

MEETING MINUTES
Real Property Law Section – Executive Committee
Thursday, July 14, 2016
3:00 P.M. – 5:00 P.M.
Salon BC, Marriott Long Wharf Hotel, Boston, MA

1. Call to Order: The meeting was called to order by Mindy H. Stern, Chair at 3:04 P.M.

2. Approval of the Executive Committee Meeting Minutes held at the Harvard Club, April 15, 2016 – Thomas J. Hall, Secretary:

A motion was made to approve the Minutes of the previous Executive Committee Meeting by Leon Sawyko and seconded by Spencer Compton. There being no further discussion, a vote was taken and the Motion was approved by all present, with one abstention.

Claire Gutekunst, President of the NY State Bar Association, attended the meeting and spoke of her initiatives as President of the Bar. She indicated that her primary effort was to increase membership and participation in the NY State Bar Association. The last membership initiative resulted in a 5% increase over a three year period. She indicated that her goal was to have a 5% increase over 2 years starting 1/1/2017. She made the Committee aware that there are nearly 10,000 Bar Members who are either interested in or practice in the area of real estate, while the RPLS has only 4,200 members. She pointed out that there is substantial growth opportunity in the current Bar membership for our section. She also pointed out that Michelle Wildgrube has agreed to co-chair the membership drive. Ms. Gutekunst also indicated that her second goal was to increase the diversity of the membership in NYSBA. She indicated that during her Presidency the Bar would be undertaking an initiative to address and find ways to reduce domestic violence. Finally, she indicated that she appreciated and encouraged the Mentor/Mentee Program the RPLS initiated for the last summer meeting and encouraged us to continue the initiative. She indicated that the one

on one attention is what gets people involved and keeps them coming back.

The Chair then asked Sam Tilton to speak for a moment on the passing of our former Chair, T. Mary McDonald. Sam indicated that T. Mary had developed Parkinson's disease approximately ten years ago and had retired. She had recently passed away and Sam shared some of his experiences, as well as recounted some of the happenings at T. Mary's memorial service. He indicated that he and Kathy Whelehan had a breakfast with T. Mary and despite her physical circumstances she thoroughly enjoyed the breakfast and recounted some of the old times with the RPLS. At her memorial service the theme was consistent with those voiced by many on this Committee about T. Mary: 1) She was smart and thorough; 2) modest about her accomplishments; and 3) insistent that fun always be a part of her interactions.

3. Welcome and Chairman's Remarks – Mindy Stern:

A. Membership Initiatives:

Mindy indicated in her remarks that the membership initiatives would be the primary focus of the Executive Committee Meeting on this day. She distributed ten initiatives (attached to the Minutes). There were a number of ideas and much discussion among the members of the Executive Committee. Some highlights are:

There was discussion that we should also encourage involvement with the Section Caucus because it is less intimidating than the House of Delegates which was described as a "mysterious organization".

Nancy Connery indicated that students would likely not be interested in the House of Delegates (Section Caucus), but rather in the substantive meetings, committees and the Executive Committee gatherings.

Claire Gutekunst suggested that again a mentor be assigned and that students and potential new members be mentored first.

Ira Goldenberg indicated that students should be invited to attend Bar CLE's and other Programs. He also indicated that the RPLS Annual Meeting could likely be attractive, especially to those students in and around New York City.

Another item of discussion was the ten law firms that are currently doing student internships. The discussion seemed to imply that number would double in the relatively near future and that should be a goal.

Another of the initiatives is to encourage students to work on Committee projects. The Chair challenged the Committee Chairs to include students and use them as resources in the various projects each Committee may decide to undertake. Mindy also indicated that they work on the journal.

Another initiative is membership and usage of the Law Hub. Small and solo firms may be another possible market for increasing membership.

Peter Coffey opined that we should focus more on practicing attorneys rather than students. While attracting future members is important, the current practitioners are the immediate market.

One member suggested we start working with local Bar Associations. Jim Grossman raised the point that local Bars see us as a competitor, especially in the Continuing Legal Education market because we try to appeal to the same customer base.

Another idea discussed was to create an economic incentive to join the Bar Association. Some reduction in fees or how we can assist potential members in enhancing their practices may be a goal of ours. Our membership opined we should advocate more for the profession and make professionalism more of a regular topic.

Harry spoke of free memberships offered to local Bar Members in Western, NY. There were 25 available and David Mineo pursued the idea and was unable to attract the entire 25 even though membership was free. Harry also indicated that it would be easier to get greater membership from existing Bar Members and potentially allow some credits towards CLE's for those individuals who actually recruit new members. Harry called for creating some incentive to attract or recruit new members.

Michelle Wildgrube indicated that again this year there was going to be a wrap-around membership. In other words, any new members who join in 2016 would also get 2017 dues waived if they pay the full dues in 2016. Harry Meyer then indicated that we should keep statistics on those particular law students who actually joined the section and whether this

was a worthwhile undertaking. He believes that the benefits are marginal at best.

