

MINUTES

CBA Real Estate Law Section Council
Date: Tuesday, October 16, 2018 – 3:00 p.m.

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

1. **Call to Order** - Joey Lubinski 3:05 p.m.

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

See **attendance attached***: Mallory Hasbrook (YLD); Erika Holmes (MLPI); Josh McMann (Guest of Geoff Anderson).

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

Approved.

4. **Financial Report** (\$90,106.07 as of 9/30/2018) - Jean Arnold

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

Before proceeding to the Chair's Report, Mr. Lubinski introduced:

- Ms. Holmes from MLPI. She gave her informational report; and
- Ms. Hasbrook from YLD. She gave her informational report.

a. **Colorado Commission on Uniform Laws – 10-15-18 agenda.**

LLS No. 19-0157.01 Uniform Voidable Transactions Act (UVTA)

LLS No. 19-0161.01 Revised Uniform Law on Notarial Acts (RULONA).

Mr. Lubinski asked Jeremy Schupbach to report on yesterday's meeting of the Commission. Mr. Schupbach reports:

- **Uniform Voidable Transactions Act.** The Commission is eager to move forward on the UVTA and requests a white paper response to the current version of the UVTA. The Council discussed concerns with the current bill including the two big issues: (1) Jurisdiction of another state over property in CO; and (2) Choice of Law provisions. The Business Law Section has an issue with Series. Chuck Calvin volunteered to review the written analysis from an earlier version of the UVTA and assist in drafting an updated white paper. The Business Law Section may also prepare a white paper on the issues of concern they identify in the UVTA.

- **Revised Uniform Law Remote Notarization.** Mr. Schupbach and Mr. Calvin met with a coalition (CMA and Land Title) to oppose the RULRN. Mr. Schupbach recommends the following approach: 1. Work around the RULRN's issues about recording transactions; data storage; sale and transfer of data; and 2. Draft something to put in the bill; or draft CBA's own bill(s). Mr. Schupbach does not think the bill will be killed again.

Discussed rule making by the Secretary of State. But the SOS is taking no formal position on the bill. Rep. Wist says without good and enforceable rules, the RULRN cannot move forward. So far there have been no stakeholder meetings about the bill – and may not be until after the November elections. The Commission wants to go forward.

Mr. Schupbach suggested running a separate bill that: No notary can sell any data or information.

Andy Toft offered to write the white paper on the RULRN. He will send to Chris Payne to review with the Business Law Section. Then Mr. Schupbach will submit to Commission.

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

Briefs are due October 30 – Geoff Anderson and Josh McMann are waiting for input due tomorrow if not sooner from LTAC for their timing to request leave to draft an *Amicus* from LTAC. Someone with the RESC should draft a request to file an *Amicus* for RESC. The Appellate will file a request for a time extension. Mr. Lubinski asks that the request be until mid-December, if possible. The following persons were identified to possibly file the request and the brief on behalf of the Real Estate Section: Dan Sweetser, Nate Osborn, Lindsey Miller. Mr. Lubinski will contact them.

The RES brief will be asking the Court to find that recording a Quit Claim Deed is not notice of a title defect. The Panel is wrong under the Recording Act. The Quit Claim Deed was a “wild deed” outside the chain of title and ineffective. The Panel affirmed Judge Romero's ruling, but for the wrong reasons.

The Section must get to the *Amicus* Committee to ask permission to file a brief. The Section should file a second brief in addition to LTAC's planned brief.

Does the Section want to take a position as to whether the late recording of the DOT creates a lien? The brief should address only the Recording Act and use of a Quit Claim Deed – not the fraudulent transfer findings. The Panel missed the Recording Act analysis – so should be reversed. The BAP found that because a Quit Claim Deed was used, the title examiner should have concluded the transfer was suspect. The Panel assumed the grantor did not have good title. However, under the Recording Act, once the grantor parts with title, the analysis under the Recording Act is done.

