

REAL PROPERTY LAW SECTION – Executive Committee

Thursday, July 16, 2015

3:00 PM to 5:00PM

Club Room

Basin Harbor Club and Resort

Vergennes, Vermont

1. Call to Order – The meeting was called to order by Leon T. Sawyko, Chair, at 3:00 P.M.
2. Approval of the minutes of the Executive Committee meeting held on April 17, 2015 – Patricia E. Watkins – Trish Watkins announced two corrections to the April 17, 2015 minutes: (a) item 8f should reflect that Paul Gruber is the new co-chair and Peter Kolodny is continuing as the other Co-Chair of the Landlord Tenant Committee; and (b) item 8p should refer to “Student Affairs Committee” rather than “Student Internship Committee. The minutes of the April 17, 2015 meeting, as corrected, were unanimously approved.
3. Welcome and Remarks – David Miranda, NYSBA President – David Miranda congratulated our Section on its initiative to attract new members and to incentivize new members to attend our Summer Meeting. David further emphasized that membership is an important issue for the NYSBA and briefly described NYSBA’s Pathways to the Profession initiative which is designed to connect with law students. As of this year, all NY law students are now entitled to free membership in the NYSBA.
4. Remarks of Chair – Leon T. Sawyko
 - a. The Chair welcomed new members and detailed a number of changes to the Executive Committee. The following new members were welcomed: Daniel Webster, Co-Chair of Public Interest, Daniel Zinman, Co-Chair of Real Estate Workouts and Bankruptcy, Gavin Lankford, Co-Chair of Construction Committee, and Dale Degenshein, Co-Chair of Condos & Co-Ops. The following changes in roles were announced: Joe Walsh was formerly an alternate to the House of Delegates and is now a Delegate, Nancy Connery is now the alternate; Gil Hoffman and Toni Ann Barone are now Co-Chairs of Title & Transfer; Joe DeSalvo has moved from Co-Chair of Title & Transfer to Member at large; Bob Zinman is now a Member at Large; Ed Filemyr, former Co-Chair of Landlord & Tenant is now a Member at Large; Jeff Chancas and Jeff Moerdler, both former Members at Large, have termed out; Elizabeth Woods, former Co-Chair of Public Interest has resigned as has Ken Block, former Co-Chair of Construction.
 - b. The Chair mentioned the upcoming new Residential Mortgage Disclosures being promulgated by the CFPB and inquired whether the

Real Estate Finance Committee would be reviewing them. Richard Fries indicated he would speak to Heather Rogers about the topic.

- c. The Chair advised that the Executive Officers discussed the current subsidies being given in our efforts to attract new members and have agreed that, for the time being, we will continue with the subsidies presently in place, which are: (a) \$10 Section Membership dues for attorneys admitted to practice five years or less; (b) the discounts offered for the 2015 summer meeting will be the same discounts offered for next years summer meeting; and (c) the Section Lunch at the Annual Meeting will continue to be subsidized to keep the price at its current level. The Executive Officers felt that the discount for the summer meeting should continue so that we can assess the effectiveness of that initiative.
- d. The Chair inquired as to status of the attorney escrow committee and was advised by Ben Weinstock that nothing has happened in the last few months.
- e. The 2016 Section Budget is being prepared. The Chair invited all committee members to provide any suggestions they may have by the end of July to either Spencer Compton or to the Chair.
- f. The Chair announced that the Section is a Co-Sponsor of the program "How to Jump Start Your Legal Career" which is part of NYSBA's Pathways to the Profession initiative, and asked for volunteers to attend the program on September 10, 2015. Larry Wolk volunteered to attend on behalf of the Section.
- g. The Chair indicated that Jerry Antetomaso and Joe DeSalvo have agreed to participate as the representatives of the RPLS on the task force for Technical Amendments to the Power of Attorney Statute.
- h. The Chair advised that the LegalEase pamphlets put out by NYSBA have been reviewed and updated as necessary by appropriate committees.
- i. The Section provided its support to legislation allowing the electronic filing of subdivision maps.
- j. The Chair opened a discussion about succession planning in light of the term limits provisions set forth in our Section's By-Laws. Numerous suggestions and comments were made, including the following: the Chair expressed his belief that we do not want to lose the input and expertise of many of our active committee members who have made significant contributions over the years and suggested the possibility of a non-voting emeritus category; Joel Sachs suggested that we already have Members at Large and perhaps the emeritus category was not needed; Karl Holtzschue indicated that NYSBA opposes the use of unlimited number of Members at Large; Ken Block stated that he thought it was important to have new people coming on to the Executive Committee and that section members can still be active on substantive committee meetings without being on the Executive Committee; Sam Tilton indicated that the past Chairs effectively were the emeritus members; Ira Goldenberg suggested the creation of young lawyer and diversity seats; a number of people, including, Bob Zinman, David Berkey, Richard Fries, John Hall and Ben