Ira Goldenberg suggested that we: 1) pursue younger lawyers who are already practicing and 2) recall that 30% of our members are out of state and should also be targeted. Dan Zinman, who lives in New Jersey, indicated that we should consider social occasions to sponsor in order to attract new members. Claire Gutekunst indicated that Pat Wood is in charge of non-resident member groups. They have already done an outreach in Boston and may do it for New Jersey as well.

Claire Gutekunst further indicated that the Bar Association would be publishing a Best Practices Guide for recruiting for the various sections which would complement or potentially even supplant the ideas discussed at our Meeting.

B. Section Booklet:

The Chair then introduced and circulated the Section Booklet which was created by Nancy with the assistance of Leon Sawyko and input by many others. Josh Stein's Dad did the artwork. The Booklet was circulated and met with tremendous applause as it truly was a wonderful piece of work. The Booklet describes the various Committees and is intended to be distributed at Meetings and at CLE's as a recruiting and informational tool.

C. Appointments:

Andy Posil has agreed to act as First District Rep. Scott Sydelnik will be Co-Chair of the CLE Committee. David Zinberg will be Downstate Co-Chair. The 7th and 12th Districts will now be unrepresented and recommendations are being accepted.

D. Reimbursement Policy: Ira will discuss this later.

E. Section Sponsorships:

The Bar Association asked each Section to contribute to a community legal services pro bono project and the Officers have done so to the level of \$500. The Officers also approved \$350 expenditure for each edition of the NYS Real Property Journal to be available on the NYSBA app.

4. Meeting Reports:

A. 2016 Summer Meeting – Patricia Watkins: Trish indicated that there would be a continuation of the Mentor/Mentee Program. She asked us to find our appropriate Mentee at the New England Aquarium where dinner will be held at 6:30 p.m. Trish indicated that the morning session starts at 8:30 a.m. in Salon AF with the general CLE.

B. 2017 Summer Meeting - Tom Hall: The summer meeting for 2017 will be July 27-30 at High Peaks Resort in Lake Placid. Tom was completing the slate of topics for the CLE, asked for suggestions, and will report on those at the next meeting.

5. Finance Report – Spencer Compton:

Spencer indicated that there is a \$161,000 surplus and that our budget is likely to be balanced for this fiscal year. The report was circulated and we have not spent more than \$50,000 of our budget for this year exclusive of the summer meeting.

6. House of Delegates Report – Steven Alden, Michelle Wildgrube, Joseph Walsh and Nancy Connery:

The candidates for President Elect appeared at the House of Delegates. The Section Caucus was created instead of the Section Delegates' Caucus. The point is to encourage participation from Section Members and not just those who are delegates. For the remainder of the Report, Nancy's written report will be circulated and appended to the Minutes.

7. NYSBA Executive Committee Report – Ira Goldenberg:

Ira Goldenberg reported to increase the reimbursement for attending Section Meetings to \$750 from \$600 was previously met with opposition. The Section Caucus then brought it up again to discuss a possible increase across the board for all Sections. The Section Caucus voted to recommend the increase to \$750. The Section Caucus then prepared a letter to the Finance Committee recommending the increase and asked them to consider and approve the \$750 reimbursement. Ira believes that there is a good chance that this will pass. The Section Caucus also realized that the Finance Committee sets the rules on how the various Sections can spend their monies. A Committee was formed to study those particular rules and to make recommendations on potential changes thereby potentially giving greater autonomy to the Sections on how they spend their funds. Leon commented on opposition that was previously encountered from the Finance Committee with respect to reimbursement. Leon Sawyko commended Ira on bringing this up with the Section Caucus and the traction he has gained, as well as the support from the other Sections. Claire indicated that it was not yet at the Finance Committee. Harry then spoke about reimbursement to individuals who agree to speak at Law Schools and Claire Gutekunst indicated that any travel over 100 miles is a reimbursable expense.

8. Section Projects and Issues:

A. Section Calendar – Gerald Goldstein: No Report.

B. Task Force on Draft, Insurance Dept. Regs: Dan Burstein, Executive Deputy Superintendent and Acting Chief of Staff for the New York State Department of Financial Services left the Department and no meetings were scheduled and they were taking none at the time.

C. Scholarships - Lorraine Power Tharp and Mel Mitzner: After Motion duly made and seconded and unanimously approved, both scholarships will be funded at \$5000 per year per scholarship.

D. Amendment to Power of Attorney Statute: Joe DeSalvo indicated that the Task Force's recommendation had been agreed to and put in writing and they are seeking a sponsor. The recommendations were approved by the House of Delegates, as well as by the Executive Committee of the State Bar. Because of the uncertainty of which party will hold majorities in the legislature after the upcoming election, we were holding off on finding a sponsor to make sure that we choose the appropriate party that will allow us to gain the most traction.

