

## MINUTES FOR AGENDA

**CBA Real Estate Law Section Council**  
**Date: Tuesday, May 21, 2019 – 3:00 p.m.**

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

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**Call to Order** - Joey Lubinski

1. **Introduction of guests** - Joey Lubinski (see attached attendance)
2. **Approval of April Minutes** - Joey Lubinski

Amicus Brief was by - Deanne Stodden. Approved.

3. **Financial Report** (\$77,181.33 as of April 30, 2019) - Jean Arnold
4. **Chair's Report** – Joey Lubinski

a. Intro to Landlord-Tenant Law **June 13, 2019** with the Hispanic Bar. Will be held at the CBA from 5:00 – 6:30 p.m. Networking at 5:00 - 5:30 p.m. and presentation will begin at 5:30 – 6:30 p.m. Mr. Lubinski and Jean Arnold will discuss the recent bills. Brochure is ready to go out and is on Hispanic Bar's website. No CLE credit, but should be a good networking event.

b. CLC Luncheon – May 2, 2019 Sustained contribution award to Dan Sweetser. Amy Mowry, Damian Cox, Chuck Calvin, Suzanne Leff, Brianna Dowling, Joey Lubinski. Dan Sweetser - DBA President-elect - attended.

c. **Doug Tueller** – last in-person meeting on Council. Thank you.

d. Initiative 300, Grand Junction Camping Ban and 9<sup>th</sup> Circuit Ruling.

Initiative 300 – Section and CBA did not take a position on this initiative but provided information for inclusion in the last newsletter to educate members.

Grand Junction's camping ban issue discussed.

9<sup>th</sup> Circuit ruling and its analysis – right-to-survive issue. RES will stay up-to-date on this developing area of the law.

e. Cohen v. Chernushi – 10<sup>th</sup> Circuit Opinion (Bankruptcy) Involving Joint Tenancy. Cert. Petition filed with SCOTUS. Member Andy Toft forwarded for information. The decision on joint tenancy appears to be correct. Interesting because the losing side is seeking Cert. with SCOTUS.

f. Jess Ham is joining us as an observer, but will be starting in July and taking Amy Sreenen's place. Ms. Sreenen will be promoted. CBA is moving things around and Ms. Sreenen will be taking on different sections. Ms. Hamm has been with the Cannabis section and is moving to real estate.

g. Jed Sonneheim – Has resigned his seat – his term expires in 2020. There is a vacancy for his seat – next month we will need to elect someone to take his seat. Mr. Lubinski asks for suggested replacement candidate or candidates to vote on. Nothing to vote on, but next meeting will have candidate(s) to vote on. Mr. Lubinski will be asking the members whose terms expire 2019 to consider an additional year of service.

## **ACTION ITEMS**

### **5. Budget Approval 2019-2020**

Suzanne Leff

No changes from last meeting. Motion to approve - Damian Cox. Second by Robin Nolan. Approved.

### **6. Title Standard XIV – homestead declarations – redline attached. Catherine Hance/Geoff Anderson**

Geoff Anderson – Update to Title XIV, spouse includes a civil union, which has been superseded by Supreme Court's ruling on gay marriage. Clarification as to the existing law. Title Standards has been through this and recommends that RESC adopt this change. Technical tweak as to existing law. Motion to approve - Doug Trueller; Second by Amy Brimah. Approved.

Will also send to the Executive Committee for approval.

## **REPORTS AND INFORMATIONAL ITEMS**

### **7. Legislative Update - Recap of Session**

Jeremy Schupbach/Jean Arnold

Mr. Lubinski and Jean Arnold report that Jeremy Schupbach did an incredible job.

**HB 1167 Remote Notary** – Passed 8 times through Committee and Floor votes. The Session ended on a Friday. Second reading – the CBA had a deal that the Bill would be read on a Thursday, but by 11:59 p.m. they did not read it. It died on the calendar. CBA won on the merits, but died on the calendar. Will have to do this all again next year. We will need to discuss this Summer. Forecast: Will have to deal with the uniform law again. Have some natural partners. Data privacy will be a hot topic next year. Four tenets for the bill:

- **Can't sell data.**
- **Can't store online.**
- **Can't record the entire transaction.**
- **Must have an agent for service of process in CO.**

The problem was in the Senate. The for-profit company does remote notary here, but treats it as a Virginia transaction. No service of process or registered agent in CO for the transaction. Data is not stored in the CO jurisdiction. A CO notary cannot do remote notary. Chuck Calvin is the expert on these bills.

