

SEPTEMBER 2020 MINUTES

CBA Real Estate Law Section Council Date: Tuesday, September 15th, 2020 – 3:00 p.m.

Colorado Bar Association – Remote Meeting

1290 Broadway, Ste. 1700
Denver, Colorado 80203

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1. **Call to Order 3:01 p.m.**..... Jean Arnold
 2. **Approval of August Minutes** Jean Arnold
Approved Unanimously
 3. **Financial Report** (\$117,606.16 as of August 31, 2020)Amy Brimah
 4. **Chair's Report**..... Jean Arnold
 - a. Updates
 - i. Chair appointments were revised and attached to the August minutes.
 - ii. Liaison Positions: Ethics Committee, Diversity Liaison. Ms. Kate Strauss will be replacing Ms. Deanne Stodden. Ms. Jean Arnold thanked Deanne for her service. Mr. Eric Nesbitt will be the Diversity Liaison.
 - iii. Symposium Update: Part 2 - September 2-4, 2020. Ms. Arnold thanked everyone who spoke at the Symposium. The golf outings raised \$120 for Colorado Legal Services.
 - iv. Symposium 2021. Ms. Melinda Pasquini stated the theme for the Symposium will be lawyers as leaders in our community.
 - v. Virtual Off-Site Meeting. Ms. Arnold asked people to start thinking about a virtual off-site meeting and combining with something different than the law schools, perhaps the Western Slope. It will likely be a Remo meeting.
 - vi. How we look at legislation- Questioning our own point of view. Ms. Arnold asked the Section to consider who the legislation we review is going to affect. She wants to have all voices heard.
 - b. **Action Items**..... None
 - i. Ms. Arnold discussed the diversity liaison position. Ms. Amy Brimah made a motion to create the diversity liaison position and to nominate Mr. Eric Nesbitt to the position. Ms. Robin Nolan seconded the motion. The Section unanimously approved the motion.

- ii. Ms. Catherine Hance discussed Title Standard 1.1.4 related to if there is a quit claim deed in chain of title. Does the use of a quit claim make title unmarketable- the answer is no. The mere existence of a quit claim deed is not enough to constitute a defect in title. Mr. Geoff Anderson commented that in the *Walters v Case* in the 10th Circuit, the opinion had a statement if there is a quit claim deed that is suspect of title. Mr. Anderson explained Colorado law is clear that the existence of a quit claim deed by itself does not raise heightened inquiry. Several people discussed that this will be helpful. Ms. Nolan made a motion for the Section to approve Title Standard 1.1.4. Ms. Brianna Dowling seconded the motion. The Section unanimously passed the motion.

5. **Women in Law: Small Actions by Male Allies Make a Big Difference....** Amy Brimah

6. **Adverse Possession**Catherine Hance and Geoff Anderson

Ms. Hance and Mr. Anderson discussed the fact that there is a difference between the session law and the statute that is in the books for CRS §38-41-101. Mr. Andrew White commented that it is likely possible to fix; however because it has been several years since the law passed, it will require an investigation as to the best possible way to resolve. Mr. White asked for a summary memo to take to the reviser of statutes. The revisers bill does technical clean up of prior bills.

7. **Legislative and Executive Order Updates**.....A. White, A. Brimah and M. Pasquini

- a. Uniform Laws [Easements Relocation Act and Partition of Heirs Property Act] . Mr. White noted that the Uniform Laws Commission is meeting on September 18, 2020. The uniform law on easement relocation is a new matter before the commission. Mr. White stated that we will need to provide feedback.

There was a discussion of the *Roaring Fork* case which allows for relocation of ditch easements. Mr. Anderson provided a summary of the case and noted that the case is based on the 3rd *Restatement of Property* and this is already the law in CO

There was a discussion on the partition of heirs act. It was generally agreed that this act is not needed in Colorado based upon the feedback received from the presentations at the Symposium.

- b. Temporary Halt In Residential Evictions- Mr. Andy Toft discussed the order issued by Dept of Health and Human Services- CDC that prohibited evictions for the remainder of the year for those experiencing factors related to Covid-19. This raises many questions. There are questions whether this is even enforceable.
- c. RON Update Task Force. The task force has been formed and they have reviewed the temporary rule. Draft proposed final rule will be

published in the next week or so. Task force is preparing a memo on the proposed final rule.

8. **CBA Young Lawyers Division**.....Liz Deline/Diana Mendez

Ms. Deline reported that YLD is doing a liaison orientation.

9. **Education/Topical Lunches Committee**.....James Meseck

Mr. James Meseck noted that the October and November speakers are lined up. Mr. Meseck noted that Mr. Joey Lubinski will be the speaker for January. The committee will look for speakers for the rest of the year.

