

MINUTES

CBA Real Estate Section Council

Date: March 15, 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 3:03 p.m.

II. Introduction of Guests

Mr. Sweetser welcomed guests Eric Snyder, Alex Pankonin, Miro Kovacevic and (by telephone) Mike Shea.

III. Approval of Minutes

The minutes of the February 16, 2016 RESC meeting were approved, subject to corrections noted by Mr. Alt and Mr. Sweetser.

IV. Financial Report

Mr. Calvin reported that the Real Estate Section officially had \$41,938.64 in its account as of February 29, 2016, but noted that this figure was approximately \$13,000 lower than it should have been, due to an error in booking travel expenses incurred by a different CBA program. The error is expected to be corrected before next month's meeting.

V. Action Items

A. Nominating Committee.

Mr. Sweetser noted that under the Bylaws of the Real Estate Section, the Chair is to appoint the members of the committee, subject to approval by the RESC. He had appointed Ms. Leff, Ms. Dunn, and Mr. Lubinski as the committee members. They will work with Mr. Calvin, as chair of the committee, and Ms. Collier Smith, who will be compiling applications for seats on the Council. Mr. Alt moved approval of the Chair's appointments. The motion was seconded and adopted on a voice vote.

VI. Reports

A. Eben Clark. Mr. Sweetser reported that Mr. Clark was absent from the meeting due to the death of his father, and added that the Real Estate Section is donating

\$250 to the Michael J. Fox Foundation for Parkinson's Research in memory of Eben's father.

B. Mortgage Loan Originator Legislation

Mr. Killean reported that the task force had had a conference call with representatives of the Colorado Mortgage Lenders Association, and CMLA had made it clear that it would not include the exemption language drafted by the RESC group in the CMLA bill. In fact, CMLA reported that Marcia Waters, Director of the Division of Real Estate in the Colorado Department of Regulatory Agencies, had expressed a negative view of the proposed language. Messrs. Killean, Clark and Sweetser had subsequently met with Ms. Waters and had shown her two alternative approaches to protecting intra-family and other non-commercial mortgage lenders from the mortgage loan originator licensing requirements. One approach tracked the language of the federal SAFE Act closely; the other approach modified the existing exemption for up to three carryback loans per year by expanding the number to five and eliminating the carryback limitation. Ms. Waters had not been impressed with the SAFE Act approach, but had agreed to submit the second alternative to the CFPB for comment. Shortly before today's meeting, Ms. Waters had reported that the her CFPB contact had expressed concern that the proposed expansion of the MLO exemption would violate the SAFE Act, and that Ms. Waters would not support the proposed amendment if there was a risk that the CFPB would treat the Colorado MLO system as noncompliant.

Mr. Killean reported on a survey of the approaches taken by several surrounding states to the MLO issue. There was no uniformity of approach, though most other states provided more protection to "casual" lenders than Colorado does. Mr. Schupbach commented that it was unrealistic to pursue the proposed amendment further in the current session, and that the Section should plan to work with CMLA and Ms. Waters over the summer to arrive at a consensus approach that could gain approval from the CFPB.

C. HB16-1005 (Rain barrel bill)

Mr. Schupbach reported that the bill had been amended as requested by the Community Association Institute and was working its way through the legislature, with a good chance of passage.

D. Supreme Court Rules Committee (C.A.R. 8(d))

Mr. Sweetser reported on a committee proposal to move Colorado Appellate Rule 8(d) to C.R.C.P. 121. The rule permits an appellant who is a judgment debtor to post a bond to remove a judgment lien from the appellant's property pending appeal. The proposed change does not seem to affect real estate lawyers, but after some discussion as to whether the rule permits recourse against the bond, and

whether having the rule relocated to C.R.C.P. would make the bonding procedure unavailable for appeals from the Court of Appeals to the Supreme Court, Mr. Sweetser asked Ms. Arnold and Mr. Anderson to meet with him to consider the issues in more depth.