Land Title is committed to doing remote notary once the law passes.

Lawyers in practice should be expected to “bless” documents that have been remotely notarized. The notarial act is the “Virginia transaction.”

The preclusions in the proposed bill apply only to the notarized document.

**Landlord-Tenant Bills. WOH bill** changed significantly. Bed bug bill passed.

**Gallagher Amendment adjusted.** Went down .05%. Commercial will go up .05%.

**Mobile Home Park** oversight bill passed. New ADR potential model. Watch to see if it expands into HOA area.

**Broadband Infrastructure passed.** Rural electric associations opposed. The implementation taskforce will address the issues as the law goes into effect. Will facilitate service to rural areas.

**Public Trustee can be the Treasurer.** Passed.

**HB1212 Community Property Manager.** Strike below to extend the program for one more year. Do not know what will happen next year.

**Summer:** No stake holder meetings on real estate issues.

Affordable Housing (Robin Nolan) – will continue to meet; but is not a formal group. Reach out through interprofessional.

**SB181 Oil & Gas** – Thank you to Amy Mowry.

**Title Standards Legislative Concern.** 38-35-101 the acknowledgement statute, want to clean up. Best way to deal with for next session and how could it tie into remote notary. October conversation - have a proposed DRAFT. Took action at the March meeting. Will send to Mr. Schupbach who will work to find sponsors. Geoff Anderson will coordinate with Mr. Schupbach.

Chuck Calvin – have language in Deed Bill so be sure the acknowledgement statute ties in.

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

November 2019 – Joint Luncheon with Construction Law Section: *Ethics and bonding off mechanic's liens* – Let the Conflicts Begin

A bit more introductory material – not so focused. Jean Arnold will discuss with Dan Wennogle, the Secretary for the Construction Law Section. Joint CLE in November with Construction Law Section – Motion to have a joint meeting Passed.

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

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

Interesting article from another section could also be included in the Newsletter.

Bridgette Shephard – October 17. Housing and residential issues will be addressed at the Fall Update. She is putting together a brochure to have at the Symposium.

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| 14. | <b>Interprofessional Committee</b> | Robyn Kube (Jed Sonnenshein, Robin Nolan) |
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Robin Nolan. Fees from property management companies are too high and the timing (14 days) is a problem to get the documents.

Standardized recording fees. Bundling of fees – insurance commission raised as an issue. They don't want to refund the money that is being collected as part of the closing. Recording, release, etc. B522 Bulletin – Division of Insurance – you must account for the money as a fiduciary. The Title Company can collect to compensate for its personnel, but cannot “bundle” - if there is an overpayment, must return the money.

Brianna Dowling – there are title companies that are bundling the fees instead of being transparent. Bundle is important on a “certainty” level with the lenders.

Notary bill – LTAC discussed that more states will pass the “Notarize” bill version and will influence CO's law.

Positions on the Committee are opening up for next year – may apply to be on the Committee.

CMLA proposed having a homeowner's day at the Capital.

15. **CBA Ethics Committee**

Deanne Stodden

Had a meeting on Saturday. Have April and May report. Ethics Opinion 127 - Committee approved. Should see the revised opinion in a few months. Short-form opinion has gone to editing. Ethical duties for attorneys consulting with attorneys.

Lawyer services for agent opinions. The Ethics Committee decided that an attorney can act as an escrow agent and attorney as long as there is full disclosure.

16. **CBA Title Standards**

Catherine Hance and Geoff Anderson

17. **CBA Trust and Estate Section**

Chad Rounds

Rules and forms approved update to revocation of beneficiary deed form. Conservators deed needs to be updated – current version is an old Bradford form.

May 3 passed bill on state holding documents – limited the depository to various types of wills. No POAs. If holding an original Will, can electronically send it to the Judicial Dept. and then destroy the original. A few years before attorneys can take advantage of the law.

Colorado Uniform Trust Code. Section 5 addresses creditor issues. A committee is being formed to address that section.

18. **CBA Business Section**

Chris Payne

Still struggling with amending their Bylaws to come to the CBA standards. Excel at bringing content to members.

Entire tract on Cannabis. Really a lot of questions on use.

Phil Weiser to speak on the state-of-the-state.

Dept. of Revenue CO information marketplace. Gives an open source opportunity to use the information to study things about the State. There will be pressure to pull information into the marketplace. On the CO government website.