10. **Communications**Brianna Dowling

Ms. Brianna Dowling noted that the newsletter will seek feedback from the membership for Symposium next year.

11. **Education/CLE Committee**..... Ron Jung

Mr. Ron Jung stated that the committee met and the topic of the fall update will be Real Estate Practice in the Pandemic. Spring will be on diversity. Mr. Jung listed 9 potential topics to be covered in the fall update. It is scheduled for November 20, 2020.

12. **Colorado Lawyer Committee**..... Robin Nolan

Ms. Nolan indicated that the committee had a brainstorming meeting for quarterly pacing of real estate articles. The upcoming articles slated for the remainder of this year are :1) Small Planned Communities by Ben Doyle and Suzanne Leff; 2) Cannabis Law in the Context of Commercial Real Estate by Ben Leonard and Brett Williams; and 3) potentially a case law update.

13. **Community Service/Charitable Committee**Eric Snyder

Mr. Eric Snyder discussed the future of Law Day, remote mentoring, eviction defense and working with Hispanic Bar, and coordinating election volunteers.

14. **Interprofessional Committee** James Meseck

Mr. Meseck reported that the member of the interprofessional committee are gearing up for next legislative session year. Mr. Meseck reported that the committee helps identify topics that may be in the legislature.

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

Ms. Hance discussed modification to statute CRS §38-35-101 with regard to notary acknowledgements. Ms. Hance discussed whether we could get a sponsor and if the CBA could be supportive. Mr. White discussed the window is narrow and would need to move

it along in the LPC process, we would need an official approval by RESC and then to LPC. Ms. Arnold suggested that this go to the RON Task Force for review also. We can recommend to Andy and get a whole package to LPC. Copy of 38-41-101 adverse possession statute as it sits in the statute. In the session laws the act takes effect July on or after such date and Language in the session law's provisions applying to claims after said date didn't get into the statute, it raises a question related to compensation to whom adverse possession has been found, should we seek to have a correction of the statute to have the statute match the session law. Gap in session law and what appears in the statute books (or online). Limitation application of modification which isn't reflected in statutes.

16. **CBA Trust and Estate Section**.....Chad Rounds

Chad approved trust and estate related forms will be published in next statute book. Didn't approve life estate deeds, have been shelved because of issues with life estate. Creditor rights as it pertains to trusts part 5 of uniform to be put in law. Language of electronic wills uniform laws.

17. **CBA Business Section** Andy Toft

Business section had their symposium Andy watched and thought it went well

18. **CBA Forms Committee** Damian Cox

Haven't had a meeting for several months.

19. **CBA Tax Section** Bobbie Collins

Ms. Collins reported that the Section had not met and she had no report.

20. **Access to Justice Liaison** Andy Toft

State-wide resources list is being put together. Still looking for volunteers. Moratorium is in place right now so not as much of an issue. Everyone needs help right now- Colorado Lawyers, please sign up

21. **Task Force on Inclusion**.....Brianna Dowling

22. **Regional**.....Doug Tueller

Mr. Tueller reported that he has done a bunch of out-reach. Mr. Tueller and Mr. Aldrich are going to work together to further the progress.

23. **CBA Ethics Committee**.....Deanne Stodden

Ms. Arnold thanked Ms. Stodden for her service. Ms. Stodden's report was included in the agenda.

INACTIVE

- 2. *Fairways at Buffalo Run*.....James Meseck
- 24. Colorado Association of Realtors (CAR): Damian Cox
- 25. Colorado Housing Council Robin Nolan
- 26. Board of Governors Katy Dunn
- 27. CCIOA Task Force Committee Chris Payne
- 28. CBA Cannabis Law CommitteeTBD
- 29. CBA ADR/Mediation CommitteeGeoff Anderson
- 30. CBA Eminent Domain Committee Jody Alderman

NEW MATTERS

ADJOURN 5:09 P.M.