E. HELOC Release Proposal

Mr. Schupbach reported that the bill was making its way through the legislature. He noted that this bill, like many others, was being delayed pending resolution of the political logjam surrounding appropriations issues.

F. Spring Meeting

Mr. Sweetser reported that the spring meeting will be held April 8, 2016 at the Inverness Hotel, followed by dinner at the Chinook Restaurant. Both the hotel and the restaurant have submitted proposed contracts, which Ms. Collier Smith will review. The RESC meeting will run from 3:00 to 5:00 p.m., followed by a reception for members of the Arapahoe and Douglas County Bars. Dinner will be served around 6:30. Spouses are invited. Ms. Collier Smith will circulate a questionnaire regarding menu choices and information as to which invitees will stay overnight at the Inverness Hotel.

G. Budget Committee

Mr. Sweetser reported that the budget committee consists of the Chair, Vice Chair, Secretary, and immediate Past Chair of the Section, plus the CBA staff liaison. Meeting dates are being arranged. The committee will distribute a proposed budget for discussion at the May RESC meeting, with a vote planned for the June RESC meeting.

H. 2016 Symposium Update

Ms. Nies reported that everything was on track – all speakers' slots have been filled.

I. Beneficial Ownership Tracking

Mr. Sweetser reminded the members of Mr. Toft's report in January, 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 noted that federal legislation in the form of H.R. 4550 had now been introduced in Congress. The bill refers to persons who serve as "licensed formation agents" in creating new corporations, limited liability companies and other entities, and while it does not single out lawyers for special responsibilities, the language is clearly broad enough to extend to lawyers involved in entity formation as well as to professional registered agents.

J. Torrens System Repeal

Mr. Sweetser reported on the memorandum by Mike Shea, counsel to the Colorado County Clerks Association, that had been distributed before the meeting, and Mr. Shea expanded on those remarks. The county clerks find maintaining Torrens system records to be burdensome. No property has been newly registered under the Torrens system for more than 10 years, and in most counties the only people with any experience with the system have retired or are about to do so. Mr. Shea added that Pam Anderson, the executive director of the Clerks Association, is setting up a working group of Clerks to consider the possible abolition of the Torrens system in Colorado. Ms. Dunn observed that lenders needed to be involved to address any issues affecting Torrens property that is still subject to a mortgage. Mr. Shea suggested that the Council should contact Ms. Anderson directly. Mr. Sweetser will select a couple of volunteers to work on this project.

K. Disputed Access to Land Records

Mr. Anderson reported on the article that had been circulated at his request, describing litigation between two private vendors over whether one of them had the right to control access to land title records by the public. The case had been resolved in favor of broader access, but the decision did not reflect a strong affirmation of the public nature of the records or of the public interest in having open access to them. The decision probably foreshadows other disputes over public access to public records that have commercial value.

L. Legislative Policy Committee

Mr. Schupbach reported that this has been a quiet year compared to some. There have not been many real estate-related bills, apart from the rain barrel bill, the TD 1000 bill and the technology fund bill. Ms. Leff noted that the rain barrel bill had been amended to provide for supervision by the State Engineer and reporting of possible impacts on senior water rights. Mr. Schupbach said that after the appropriation or “long bill” passes, there may be additional legislation, including a construction defects bill. If there is such a bill, it will probably not have been pre-negotiated, but will reflect the interests of developers only, so the RESC may find it necessary to take a position.

M. Membership and Practice Development Committee

Mr. Starritt, Mr. Payne and Mr. Osborn reported. They are proposing a happy hour this spring, involving a Q&A session for possible new members. Mr. Osborn and Mr. Starritt are coordinating these efforts.

N. Publications/Newsletter, Website, Discussion Group

Mr. Lubinski 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. There will also be a reminder of the deadline for submission of applications for membership on the Real Estate Section Council, though this reminder will come late in the process.

O. Education/CLE

Mr. Mayo reported that the Spring 2016 CLE program will be held on March 17. Ms. Leff has agreed to take over the moderator’s role. Ms. Ray reported that 83 attendees had signed up, and that she’d noticed there were no brochures for the program left in the 3rd Floor lobby, another indication of strong interest.

