

MEETING MINUTES
Real Property Law Section – Executive Committee
Thursday, July 17, 2014
Queens Landing Hotel, Niagara-on-the-Lake
Ontario, Canada
3:00 P.M. – 5:00 P.M.

1. Call to Order – David L. Berkey, Chair: The meeting was called to order at 3:00 P.M. The Chair welcomed everyone to the meeting in Queens Landing Hotel, Canada and thanked Leon for the lovely location. [Agenda attached]
2. Welcome to NYSBA President Glenn Lau-Kee: David welcomed Glenn to our meeting.
3. Approval of the April 11, 2014 Meeting Minutes – Mindy Stern, Secretary: On motion made by Jerry Goldstein and seconded, the minutes were unanimously approved.
4. Chairman's Remarks: The Chair reported on the following items:
 - a. A new Website and Electronics Communications Committee has been created. Susan M. Scharbach and Michael P. Stevens have been appointed as Co-Chairs. Mike Berey was thanked for his past work as Webmaster.
 - b. Michelle Wildgrube has been appointed to serve as our newest delegate to the House of Delegates.
 - c. New District Delegates were welcomed to the Executive Committee – Daniel J. Baker and Sanford A. Pomerantz for the Tenth District and Joseph J. Risi and Steven Wimpfheimer for the Eleventh District.
 - d. Richard A. Nardi was welcomed to serve with Sam Tilton as the new Co-Chair of the Legislation Committee. Karl Holtzschue was thanked for his excellent work as former Co-Chair of that committee.
 - e. Maggie R. Robb and Elizabeth S. Woods were welcomed as the new Co-Chairs of the Public Interest Committee.
 - f. The Real Estate Financing Committee was divided into two committees, with Richard Fries and Frank Sarratori appointed as Co-Chairs for the Commercial Real Estate Financing Committee, and Heather Rogers appointed as Co-Chair of the Residential Financing Committee. A downstate Co-Chair is needed to serve on the residential committee with Heather. It was suggested that Heather's committee look into the Model Act that is under consideration by the Uniform Law Commissioners.

- g. David reported that he attended the Section Leaders Conference in Manhattan on May 7, 2014. Best practices and budgeting, among other topics, were discussed, and good ideas were shared. Our section is doing model work. We are moving forward with electronic communications and leading the charge in interfacing with students. He also attended the Schenectady County Bar Association's annual real estate seminar in Scotia, NY, where he gave an overview of the activities by our section on behalf of its members, such as our role in the title agent licensing bill; Peter Coffey and Michelle Wildgrube were speakers at the seminar.
- h. The NYS Bar Foundation has created a common calendar for the scholarships which it administers, including our two scholarship funds. The section officers have recommended funding increases for our scholarships. In January 2014 we increased funding of our scholarships by \$10,000 and increased each of the two scholarships from \$1500 per year to \$2500 per year. The current balance of the Lorraine Power Tharp fund is approximately \$7,900 and the current balance of the Mel Mitzner fund is approximately \$13,000; the officers have now recommended using some of our surplus to increase each of our scholarship funds to \$20,000.
- i. The officers also discussed initiatives to increase membership and participation, and reestablishing the Escrow Task Force to focus on proposing legislation to deal with attorney theft from escrow accounts. A previous suggestion was for banks to issue two statements for escrow accounts. Ira Goldenberg mentioned that there was resistance from the State Bar to changing the structure of IOLA in a way that would affect funding for Legal Aid. Peter Coffey also raised a concern that the ability to track each individual deposit would likely jeopardize the underlying basis for IOLA accounts. Anne Copps raised that this may be an upstate/downstate issue. Both Anne and Ben Weinstock volunteered to serve on a task force to study this issue.
- j. There have been issues with CLE programming and the State Bar being fully equipped with necessary electronics at all program sites. Joe Walsh acknowledged that there have been some rough spots, but that the bugs are being worked out. He reported that the State Bar lost some long-time employees in the CLE department, and that what we want and what the State Bar can do are at times two different things. CLE has changed dramatically, but will continue to improve. We must plan ahead and work together with State Bar.
- k. Law students have been used very successfully on some committees. We all are encouraged to continue to consider how we can integrate law students into our committee work.