Motion: Damian Cox moved, with a second by Robyn Kube, to ask the *Amicus* Committee for permission to write and submit an *Amicus* brief on the Recording Act and Quit Claim Deed issues discussed above. Motion passed. Mr. Lubinski will ask the Committee and will contact the individuals identified above about drafting the brief.

c. **Revised: Deed Form and Legislation.**

Mr. Lubinski thanked the task force for their good work that generated the sample versions of the legislation and deeds attached to the agenda. Mr. Lubinski is not sure the RESC will get unanimous buy-in on the proposed legislation. But asks for discussion.

Discussion.

- Address warranties with the goals: (1) to have a deed the title companies can draft; (2) Brokers are preparing general warranty deeds and that may not be in the best interest of the Seller; and (3) address off record matters.
- The proposed legislation will not change anything for Personal Representatives Deeds. Title companies will not draft PR Deeds.
- Concerns were expressed by several Council members that a deed should stand on its own and should not incorporate statutory exceptions.
- Solution to off-record matters: CAR says there is no way to change from General to Special Warranty Deeds and have warranties for off-record matters in the General Warranties.
- The survey exception language addresses that a Buyer can discover an issue as easily as a Seller by getting a survey.
- Most Buyers and Sellers in residential real estate transactions do not have lawyers involved in the process.
- The Council does not want to do violence to the system. People have title insurance. The Buyer is protected by a realistic amount of coverage whereas the Seller is not.
- Is this proposed law better than what we have?
- The proposed law addresses the survey exception.
- Mr. Lubinski will revise the off-record matters provision to tie-back to the statutory exceptions, and then the form of deed will allow “known” matters to be filled in. “Statutory Exceptions” has to have a fixed meaning. Survey exceptions are already built in to the proposed language.
- Mr. Lubinski will also revise the “covenant of seisen” language in the statute and deed form. Note: the covenant does not belong in bargain and sale deeds.
- The Statutory Mortgage Form needs to be reviewed.
- Preparation of deeds – Mr. Lubinski will change the language from “draft” to “prepare.”
- Title companies will have the liability if they prepare the deeds.

Mr. Lubinski will circulate the edited versions to the Council via email and then ask for an electronic vote. LTAC will be taking on the bill once the drafting is complete. The RESC will see it again through Bill Track.

ACTION ITEMS

6. ***Amicus Brief – Security Credit Services LLC v. Hulterstrom – DRAFT attached.***

DUE OCTOBER 30, 2018.

Mr. Lubinski congratulated Mr. Anderson for a good job of drafting the brief. The brief has been circulated, shared with John Dunn on the *Amicus* Committee and approved. Mr. Lubinski asks for line edits to be sent to the officers, if any. Then edits will be sent Mr. Anderson and Greg Notarianni before the deadline to file.

Motion: to approve brief as written, subject to suggested line edits, seconded. Motion passed.

REPORTS AND INFORMATIONAL ITEMS

7. **CBA Modern Law Practice Initiative Section** Erika Holmes, Past Chair

Ms. Holmes is talking to all Sections and Committees about the Modern Law Practice Initiative. The Initiative is a different way to practice law that is: Client-centered representation using innovative means to provide affordable legal services for clients. 70% of all litigants do not have attorneys; and they are not necessarily at poverty level.

The Initiative affects the way lawyers practice law. Four pillars:

1. Empowerment. Client very involved in the case - interactive. Customizable way of practicing for attorney.
2. Focus. Focus on client and how to meet their solutions and needs. Can focus on practice of law instead of the business of law.
3. Technology. Being very efficient with clients. Helps them find you. And during the case, give 24 hour access to portals. Automating the practice as much as possible.
4. Value. Affordability for client. Allows clients to get an attorney they otherwise could not afford. Value is profitable for attorney.

The approach works well with transactions and litigation.

Transactional – break the transaction into different tasks and then focus on tasks you enjoy the most.

Litigation – break into parts and ways to do fee agreements. Can do flat fee.

How to become a MLPI – tool kit online (free) CBA website. The kit explains how to bring technology into your practice. The MLPI has monthly lunches to connect with each other. Putting representation together as a package. Will be incorporated into CAMP (Colorado Attorney Mentoring Program) and through the Higher Logic website.

