

MINUTES

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

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

Attendance: See attendance sheet attached hereto.

1. Call to Order

Mr. Calvin called the meeting to order at 3:05 pm.

2. Introduction of Guests

Mr. Calvin welcomed guests Alex Pankonin and Miro Kovacevic.

3. Approval of November Minutes

Mr. Calvin explained that he provided revisions to the November minutes to Ms. Leff. Council will receive revised minutes for consideration after the meeting.

4. Financial Report

Ms. Leff reported that the current balance in the Real Estate Section's account as of December 31, 2017, is \$74,777.47.

5. Chair's Report

a. Steck's Addition Update

Mr. Calvin reported that the Land Title Association of Colorado (LTAC) and the Denver Assessor have come up with historical and more modern legal descriptions for Steck's Addition properties. The Assessor will not insist on changes to the legal descriptions but requests the following preferred descriptions for these properties: If the property is completely within the area known as Steck's Addition: "East Denver, commonly known as Steck's Addition ..." or "East Denver, commonly referred to as Steck's Addition to Denver." If the property is partially within the area known as Steck's Addition: Partly in East Denver and partly in what is known as Steck's Addition to Denver." RESC has agreed to help circulate this information.

b. Meeting with Assessors

Mr. Calvin and Ms. Leff met with the Assessors, including the Denver Assessor, to address problems with failure to change names in property records due to divorce, marriage, etc. Assessors often recommend executing a quitclaim deed, which can lead to problems with title insurance and due on sale clauses. The parties agreed to explore possible legislative solutions. Discussion included entity mergers and conversions as well and determined that the Assessor's Reference Library can address those issues without the need for legislation.

- c. New Title Standards Committee Appointee – Cynthia Stovall

Mr. Calvin announced that Dick Francis has resigned from the Title Standards Committee and Cynthia Stovall was appointed to serve on the Committee.

ACTION ITEMS

- a. Amendments to Bylaws

Mr. Calvin thanked Amy Mowry and Bryan Schwartz for their assistance with the Bylaws amendments. A redlined version of the Bylaws was distributed to all Council members at the end of December. In addition to updates to conform the Bylaws to CBA Best Practices updates, the amendments seek to modernize the language. Most substantive changes occur in the elections section. After the revisions were circulated, problems with voting were also identified. Council members raised questions about the number of members on Council and section headings and suggested reorganizing sections and clarifying terms.

Ms. Kube moved to amend the proposed Bylaws, as follows, with allowance for other conforming amendments, including updates to the Table of Contents. Mr. Tueller seconded the motion.

In Section 6.1, change the caption to read “Election and Terms of Officers.”

In Section 6.3(b)(ii), second line, before “become unavailable” insert “resigned or otherwise.”

In Section 5.1, delete “shall have the right to vote at such meetings, but only in the event of a tie” and add “Section or the” before “Council may be asked to vote.”

In Section 10.3, insert language to revise the voting requirements and recognize the “Board of Governors Representative.”

Move Section 8.1(g) to a new Section 5.6 and amend the caption of Article 5.

Clarify Section 10.1 to reflect the Secretary’s responsibility to give notice of regular meetings.

Revise Sections 10.1 and 10.2 to address issues discussed.

Ms. Alderman moved to amend the motion to amend to revise the “office held by such member” language in Section 4.4 to state “position” rather than “office.”

The motion to amend was accepted by Ms. Kube and Mr. Tueller. Council unanimously approved the motion to amend the proposed Bylaws as amended.

- b. Proposed Nominating Committee: Suzanne Leff, Secretary; Damian Cox; Amy Mowry

Mr. Calvin explained that Council must provide affirmative approval for the nominating committee under the existing Bylaws. The terms of Ms. Alderman, Ms. Arnold, Mr. M. Payne, and Mr. Starritt expire this year. Mr. M. Payne moved approval of the nominating committee, and Mr. Tueller seconded the motion. Council approved the Nominating Committee without discussion.

c. Title Standard 9-2-3

Ms. Hance provided an overview of the proposed changes to Title Standard 9-2-3. This change deals with situations where a certificate of acknowledgment fails to reflect the date the notary license expires or the acknowledgment date is incorrect. Scenario (A) changes the statutory reference due to new law that addresses wrong dates and (B) addresses issues where errors occur within a notary certificate and means by which to correct the errors (e.g. not dated or wrong name or stamp not affixed). Mr. Cox moved to accept the proposed changes to Title Standard 9-2-3, with the request to correct the typo of an extraneous “d”, and Ms. Alderman seconded. Council unanimously approved the motion.

