

MINUTES

CBA Real Estate Section Council
Date: February 16, 2016 – 3:00 p.m.

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

I. Call to Order

Mr. Sweetser called the meeting to order at 3:02 p.m.

II. Introduction of Guests

Mr. Sweetser welcomed guests Sam Jones, Alex Pankonin and Miroslav Kovacevic.

III. Approval of Minutes

The minutes of the January 19, 2016 RESC meeting were approved, subject to corrections noted by Ms. Decker and Mr. Sweetser.

IV. Financial Report

Mr. Calvin reported that the Real Estate Section had \$57,116.36 in its account as of January 31, 2016.

V. Action Items

A. Mortgage Loan Originator Legislation

Mr. Sweetser reported on the relationship between the issues of concern to the Real Estate Section and two bills offered by the Colorado Mortgage Lenders Association, of which RESC was generally supportive. Mr. Killeen related the history of the working group's effort to arrive at language for a reasonable exemption from the mortgage loan originator licensing requirements for intra-family loans and non-commercial loans by employers to employees. Initially, the effort was to expand the present exemption for up to three seller-carryback loans per 12-month period to five loans of any type.

The CMLA had rejected this approach because the federal SAFE Act did not provide for any numeric safe harbor for originators of any kind of residential mortgage loans. In response, the working group had prepared an alternative amendment that tracked the language of the SAFE Act's definition of "mortgage loan originator" almost verbatim, focusing on the non-commercial and non-habitual nature of transactions sought to be exempted. The working group had

scheduled a conference call with CMLA later this week, but Jeremy Schupbach had reported his sense that CMLA would not agree to inclusion of the exemption language in their bill.

Mr. Mayo asked whether the proposed language would eliminate the need for the family members making loans to other family members to register as mortgage loan originators. Mr. Killean responded that it would.

Mr. Mayo moved that the RESC recommend LPC approval of the proposed amendment, either as part of the CMLA bill or as independent legislation if CMLA refused to include it. Mr. Calvin seconded the motion, which was adopted on a voice vote.

B. HB16-1051 (disposition of surplus bid proceeds)

Mr. Sweetser reported that this bill was introduced at the behest of the Public Trustees. Existing law provides that if a property is redeemed from a foreclosure sale by a junior lienholder, any surplus sale proceeds will be paid to the lienholder last redeeming, up to the amount owed that lienholder; any additional surplus proceeds are to be paid to the former owner of the property. The bill would modify this rule so that a redeeming junior lienholder would have to choose between receiving surplus proceeds and taking title to the property if no further redemption occurred. The thinking behind the bill appears to be that a lienholder would not redeem unless the lienholder expected to be made whole through the value of the redeemed property, and thus allowing the lienholder to receive surplus bid proceeds, in addition to the property, would result in a windfall at the expense of the property owner.

Ms. Stodden commented that the assumptions behind the bill were wrong, because in most cases a junior lienholder can't be confident of the value of the property and how much can ultimately be realized from it. The policy of the law should be to encourage redemption by as many successive lienholders as possible, even if this might result in an occasional windfall, because deficiencies were much more common than windfalls. There had been talk with the bill's proponents of a possible amendment, but it was not clear how the amendment would work or whether it would actually be made.

Mr. Killean observed that if there were enough equity in a property to pay all junior lienholders and generate a windfall to the last one, the owner should be able to sell the property or refinance it before foreclosure, and thus capture the equity and prevent any windfall to a creditor.

Mr. Sweetser suggested that the RESC should continue to monitor the bill and be prepared to conduct an e-mail vote on whether to oppose it, if the bill is not amended and if it appears to be gaining traction in the legislature.

C. Trust & Estate Omnibus Bill Drafts

Mr. Sweetser reported on these draft bills, which do not yet have a sponsor and have not been introduced. The proposed bills would affect real property interests in at least two ways: (1) simplifying the supplemental affidavit requirement to establish that a particular decedent was the same person who was the owner of an interest in real property that was to pass to another person upon the decedent's death, and (2) modifying the existing determination of heirship statute. Mr. Kirch noted that the Title Standards Committee had suggested language which had been incorporated into the supplemental affidavit provisions.

Mr. Sweetser commented that the changes in the supplemental affidavit requirements seemed appropriate and non-controversial, but the determination of heirship changes merited closer study by RESC members. The change in the definition of "interested person" narrowed the class of persons who would receive notice of heirship proceedings, and RESC members need to be comfortable that persons who do not receive notice will not be adversely affected by the outcome of the proceedings. He urged members to review the proposed bills and communicate their thoughts to the officers.

VI. Reports

A. HB16-1005 (Rain barrel bill)

Ms. Leff reported on the bill. Water rights interests had voiced concern about any legitimization of interference with natural return flows of rainfall or snowmelt to streams and rivers; rain barrels might seem to have no measurable impact, but legal recognition of any right to intercept water flows is disturbing to some. In addition, the bill as drafted raises issues for common interest communities, because it could be read to allow owners to take over portions of common areas for their rain barrels, and to preclude HOAs from regulating the practice. She reported that the Community Association Institute had proposed language that had been incorporated into a very similar bill last year. That bill died, and for some reason when it was resurrected this year, the CAI language was not included.

