

MINUTES

CBA Real Estate Section Council
September 20, 2016 – 3:00 p.m.

Colorado Bar Association Offices
1900 Grant Street, 9th Floor
Denver, Colorado 80203

1. Call to Order

Ms. Nies called the meeting to order at 3:01 p.m.

2. Introduction of Guests and New RESC Members

Ms. Ray, Ms. Sreenan and Mr. Schupbach were present.

3. Minutes

The proposed minutes of the August 16, 2016 meeting were approved, as amended.

4. Financial Report

Ms. Decker reported the current balance in the Real Estate Section's account is \$76,152.13 as of August 31.

ACTION ITEMS

5. Real Estate Section Mixer with YLD at ViewHouse

No action was required on this item. More information needs to be obtained regarding the amount the mixer exceeded the approved budget.

REPORTS AND INFORMATIONAL ITEMS

6. ABA RPTE 2017 Symposia

Mr. Lubinski reported the ABA will have its real property and trust and estate 2017 symposia in Denver on April 20-21 at the Four Seasons Hotel, which presents an opportunity to collaborate.

7. *Gary Lensky v. DiDomenico, et al.* – Amicus Request

Mr. Sweetster reported there is nothing to do at this time. The petition for writ of certiorari was just filed.

8. 2016 Uniform Acts for Colorado

Ms. Nies reported that several Council members attended the Colorado Commission on Uniform State Laws meeting in September. Below are the updates for each Act.

- Uniform Employee and Student Online Privacy Protection Act
 - This Act will likely be removed from the Commission's consideration.
- Amendment to Revised Uniform Law on Notarial Acts
 - Mr. Schupbach reported the Secretary of State is interested in revising the Colorado Notarial Act by using the Uniform Act as the means to accomplish the amendment.
- Revised Uniform Unclaimed Property Act
 - This Act does not involve real property, and there is no need for the Council to comment.
- Uniform Residential Landlord Tenant Act
 - Ms. Arnold reported this Act is referred to as the Revised Uniform Landlord Tenant Act. Colorado has not passed the original Uniform Act. The Commission requested that the Council provide a summary of the ways in which the revised Act would change existing law. Most states that have adopted the Uniform Act adopted it with substantial changes.
- Uniform Commercial Real Property Receivership Act
 - Mr. Lubinski reported this Act has been introduced in three states – Kentucky, Mississippi and Rhode Island. It is anticipated it will be introduced in 12 more states in 2017. Although Colorado has not historically followed the Uniform Act, the Council will review the Act and propose changes for consideration by the Commission at its November hearing.

9. Mortgage Loan Origination Statute – Task Force

The task force is meeting on September 29 at noon.

10. Title 12 Recodification Study

Mr. Cox reported the Real Estate Commission would like to see more separation between programs and creation of a common definition section. The next meeting will be held on October 19 at 10:00 a.m.

11. Electronic Recording Technology Board

Mr. Starritt reported the first meeting was held and committee assignments were established. Mr. Starritt is on the strategic planning committee and daily administration committee. The surcharge was set at the maximum amount of two dollars and will be imposed beginning in January.

12. *Arrabelle at Vail Square Res. HOA v. Arrabelle at Vail Square*

Mr. Lubinski reported this case involved a mixed use development that was structured as two lots, an air space lot and a lot that was composed of everything else. The division served the purpose of charging the residential owners for the amenities and

maintenance, but without giving them the same voting rights they would have if they were in a master association. The Court of Appeals held the developer was evading CCIOA.

13. Deed Form Task Force

Mr. Tueller is drafting a proposal and working with the task force on possible resolutions. Once a proposal is finalized by the task force, it will be brought to the Council for consideration.

14. CBA/RESC Portal Proposal

Ms. Nies reported that this proposal is still in discussion status. There was discussion regarding whether the portal should be a public or private forum, and the preference was toward private.

15. *Miller v. Mellon*

Ms. Waggener reported this case dealt with the covenant of good faith and fair dealing. She voiced her concern that the CREC form contract includes both covenant of good faith and fair dealing and sole subjective discretion provisions, which could create a conflict that may imply a reasonable discretion standard instead of a sole subjective standard. The Council discussed the issue, and it was the consensus of the Council that there is no conflict.

16. Legislative Forecast

Mr. Schupach reported that construction defect legislation has not been proposed yet. Title 12 recodification legislation is under consideration but will probably not move forward this year, and Article 5 is proposed to be moved outside of Title 12.

17. CBA Ethics Committee Liaison

Ms. Stodden reported that the Committee met on September 17. The Executive Committee is meeting with AVVO, at AVVO's request, to review whether AVVO's practices constitute illegal fee splitting. There is a sub-committee that is available to present on ethics topics. The Supreme Court Rules Committee is meeting to discuss flat fees. The update of Opinion 80 is currently underway.

18. Publications/Newsletter, Website, Discussion Group

Mr. Nies discussed an inappropriate discussion list email that was recently posted. The Council decided that an amendment to the rules was not necessary to address the issue. Instead, a statement from the officers will be posted on the discussion list. Mr. Lubinski reported that the newsletter will go out this week.

19. Education/CLE

Ms. Leff reported that there are two conferences the Real Estate Section is co-sponsoring: *Advanced HOA Issues* on September 30 and *Life Cycle of a Commercial Real Estate Development* on October 13.

20. Education/Topical Lunches

Ms. Alderman reported the October 6 lunch topic is short-term rentals at the Denver location, and the November 3 lunch topic is municipal water credit at the DTC location.

21. Interprofessional Committee

Ms. Leff reported the Real Estate Commission and Division of Insurance programs are going through sunset review this year. Next year, the Mortgage Loan Originator, Conservation Easement and Community Association Manager programs will be reviewed. Ms. Leff also discussed LTAC's concern regarding the ability to obtain third party information to comply with FinCEN. She also reported that the need for appraisers continues to be an issue.

22. Trust and Estate

Mr. Kirch reported that the Trust and Estate Section is moving into the final stages of an approved supplementary affidavit form for consideration by the Title Standards Committee.

23. Young Lawyers Division Liaison

No report was given.

24. Cannabis Law Committee Liaison

Ms. Dunn reported that a CLE event will be held on October 6 at noon for five dollars on risks associated with use of IRS Form 8300.

INACTIVE ITEMS

- 25. Forms Sub-Committee Liaison
- 26. Title Standards Committee
- 27. Business Law Section Liaison
- 28. Publications/Colorado Lawyer
- 29. Community Service/Charitable Committee
- 30. Membership and Practice Development Committee
- 31. Legislative Policy Committee
- 32. Tax Section Liaison
- 33. Board of Governors
- 34. Eminent Domain Committee
- 35. Colorado Housing Committee
- 36. Supreme Court Civil Rules Committee Liaison – Rule 120

NEW MATTERS

Mr. Calvin raised the issue that some municipalities are requiring that the title certification on the face of the plat be signed by a private attorney, and the requirement appears to be growing among municipalities. The Council discussed whether the issue should be addressed legislatively and requested that Mr. Schupach contact CML.

ADJOURN

There being no further business, the meeting was adjourned at 4:20 p.m.