Mr. Anderson reported that he will be teaching a quiet title seminar on May 20, also at the CLE classroom on the 3rd Floor of 1900 Grant Street.

P. Education/Topical Lunches

Ms. Alderman reported that the next topical lunch will be April 7, at Maggiano’s southeast location; Corey Zurbuch will speak on friendly foreclosures. The May 5 topical lunch will be downtown, and will feature Jamie Baker Roskie on creative solutions for the affordable housing crisis. The June topical lunch, on an ethics topic, will be southeast again.

Q. Business Law Section Liaison

Mr. Bergstrom said the Business Law Section would be meeting the next day, so there was nothing to report at this time.

R. Interprofessional Committee

Ms. Leff reported that there had been discussion of a need for a new deed form – a special warranty deed by a different name – but that the committee was only beginning to discuss the legal implications of using a different form for residential conveyances. Mr. Sweetser commented that the present approach followed by some title companies, using a general warranty deed with exceptions by reference to an unrecorded contract, did not protect either buyers or sellers. Ms. Decker asked for a concise statement of legal concerns that she could present at the next meeting, and Mr. Sweetser said he would provide some comments. Ms. Decker also noted that she had submitted a written report, *attached*.

S. Publications/Colorado Lawyer

Mr. Lubinski reported that a new article had been received. It was too long for the newsletter and too informal for the Colorado Lawyer, but the author is revising it for the Colorado Lawyer.

T. Community Service/Charitable Committee

Mr. Mayo reported that the LawLine 9 event on February 24 had been very successful. This had been the best turnout from volunteers, and the telephones had rung nonstop.

U. Colorado Housing Council

Ms. Wendel submitted a written report, *attached*. She added that the last meeting had been focused on the lack of affordable housing in many parts of the state. Ms. Decker mentioned in that connection that HB16-1334 would allow, but not require, counties to adopt regulations concerning micro housing in an effort to increase the supply of affordable housing.

V. Trust & Estate Section Liaison

Mr. Kirch indicated that there were no new developments involving the Trust & Estate Section. Mr. Schupbach noted that the Land Title Association was concerned with the language changes in SB16-132, one of the Trust & Estate Section's omnibus bills, dealing with supplementary affidavits, and Mr. Sweetser responded that this issue would be addressed after the meeting.

W. Young Lawyers Division Liaison

Mr. Osborn reported that the planned social event with young brokers had taken place on February 18, and had been well attended by both brokers and lawyers.

X. Cannabis Law Committee Liaison

Ms. Dunn reported that the committee is beginning to focus on legislative matters, but was still learning about the process; the committee had wanted to comment on one bill, but didn't realize that the bill had been amended in crucial ways before their comments were finalized and submitted.

Y. Tax Section Liaison

Mr. Murray reported that the section was working to assemble expense numbers to support their proposal that costs and revenues of the annual legislative update event be shared among tax, real estate, business law, and trust & estate sections.

Z. Forms Sub-Committee Liaison

Mr. Anderson reported that there had been a two-hour discussion with brokers regarding unauthorized practice of law. Brokers would like to give notice of title objections, but recognized that this might be the unauthorized practice of law. They hope to develop a form that would allow them to object to an appraisal, but not to matters of survey or title. Ms. Waggener suggested that the next newsletter include an invitation to Section members, to send comments on Real Estate Commission-approved forms to Mr. Anderson. Mr. Anderson noted that the Commission's self-imposed moratorium on changing forms applied on a form-by-form basis, so in any given year it was likely that a number of forms could be considered for modification despite the moratorium.

AA. Supreme Court Civil Rules Committee Liaison

No report this month.

BB. Title Standards Committee

No report this month.

CC. Board of Governors

No report this month.

DD. CBA Ethics Committee Liaison

No report this month.

EE. Eminent Domain Committee

No report this month.

VII. Adjournment

The meeting was adjourned at 4:49 p.m.



Charles D. Calvin, Secretary