8. **CBA Young Lawyers Division** Liz Deline (with guest Mallory Hasbrook)

YLD Member Mallory Hasbrook – is visiting the Sections to gain better support for and from YLD with the goal to integrate with the Sections.

At the YLD Executive Council Retreat, YLD created separate subcommittees. Ms. Hasbrook is in charge of Section outreach. She is going to each Section and letting Sections know that YLD is available to support the Sections so YLD is not “stand alone” but integrates with industry Sections by:

- Co-sponsoring CLEs. Co-sponsoring Lunch events. Outreach for Elder Law Section. (also does Oil & Gas). Sections that cross over into practice areas. Reach out to Liz or Mallory. Future ideas – get involved with existing events.
- RESC Newsletter – discounted rates for young lawyers to RESC luncheons.
- Higher Logic may be the better way to communicate between Sections. YLD is not creating events without partnering with a substantive section.

9. **Affordable Housing Task Force** Doug Tueller

Mr. Tueller met with housing trust representatives in Telluride. They discussed conceptual ideas for different affordable housing models around the State. As discussed last month, Mr. Tueller proposes an article in the CO Lawyer and through the task force; then find the authors. Lawyer and practitioner – industry - co-authors. What works in resort communities? What works best in urban areas? Inventory topics and approaches. Goal is education.

10. **Remote Notarization/Uniform Laws Update** Chuck Calvin (Andy Toft, Joey Lubinski)

See above.

11. **Legislative Update** Jeremy Schupbach

See above. Mr. Schupbach is working with the Public Trustees on their version of the bill – the work is in progress.

12. **Board of Governors** Katy Dunn

No report.

13. **Education/Topical Lunches Committee** Melinda Pasquini (Amy Brimah, Ron Jung)

Cybercurrency for November. No lunch in December.

Possible future topics: Economic opportunity zones; and oil and gas (after election).

Location suggestion to be explored: Maggiano's Broomfield to reach RESC members who are North of downtown.

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

Report attached to agenda.

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

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

Melinda Pasquini (Amy Brimah, Brianna Dowling)

Newsletter is in DRAFT and reviewed by officers. The newsletter will come out next week and include volunteer opportunities to monitor voting.

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

Program went well. During panel discussion, the panelists began discussing the ballot issues. The discussion got political. Speakers should be reminded that the CLE is not a platform to discuss political views. In the future: caution speakers to be objective.

Attendance: 35 live and 16 on webcast. March 21, 2019 is the Spring Update. The committee has a conference call scheduled next week.

17. **Colorado Housing Council** Melinda Pasquini (Jed Sonnenshein)

CFO from DEN talked about improvements at DEN. The materials are attached to the agenda.

18. **Colorado Lawyer Committee** Doug Tueller (Bryan Schwartz, Robin Nolan)

Article in technical editing now on "Which Deed."

19. **Community Service/Charitable Committee** Robyn Kube (Bryan Schwartz, Brianna Dowling)

No report.

20. **Membership and Practice Development Committee** Robyn Kube (Amy Mowry, Ron Jung)

No report.

21. **CBA Legislative Policy Committee** Andy Toft and Jean Arnold

No report.

22. **CBA Cannabis Law Committee** Jed Sonnenshein

Meeting minutes attached to Agenda.

23. **CBA Ethics Committee**

Deanne Stodden

Meeting cancelled – no report.

24. **CBA Forms Committee**

Damian Cox

Next meeting in November.

25. **CBA Title Standards**

Geoff Anderson (for Catherine Hance)

No report.

26. **CBA Business Section**

Chris Payne

On break. Expect revision to corporate code.

27. **CBA Tax Section**

Arthur Griffin

No report.

INACTIVE

28. **CBA ADR/Mediation Committee**

Geoff Anderson

29. **CBA Trust and Estate Section**

David Kirch

30. **CBA Eminent Domain Committee**

Jody Alderman

NEW MATTERS

December 7, 2018 @ Cheeseman Park. Holiday party. Invitations will be sent.

ADJOURN 5:24 p.m.