

MINUTES

CBA Real Estate Law Section Council Tuesday, August 15, 2017 – 3:00 p.m.

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

Attendees: See attendance sheet attached hereto.

1. Call to Order

Mr. Calvin called the meeting to order at 3:08 p.m.

2. Introduction of Guests and New Members

Each of the Council members, liaisons and CBA staff in attendance introduced themselves and the capacity in which they serve.

3. Approval of June Minutes

The proposed minutes of the June meeting were approved.

4. Financial Report

Mr. Lubinski reported that the current balance in the Real Estate Section's account as of July 31, 2017 is \$75,493.17, which reflects credit for dues payments. Ms. Sreenen confirmed that the July financials reflects payment of the sponsorship for the summer Symposium.

ACTION ITEMS:

5. Welcome of New Council Members/Reception

Mr. Calvin noted that the new members of the Council participated in an orientation session immediately before the Council meeting began. Mr. Calvin also announced a reception will be held immediately after the meeting for all Council members.

6. Thanks to Kristin Decker and Action to Fill Vacancies

Mr. Calvin reported that Ms. Decker has decided for health reasons to resign as Vice-Chair of the Section. Mr. Calvin expressed his regret that Ms. Decker would be unable to continue serving on Council and thanked Ms. Decker for her service to the Section. As the current Secretary of the Section, Mr. Lubinski was nominated to serve as Vice-Chair. Ms. Leff was nominated to serve as Secretary. The motion passed. Discussion ensued regarding filling Ms. Leff's now vacant seat on the Council. Ms. Arnold, as a member of the 2017 Nominating Committee, suggested that the Council consider appointment of one of the 2017 Council applicants that were not selected. Mr. C. Payne suggested that Council

may want to approach one of the former Council members who just rotated off of Council (E. Clark, J. Alderman).

7. Proposed Changes to Rules 250 and 260

Mr. Lubinski reported that an email was distributed to Council members inviting comments on proposed changes to Rules 250 and 260 regarding continuing legal education requirements. Mr. Lubinski also noted that the proposed changes are included as part of the agenda packet. Among the more significant proposed changes: (i) oversight for CLE compliance would move to the Office of Attorney Regulation, (ii) active members over the age of 65 would no longer be exempt from CLE requirements beginning January 1, 2019, and (iii) a specified proportion of CLE credits earned would be required to be “live.” Ms. Sreenen reported that the bar association is trying to put together a joint statement to the Colorado Supreme Court based on input received by individual members and the Sections. The bar association’s response to the Supreme Court is due at the beginning of September. Ms. Sreenen confirmed that comments will continue to be accepted for anyone who did not have an opportunity to submit comments previously.

REPORTS AND INFORMATIONAL ITEMS:

8. Committee Assignments and Committee Reporting

Mr. Calvin reported that he is in the process of reviewing the committee preference sheets submitted by members of the Council and that appointments will be made shortly. Mr. Calvin noted that new member outreach will be an important part of the Council’s work generally, but specifically for the Membership and Practice Development Committee.

9. Symposium Wrap-Up

Mr. Calvin reported that 380 pages of attendee evaluations were received and reviewed with mostly positive responses and some useful feedback for future conferences. Ms. Ray reported that the symposium was very successful and thanked the Section for its sponsorship. Attendance for the symposium was higher than the previous year’s symposium in Breckenridge, with about 410 total registrants. The 2018 symposium will be held in Vail on July 19-21, 2018.

10. CBA Best Practices Committee/Bylaws Update

Mr. Calvin reported that bar associations across the country are worried about declining membership and that they recognize the need to engage new members and demonstrate value. This concern led, in part, to the bar association’s best practices committee and development of a best practices handbook to make practices more efficient and uniform across the Sections. Mr. Calvin explained that if bar associations are expected to do more for member recruitment and retention with limited resources, staff needs to be available to devote significant time to new initiatives/member outreach. Uniformity and consistency among Section operations is an important way to help free up some staff time. As a result, the Section will need to revise its bylaws to more closely align with the best practices handbook. As such, a bylaw revision committee will be constituted by Mr. Calvin. Mr. Calvin further reported that another part of engaging new members is its ambassador role.

The bar association will be providing new member information on a rolling basis. It will be the responsibility of a committee of the Section to coordinate outreach. Mr. Calvin also noted that as a part of the new best practices, the Section will need to appoint a treasurer and he proposed that the Vice Chair serve in that capacity. These topics will all be further discussed at future meetings, however the Section needs to have its revised bylaws in place by December 2017.

11. Legislation Update

Mr. Schupbach reported on new legislation anticipated to be introduced in 2018. He reported there will need to be a task force for the Colorado Trust Code revisions and that the Trust and Estate Section is scheduled to complete its review of the draft on Thursday, August 17.

Mr. Schupbach reported that oil and gas will be busy this year, with safety and forced pooling likely to be hot topics again. With the construction defect reform legislation passed in 2017, it is anticipated that construction defects bills will not be prevalent but that affordable housing is likely to resurface as a contentious issue. Mr. Schupbach also reported that the tone of this session is likely to be more partisan because it is an election year.

Mr. Schupbach also reported that he is starting to hear from other industry groups on possible legislative issues. Among these possible issues that may touch on real estate are landfill regulations, reverse mortgages, and vacation rentals.

