the Boulder area.

The following issues will likely be addressed in the 2019 session: Affordable housing; conservation easements; oil and gas setbacks; guns; Prop 112; red flag bill; full day kindergarten; land use;

CCI – writing with Hickenlooper’s office – around broadband rollout. Indiana law to piggy back on existing easement. Add line to an existing telephone pole.

Voidable transactions – turnover won’t affect. Uniform Law Commission is wanting to push through. White paper will go to next Committee meeting – bar persons should show up to meet and support the white paper.

B. Public Trustee’s Fee Proposal. Report on PTAC. Attached – PP Presentation.

We gave our feedback. But there will be a bill. There are issues with this bill beyond Boulder. Why raise fees if most counties can get it right? There is merit to getting simplified and consistent fees. This is a good legislature to pass these fees. Deanne Stodden has not heard anything since the last meeting. May want to give a more formal objection. So far CBA has given “concerns” but we have not taken a position. Jeremy Schupbach needs to know RESC’s position so he can get a stakeholder meeting together.

Joey Lubinski: Suggests a straw poll - should we oppose? Most Counties are turning over surplus money. Boulder is an anomaly. Arapahoe says Boulder has the lowest volume. Boulder was the only county in its own building. And Boulder was the last to reduce staff. Treasurer and PT are usually in the same office. Now Boulder has reduced staff and have negotiated to move their offices. Boulder is “out of the woods” for now. Boulder does not expect an ongoing issue. Most other counties do not have full time PTs and staff. And they flex their employees between Treasurer and PT.

Chris Payne: consumers are not at the table. Need to be sure the PT’s office is funded, but who is representing the consumer’s interest? Need to think of the broader interests.

Consider the purpose for the increase because the cost will be borne by borrowers. There is a controversy for the \$50 posting fee.

Chuck Calvin: CBA needs to be sure the PT system survives.

The PT must have a reserve fund. CBA needs to see the proposed bill before taking a position. Not a lot of justification and detail at this point.

Consensus: RESC should stay ambiguous until we receive and review the bill.

C. Uniform Laws Update:

Remote Notarization. Attached white paper. Chuck Calvin (Andy Toft, Joey Lubinski)

Chuck Calvin: We may have another shot at the Uniform Law Commission – and the fixes are simple.

Jeremy Schupbach: There is a meeting on December 6 – the Bar will take the lead. Mr. Schupbach wants to take 2-3 people to the meeting. Mr. Calvin and Andy Toft can attend. The Bar should prepare a set of simple Bar Amendments. Look very simple and not redlined at all. Here are 6 word changes – then the Commission is more likely to amend.

Andy Toft: He has a meeting with the Secretary of State, Griswold Team on December 5. Ms. Griswold is not paying attention to legislation yet – she is still learning to run the department. Mr. Toft hopes to do a deal with the SOS.

Uniform Voidable Transactions Act. RESC comments. Andy Toft and Suzanne Leff

Drafters of summary of objections - Thank you. Jeremy Schupbach is putting together the summary. Expecting a meeting in December with the Uniform Law Commission.

9. Colorado Housing Council

Melinda Pasquini (Jed Sonnenshein)

See attached handout.

Right to Survive initiative is on the May 2019 ballot. Allow tents and camping in public spaces. Big nightmare for Denver. Denver has been doing sweeps in areas of the shelters. This is a response to the sweeps. The proposed ordinance is broad and property rights, public space and safety are impacted. There are tent cities in LA – 50 blocks and related health issues.

Downtown partnership are partnering with various stakeholders. The City sees this as a larger issue. This is about behavioral and mental health. Last election received \$45M to help with mental health services – so can start dealing with the issue.

Ballot initiative in Denver – making it harder to get ballot initiatives on to the ballot; the initiative passed.

Law enforcement would be subject to civil penalties. Property owner and law enforcement subject to civil penalties.

Chris Payne: Class action on sweeps against Denver. This issue will be politically charged.

Tourism with Gaylord bubble – will push tourism out of Denver as Denver becomes less inviting. Mayor is quiet on this issue. The concern is that Denver is criminalizing poverty.

Durango is going through this issue with displaced persons. And they have a limited amount of space. Issue is not going away for communities across the state and the country.

Suzanne Leff: Last year “right to rest” bill. We can expect another one at the state level. Broadly defines a public space. Could include DIA as a camp group. Includes easements. Could mean free camping for anyone.

Would be an ordinance – and treated like the green roof initiative – could be rolled back or amended by a supermajority.

Joey Lubinski: RESC does not weigh in on a city issues. But we will want to monitor the initiative.

10. **Affordable Housing Task Force**

Doug Tueller

Working with CO Lawyer committee. May have a special edition of CO Lawyer – January 2020. Good feedback and have a meeting tomorrow. Or there could be a series of articles throughout the year – CO Lawyer – rather than one edition. Still working through that and finding authors. Need to decide on focus: topical or geographic. Still exploring.

May tie the articles with CLE to coordinate an update on what is going on in affordable housing: DHA and Land trusts. May do a discrete update in March – then morph into CO Lawyer articles.

Task force is limited. More eyes is good. Anyone who wants to be added on let Mr. Tueller know.

Robin Nolan – Interprofessional committee meeting. Got some response that some members want to be authors: CAR and LTAC have authors. She’ll follow up.

Any attorney and a layperson as authors – mixed perspective.

Joey Lubinski: This is a nice opportunity to get others from outside the Council involved.

11. **Education/Topical Lunches Committee**

Melinda Pasquini (Amy Brimah, Ron Jung)

November lunch is schedule. December off.

January – end of January consider a location for North Denver / Boulder area. Ron Jung was looking for a panel of Judges: Boulder, Adams and Denver. Northern metro area focus. Westin in Westminster has been used before. The committee needs to check on cost. Very tight timing to get a meeting scheduled in January, may need to look to February.

