

MINUTES
CBA Real Estate Law Section Council
Date: Tuesday, September 21, 2021 – 3:00 p.m.

Colorado Bar Association
1290 Broadway, Ste. 1700
Denver, Colorado 80203

Call to Order – 3:05 Melinda Pasquini

1. Introduction of Guests Melinda Pasquini

None.

2. Approval of August Minutes..... Jim Meseck

The August Minutes were unanimously approved.

3. Financial Report (\$117,606.16 as of August 31, 2021)..... Jim Meseck

4. Chair’s Report..... Melinda Pasquini

a. Date and Venue for Holiday Party

1. Tuesday December 2, 2021

Ms. Pasquini announced the holiday party. In the past, the party was at Ms. Catherine Hance’s condo. Currently, the plan is to have the holiday party at Ms. Hance’s club room of her condominium association. More details are to follow. There will be no planned December meeting. Any issue that arises will be addressed by email.

b. In the News - Eviction Moratorium Status

Ms. Pasquini brought up for discussion the Supreme Court’s recent order striking down the CDC eviction moratorium. There is no longer a state ban on evictions. However, there is a state rental assistance program to allow tenants a certain amount of time to procure rent assistance. It is unclear what the deadlines are or how the program works. Information is being solicited to be shared with members.

c. The New West: Art, Real Estate and the Law

Ms. Pasquini reminded everyone of The New West CLE program that will be presented later this week in Telluride. This innovative program highlights the possibilities and uses of special districts for economic development. Mr. Doug Tueller was recognized for his involvement in the program and Ms. Erin Clark for her contribution to the program. There is a cocktail party afterwards.

d. CHBA’s Hispanic Heritage Month Kickoff Social

Mr. Meseck reported that the Colorado Hispanic Bar Association kicked off Hispanic Heritage Month with a social networking event on September 15, 2021. 103 attorneys registered for the event. Hispanic Heritage Month will run from September 15 to October 15, 2021. The CHBA focuses on public

education, scholarship, volunteer opportunities and acts as the voice of community advocacy, including immigration and land use.

e. Microaggressions and the Workplace Program Amy Brimah

1. September 27th from 4-5:30 p.m.
2. <https://www.cobar.org/Calendar/Event/sessionaltcd/CBA091521>
3. EDI Goals and Update

Ms. Amy Brimah discussed the CBA's program about Microaggressions in the Workplace. Everyone is encouraged to attend or to watch the recording. Microaggressions are detrimental. Most people are unaware of the impact of their unintended actions. The class is currently filled but members are invited to watch the recording. Suggestions on EDI programs and spreading the word on such events are encouraged as this is an important topic.

f. Happy Hour – Pints Pub

Ms. Pasquini announced a Section Council sponsored happy hour at Pint's Pub immediately following the adjournment of this meeting. All are welcomed to attend. This is an important time to connect as it represents a social opportunity and a chance to start committee discussions.

g. Real Estate Section Happy Hour Mixer

1. Thursday, Oct. 14th, 5:00 - 7:00 PM
2. 2701 Lawrence Street, Denver, CO 80205

Mr. Adam Aldrich invited and reminded everyone that the CBA Real Estate Section Council is sponsoring a happy hour mixer for the section's member on October 14th, 2021, starting at 5 PM at 2701 Lawrence St., Denver, CO. DU and CU Law students are invited. Ms. Pasquini encouraged everyone to get the word out. Ms. Pasquini suggested sending an invite to YLD members. One of the goals of the Mixer is to introduce attorneys to the Real Estate Section and get people interested in becoming members. Ideas were generated on how to reach out to other groups and organizations. Ms. Jean Arnold shared with the Council a presentation by the Law Club of a CLE event scheduled for Tuesday and Wednesday from 5-9 pm on 9 and 10 of November, 2021, as such an opportunity.