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| 19. | <b>CBA Legislative Policy Committee</b> | Jean Arnold     |
| 20. | <b>CBA Cannabis Law Committee</b>       | Jed Sonnenshein |

Section now.

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| 21. | <b>CBA Forms Committee</b> | Damian Cox |
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Section 13 is updated. Closing sections are updated. Listing contracts will be looked at in June.

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| 22. | <b>CBA Tax Section</b> | Tyler Murray |
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How did last month's meeting at DU go? Time of year – go in January or February and not a Friday. Not terribly successful at either CU or DU when the meeting is held in the spring (April is too late).

Will present at legislative update for Tax next month.

Tyler will stay as Liaison from Tax to RESC.

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| 23. | <b>CBA ADR/Mediation Committee</b> | Geoff Anderson |
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Strike through is going forward.

## **INACTIVE**

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| 24. | <b>Colorado Housing Council</b>      | Melinda Pasquini (Jed Sonnenshein) |
| 25. | <b>Affordable Housing Task Force</b> | Doug Tueller                       |
| 26. | <b>CBA Young Lawyers Division</b>    | Liz Deline                         |
| 27. | <b>Board of Governors</b>            | Katy Dunn                          |
| 28. | <b>CBA Eminent Domain Committee</b>  | Jody Alderman                      |

## **NEW MATTERS**

**ADJOURN 4:36 p.m.**

**ATTENDANCE ROSTER**  
Real Estate Law Section Council  
**May 21, 2019**  
COLORADO BAR ASSOCIATION

| NAME  | PRESENT | EXCUSED | ABSENT |
|---|---------|---------|--------|
| <b>Officers:</b>                                    |         |         |        |
| Joey Lubinski – Chair                               | X       |         |        |
| Suzanne Leff – Vice Chair                           | X       |         |        |
| Jean Arnold – Secretary                             | X       |         |        |
| Katy Dunn – Board of Governors Representative       | X       |         |        |
| <b>Members:</b>                                     |         |         |        |
| Amy Brimah (2020)                                   | X       |         |        |
| Damian Cox (2019)                                   | X       |         |        |
| Brianna Dowling (2021)                              | X       |         |        |
| Ron Jung (2021)                                     | X       |         |        |
| Robyn Kube (2019)                                   | X       |         |        |
| Jim Meseck (2021)                                   |         | X       |        |
| Amy Mowry (2020)                                    | X       |         |        |
| Robin Nolan (2021)                                  | X       |         |        |
| Melinda Pasquini (2019)                             |         | X       |        |
| Bryan Schwartz (2020) Phone                         | X       |         |        |
| Jed Sonnenshein (2020) Resigned                     |         |         | X      |
| Doug Tueller (2019)                                 | X       |         |        |
|   |         |         |        |
| <b>Committees / Liaisons:</b>                       |         |         |        |
| Chuck Calvin – Legislative Policy Committee Liaison | X       |         |        |
| Chad Rounds – Trusts and Estate Liaison             | X       |         |        |
| Damian Cox – Forms Committee Liaison                | X       |         |        |
| Deanne Stodden – Ethics Committee Liaison (Phone)   | X       |         |        |
| Geoff Anderson – RE Title Standards Liaison         | X       |         |        |
| Jody Alderman – Eminent Domain Committee Liaison    |         |         | X      |
| Chris Payne – Business Section Liaison (Phone)      | X       |         |        |
| Tyler Murray – Tax Section Liaison                  | X       |         |        |
| Elizabeth Deline – YLD Liaison                      | X       |         |        |
| Catherine Hance – RE Title Standard Committee       | X       |         |        |
| Chuck Calvin – Immediate Past Chair                 | X       |         |        |
|   |         |         |        |
| <b>Staff &amp; Guests:</b>                          |         |         |        |
| Amy Sreenen (CBA)                                   | X       |         |        |
| Jeremy Schupbach (CBA)                              | X       |         |        |
| Bridgett Shephard (CLE)                             | X       |         |        |
| Julie Waggoner, Past Chair RESC                     | X       |         |        |
| Adam Aldrich, RESC 2022                             | X       |         |        |
| Nathan Lawrence, Minor and Brown – new to RES       | X       |         |        |

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| Erin Clark, RESC 2022         |   | X |   |
| Angela Schmitz, RESC 2022     |   | X |   |
| Jeremy Syz, RESC 2022         | X |   |   |
| Dan Sweetser, Past Chair RESC |   |   | X |
| Jess Hamm (CBA)               | X |   |   |
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