Topic – Real Estate Litigation, a perspective from the bench.

Joey Lubinski: Land Trusts at Maggiano’s -Erin Clark.

February - Construction Defect

Opportunity Zones (topic).

12. **Interprofessional Committee** Robyn Kube (Jed Sonnenshein, Robin Nolan)

Lobbyist talked about the agenda – Remote notarization.

Realtors split between lobbyists – National Association of Realtor support – but want to support data privacy.

LTAC – Section 7 and 8 of forms. HOA docs. LTAC: HOAs don't have the information. Really hard to get the docs in the time stated in the forms. Must have the HOA documents by the time title comes out. There is some threat about "rush" fees. Title companies will no longer front the amount that must be paid to the HOA. There are issues with getting tax certificates depending on the counties - especially at the end of the year.

Licensee buyout agreements – broker buys the property. Forms committee decided there was a problem with the current form. Need an attorney to draft the agreement.

Damian Cox: Association docs not due with title. Should be easier to get and not harder. Tax certificates, only two weeks that the assessor is shut down – so this is an end-of-year problem. Need to extend the deadline. Rest of the year should not be a problem. Licensee buy-out agreement – commission repealed in October, 2018. Now attorneys should draft.

Brianna Dowling – tax certificate cannot issue is 2 days. Need an amend-extend of run into a delay. Or an automatic extension of 10 days in the contract.

13. **Communications** Directors: Melinda Pasquini and Doug Tueller

Brianna Dowling – Get the newsletter out quarterly or every two months. Recurring articles. Take volunteers to write brief articles. Focus on bylines. Want to have name recognition when draft.

Reaching to other sections that are relevant. If more than one section let know.

Marrying community service piece – to newsletter.

Communications Committee (RE Section Web Page (COBAR)/Newsletter/Web Discussion Group)

Melinda Pasquini (Amy Brimah, Brianna Dowling)

14. **Education/CLE Committee** Damian Cox (Amy Mowry, Jim Meseck)

Spring update. Regulatory update; Affordable Housing; Ethics; Colorado Real Estate Practice.

Shorter update - but longer sessions for speakers.

Mechanic's Liens – Advanced topics is coming up.

15. **Colorado Lawyer Committee** Doug Tueller (Bryan Schwartz, Robin Nolan)
Focused on affordable housing. Want articles on a quarterly basis. Let them know.
16. **Community Service/Charitable Committee** Robyn Kube (Bryan Schwartz, Brianna Dowling)
No report. Any outreach for CA fire? Julie Baird and Joey Lubinski will reach out.
17. **Membership and Practice Development Committee** Robyn Kube (Amy Mowry, Ron Jung)
No report.
18. **CBA Ethics Committee** (meeting 11-17-18) Deanne Stodden
Two formal opinions issued in December: 8.4c. Conflicts.

Short form letter opinions. Two in December and one in February. Consultation with more than one firm; fee splitting.

Two 108 and 127 – should withdraw or amend: need changes due to 8.4. Some parts are incorrect. Note that they are in the process of amending. Inadvertent disclosure; social media for discovery.

Have an opinion that was approved. Went to the editing committee – and they had more changes on substance – redrafting. Responding to online posting of materials. How respond to postings online that are negative? Looking for good advice. Going back through the process.

Opinion 130. Revision. Dec. or Jan. No change to requirement that get consent. The restriction will be based on an ABA opinion. Getting tighter and more restrictive.

Opinion 133. Revision. Dec. or Jan.

Supreme Court has posted a flat fee rule and agreement – Supreme Court website – inviting comments by January 2019.
19. **CBA Young Lawyers Division** Liz Deline
Working with YLD to try and form a procedure for topical luncheons and Section. YLD attendance topics. Speakers in mind.
20. **CBA Legislative Policy Committee** Andy Toft and Jean Arnold
Training will come in January.

Andy Toft: LPC had its first meeting last week. Social and getting to know members. Broad band legislation pay close attention. Asked for copy of the draft bill.
21. **CBA Cannabis Law Committee** Jed Sonnenshein
No report.

22. **CBA Forms Committee** Damian Cox
Recommendations put together – will go to commission in December. Section 13 on deeds to tie to legislation.
23. **CBA Business Section** Chris Payne
See above.
24. **CBA Tax Section** Tyler Murray
Tax section is feeling budgetary pressures and may rethink their luncheons. January will go on as scheduled.
25. **CBA Title Standards** Geoff Anderson
Discussed proposed deed and what should be adjusted. Section 3 says every deed shall be a conveyance in fee simple. Quit Claim and Bargain and Sale are not a conveyance in fee simple.
Extent of title insurance company's liability for drafting. Title companies think they have enough liability from the closing instructions. They do not want statutory liability – i.e. negligence *per se*.
Deed warranties are gone due to Section 5. If have a statutory exception, real estate taxes and survey are out – everything in C&R office are out – so basically no warranties.
Dueling notary statutes to add 38-35-101 “or any other statute authorized by CO law” gives presumptions but does not tie to Uniform Notary Statute. Should add in. Do not tag to bill that is going to revise deeds. Should run as a separate statute.
38-35-104 deeds as evidence.

INACTIVE

26. Board of Governors Katy Dunn
December 7 next meeting.
27. CBA ADR/Mediation Committee Geoff Anderson
28. CBA Trust and Estate Section David Kirch
29. CBA Eminent Domain Committee Jody Alderman

NEW MATTERS

Taylor Ranch Case – CO App. 95 page opinion upholding the means by which the title was validated. Issued last month.

Amy feedback about sound quality on phone.

ADJOURN 4:54 p.m.