ACTION ITEMS:

5. Fairways at Buffalo Run Legislation ProposalRobin Nolan, Chuck Calvin

Ms. Robin Nolan introduced the topic by explaining that the taskforce had met and produced the draft that was previously circulated. Ms. Nolan summarized the concerns. The Fairway at Buffalo Run Taskforce was tasked with drafting a narrowly focused bill to address the issue. The purpose of the legislation is to correct the opinion of the Court of Appeals in the civil action known as *FD Interests, LLC v. Fairways at Buffalo Run Homeowners Association, Inc.*, 2019 COA 148. Ms. Nolan walked the Council through the draft. The draft legislation seeks confirmation from the Colorado General Assembly to confirm that the equitable remedy of reformation should, in appropriate situations and in accordance with principles equity, with due regard for all affected interests, be available to correct errors relating to the execution or contents of documents affecting real property. The proposed legislation would amend C.R.S. §§ 38-33.3-201 and 38-33.3-217 in order to achieve and effectuate the equitable means of reforming recorded documents affecting real property, including the creation of common interest

communities and the amendment of declarations. If approved, the draft bill would be introduced to LPC for approval and, assuming LPC approval, to potential legislators for sponsorship.

Mr. Chuck Calvin explained the work of the taskforce, including the contributions of Mr. Andy Toft. Mr. Calvin expressed gratitude for the work of the individual members who contributed to the draft. The Taskforce sought balance and flexibility for different scenarios. The legislative findings are modeled after the legislature's response to past Supreme Court precedent. It was also felt important to avoid situations where real property could be unnecessary encumbered by a stranger to title.

Ms. Pasquini suggested preparing a summary for lay people to quickly familiarize themselves as a potential next step.

Mr. Calvin explained that the aim was to produce something that was freestanding and avoid being connected to CCIOA bills that could be controversial. Mr. Calvin wanted to avoid something that sounded less technical and indirect.

Ms. Brimah asked if there was review and a bill summary by the Legislative Services Office. That review has not occurred yet and, at the appropriate time, the Legislative Services Office will provide their own summary per Mr. Calvin. Also, per Mr. Calvin the bill summary and bill title is for information uses only and does not become part of the statute.

Ms. Pasquini thanked the Taskforce for acting so quickly to address this topic and thanked everyone for their hard work.

Mr. Geoff Anderson asked whether the taskforce thought about the implications beyond just condominium declarations and to address other real estate documents not subject to CCIOA. Mr. Calvin explained that the issue was contemplated. The Taskforce's thinking was to keep the proposed bill language general and non-controversial. The draft bill does refer to issues of a broader pattern and something to be recognized as true. The goal was to avoid restating the common law of real property but point out that the common law does apply to these instances. Mr. Anderson suggested possible legislative history and commentary to be included to show a universal appeal of the proposed approach and that it is not unique.

Ms. Pasquini talked about what flexibility was necessary if LPC seeks leeway and its own course of action. In that event, Ms. Nolan would work with Mr. Andy White on addressing LPC changes. Mr. Toft shared a historical perspective of the LPC and suggested not to ask for permission to revise the proposed bill in advance. Mr. Toft did not expect opposition to the bill by LPC as long as the Section Council supports it.

Ms. Pasquini asked if anyone wanted more time to consider the draft. No one requested more time to review. Ms. Nolan explained that we need to act quickly in order to find a sponsor. LPC is expected to meet on October 12.

Ms. Angie Schmitz moved for approval of the proposed draft legislation to be submitted to LPC and Ms. Fritsche seconded the motion. The motion unanimously passed.

6. LPO Report Robin Nolan, Andy White, Jim Meseck

a. Survey of Real Estate Section Membership

Ms. Nolan reported that Ms. Jess Ham distributed a survey to the membership of the Real Estate Section and that some survey responses were received. All members are encouraged to complete and

return the survey as more information is desired in order to identify member resources, skills and interest to be available as a resource during the upcoming legislative session. The limited information we have obtained shows a wide general range of specific interests including litigation, mediation, business impacts, natural resources, energy, transactions, business planning, estate planning, government regulation, compliance, etc. The information was shared with the officers in order to be prepared to strategically identify, recruit and utilize individuals with matching interests and skill sets for upcoming possible legislative projects and taskforces.

b. Taskforces

1. Fairways at Buffalo Run

See the discussion and motion above.

2. Restrictive Covenants

3. Updated/Edited Taskforce Appointments

Ms. Nolan identified the need for an attorney to lead the Restrictive Covenants Taskforce. Ms. Nolan explained that the problem stems from the complexity of the issue and political considerations. The intent is to identify candidates and select a chair to then gather the members of this Taskforce to move forward.

Ms. Joan Fritsche was appointed to serve as the chair of the Special Districts Taskforce. Ms. Marjorie Sant was appointed as a member of the Special Districts Taskforce.

