

MINUTES

CBA Real Estate Section Council

Date: May 17, 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

No guests attended the meeting.

III. Approval of Minutes

The proposed minutes of the April 8, 2016 meeting were not available. They will be circulated, along with the proposed minutes of this meeting, for review and consideration at the RESC meeting in June.

IV. Financial Report

Mr. Calvin reported that the Real Estate Section had \$54,053.61 in its account as of April 30, 2016.

V. Action Items

There were no agenda items requiring a vote by the members of the Council at this meeting.

VI. Reports

A. Nominating Committee.

Mr. Sweetser reported that the Nominating Committee had nominated Kristin Decker as the new Secretary of the Real Estate Section and Damian Cox, Robyn Kube, Melinda Pasquini and Doug Tueller as new members of the Section Council, beginning July 1, 2016. Nicole Nies was nominated as the new Chairperson and Chuck Calvin as the new Vice Chairperson. Mr. Sweetser noted that under the Bylaws of the Real Estate Section, any member of the Section could, with 24 co-petitioners, propose an alternate candidate for any of the positions for which nominations had been made by submitting the petition to the Secretary by May 30, 2016.

- B. Budget Committee. Mr. Sweetser discussed the proposed budget for the 2016-17 fiscal year, which had been circulated shortly before the meeting. He noted that the Real Estate Section had overspent its budget for five straight years, which prompted the formation of the budget committee. Although final numbers for costs associated with the April 8 meeting at the Inverness Hotel were still coming in, it appeared that the Section would finish the current fiscal year with a small surplus. One of the budget committee's goals had been to maintain a year-end reserve of one year's expenses – approximately \$45,000 – to assure that programs could continue, despite any unanticipated shortfall in revenues, while adjustments were considered and implemented. The preliminary numbers indicate that the reserve target for the current fiscal year will be met. Members were urged to review the proposed budget and be prepared to vote on it next month.

C. Legislative Report

Mr. Schupbach reported that the Colorado legislature had formally adjourned on May 11, although it would be a week or more before House and Senate conference committees had finished work on bills that had passed the two chambers in different forms. The Governor would have 30 days after receiving bills within which to decide which to sign, which to veto, and which to allow to become law without his signature.

There is speculation at the Capitol, Mr. Schupbach reported, that a special session is likely. The Governor's priority for a special session would probably be the hospital provider fee issue, but, to reduce the likelihood of a partisan stalemate, other issues would probably be included on any call for a special session, including affordable housing, alcohol sales by grocery stores, and construction defects reform.

During the regular session, 683 bills were introduced, approximately 190 of those passed, and about 40 had been signed so far by the Governor. Bills that the Real Estate Section had either supported or had not opposed generally passed. These included CMLA SAFE Act bill with limited mortgage loan originator reform; the electronic recording system funding bill; the HELOC deed of trust release clarification bill; the rain barrel bill; and the documentary fee bill. Other bills that passed included the special district retrospective election validation bill, which was discussed at some length. The Council anticipates a "forward looking" special district election bill next year, and will be prepared to follow that closely.

- D. McMullin v. Hauer Amicus Issue. Mr. Sweetser recalled there had previously been some discussion of filing an unsolicited *amicus* brief, suggesting that the Supreme Court should affirmatively disapprove any implication in the Court of Appeals opinion that ownership of the "implied" common elements in the implied common interest community should be shared among lot owners as tenants in common. Any such brief would have been aligned with the appellant, however, so the timing would have been difficult at best. In addition, the appellant's opening

brief had asserted the existence of some factual considerations that had not been obvious in the Court of Appeals opinion, and this also reduced the likelihood that an *amicus* brief would have much effect. Accordingly, the decision had been made not to request permission to file an *amicus* brief.

- E. Department of Insurance Working Groups. Geoff Anderson reported that work had been largely completed on some sections of the proposed new regulations. Fiduciary standards and consumer protection issues are still to be addressed.

- F. “Standard” Forms Proposal. Mr. Sweetser reported that there had been no new developments. The “easy” rules changes had been adopted, so that brokers can now cross out inapplicable provisions. The Real Estate Commission has not adopted the proposed rule change defining “standard” forms. Thus, lawyers, brokers and the real estate commission will live with the status quo unless and until there is further regulatory action. Julie Waggener will report on the Real Estate Commission’s perspective next month.

- G. 2016 Symposium Update

Ms. Nies reported that brochures are out and registrations are coming in. She noted that room availability was limited, because the CBA Ethics Committee had scheduled its summer meeting for Breckenridge on days that overlapped the Symposium.

- H. Membership and Practice Development Committee

Mr. Osborn reported that the Committee is planning an event for some time in August.

- I. Publications/Newsletter, Website, Discussion Group

Mr. Killian reported that the newsletter was ready for distribution. It includes an article on the *McMullin* “implied common interest community” case. The Committee hopes to get another newsletter out before the Symposium, but may decide to wait and see whether there will be a special session of the legislature, as that could provide important fodder for a new newsletter.

- J. Education/CLE

Mr. Mayo noted that the Symposium has preempted most other CLE activities in the near term, but said the committee was meeting with Heidi Ray to work on fall events. He reminded the group that Geoff Anderson would be presenting a CLE lecture on quiet title proceedings on May 20, and noted that the timing coincided nicely with the publication of the latest edition of Mr. Anderson’s book, which would be available to attendees at the lecture.