Mr. Schupbach reported that he understood CAI was raising the same issue with the same proposed amendment, and that the sponsor was amenable to the change, but no amendment had surfaced publicly yet.

Mr. Sweetser said that the RESC should continue to monitor the bill and be prepared to take action if it is not amended.

B. HELOC Release Proposal

Mr. Schupbach reported that the bill, with language previously approved by the RESC, was well on its way and did not require further action by the Council.

C. Address Confidentiality Program

Mr. Sweetser reported that this proposed legislation appeared to be dead for this session, though it will probably resurface again next year.

D. Spring Meeting

Mr. Sweetser reported that the spring meeting will be held at the Inverness Hotel, followed by dinner at the Chinook Restaurant. An effort will be made to encourage attendance by lawyers in Arapahoe and Douglas Counties. The decision not to go farther away was based on budgetary concerns; the picture may look different next year, but this year we need to control expenditures where we can. The tentative meeting date is April 8, 2016.

E. Budget Committee

Mr. Sweetser reported that the budget committee will schedule a meeting or meetings in the next month.

F. 2016 Symposium Update

Ms. Nies reported that everything was on track – only one 15-minute speaker's spot remains to be filled.

G. Beneficial Ownership Tracking

Mr. Sweetser reminded the members of Mr. Toft's report last month, regarding the Treasury Department's announcement that it would require title companies to report on the ultimate beneficial owners of entities that made all-cash purchases of high-end residential properties in Miami-Dade and Manhattan. He added that there were reports that legislation would be introduced shortly in Congress to require lawyers to provide similar information, presumably without limits on geographic scope.

H. Legislative Policy Committee

Mr. Toft reported that the committee had not needed to consider much real estate-related legislation; the TD1000 bill, SB115 a/k/a the Clerks' Bill (technology fund surcharge to support electronic recording systems) and the one CMLA bill already introduced were the main ones. He reported on the committee's general approach to considering legislation and the positions the Bar might take as a result.

I. Membership and Practice Development Committee

The committee had no new information to report.

J. Publications/Newsletter, Website, Discussion Group

Mr. Killean reported that the next newsletter was still on track to be published in late March or early April. There will be a new article on “friendly” foreclosures. Mr. Sweetser reminded the committee to include a notice soliciting applications for membership on the Real Estate Section Council.

K. Education/CLE

Mr. Mayo reported that signups had been strong for the Spring 2016 CLE program, which will focus on the anatomy of residential real estate transactions, on March 17.

L. Education/Topical Lunches

Ms. Alderman reported that the next topical lunch will be March 3, in the downtown location, and will focus on sales and use taxes in real estate transactions.

M. Business Law Section Liaison

Mr. Bergstrom was unable to attend and there was no report.

N. Interprofessional Committee

Ms. Dunn submitted a written report, *attached*. She commented that everyone on the committee is waiting to see whether construction defect legislation will be introduced and, if it is, what approach it will take.

O. Supreme Court Civil Rules Committee Liaison

Mr. Sweetser noted that the proposed new Rule 120 was still out for comment.

P. Publications/Colorado Lawyer

Mr. Clark reported that several new articles were in the pipeline.

Q. Community Service/Charitable Committee

Mr. Mayo reported all volunteer slots for the next LawLine 9 event on February 24 had been filled. The volunteers include Joel Mayo, Jody Alderman, Jeff Bergstrom, Julie Waggener, Eben Clark, Kristin Decker and Deanne Stoddard.

R. Colorado Housing Council

Ms. Dunn submitted a written report, *attached*. She added that the last meeting had been attended by a representative of the State Demographer.

S. Trusts & Estate Section Liaison

Mr. Kirch indicated that the Trust & Estate Section was very pleased with the efforts being made to address the mortgage loan originator licensing issue discussed earlier in the meeting.

T. Young Lawyers Division Liaison

Mr. Osborn reminded members of the barristers' event with young brokers on February 18, and invited RESC members to attend. He commented that the Business Law Section was conducting a training session for young lawyers on representing entrepreneurs.

U. Cannabis Law Committee Liaison

Ms. Dunn reported that she had been unable to attend the committee's February meeting, but understood they were beginning to focus on legislative matters. The committee will be presenting a CLE program in March, devoted mostly to real estate issues.

V. Tax Section Liaison

Mr. Murray reported that the section sponsored a number of update lunches each year. The tax section paid all costs and retained all revenues, but given the small size of the section, this placed quite a strain on cash flow. Update sessions were often attended by members of other sections, and the tax section would like to see other sections – real estate, business law, and trust & estate, in particular – share equally in both expenses and revenues.

W. Forms Sub-Committee Liaison

Mr. Anderson reported that there had not been a full meeting of the sub-committee this month. At next month's meeting, the issue of the broker/seller split of forfeited earnest money would be back on the agenda.

X. Title Standards Committee

No report this month.

Y. Board of Governors

No report this month.

Z. CBA Ethics Committee Liaison

No report this month.

AA. Eminent Domain Committee

No report this month.

BB. New Matters/Legislation

Mr. Schupbach reported briefly on the status of bills of interest to the Real Estate Section that had not been discussed previously in the meeting.

VII. Adjournment

The meeting was adjourned at 4:15 p.m.



Charles D. Calvin, Secretary