4. CCIOA

A. Colorado Uniform Laws Commissioners Meeting

There was a meeting of the Colorado Uniform Law Commissioners. Mr. Joey Lubinski presented. Based on that meeting, we can expect to be busy with CCIOA related issues, including new proposals for changes to common interest communities in Colorado. The Commissioners will meet again in November.

c. Property Ownership Confidentiality

1. Trust and Estate Aug. 23 meeting.....Steven Nagy

Mr. Steve Nagy attended the August 23 Zoom meeting of the Trust and Estate section to address property ownership confidentiality concerns. Mr. Andy White also attended. Ms. Nagy reported that the purpose is to protect criminal and stalking victims. Money was allocated by the state government to help members of the program utilize it to protect confidentiality of victim identity in real property records. The money must be spent before June of 2022. There are 4500 people involving 1800 properties that are potentially subject to the proposed protections. Most of the participants are renters. There is a real problem and need for protecting confidentiality. Several proposals have been made. The lead proposal is to create a trust. But there are still problems with this approach including the variables of the trust and potential unintended consequences. Use of the donated money is also an added problem as to who receives the benefit and how the money is used over time. Ms. Nagy spoke about creating a model non-profit and viewed this as a Trust and Estates issue rather than a real estate matter. Ms. Darla Daniels is

involved in a leadership role and may be a contact. Mr. Nagy offered to continue to be the liaison and stay involved.

Ms. Nolan explained the history of how the issue reached the Council's attention. Mr. Nagy added that the issues and options are still being developed and that there is a role for the Real Estate Section. Ms. Pasquini suggested creating a taskforce to coordinate communications with Trust and Estates and Tax Sections. Ms. Nolan pointed out that work has been done and they are trying to figure out how to put the trust option in place.

Ms. Pasquini wants the Section Council to stay connected in order to address any real property issues that may come up. Mr. Anderson expressed concerns about attempts to alter and need to protect the real estate records. Mr. Anderson gave the example of Florida's 23 categories of people who can alter or redact real property records. The consensus was to continue to monitor.

REPORTS AND INFORMATIONAL ITEMS

7. Membership and Practice Development Adam Aldrich, Zak Kessler, Joan Fritsche

Mr. Aldrich reminded everyone of the happy hour set for next month discussed above.

8. Interprofessional Committee Angie Schmitz, Eric Snyder, Reagan Larkin

Ms. Angie Schmitz reported that the Committee met last month and referred the Council to the Committee's report. The Committee will meet later again this week for their September meeting. Things are quiet as people prepare for the upcoming legislative session.

9. Education CLE Committee Angie Schmitz, Marjorie Sant, Steve Nagy

The Committee reported on the Real Estate Fall Update with the theme "When Other Practice Areas Intersect with Real Estate" that will take place on October 19, 2021. Ms. Schmitz reported that some of the faculty presenters are members of the Section Council including Ms. Schmitz herself, and Ms. Marjorie Sant. There is still time to register. The program can be attended in person or by Zoom. Ms. Kendra Yates was thanked for her organizational assistance and leadership.

10. Education/Topical Lunches Committee Jeremy Syz, Marjorie Sant, Cindy Lowery-Graber, Deanne Stodden

Mr. Jeremy Syz reported that the Committee met this month. The next presentation is entitled "Changes to the American Land Title Association Base Policy Forms" and will be co-presented by Peter Griffiths and Brianna Dowling. A speaker is committed for October and there are potential speakers for November and December as well. Topics for the presentations in 2022 have been identified with the Committee members actively reaching out to potential speakers on topics of interest. The Committee also reported on the challenges of doing in-person luncheons with feedback from Ms. Ham. Ms. Ham explained the options and ongoing problems that the Committee will have. One challenge is to work with the CBA and a host provider who has the technology capabilities to find a feasible means to do the presentations in a cost-effective format that will appeal to members. Cost to the participants, location, lack of a dedicated date and time for use of CBA offices are all real problems that other CBA sections have encountered. Currently, it would be possible to use the CBA class room but the date would change. Ms. Ham further pointed out that current in-person attendance is down and varies across all sections that she serves. Ms. Ham suggested that it may not be the time to return in-person luncheons.

