

## MINUTES

### CBA Real Estate Law Section Council

Date: Tuesday, September 18, 2018 – 3:00 p.m.

Colorado Bar Association Offices  
1900 Grant Street, 9<sup>th</sup> Floor  
Denver, Colorado

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1. **Call to Order** - Joey Lubinski **3:05 p.m.**
2. **Introduction of guests** - Joey Lubinski
3. See **attendance attached**\*: Shanna Montoya CBA and Greg Notarianni, Esq.
4. **Approval of August Minutes** - Joey Lubinski

Doug Tueller moves to amend notes on Affordable Housing Task Force to add the discussion point about the merits of a white paper vs. inventory approach. Edit made. Robin Nolan: motion to approve as edited. Seconded. Motion passes: Minutes approved as edited.

5. **Financial Report** (\$90,105.52 as of 8/31/2018) - Jean Arnold

Amy Sreenen reports that the \$10,000 Section sponsorship of the 2018 Symposium was deducted from the RESC budget in June 2018.

6. **Chair's Report** - Joey Lubinski

- a. **CREC Rule Review Task Force (DORA)**

DORA is putting together a task force and RESC is invited to participate. The first meeting is Oct. 1, 2018. J. Lubinski will attend. DORA is interested re-reviewing all rules and regulations. The structure of the rules and regulations will change.

- b. **Margaret M. Cook**, Deputy General Counsel for Alliant National Title, appointed to **RESC Title Standards Committee**.

- c. **PTAC Proposed 2019 Legislation** to raise fees.

The Public Trustees will propose legislation for 2019 to increase fees for initiating foreclosures to address revenue issues and costs of operation. There is no draft legislation yet – just the white paper provided with the agenda.

A discussion ensued identifying questions for PTAC. J. Lubinski will summarize the questions. Deanna Stodden and Andy Toft will review the draft of questions / feedback from RESC. Jeremy Shupbach will forward the questions for PTAC's consideration.

RESC will follow the proposed legislation.

e. **Deed Legislation**

Damian Cox, Dan Sweetser and J. Lubinski will attend the LTAC working group on Sept. 25. The RESC does not yet have a position with the working group.

The direction the RESC is headed is to build in a provision for General and Special Warranty Deed to take exception to “all matters of record” rather than listing the exceptions in the deed. The title companies should be allowed to prepare deeds, but the Supreme Court needs to address what is the unauthorized practice of law.

The consensus is there should not be different deeds for commercial vs. residential transactions. The contract forms may differ but the deeds should not. The Buyer should not have jump through “special hoops” to get a SWD.

The Council discussed how some states use the phrase: “With statutory warranties.” Perhaps Colorado could use a similar approach using a legislative phrase such as: “Statutory Exceptions.” And define what that means.

The Council then discussed how to address off record matters. Buyers care about someone else having possession of the property. The definition of “Standard Exceptions” could be all matters of record and certain off record matters defined as those things a buyer could know about if the buyer inspected the property.

## **ACTION ITEMS**

7. **Amicus Brief** – *Security Credit Services LLC v. Hulterstrom.*

J. Lubinski reported on two potential Amicus briefing opportunities.

The first: by an email vote on September 14, 2018, the RESC voted (by 14 “yes” votes) to submit an Amicus brief in the Security Credit Services case. The Court of Appeals reached out to the CBA and to Cynthia Coffman with Attorney General’s office. Geoff Anderson and Greg Notarianni volunteered to draft the Amicus Brief.

A discussion then ensued about the “right” answer to address in the brief. The RESC will support the Appellate, who applied to revive a 20-year judgment in year 7 in order to obtain a valid transcript of judgment under the existing language of the statute.

The trial court ruled that the judgment did not have to be revived – the creditor only needed to request a new transcript from Clerk. The approach taken by the District Court is consistent with Colorado Methods of Practice.

The RESC consensus is that a creditor is entitled to a judgment lien throughout the duration of the judgment (in this case 20 years), but must go through the revival process after 6 years in order to obtain a valid transcript of judgment.