With respect to uniform laws, Mr. Schupbach noted that the uniform laws commission is seeking Section updates on the Colorado Trust Code, Commercial Receivership Act, and Landlord Tenant Act at their next meeting on September 22, 2017. Also on that agenda will be the 2016 remote notarization amendments to the Revised Uniform Law on Notarial Acts. Mr. Schupbach concluded by reviewing some of the other uniform laws that may be considered for introduction in 2018.

12. Colorado Trust Code Task Force

Mr. Kirch reported that significant effort has been made to modify the Uniform Trust Code for consistency with Colorado law. He didn't expect the new code to affect many real-estate related aspects of trust law.

Ms. Pasquini reported that she had observed several potentially important provisions of the Code, including provisions appearing to affect the Rule Against Perpetuities and a provision limiting trustees' ability to make loans or pledge property to guaranty loans.

Mr. Calvin suggested a new task force be constituted. Ms. Pasquini was the sole member of the previous task force and agreed to continue. Ms. Arnold volunteered to join the new task force.

Mr. Schupbach reported that the Trust and Estate Section was scheduled to take an up or down vote on the Code revisions at their meeting on Thursday, August 17, 2017.

13. Remote Notarization

Mr. Calvin reported that last year's remote notarization proposal was defeated, but there had been agreement that additional meetings would be held to continue the discussion. The Colorado Secretary of State has held summer meetings, and Bar has formed a task force with representatives of the Real Estate, Trust & Estate and Elder Law Sections to formulate a uniform position on behalf of the Bar. The Bar group has developed some basic principles. One basic tenet that has emerged is that Colorado residents should get the benefit of the convenience remote notarization can provide, but creation of a "gold standard" that would displace traditional face-to-face notarization should be avoided. As such, current discussion proposals have involved a more limited process than the private notarization provider has previously suggested. Mr. Calvin requested volunteers to continue to monitor the development of these discussions and proposals. Mr. C. Payne volunteered. Mr. C. Payne also asked whether these discussions overlapped with the possible uniform act on electronic notarization and Mr. Schupbach confirmed such overlaps did exist. Mr. Calvin noted some of the proposed limitations on types of acknowledgements and reported that there is a proposal to allow remote notarization overseas so as to avoid the need for citizens to travel to US consulates. Mr. Calvin reported that it appears Colorado will need to take some action. Mr. Calvin also reported that remote notarization is currently excluded from some malpractice coverage. Mr. C. Payne asked whether the mortgage bankers were involved in the remote notarization discussions at this point and Mr. Calvin noted that organization has been part of the Secretary of State's working group.

14. OLLS Title 12 Recodification

Mr. Cox reported that there have been no new developments on the recodification efforts over the summer. Mr. Cox then provided a brief overview of the recodification efforts for new members of the Council.

15. Section 13 Task Force

Mr. Calvin reported that the Section 13 Task Force is the result of the title company practice of putting broad exceptions in the general warranty deeds that they prepare. The broad language is borrowed from Section 13 of the Real Estate Commission form purchase and sale agreement, with the basic problem being that the exception includes off record documents. Mr. Tueller reported that title companies originally included this exception as a way to protect their title plant records/information and to get away from specifically listing exceptions. A memo was previously prepared by the task force and Mr. Cox reported that the memo will go before the Forms Committee this fall.

16. Board of Governors

Ms. Sreenen reported that the next meeting of the Board of Governors will be on October 14, 2017.

17. Education/Topical Lunches Committee

Ms. Leff reported that Mr. Lubinski will be presenting the next topical lunch on September 7, 2017 at the DTC Maggiano's. Mr. Lubinski will be speaking on recourse carveout guaranties in commercial loan transactions. The committee is planning topics for future lunches, including cryptocurrency in real estate financing, special districts and due diligence in transactions, Denver subdivision process, title matters including endorsements, surveys, environmental disclosures, party-wall agreements, tax liens and treasurers deeds. Mr. Calvin asked Council members to consider presenting on these or any other topics at a lunch.

18. Interprofessional Committee

The Interprofessional Committee next meets on Thursday, August 17, 2017.

19. Publications/Newsletter, Website, Discussion Group

Mr. Lubinski reported that the template for the newsletter will be available to the new committee. Mr. Calvin suggested that a shorter, more regularly produced newsletter would be beneficial to the Section and the members.

20. Education/CLE Committee

Ms. Arnold reported that the fall update program will focus on leasing issues. Mr. Cox will moderate. Ms. Arnold will present on ethics. The fall update program is scheduled for November 10, 2017. A brochure for a program on foreclosure law scheduled for September 22, 2017 was also distributed to the Council.

21. Young Lawyers Division Liaison

Mr. Calvin reported that a new liaison will be appointed. Mr. Osborn has suggest Liz Deline become the new liaison.

22. CBA Business Section Liaison

Mr. C. Payne reported that Business Law Institute will be held in Denver on September 13-15, 2017.

23. CBA Trust and Estate Section Liaison

Mr. Kirch noted that the Trust and Estate Section is working on the Colorado Trust Code, as noted above.

24. CBA Tax Section Liaison

Mr. Griffin was introduced as the new Tax Section liaison. Mr. Griffin reported that Tax Section meetings will recommence in August and suggested that a joint real estate/tax CLE might be beneficial to members of both Sections.

INACTIVE ITEMS:

25. Title Standards Committee

Mr. Calvin noted that the Title Standards Committee is considering a change in at least one title standard, to update references to the notary public statute as amended last year.

26. CBA Ethics Committee Liaison

No report until September.

NEW MATTERS

ADJOURN

Mr. Calvin adjourned the meeting at 4:35 p.m.