Weinstock expressed the importance of having “young blood” but also emphasized the need for the newer members to pitch in and do the work; John Hall suggested having an “adjunct” young lawyer co-chair for each committee; Dan Zinman stated that we need a smaller task force to hash out the ideas and that the by-laws should address what can be done if an appropriate replacement cannot be found for a committee chair.

- k. The Chair appointed Karl Holtzschue as the Chair of a By-Laws revision task force to look at the succession issue as well as any other matters which should be revised in the by-laws. The following Executive Committee members volunteered to be on the committee: David Berkey, Dan Zinman, Brian Lustbader, Richard Fries and Larry Wolk. If anyone else wants to join the committee, they should email Karl Holtzschue.
5. Meeting Reports
- a. 2015 Summer Meeting – Mindy Stern reported that the attendance at the summer meeting was exceptional with a significant number of new members attending. Mindy also explained her “buddy system” designed to make new members feel welcome and engaged in the hope of generating new active Section members.
 - b. 2016 Annual Meeting – Mindy Stern reported that the Executive Committee Dinner will be at Upper Story in the penthouse at the D & D Building. The CLE program is being worked on.
 - c. 2016 Summer Meeting – Trish Watkins reported that the 2016 Summer Meeting will take place from 7/14/16 through 7/17/16 at the Long Wharf Hotel in Boston. There will be a dinner at the Aquarium. Anyone with suggestions for group activities should email Trish Watkins.

Financial Report – Spencer Compton. The RPLS is right on target with its budget. We presently have a surplus of \$163,442.00. The Surplus will be used in part for subsidies previously discussed (to attract new members) and for student awards and grants. Ben Weinstock inquired as to the cost of the subsidy of the 2015 summer meeting. Spencer Compton advised that the final figure will not be known until after the meeting. Mindy Stern indicated that we had budgeted approximately \$25,000 to \$30,000 for the subsidies of the 2015 meeting and that we have approximately 32 or 33 new attendees at the 2015 summer meeting. John Hall asked if there will be follow up to see what kind of return we will be getting on our subsidy expenditure. Mindy Stern advised that of those being subsidized, most were first time attendees and very few were young lawyers. David Miranda suggested that RPLS should work with the Young Lawyers Section in an effort to boost attendance by younger lawyers.

6. House of Delegates Report – Sam Tilton reported that the Section Delegates Caucus now meets twice before every House of Delegates meeting rather than once because they found that there was not enough time to cover all of the issues relevant to the sections. The Section Delegates Caucus discussed future CLE programs; by-laws revisions to allow more continuity; proper uses of surplus and plans to share best practices for Sections. The agenda in

- the HOD was on the lighter side as there were many items that are works in process, which include: family leave, social media guidelines (which are now posted on the NYSBA website) and the Chief Judge's commission to establish uniform attorney discipline process and penalties in the four departments.
7. NYSBA Executive Committee Report - Ira Goldenberg reported on the recommendations of the CLE task force (of which there were 10 in total) including the continuation of the "3-legged stool" comprised of the meetings department, the CLE Department and the Sections – all of whom provide CLE programs and the requirement of sharing of technology by the various sources providing CLE – especially the CLE Department being required to share its technological resources with the Sections.
 8. Section Projects and Initiatives
 - a. Section Budget – was previously reported on by Spencer Compton (see #5 above).
 - b. Section Calendar – the Chair advised that Gerry Goldstein continues to run the Section Calendar and that all committees should advise Gerry of any upcoming meetings, events, seminars, etc.
 - c. Task Force on Draft Insurance Department Regs – Tom Hall reported that the Final Regulations still have not been issued and the Temporary Regs continue to be extended. Karl Holtzschue requested that his name be removed as Co-Chair of the Task Force and that the current co-chair, Jerry Antetomasso, be listed on future agendas.
 - d. Student Intern Program – David Berkey reported that 20 law firms and businesses were in the program, which was highly successful, and that the program universally received rave reviews from the students. David further suggested that it may be appropriate to bring the Student Intern Program under the auspices of the Student Affairs committee.
 - e. Scholarships – Mindy Stern reported that there were no applications for the Mel Mitzner Scholarship and only one application for the Lorraine Power Tharp scholarship. We need to get more interest in the scholarships and there is a concern that the New York State Bar Foundation has not been promoting the Scholarships aggressively enough. There is also a question as to the accuracy of the amounts carried on the books of the Foundation for each of the scholarships.
 - f. Home Foreclosure Procedures Model Act – The Chair inquired whether the Real Estate Financing Committee was addressing the Model Act. Due to technological difficulties with the call in system, Richard Fries's response could not be deciphered.
 - g. Recommendations for NYSBA's 2015 Legislative Priorities – No Report.
 - h. County Clerk Treatment of Equalization and Assessment Form (RP-5217) – The Chair explained the problem with differing treatment on the completion of the RP-5217 form by the various County Clerks. NYSBA has a task force addressing the issue and our section has members participating on that task force.

