

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, November 15, 2016 – 3:00 p.m.

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

1. Call to Order

Ms. Nies called the meeting to order at 3:10 p.m.

2. Introduction of Guests

Ms. Ray, Ms. Sreenan, Mr. Schupbach and Ms. Hoyt of CLE were present.

3. Approval of October Minutes

The proposed minutes of the October meeting were approved.

4. Financial Report

Ms. Decker reported the current balance in the Real Estate Section's account is \$76,095.10. However, this is before the Section has contributed to the cost of the 2016 Symposium.

ACTION ITEMS: None.

REPORTS AND INFORMATIONAL ITEMS:

5. Potential Construction Defect Legislation

Ms. Nies reported that a meeting was held prior to our Council meeting with Representative Wist. The CBA and the Council will continue to be involved in reviewing any legislation aimed at construction defect litigation.

6. 2016 Uniform Acts for Colorado Task Forces

The Uniform Law Commission is meeting on November 18, 2016.

- **Uniform Commercial Receiverships Act**

Comments on the Act were provided by Mr. Lubinski and Mr. Calvin for consideration by the ULC.

- **Notarial Acts for Individuals Outside US**

Ms. Nies reported that this bill is being proposed by the Secretary of State. Mr. Schupbach doesn't anticipate wholesale changes, only minor changes. The bill is going through the ULC. The Secretary of State has proposed revisions to the Revised Uniform Notarial Act

to integrate language from the Colorado Notary Public Act, but without incorporating the 2016 amendments to the Revised Uniform Notarial Act that would allow for notarial acts outside the United States.

- **Revised Uniform Residential Landlord Tenant Act**

Ms. Arnold reported that she will draft a memorandum for the ULC that summarizes her previous report regarding proposed revisions to the Act.

- **Authorize Revisor to Publish Comments on Uniform Acts**

Ms. Nies reported that a conference call was held with the Business Law Section and Trust and Estate Section on this Act, and the general consensus is that the Sections will oppose the proposed bill.

7. Potential Mobile Home Park Legislation

Ms. Nies reported that the purpose of this bill is to allow for formation of entities similar to HOAs for mobile home parks. Mr. Schupbach does not anticipate this bill will move forward.

8. Task Force Reports:

- **Sunset Review Recommendations Task Force**

Mr. Schupbach reported that there is not a bill sponsor at this time. Ms. Leff reported that DORA and CAR want the Council's input on the proposed bill. Ms. Nies and Mr. Cox will work with Ms. Waters to develop a strategy for the task force.

- **Mortgage Loan Origination Statute Task Force**

Mr. Jones is not interested in changing the definition of mortgage loan originator, but will agree to work on drafting additional exclusions that could include family and employers. Mr. Schupbach has already discussed possible sponsors of the bill. The next step will be to draft the bill.

- **Deed Form Task Force**

Mr. Tueller prepared a memorandum with proposed language that was included in the agenda materials. The language will be proposed to Mr. Levine and Ms. Waters, then to the Forms Committee for review. The final form cannot be implemented until January 1, 2019. The proposal will be recirculated for additional review by the Council for further comment and discussion.

- **Vacation Task Force**

Ms. Waggener reported that the last version of the draft was proposed by Mr. Calvin. Mr. Schupbach suggested that revising the definition of "deed" will draw too much scrutiny. Upon motion by Ms. Arnold and second by Ms. Leff, the Council voted to revise only Section (d) as proposed. Mr. Schupbach will work on obtaining a sponsor and then approach the Legislative Policy Committee in January.

9. Title 12 Recodification Study

Mr. Cox reported that only minor changes will be made, which will not be proposed until 2018.

10. CCIOA Case Law (*Perfect Place v Semler*; *Ryans Ranch Cmty. Ass'n, Inc. v Kelley*; *DA Mountain Rentals, LLC v Lodge at Lionshead*)

These cases were provided for information only.

11. Supreme Court Civil Rules Committee – Rule 120 Update

Mr. Calvin reported that the Supreme Court conducted a public hearing on the proposed Rule 120 changes. Mortgage bankers were generally opposed to the changes. Other speakers were in favor. The Court should make a decision as to whether it approves the revisions to the Rule in the near future.

12. CBA Business Law Section Liaison

Mr. Cohen was elected as the new Chair. Mr. Payne reported on the manner in which the Business Law Section conducts its meetings. The Executive Council of CBA granted the Real Estate and Business Law Sections permission to approve the Statement of Opinion Practices as sections, without formal approval by the CBA as a whole.

13. Forms Sub-Committee

Mr. Anderson reported that the Forms Committee met and that there was discussion that a form personal property contract should be developed. Mr. Anderson relayed his comment involving brokers in negotiating such contracts could constitute the unauthorized practice of law, since the Conway-Bogue decision applied only to real property transactions. The issue will be raised with the Office of Attorney Regulation for an opinion.

14. Publications/Newsletter, Website, Discussion Group

Mr. Lubinski reported that the Winter edition newsletter will be done by the end of the year.

15. Education/CLE Committee

Ms. Arnold reported that the Spring Update planning is underway. The seminar will be held on March 24.

16. Education/Topical Lunches Committee

Ms. Alderman reported that there will not be a lunch in December. In January, the topic will be Property Rights in Space Law.

17. Interprofessional Committee

Ms. Leff reported that LTAC is working with the Clerks Association on the recording cost for deeds so that the cost is set for residential deeds and not on a per page basis. The appraisers are not pursuing an appraiser registration bill this year. CMLA and HBA reported that appraisal

backlogs are delaying closings. DOI reported on a new scam where bank owned properties are being marketed to third party purchasers by squatters or other non-owners.

18. Board of Governors

Mr. Alt reported that the Board of Governors is focusing on diversity in the Sections and reaching out to minority law school students. Action items included: adoption of a resolution supporting legislation to authorize two additional judgeships for the District of Colorado; approval of an amendment to the CBA bylaws adding one new member to the Nominating Committee for election of CBA Vice Presidents to include one member of the CBA YLD Council; approval of the Presidential appointment of Mario Trimble and Alison Zinn to the CBA Executive Council; and approval of minutes from May 2016 meeting. Goals are to further define a strategic plan to recruit and retain members, as well as to attract volunteers.

19. Publications/Colorado Lawyer Committee

Mr. Clark reported there will be a *Colorado Lawyer* article on friendly foreclosures.

20. CBA Trust and Estate Section Liaison

Mr. Kirch reported that the new form of supplementary affidavit is still under consideration.

21. Cannabis Law Committee

Ms. Dunn reported that they are having difficulty retaining government attorneys on the committee.

INACTIVE ITEMS:

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| 22. | CBA Ethics Committee Liaison | Deanne Stodden |
| 23. | Title Standards Committee | Catherine Hance/Julie Waggener |
| 24. | Young Lawyers Division Liaison | Nate Osborn |
| 25. | Community Service/Charitable Committee | Doug Tueller |
| 26. | Membership and Practice Development Committee | Mike Payne |
| 27. | Legislative Policy Committee | Andy Toft |
| 28. | CBA Tax Section Liaison | Tyler Murray |
| 29. | Eminent Domain Committee | Jody Alderman |
| 30. | Colorado Housing Council | Katy Dunn |

NEW MATTERS:

Ms. Nies reported that procurement reform at the State level is being discussed.

ADJOURN

The meeting was adjourned at 4:50 p.m.