Announcement

Ms. Waggener shared that Amy Durfee West, former Section Chair in the 90s, died on Sunday, January 14, 2018. Ms. Durfee West left the practice of law to pursue ministry several years ago. Financial assistance is needed to help with the burial costs. Ms. Waggener will coordinate donations from Section members.

REPORTS AND INFORMATIONAL ITEMS

6. Legislative Update

a. Foreclosure Statutes

Mr. Lubinski reported that the last working draft of a foreclosure clean-up bill was received from the Denver Public Trustee’s office in November. No other updates are available, and no bills have been introduced yet.

b. Remote Notarization

Mr. Calvin reported that a bill authorizing remote notarization of documents is expected this legislative session. A draft was prepared by Legislative Legal Services. The Bar’s working group suggested some changes to the bill drafter. Last week the Bar’s working group received a new tentative draft that needs response within the next few days. Mr. Calvin presented an issue for input from Council. The existing statute does contain a requirement for stating the county where the notary resided or had an office when performing the notarial act. The traditional certificate includes a place to indicate the county. The new notary law effective July 1, 2018, makes the notary’s location the place where the act is deemed to occur and the venue for any dispute. The proposed remote notary law also includes reference to the county where the notary was at the time of notarization. Mr. Calvin asked Council to give direction on whether the county information adds to security or reliability of notarial certificates. The proposed changes to Title Standard 9-2-4 relate to this issue. Discussion ensued about the relevance of the notary’s location for evidentiary and title purposes. Per Mr. Pankonin, from the title company perspective, anything wrong with the notary gives rise to questions about validity of the conveyance and the presumption of the person signing. Anything wrong in the notary certificate will result in the title company seeking a scrivener’s affidavit. A question arises about proper venue if no county is included. Early statutes commissioned notaries through the county clerk, but notaries could perform notarial acts anywhere in the state. Members of the Title Standards Committee have approached Council about supporting a clean-up bill on this issue. Language of the existing statute may protect against invalidation of a notarial act, pursuant to CRS 24-21-526. Mr. Schupbach noted that no bill under discussion or introduced currently addresses this issue, which

would make support for a legislative fix difficult to implement at this time; however, an opportunity may exist to address this issue later in the session through a bill driven by LTAC or the Bar.

c. Draft Data Breach Bill

Mr. Schupbach reported that the Attorney General's office is revising a draft bill to address data breaches. Several Bar sections have provided input on the initially proposed language with concerns and opposition due to conflict with other controlling laws, such as HIPPA. Mr. Toft attended the AG's open forum with interested stakeholders. No one but those from the AG's office supported the draft at that time. Mr. Schupbach expects a new version of the draft bill in a week or ten days.

d. Draft Unauthorized Funds Transfers Bill

Mr. Schupbach stated that several Bar sections have reviewed a draft bill that would shift protections from "account holders" to "consumers" and could affect entities as a result.

7. Proposed Changes to Title Standard 9-2-4

Council discussed the proposed changes to Title Standard 9-2-4 in conjunction with the anticipated remote notary bill agenda item. No further discussion or action occurred.

8. C.R.P.C. Rule 1.6 and Ethics Opinion 130

Mr. Starritt alerted Council to CBA Ethics Opinion 130, which was approved on April 3, 2017. Mr. Starritt reported that Litigation Council met with Marcy Glenn of the CBA Ethics Committee about potential impacts of Ethics Opinion 130. Opinion 130 provides that, regardless of whether information is otherwise publicly available, an attorney must keep the information confidential under Rule 1.6, without any exception for educational purposes or newsworthiness. Lawyers need informed consent from clients for any disclosure of confidential information related to clients. Due to concerns about violations of the Rule, Litigation Council is forming a committee to draft a proposed exception to Rule 1.6 to allow disclosure of certain information otherwise publicly available in certain situations. Litigation Council invites Real Estate Section Council to join this effort. Other states and an ABA ethics opinion offer alternatives to the approach taken in Opinion 130. However, when Litigation Council discussed this with Ms. Glenn, she indicated that the Supreme Court committee may not be open to changes. Council members suggested that an upcoming Section newsletter and the Symposium 15 Minute Drill address this topic.

9. CBA Forms Committee

Per Mr. Cox, the Forms Committee approved the RESC language for Section 13 of the standard real estate contract.

The Communications Committee, Membership and Practice Development Committee, and Business Section will defer reports until the February meeting.

ADJOURN

The meeting was adjourned at 5:12 pm.