The Amicus brief should include a discussion of:

- The Colorado Methods of Practice.
- The current language of the statute at issue in the case.
- A discussion of the language of the statute before it was amended, which did not require the result requested by the Appellate. When the statute was revised the legislature got rid of the “judgment docket” language.
- The priority of the transcript of judgment is a separate issue. A creditor can keep the priority of the transcript of judgment if the creditor revives the judgment and follows the C.R.C.P 54(h) procedure: filing a motion for issuance of an Order to Show Cause and complying the C.R.C.P. 4 as to service.
- The issue can be framed as: How does a judgment creditor get a transcript of judgment under the current statute after 6 years; does the creditor have to revive an unexpired judgment? Answer: Yes, the judgment creditor has the right to obtain a transcript of judgment after 6 years, but must follow the required process of revival to obtain the transcript so that the date of revival is shown on the issued transcript.

G. Notarianni reported that a second case - Galvin - is also going up to the Court of Appeals on a similar issue. Mr. Notarianni received a call from a member of the Creditor’s Bar about the Galvin case.

Motion: D. Tueller moves that G. Anderson and G. Notarianni are authorized to write the Amicus Brief consistent with the position of the RESC – supporting the Appellate’s interpretation of the statute. Mr. Tueller further moves to thank Messrs. Anderson and Notarianni for their work.

On September 18, 2018, the RESC filed its notice with the Court of Appeals of the RESC’s intent to submit the Amicus Brief. The brief is due October 9, 2018.

A discussion ensued about the timing to circulate the draft brief and the need to have the CBA Executive Council approve the brief. The CBA Amicus Committee declined to accept the request so that committee does not need to be involved.

The pending motion was amended by R. Jung to allow Messrs. Anderson and Notarianni to use their discretion in requesting a time extension to file the Amicus Brief. And to limit the RESC review and comment period on the draft brief to 5 business days. The amendment was seconded by D. Tueller. Motion, as amended, passed.

## REPORTS AND INFORMATIONAL ITEMS

8. **Higher Logic platform launch** – update

Shanna Montoya CBA

Presentation and Tour of Higher Logic Platform.

The traditional list serve (from 1986) is being married with a more modern forum (from the 1990's). The result is the Higher Logic platform. Ms. Montoya conducted a tour of the website and showed how it would work. The purpose of the new site is to help with communications and build a sense of community around Colorado. The RESC will continue to have the list serve capabilities, but the threads will be easier to follow, will be archived and searchable.

Community Home page includes: a library; Section blogs; events; member directory and the ability to post legislation.

Transition: Soft launch date and a hard launch date. Once CBA works through the technical issues, CBA will send an email to the communication committee for each section to give notice of the Soft Launch date. After the Soft Launch the existing list serve will continue for 30 days.

A discussion ensued about the Moderator duties and rules for the list serve. J. Lubinski will discuss the new platform with Professor Collins. And Ms. Montoya will provide one-on-one training for him.

Both Ms. Montoya and Ms. Sreenen have Super-administrator status and the ability to remove posts.

9. **In re Diann Marie Cates** – *Amicus Discussion* – 10<sup>th</sup> Cir. Joey Lubinski

This is the second Amicus opportunity. Opening briefs will be due in 2-4 months. We are awaiting the briefing schedule. The issue of concern is the Court's reliance on Oklahoma law – contrary to existing Colorado law; and erroneous comments about the use of Quit Claim Deeds in Colorado.

The decision was provided with the agenda. Mr. Lubinski asks the RESC to read the decision and be ready to vote at either a future meeting or by email about whether to submit an Amicus brief.

10. **Affordable Housing Task Force** Doug Tueller

There are many affordable housing models in the State. Resort communities deal with affordable housing day-to-day. A survey of the "models" will be the Task Force's focus – not a particular solution. This is a good topic for the Colorado Lawyer. Perhaps a series of articles on the issue.

11. **Remote Notarization/Uniform Laws Update** Jeremy Schupbach

Wait until after elections to discuss the stake holder process. There is a meeting in October.

12. **Legislative Update** Jeremy Schupbach

Public Trustee Legislation – discussed earlier.

Corporate code changes. Business Law Section is addressing.