1. Our By-Laws set term limits for committee co-chairs, which have been exceeded in many instances. No one is being asked to resign, but all co-chairs are encouraged to train members of their committees so that there will be someone prepared to step up to be a successor in the future.
5. Meeting Reports:
 - a. Leon Sawyko discussed the events for this week end and plans for the Annual Meeting in January 2015.
 - b. Mindy Stern reported on plans for the Summer 2015 (July 16-19) meeting at the Basin Harbor Club on Lake Champlain in Vermont.
6. House of Delegates Report. Sam Tilton reported that debate on pro bono reporting continued at the most recent HOD meeting. The matter was tabled because discussions on this issue were opened with the Chief Judge, and negotiations will continue. Glenn Lau-Kee reported that there was a meeting yesterday and further progress made. Another meeting is scheduled, and he is optimistic. Ira Goldenberg is the representative on behalf of the sections on the State Bar Executive Committee. He reported on two important issues that the section delegates are addressing: CLE (including the administrative structure of the State Bar office -- Ira is serving on a State Bar CLE Task Force); and section finance (including excessive surplus of some sections and productive use of surplus funds.)
7. Section Projects and Initiatives.
 - a. Budget – Spencer Compton reported that our surplus is currently approximately \$148,000, and he expects we will add a bit more to our surplus this year. Some of our surplus will be used to increase our scholarship funds. In addition the officers have recommended using some of our surplus in the following ways: (1) reduce membership dues by \$10 for one year for any new section member who is also a member of another section; (2) offer \$10 memberships for attorneys admitted 5 years or less; (3) underwrite 75% of the cost to attend our summer meeting for first time attendees or attorneys in practice 10 years or less (this would include registration, hotel and the attorney's guests); and (4) free section dues for students who want to join our section.
 - b. Section Calendar – notices of committee meetings should be given to Jerry Goldstein to include on the calendar.
 - c. Task Force on Insurance Department Regulations – Tom Hall reported that the Task Force received a draft of the regulations from the Department of Financial Services. The draft was reviewed and discussed on a conference

call with DFS. An issue showed up in the draft regarding 'multiple sources of business' and the Task Force is waiting for feedback on resolving this language. Proposed regulations are expected soon. There seems to be an acknowledgement that attorneys can act as title agent for their clients.

- d. Student Internship Program – This program seems to be working well, with over a dozen law firms and 1 upstate and 5 downstate law schools participating.
 - e. Diversity – no report
 - f. Publications – no report
 - g. Scholarships – Applications for all NYS Bar scholarships now will be submitted at the same time, in the fall.
 - h. Home Foreclosure Procedures Model Act – was previously mentioned and the committee will be looking at it.
 - i. Recommendations for NYSBA 2015 Legislative Initiatives were discussed previously.
8. Report of District Reps. Nancy Connery and Alice Breeding held a conference call with the District Representatives. They plan to do this quarterly. They requested that Tiffany provide them with names of people who have dropped their membership in the section so that follow up contacts can be made.
- a. Third District – Alice Breeding, in conjunction with the Fourth District, held a very successful event on July 7 at a Tri-City Valley Cats Baseball game. They raised money for a donation to Out-of-the-Pits, a dog rescue/rehabilitation organization. It was open to Third and Fourth District members, as well as Young Lawyers. 70 people signed up, and 51 attended (rain may have deterred some who signed up.) It resulted in 1 new member for our section and 2 new Young Lawyer members. She brought some of the 'Swag Bags' that were handed out at the event. Alice also called all those in the Third District who have dropped their RPLS membership; most dropped members indicated that they either no longer work in the legal field or their firm no longer pays for section dues.
 - b. Fourth District – Michelle Wildgrube attended the July 7 event and confirmed that it was a great networking opportunity and is hoping it will generate more new members for us and for the Young Lawyers Section.
 - c. Seventh District – Scott Sydelnik is working with Tiffany to plan a Happy Hour/Trivia Networking event at Scotland Yard Pub in Rochester. The cost is expected to be about \$800.

- d. Eighth District – Dave Mineo held an event at the County Clerk’s Office last year. This year he is planning a CLE on real estate practice in New York and Canada, which is of interest to attorneys in his district.
- e. Tenth District – Sanford Pomerantz was recently appointed and is looking forward to serving.
- f. First and Ninth Districts – Nancy Connery reported that she and Lisa are planning a cocktail party/theater event for members of their districts to honor participants on our listserv.