ATTENDANCE ROSTER
Real Estate Law Section Council
September 15, 2020
COLORADO BAR ASSOCIATION

Remote Meeting

NAME	PRESENT	EXCUSED	ABSENT
Officers:			
Jean Arnold – Chair	X		
Melinda Pasquini – Vice Chair	X		
-Amy Brimah- Secretary	X		
Katy Dunn – Board of Governors Representative	X		
Members:			
Adam Aldrich (2022)	X		
Amy Brimah (2020)	X		
Erin Clark (2022)	X		
Brianna Dowling (2021)	X		
Cindy Lowery-Graber (2023)	X		
Ron Jung (2021)	X		
Zak Kessler (2023)	X		
James Meseck (2021)	X		
Robin Nolan (2021)	X		
Marjorie Sant (2023)	X		
Angela Schmitz (2022)	X		
Eric Snyder (2023)	X		
Jeremy Syz (2022)	X		
Committees / Liaisons:			
Chuck Calvin – Legislative Policy Committee Liaison	X		
Chad Rounds – Trusts and Estate Liaison		X	
Damian Cox –CAR Liaison	X		
Geoff Anderson – RE Title Standards Liaison	X		
Jody Alderman – Eminent Domain Committee Liaison			X
Chris Payne – Business Section Liaison	X		
Tyler Murray – Tax Section Liaison	X		
Bobbie Collins – Tax Section Liaison	X		
Liz Deline – YLD Liaison	X		
Diana Mendez - YLD Liaison	X		
Catherine Hance –RE Title Standard Committee	X		
Suzanne Leff – Immediate Past Chair RESC	X		
Doug Tueller – Regional Liaison		X	
Andrew Toft – Access to Justice Liaison	X		
Staff & Guests:			
Jess Ham	X		
Amy Sreenen (CBA)			X

Amy Larson (CBA)			X
Bridgett Moore(CLE)	X		
Andy White (CBA)	X		
Julie Waggoner, Past Chair RESC			X
Dan Sweetser, Past Chair RESC			X
Suzanne Leff, Past Chair RESC	X		

**CBA Real Estate Section Council
Committee, Liaison & Taskforce Appointments
2020-2021**

Committees: (Chairs and co-chairs designated in bold/red)

Annual Symposium Committee (2021) – Melinda Pasquini (Section Vice Chair)

Budget Committee – Melinda Pasquini (Section Vice Chair); Suzanne Leff (Immediate Past Chair), Jean Arnold (Section Chair), Amy Brimah (Section Secretary)

Community Service and Charitable Committee – Erin Clark, Ron Jung and Eric Snyder

Communications Director – Brianna Dowling

Communications Committee (Web Page COBar / Newsletter / Web Discussion Group)

– **Brianna Dowling**, Angie Schmitz, Zak Kessler

Publications Committee (CO Lawyer) – **Robin Nolan**, Adam Aldrich, Jeremy Syz, Eric Snyder

Education Committee

CLE – Ron Jung, Angie Schmitz, Marjorie Sant

Topical Lunches – James Meseck, Jeremy Syz, Cynthia Lowrey-Graber

Interprofessional Committee: James Meseck, Angie Schmitz

Membership and Practice Development Committee – Adam Aldrich, Zak Kessler, Cynthia Lowrey-Graber

Liaisons:

CBA Board of Governors (voting): Katy Dunn (voting member of RESC)

CBA Business Section: Andy Toft

CBA Cannabis Law Section: TBD

CBA Ethics Committee: TBA (Deanne Stodden until successor chosen)

CBA Legislative Policy Committee: Amy Brimah (Section Secretary)

CBA Legislative Policy Committee Member: Chuck Calvin

CBA Taxation Law Section (appointed by the Tax Section): Bobbie Collins and Tyler Murray

CBA Trust and Estate Section (appointed by the T&E Section): Chad Rounds

CBA Young Lawyers Division (appointed by YLD Section): Liz Deline and Diana Mendez

Colorado Association of Realtors (CAR): Damian Cox

Colorado Housing Council (2 can attend each month): Erin Clark, Robin Nolan and Marjorie Sant

Colorado Real Estate Commission (CREC) Forms Committee: Geoff Anderson

Colorado Supreme Court Civil Rules Committee: Angie Schmitz (applying to CO Supreme Ct.)

Eminent Domain Committee: Jody Alderman

MVL / Access to Justice: Andy Toft

Regional: Doug Tueller

Title Standards: Catherine Hance (Member); Geoff Anderson (pro tem)

Diversity and Inclusion: Eric Nesbit

Taskforces:

Amendment to Revised Uniform Law on Notarial Acts – **Adam Aldrich**, Chuck Calvin, Andy Toft, Joey Lubinski, Brianna Dowling

CCIOA – **Chris Payne**, Amy Brimah, Robin Nolan, Suzanne Leff

Fairways at Buffalo Run (Amicus/Legislative) – **Jim Meseck**, Robyn Kube, Robin Nolan, Andy Toft

Inclusion (and barriers to inclusion) – Amy Brimah, Andy Toft, Katy Dunn, Erin Clark

- Removal of race-based restrictive covenants from public records – Brianna Dowling; with Inclusion task force.