- i. Public procurement reform legislation – Brian Lustbader reported that the Construction Committee will be evaluating the position of the Association of the Bar of the City of New York, which is looking to get support from our Section as well as the New York County Lawyers Association.
9. Reports of Standing Committees
 - a. Substantive Committees
 1. Attorney Opinion Letters – No Report
 2. Commercial Leasing – Had a successful program in June where the Committee flew in a speaker, Joel Hall, from California to speak on SNDAs. The program was open to all Section members. (Report Attached)
 3. Condemnation and Certiorari – Report was inaudible due to the poor quality of the audio system. The Chair suggested that the committee send a written report.
 4. Condos & Co-Ops - Dennis Greenstein reported that the Committee had a well attended recent meeting. The Committee normally puts on 2 meetings per year. They would like to have their meetings accredited for CLE going forward.
 5. Green Real Estate – No Report
 6. Land Use and Environmental Law – No Report
 7. Landlord and Tenant – No Report
 8. Low Income and Affordable Housing – Report was inaudible due to the poor quality of the audio system.
 9. Not-for-Profit Entities and Concerns – Anne Copps reported that the Committee has CLEs scheduled for October and January.
 10. Professionalism – Nancy Connery reported that there are two ethics summaries ready to go online now that the conversion from the Listserve to the on-line Community has been completed
 11. Public Interest - Maria DeGennaro reported that she and Dan Webster are new committee co-chairs and will be focusing on foreclosure issues.
 12. Real Estate Construction – Brian Lustbader reported that the Committee is very close to completing a form rider to the AIA Architect agreement (similar to what the committee has done for the Contractor Agreement). The Committee is now going to focus its efforts on the Design/Build contract. (Report Attached)
 13. Real Estate Financing – Richard Fries discussed the recent Altschuler decision (a copy of which is attached to the minutes). The Altschuler Court essentially held that a foreclosure judgment which was appealed and reversed, but without any stay having been imposed, could be binding upon successor purchasers under a balancing of the equities test

because of the fact that the purchaser at the foreclosure sale had knowledge of the appeal. Richard Fries indicated that the decision will chill all foreclosures sales in any action where a notice of appeal has been filed.

14. Real Estate Workouts and Bankruptcy - Gary Gruber and Dan Zinman reported on the recent US Supreme Court decision, *Bank of America v Caulkett* which held that a second mortgage on residential real property – even when entirely underwater – cannot be stripped from the real property. Gary also discussed *In re Arch Hospitality, Inc.*, a case out of the Bankruptcy Court for the Western District of NY which held essentially the same thing in a Section 363 sale, even when the second lienholder did not object to the sale.
 15. Student Affairs Committee – No Oral Report (written report attached)
 16. Title and Transfer – No Report
- b. Administrative Committees
1. Awards – Peter Coffey reported that notices of the Professionalism Award have been placed in the Real Property Section Journal and NYSBA newsletters. When an award is issued, we should communicate with the local county bar association of the awardee.
 2. CLE – Joe Walsh reported that the Committee is working on the following programs: (a) a program similar to the one put on by the Schenectady Bar, on titles and surveys; (b) a program on the new CFPB regulations affecting TILA, RESPA and residential closing procedures; and (c) a program on the new Title Agent Licensing regulations, once they are finalized. Joe further indicated that there has been an overall general decline in attendance at CLE programs. Joe indicated that the cost of meetings, especially in the NYC area is a huge expense and requested that if anyone has access to alternative space at lower cost to please let him know. Larry Wolk reported that the Advanced Real Estate program will be held on 12/7/15. Dan Zinman suggested using law schools as venues for CLE. Joel Sachs advised that the Westchester County Bar Association has been going to private banquet halls and country clubs and getting reasonable rates for daytime programs. (Report Attached)
 3. Legislation – Sam Tilton advised that his report has been submitted (and is attached to these minutes). Sam also advised that things have been quiet lately in the legislative arena. Sam also mentioned that a bill has been introduced to eliminate retainages in construction contracts (A796/ S2931). (Report Attached)
 4. Membership – No Report
 5. Publications – Bill Colavito reported that the next issue of the Section Journal will be a combined Summer/Fall issue and