CWBA Policy Group – equal pay bill. This bill will impact business and employment law.

Trust and Estates is working on an Omnibus clean-up bill.

13. **Board of Governors**

Katy Dunn

Nothing to report

14. **Education/Topical Lunches Committee**

Amy Brimah

October - Asbestos issues in real estate.

November - Adam Foster on Cybercurrency. Other possible speakers on this topic were also suggested.

No lunch in December.

15. **Interprofessional Committee**

Robin Nolan

Meeting this coming Thursday.

16. **Communications**

Doug Tueller and Brianna Dowling

The committee asked RESC member to submit substantive topics – current events. “Things you should know.” Ideas for the new platform. The committee’s goal is to publish a newsletter every other month. Please submit articles to Brianna Dowling.

17. **Education/CLE Committee**

Joey Lubinski

Fall Update is set for October 12 – brochures were passed out. March 21, 2019 is the Spring update. The Symposium will be in Vail July 18-20, 2019.

18. **Colorado Housing Council**

Melinda Pasquini

Meets tomorrow.

19. **Colorado Lawyer Committee**

Doug Tueller and Robin Nolan

The committee talked to Chris Bryan with the Colorado Lawyer to work out the process for submitting articles. Two are in the works now. The goal is to publish articles quarterly.

Please let the committee know about authors. The committee shared a list of potential topics. Affordable Housing was thought to be an excellent topic for a series of articles.

20. **Community Service/Charitable Committee**

Bryan Schwartz and Brianna Dowling

Nothing to report.

21. **Membership and Practice Development Committee**

Amy Mowry and Ron Jung

Nothing to report.

- 22. **CBA Young Lawyers Division** - No report.
- 23. **CBA Legislative Policy Committee** Andy Toft and Jean Arnold  
Nothing to report yet.
- 24. **CBA Cannabis Law Committee** Jed Sonnenshein  
Written report submitted with Agenda. Suzanne Leff summarized the report.
- 25. **CBA Ethics Committee** Deanne Stodden  
New: Opinion 133 will be revised – Ethical duties (one of the cases cited in the original opinion has been overturned).  
Opinion 130 (delayed) and Opinion 104 (revisions).
- 26. **CBA Forms Committee** Damian Cox  
Not done. In October drafting will be completed.
- 27. **CBA Tax Section** - No report
- 28. **CBA Title Standards** Geoff Anderson (for Catherine Hance)  
Discussed In re Cates at the meeting.

**INACTIVE**

- 29. **CBA ADR/Mediation Committee** Geoff Anderson  
Nothing to report.
- 30. **CBA Trust and Estate Section** David Kirch  
Nothing to report.
- 31. **CBA Business Section** Chris Payne  
C. Payne attended the Business Law retreat. He reinforce enthusiasm on Higher Logic and Ms. Montoya’s presentation. They noted that the Bar Association does not have good records as to who belongs to what committee and sub-committee. Be aware of this issue as the site launches for the Real Estate Section.
- 32. **CBA Eminent Domain Committee** – No report.

**NEW MATTERS** – None.

**ADJOURN 5:22 p.m.**

**ATTENDANCE ROSTER**  
Real Estate Law Section Council  
**September 18, 2018**  
**COLORADO BAR ASSOCIATION**  
1900 Grant Street, 9<sup>th</sup> Floor  
Denver, Colorado 80203  
**3:00 P.M.**

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)	X		
Jed Sonnenshein (2020)		X	
Doug Tueller (2019)	X		
<b>Committees / Liaisons:</b>			
Andy Toft – Legislative Policy Committee Liaison	X		
David Kirch – Trusts and Estate Liaison	X		
Damian Cox – Forms Committee Liaison	X		
Deanne Stodden – Ethics Committee Liaison	X		
Geoff Anderson – RE Title Standards Liaison	X		
Jody Alderman – Eminent Domain Committee Liaison			X
Chris Payne – Business Section Liaison	X		
Arthur Griffin – 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		
Shanna Montoya (CBA)	X		

Greg Notarianni	X		
Dan Sweetser, Past Chair RESC			X
Mallory Hasbrook (YLD)		X	