In addition, Mr. Mayo reported that Deanne Stodden had accepted the position of executive editor of the course in real estate fundamentals that had been developed and taught for many years by Willis Carpenter.

K. Education/Topical Lunches

Ms. Alderman reported that the next topical lunch will be on June 2, at Maggiano's southeast restaurant; Timothy O'Neill of the Office of Attorney Regulation Counsel will speak on ethics issues. That will be the last program until September, but the committee is working on ideas for fall programs.

L. Business Law Section Liaison

Mr. Bergstrom reported that the ABA and other national bar groups had released a commentary and forms dealing with local counsel opinions and opinion practice. The Business Law Section will consider soon whether to endorse the report on local counsel opinions. He anticipates that the endorsement will be forthcoming, but formal approval by the Colorado Bar Association would require Board of Governors Action. This, he said, might be more likely if the Real Estate Section also endorsed the report.

M. Interprofessional Committee

Ms. Dunn reported the Real Estate Commission Forms Committee had announced that a number of forms changes would be proposed, none "earth shaking" but affecting nine or ten forms nonetheless, as detailed in the written report, *attached*. The Division of Real Estate had reported receiving numerous complaints of time-share "relief" scams, some of which involved identity theft. Mr. Clark described one scam that he analogized to a "Viking funeral", in that a burdensome timeshare would be conveyed to an unknown or nonexistent entity and metaphorically launched into the distance – creating confusion but doing little to relieve the owner of liability for maintenance charges.

N. Publications/Colorado Lawyer

Mr. Clark reported that the committee was continuing to work with the author of a new article that required extensive revision.

O. Community Service/Charitable Committee

Mr. Mayo reported that the next LawLine 9 event was scheduled for August 31. He has been trading calls with Habitat for Humanity, but no activity has been scheduled yet.

P. Colorado Housing Council

Ms. Dunn reported that the most recent meeting had focused on housing for Millennials.

Q. Trust & Estate Section Liaison

Mr. Kirch reported that both of the probate bills supported by the Trust & Estate Section had passed the legislature and been signed by the Governor. These included the determination of heirship and supplementary affidavit bill that the Real Estate Section had reviewed and commented on, as well as a prohibition against a trustee's use of estate funds to defend an attack on the trustee's actions, unless the court approved the expenditure.

R. Young Lawyers Division Liaison

Mr. Osborn reported that the Committee is planning an event for some time in August.

S. Cannabis Law Committee Liaison

Ms. Dunn reported that the committee is planning to contact Mr. Sweetser to find a speaker for a real estate-related program around the end of May. Ms. Ray commented that the committee is sponsoring a half-day CLE event on June 24, relating to enforcement of contracts that pertain to the cannabis industry.

T. Tax Section Liaison

Mr. Murray reported that the CBA had disapproved the tax section's proposal that costs and revenues of the annual legislative update event be shared among tax, real estate, business law, and trust & estate sections. He noted that the legislative update event would go forward as planned on June 8.

U. Forms Sub-Committee Liaison

Mr. Anderson reported that Kent Levine and the Forms Committee had been working on a few new forms.

V. CBA Ethics Committee Liaison

Ms. Stodden reported that the Committee had been working on updates of several opinions, including Opinion 80, which addresses a lawyer's duty to disclose errors discovered by the lawyer in the context of a transactional closing. The Committee also approved in principle, but is working on the wording of, a letter opinion responding to a request by a lawyer who wanted to post on the lawyer's website a form of permission document by which a landowner could grant

permission to others to hunt on the owner's land. The Committee is also working on an opinion that addresses the use of social media.

Ms. Stodden also noted that there have been some recent changes in Rules of Professional Conduct, dealing with co-counseling and with the duty to protect confidential information when a lawyer leaves a law firm or joins a new one. The updated rules are not on the CBA website, but are on the Supreme Court's website.

W. Board of Governors

Mr. Alt submitted a written report, *attached*. He said the last meeting had been devoted primarily to discussion and adoption of a four-year strategic plan. The CBA is in a strong financial position, but sees a need to get more lawyers involved in association activities, earlier in their careers. The Bar needs to do more outreach and increase its membership, especially among younger lawyers and in rural areas outside metropolitan centers.

He noted that Mr. Toft had been appointed to another term on the Legislative Policy Committee, and that the Civil Rights Committee was now the Civil Rights Section.

The Board of Governors had also noted that, thanks in substantial part to the Colorado Bar Association, Colorado was celebrating 50 years of merit selection of judges.

The Board of Governors had also discussed the Colorado Lawyers Assistance Program. The program has been averaging 406 calls per month, of which 40+ represent new contacts with lawyers needing assistance.

Finally, Mr. Alt noted that the Board of Governors was considering whether an effort should be made to make the bylaws of the various sections more consistent, in order to conserve staff time in dealing with internal section issues and activities.

X. Legislative Policy Committee

No report this month.

Y. Supreme Court Civil Rules Committee Liaison

No report this month.

Z. Title Standards Committee

No report this month.

AA. Eminent Domain Committee

No report this month.

VII. Adjournment

The meeting was adjourned at 4:29 p.m.

A handwritten signature in blue ink, appearing to read "Charles D. Calvin", is written over a horizontal line.

Charles D. Calvin, Secretary