currently needs a few more articles – the deadline for submission is early August.

6. Website and Electronic Communications – Michael Stevens reported that the RPLS communities launched in April. The committee has drafted and posted FAQs to help users with issues that have arisen since the rollout. Michael also reported that the Construction Committee Listserve will be maintained until its online Community is launched. (Report Attached)

10. Reports of District Reps

- a. 1st District – Nancy Connery advised that she is working on a project which describes the various committees which will be assembled into a brochure.
- b. 2nd District – Lawrence DiGiovanna reported (via text message) that he tried to sponsor a CLE at the Brooklyn Bar Association but was unable to do so because the facility is not ADA compliant.
- c. 3rd District – Alice Breeding reported that she is working on: (a) a charity event in August for the Animal Protective Foundation of Schenectady; (b) a Fall meet & greet reception with Albany Law School; and (c) for next summer, a Christmas in July event to benefit the Children’s Hospital of Albany Medical Center.
- d. 4th District – Michele Wildgrube thanked the Executive Committee for its support of the Schenectady Bar Real Estate Program.
- e. 5th District – No Report
- f. 6th District – No Report
- g. 7th District – No Report
- h. 8th District – David Mineo reported on the Co-Sponsoring of the Erie County Bar 25th Annual Real Estate Seminar. David is currently planning a Tour of the Federal Court House and cocktail reception.
- i. 10th District – Sandy Pomerantz reported on participating in the Touro Law School career day.
- j. 11th District – Steve Wimpfheimer indicated that upcoming programs are being worked on in conjunction with the Queens County Bar Real Estate Committee.
- k. 12th District – No Report
- l. 13th District – No Report

11. Old Business – None

12. New Business – Karl Holtzschue reported that the most recent Journal had an article on Retainer Letters and an Article on Escrow Accounts. Karl pointed out that one of the Articles discussed the Galasso case, where a lawyer was suspended for 2 years because he failed to adequately supervise his brother who had stolen funds from the firm’s escrow account. Peter Coffey pointed out that the theft of the funds was sophisticated and the brother was even able to con an accountant who was reviewing the firm’s escrow accounts. David Berkey mentioned a recent case in the law journal involving an office manager who stole money from a law firm. After he was caught by the firm, he moved on to a second law firm and the first law firm did not notify the

second law firm of the theft from the first law firm. The office manager then proceeded to steal money from the second law firm, in part to repay the first law firm.

13. Future Executive Committee Meetings
 - a. October 16, 2015 – Harvard Club, NYC
 - b. January 27, 2016 – Annual Meeting – New York Hilton
 - c. April 15, 2016 – Harvard Club, NYC
14. Adjournment – The Meeting was adjourned at 5:10 PM

Respectfully Submitted

Thomas J. Hall, Secretary

Attachments:

1. List of Members Attending in Person
2. List of Members Attending by Phone
3. Legislative Committee Report
4. Legislative Committee – List of Bills which have passed both houses.
5. Student Affairs Committee Report
6. Commercial Leasing Committee Report
7. Decision – Court of Appeals – 172 Van Duzer Realty Corp v. Globe Alumni Student Assistance Assn.
8. Decision – Court of Appeals – Altshuler Shaham Provident Funds, Ltd., v GML Tower LLC
9. Decision – US Supreme Court - Bank of America v Caulkett
10. Decision - US Bankruptcy Court – WDNY – In re Arch Hospitality, Inc.
11. Construction Committee Report
12. Website and Electronic Communications Committee Report
13. CLE Committee Report