

MINUTES

CBA Real Estate Law Section Council
October 18, 2016 – 3:00 p.m.

Colorado Bar Association Offices
1900 Grant Street, 9th Floor
Denver, Colorado 80203

1. **Call to Order**

Ms. Nies called the meeting to order at 3:05 p.m.

2. **Introduction of Guests**

Ms. Ray, Ms. Sreenan and Mr. Schupbach were present.

3. **Minutes**

The proposed minutes of the September 20, 2016 meeting were approved, as amended.

4. **Financial Report**

Ms. Decker reported the current balance in the Real Estate Section's account is \$76,741.38 as of September 30.

ACTION ITEMS

None.

REPORTS AND INFORMATIONAL ITEMS

5. **Title Standards Committee**

Ms. Waggener raised a concern with C.R.S. § 38-30-113(1)(d) which states that, "Every deed in substance in the above form [short form general warranty deed], when properly executed shall be a conveyance of the grantor's interest, if any, in any vacated street, alley, or other right-of-way that adjoins the real property unless the transfer of such interest is expressly excluded in the deed." It does not include a deed that is not a short form general warranty deed or other instruments such as a mortgage. C.R.S. § 38-30-150 defines "deed" to include mortgages, leases, releases, and every conveyance or encumbrance under seal. Ms. Waggener suggested that inconsistencies could be clarified through legislation. Mr. Calvin, Mr. Toft, Ms. Waggener, Mr. Tueller, Mr. Sweetser and Mr. Clark volunteered to be on a vacation task force to prepare recommendations for Council discussion at the November meeting.

Ms. Nies reported that the sunset review on real estate brokers and subdivision developers was sent to Council members. Ms. Waggener summarized relevant

recommendations, including: removing the word “standard” from “standard and approved forms” in the current statute about what brokers can use as part of their practice without being deemed to practice law; that there be a separate license required for brokers serving as property managers; that the composition of the Real Estate Commission be amended to require that one of the three real estate broker positions be changed to require one to be a broker who also is a property manager; and that the contract be revised so that “transaction brokerage” is not the default in the standard listing contract. Mr. Cox, Mr. Payne, Ms. Dunn, Ms. Alderman, Ms. Kube and Mr. Toft volunteered to be on a task force to prepare recommendations for Council discussion at the November meeting.

6. **Construction Defect Legislation**

Ms. Nies reported that the RESC officers, Mr. Sweetser, Mr. Alt and Mr. Schupbach met with Representative Wist to discuss his intention to run a construction litigation reform bill. The officers and Council members will continue to have conversations with him and also include the Litigation and Construction Sections of the CBA.

7. **Attorney Certification on Plats**

Ms. Waggener reported that the issue of cities requiring title certifications by attorneys on plats instead of title companies is being resolved in the City of Centennial. The City agreed to accept endorsements from a title company to satisfy the City’s requirement rather than requiring the attorney certification.

8. **2016 Uniform Acts for Colorado – Task Forces**

- *Uniform Residential Landlord Tenant Act*

Ms. Arnold reported that the task force submitted to the Uniform Law Commissioners its expanded memorandum analyzing the differences between the current statutes and the proposed uniform law and concerns related thereto.

- *Uniform Commercial Receiverships Act*

Mr. Lubinski and Mr. Calvin reported that they have reviewed the Act and are proposing revisions for review by Council members, which will be submitted to the Uniform Law Commissioners.

- *Amendment to Revised Uniform Law on Notarial Act*

Mr. Calvin reported that the Secretary of State’s Office is interested in Colorado adopting the Revised Uniform Notarial Act, but not the 2016 amendments to it, so that the statute addresses electronic signatures and seals.

- *Authorizing Revisor to Publish Comments on Uniform Acts*

Ms. Nies reported on a proposed bill concerning statutory authority for the revisor of statutes to publish official and Colorado comments relating to bills that enact

uniform laws in Colorado. It will be sent to Council members for review and further discussion.

9. **Torrens Registration Act Amendments**

Mr. Calvin reported that the Clerks' Association raised the concern that very few clerks know how the Torrens system works. The Clerks are suggesting that the Act be repealed, almost in its entirety, and a draft bill to that effect has been circulated.

10. **Title Standards (reprint in *Water Law Benchbook*)**

Ms. Nies reported that there were several errors Mr. Calvin corrected in the title standards version sent to the Council for review prior to printing. A central repository will be created to keep the latest version.

11. **Mortgage Loan Origination Statute – Task Force**

Mr. Sweetser reported that the task force met with DORA and lenders. The task force will likely propose an amendment to the definition of mortgage loan originator to make it consistent with the federal statute to, at the very least, exempt a person who inadvertently acts as a mortgage loan originator from a criminal prosecution.

12. **Deed Form Task Force**

Mr. Tueller has proposed revisions, but the task force is not prepared to make a recommendation to the Council at this time.

13. **Legislative Forecast**

Mr. Schupbach reported that most of the legislation is on hold until the election is over. The CBA will likely decide to push for some kind of amendment to the mortgage loan origination statute. So far, however, the CBA is only promoting one bill: the Trust and Estate Section is proposing legislation affecting the office of public guardianship.

14. **Business Law Section Liaison/Exposure Draft**

Mr. Payne reported on the Business Law Section's September retreat. He discussed some differences between the organization and objectives of the Real Estate Section and the Business Law Section councils. Mr. Payne confirmed that the ABA Statement on Opinion Practices had been endorsed by the CBA Business Law Section and now requested that the CBA Real Estate Section join them in requesting authority from the CBA Executive Council to either approve the Statement on behalf of the CBA or to grant the Sections permission to approve it separately. After further discussion, upon motion and second, Council members voted to endorse the Statement and join the Business Law Section in requesting that the CBA Executive Council either approve the Statement or grant the Sections permission to approve separately.

15. **Title 12 Recodification Study**

Mr. Schupbach reported that Title 12 will be recodified, but without substantive changes.

16. **Electronic Recording Technology Board**

No report was given.

17. **CBA Ethics Committee Liaison**

Ms. Stodden reported that the *Colorado Lawyer* did a survey and their most read materials involve ethics and professional responsibility, so the Committee will endeavor to produce more short articles. There are a number of opinion updates in the works, but nothing finalized.

18. **Publications/Newsletter, Website, Discussion Group**

Mr. Lubinski reported that the newsletter went out and that the Winter edition newsletter will go out by December 31.

19. **Education/CLE**

Ms. Leff reported that the Fall Update went well and that the CLE committee met to discuss the 2017 Spring and Fall Updates. The plan for the Spring is to have a heavier ethics component and to have a distressed real estate forum in the Fall.

20. **Education/Topical Lunches**

Ms. Alderman reported that the topic for the November topical lunch in the DTC will be "Understanding and Evaluating the Risks Associated with Water Rights and Municipal Water Credits in Real Estate Transactions".

21. **Interprofessional Committee**

No report was given because the Interprofessional Committee's October meeting had not been held yet.

22. **Trust and Estate Section Liaison**

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

INACTIVE ITEMS

23. Young Lawyers Division Liaison

24. Cannabis Law Committee Liaison

25. Forms Sub-Committee Liaison

26. Publications/Colorado Lawyer
27. Community Service/Charitable Committee
28. Membership and Practice Development Committee
29. Legislative Policy Committee
30. Tax Section Liaison
31. Board of Governors
32. Eminent Domain Committee
33. Colorado Housing Council
34. Supreme Court Civil Rules Committee Liaison – Rule 120 Update

NEW MATTERS

None.

ADJOURN

The meeting was adjourned at 4:40 p.m.