9. Reports of Standing Committees.

- a. Attorney Opinion Letters – The committee has a meeting scheduled for tomorrow morning.
- b. Awards –
- c. CLE – Advanced Real Estate will be offered in the Fall, as will Mortgage Foreclosures. Purchases and Sales will be offered in Spring 2015, and perhaps Abstracting and Surveys. Title Agent Licensing may be offered – perhaps one location with a web cast.
- d. Commercial Leasing – The committee had a great CLE meeting on ground leases in June. The committee hopes to do more in the Fall.
- e. Condemnation, Certiorari and Real Estate Taxation – Karla Corpus had a conference call with Tiffany. They are working to reinstitute the Office of Real Property Tax Services Administrative Reporter. The committee plans to upload information and pdf documents to be available either to our web community or perhaps to a web page that would have wider availability.
- f. Landlord and Tenant Proceedings – Ed Filemyr reported that the next meeting will be held on September 18 and will be a recent case law update and a preview from the new commentator, Dan Blumenthal, for the Real Property Law.
- g. Legislation -- The committee continues to monitor legislation and update the legislation chart, a copy of which was provided a written report prior to the meeting (copy attached.) The title agent licensing bill included provisions on title closing charges and disclosure. Also a bill to protect referees passed both houses but has not been signed to by the Governor. Four memos, authored by Tom Hall, were issued in 2014 regarding title insurance licensing; and they were all very effective. Kevin Kerwin continues to alert our Legislation Committee of proposed legislation of interest to our section; the committee then identifies and contacts the appropriate committee in our

section to see whether they want to write. The committee also keeps a chart of pending legislation of interest to our section.

- h. Awards – Peter Coffey reported that an ad has been placed in the RPLS Journal seeking nominations. He plans to place a notice in the State Bar News as well seeking nominations. He would like to see us reach out to the entire state for people at the local level who are worthy of being recognized.
- i. Condos and Coops – Held a meeting June 11 which covered an update on tax issues, City Bikes and a case law update.
- j. Membership -- Harry Meyer reported that the State Bar is getting good at giving us information about membership. The District Reps are reaching out to new members to welcome them and get them involved. Ken Block suggested having networking opportunities with people in the industry. A question was raised as to what we can do to get corporate counsel attorneys involved. Richard Fries commented that many of the New York City attorneys seem to be more interested in their local bar associations than in the NYS Bar, and that the need for NYC attorneys to make billable hours leaves little time for bar activities.
- k. Not-For-Profit Entities – Anne Copps left a report on three CLEs being planned: October 16 ‘Changing the Culture of a Failing Not-For-Profit’; a morning seminar during the annual meeting in 2015; and an evening seminar next April.
- l. Professionalism – Summaries of recent ethics opinions have been prepared for publication on our list serv. The committee will be coordinating with the Web Site and Electronics Committee to get those summaries posted in hopes of generating discussion on the list serv. Harry Meyer shared an ethics opinion issued by the Erie County Bar (copy attached) which advised that it is unethical for an attorney to guarantee water charges and other fees or taxes on behalf of a client at closing.
- m. Publications – The Summer edition has been mailed; several articles have been received for the Fall edition. Bill Calavito requested an article on the agent licensing law to be included in the Journal.
- n. Real Estate Construction – The committee is working with construction committees of other bar associations. Brian Lustbader reported that the committee continues to work on updating and improving various AIA forms. A meeting is scheduled for 7:30 tomorrow. Ken Block said they will be working on membership in this committee. The committee worked with the NY County lawyers to amend the Scaffold Law, but no negligence reform was enacted.

- o. Real Estate Financing – Richard Fries questioned whether it was wise to split into two committees (commercial and residential) and ‘proposed’ reuniting the two committees. He also reported on a new rule enacted June 2, 2014 providing for accelerated resolution of disputes (a ‘rocket docket’) in the Commercial Division. Scriveners need to know about it so that in drafting documents significant, substantive rights are not unwittingly waived by boilerplate contract language. Heather suggested perhaps residential should be a subcommittee of this committee. She indicated that the committee is looking at the proposed model rules.
 - p. Workouts and Bankruptcy – Bob Zinman discussed the right to credit bid in foreclosure actions; further study will be done for a more complete report at the January meeting. They would like an intern to do an empirical study of bankruptcies in New York.
 - q. Title and Transfer – The committee is scheduled to meet at 7:30 tomorrow.
 - r. Website and Electronic Communications – Susan Scharback reported that the committee met for the first time yesterday. They are just getting their feet wet. Their first task is to clean up links on the web site and update announcements. They also will be communicating with Mike Berey to get his suggestions, and welcome suggestions from others. Please contact michaelpstevens@gmail.com or scharbach@gagll.com with your comments or suggestions.
10. Old Business. Maureen Lamb asked if there any new people here for the conference. Leon indicated there were new people attending and encouraged all of us to reach out to the new members, welcome them and try to get them involved. Maureen suggested that we also look at attorneys who are retired or retiring as a potential resource for us.
11. Next Executive Committee Meeting: The next meeting of the Executive Committee will be held on Friday, October 17, 2014, from 10:00 A.M. to noon at the Harvard Club in NYC.

Motion to adjourn by the Chair and seconded. The Meeting was adjourned.

Respectfully Submitted,

Patricia E. Watkins, Secretary