Ms. Pasquini noted the number of Zoom attendees is high and wants to maintain that level of outreach. Ms. Brimah's point of doing the presentations at the CBA office was a good idea. Mr. Syz noted that Maggiano's does have a draw and if that is lost, maybe in-person attendance would decline. Also, it is difficult for speakers to present to both in-person and Zoom attendees. Speakers want to be engaged with the people in the room, rather than the online attendees who seem to get ignored. Maggiano's currently lacks the technology to provide what is needed for a Zoom presentation. Ms. Ham suggested a survey as to what members would prefer. Ms. Brimah recommended the survey as the number of attendees are up and this is a free CLE program offered by the Section. Ms. Yates mentioned that other sections are experiencing low in-person attendance despite the numbers that actually sign up. Ms. Pasquini expressed a desire to continue the practice of meeting in-person and gave the example of last month's POETS in-person meeting. Ms. Pasquini encouraged the Committee and others to explore options. Mr. Syz also mentioned the effects of the ongoing pandemic as we head into winter and agreed to develop a survey to gauge member interest. The Committee will report back with their recommendation.

11. Communications Committee.....Zak Kessler, Jeremy Syz, Eric Snyder, Joan Fritsche

Mr. Kessler reported that the Committee is making plans to move forward on the next newsletter as far as content and for when to distribute it. Ms. Pasquini identified the goal of issuing a newsletter every fall, winter, spring and summer. Ms. Pasquini solicited ideas for short articles. A suggestion was made by Mr. Aldrich regarding mobile home park operators. Ms. Arnold suggested a write up on electronic signatures on Colorado exceptions. Ms. Brimah and Ms. Deane Stodden made suggestions regarding the status of eviction moratoriums. Ms. Pasquini suggested providing a link to court and executive orders.

12. Publications Committee.....Adam Aldrich, Eric Snyder, Reagan Larkin

Mr. Aldrich reported that upcoming articles are planned starting in November. Mr. Aldrich explained the reason why there is no October article was due to the author of the proposed draft article being unwilling to make editorial changes. The November article will provide a landlord/tenant update by Burton Nadler. The Committee has also identified potential issues for future articles ranging from ground leases, to undisclosed principals in PSA and the impact of climate change on real estate and development. The Committee referred to their previously submitted report.

**13. Community Service Committee.....Cindy Lowery-Graber, Erin Clark, Marjorie Sant,
.....Steve Nagy**

Ms. Cindy Lowery-Graber reported that some of the members were able to meet this month. However, the Committee needs more background information on past projects and is in the process of scheduling a meeting as soon as possible to understand the historical perspective, gather more information and begin identifying future projects.

14. CBA Trust and Estate SectionChad Rounds

Mr. Rounds referred to his submitted written report.

15. CBA Title Standards.....Catherine Hance and Geoff Anderson

Mr. Anderson reported there was no meeting last month.

16. CBA Business Section Liaison Andy Toft

Mr. Toft reported that the Business Section meets tomorrow. There will be a presentation on how securities work, investigations, and other CLE programs are available as sponsored by the Business Section. The Business Section has a significant legislative proposal in the works and is focusing on other potential legislative matters. The focus is to make non-substantive changes to clean up little things in an attempt to make changes with Professor Lowenstein.

17. Forms Committee Liaison..... Geoff Anderson

Mr. Anderson reported that there was no meeting or report to provide at this time.

18. CBA Cannabis Law Committee Liaison..... Eric Jaworski

Mr. Eric Jaworski reported that the Committee spent time discussing *pro bono* program to assist social equity candidates, how they could help people and how to address a bill passed last legislative session preventing youth from having access to high potency products. There is a request to coordinate with the Real Estate Section to address cannabis issues and real property law. Mr. Jaworski was directed to discuss with the Topical Lunch Committee Chair.

19. CBA Ethics Committee Liaison..... Kate Strauss

Ms. Kate Strauss looks forward to reporting on developments in October.

20. Access to Justice Liaison Andy Toft

Mr. Toft reported that there was an upcoming meeting. There was a past request to help with eviction issues. Mr. Toft wanted to know where to send people for legal assistance and where people were being directed. Ms. Arnold shared her experience and upcoming related committee meeting tomorrow as a potential option for Mr. Toft. There are different EDI organizations that are making an effort to communicate with each other and to become aware of how different organizations can support each other. EDI efforts are gaining traction around Colorado.

INACTIVE

21. Colorado Housing Council

22. Affordable Housing Taskforce

23. Land Board Liaison

24. CBA Young Lawyers Division

25. CAR Liaison

26. CBA Tax Section Liaisons

27. Board of Governors

28. Diversity and Inclusion Liaison

29. Regional Membership Liaison

NEW MATTERS

ADJOURN 4:55