E. Zombie Houses Task Force: Leon reported that the last session of the Legislature and the last bill passed was the zombie housing bill. There is a synopsis to the bill which will be attached to the Minutes and prepared by the Empire Justice Center. There was a phone conference which entailed 11 people to discuss the implications of the new law and there might be a CLE at the Annual Meeting. The law is set to go in effect in December and the bank lobby was ineffective in defeating the bill. There were 3 primary provisions in the bill. First was property maintenance. The law places the responsibility for the maintenance of the property on the lender. Second, there is an expedited foreclosure procedure; and Third, the creation of a state wide directory of zombie houses. The Empire Justice Center will update the synopsis, so we will need to make sure that we get the latest version.

F. Support of New York City Bar Position on Construction Law Issues - Brian Lustbader:

The New York City Bar's position on construction law issues was approved by most Bar associations. Ira Goldenberg brought/will bring the recommendation of the New York City Bar to the Executive Committee of NYSBA for approval. Brian also reported that they would be doing a design build contract similar to the Architects and General Contractors and they would be discussed in their Committee Meeting the following day.

9. Reports of District Reps:

- A. 1st District: Andy Posil had no report, but indicated that he was looking forward to working as the Rep.
- B. 2nd District: No report.
- C. 3rd and 4th District : Alice Breeding indicated that the 3rd and 4th Districts are holding a brewery visit with the Young Lawyers Division who asked for a \$500 sponsorship.
- D. 5th and 6th District: John Jones from the 6th District reported that the Local Practice Guide was shared with the District Reps and there has been some good feedback.
- E. 7th District: Is now vacant since Scott Sydelnik took as a position as Co-Chair of CLE.
- F. 8th District: They had a membership drive and got 7-8 new members with the free membership offer.
- G. Districts 9-12: They had no report.
- H. 13th District: Toni Ann Barone indicated that they are doing a Las Vegas CLE with the Richmond County Bar Association. Toni Ann invited the Executive Committee to attend. Toni Ann further indicated that Claire attended the Annual Meeting of the Richmond County Bar Association in May and thanked her for that attendance.

10. Report of Standing Committees:

A. Substantive Committees:

- 1. Attorney Opinion Letters: There was no report.
- 2. Commercial Leasing: There was no report.
- 3. Condemnation: Karla reported on a recent Court of Appeals case that indicates that when you challenge an assessment, you don't have to refile each year as long as the case is pending. Such refiling is not necessary. This creates a problem with some of the School Districts

because they are not allowed to set aside reserves for cases that are not filed.

4. Condominiums and Cooperatives: They indicated that they had a very large turnout for their CLE in June. A representative from the Attorney General's Office appeared. Article 81 was discussed, as was title insurance. The next CLE is going to be scheduled for September/October.

5. Green Real Estate: They had a CLE where they dealt with brownfield issues and with the GM cases where they are selling off contaminated properties. There were approximately 25 people in attendance.

6. Land Use and Environmental Law: There was no report.

7. Landlord and Tenant Proceedings: There was no report.

8. Low Income and Affordable Housing: There was no report.

9. Not for Profit Entities and Concerns: Anne reported that there will be a CLE held in January and that Brian will be one of the speakers. There will be a case law update and they are looking for one more topic to fill the time period.

10. Professionalism: Nancy indicated that we should be using the list serve more and that interns should be employed more, especially in regards to analysis and dissemination of ethics opinions.

11. Public Interest: Dan Webster indicated that he is on the zombie task force. He reiterated the passage of the Zombie Housing Law and that they would likely be addressing the implementation and potentially make some recommendations to the Task Force. He again indicated that Keith of Empire Justice has put together a great summary of the new law.

12. Construction Law: A report was already given.

13. Real Estate Financing: A couple of cases were reported on by Richard and Heather in real estate financing. Section 1309 calls for monies to be expended pre-foreclosure. They also spoke about a Second Circuit case on a guarantee, 136 Fieldpoint Circle v Inbar, which held that even if a liquidated damages provision is unenforceable, the guarantee covering such liquidated damages provision is enforceable. The parties

had stipulated that the liquidated damages provision was an unenforceable penalty. The Court held that the guarantee of that liquidated damages provision and of the Lease generally were enforceable. Richard also reported on the Altschuler Decision with respect to a foreclosure. He indicated that if the Defendant files a two line Notice of Appeal and the case is ultimately reversed, then all subsequent transfers are null and void.

14. Real Estate Workouts and Bankruptcy: Daniel Zinman reported that the A&P Bankruptcy case has held that if the Trustee rejects a primary Lease in Bankruptcy and there was a sublet, then the sub-lessee is out without recourse and its sublease is cancelled. He will also be giving a CLE on Bankruptcy 101 for real estate lawyers.

15. Title and Transfer: The Committee is holding a 7:30 a.m. breakfast meeting in Salon C. They are going to be discussing the POA statute. Joe DeSalvo was going to expand upon the potential changes to the POA law and Gil Hoffman was going to discuss the Record of Marketability of Title Act in an attempt to gain some traction there.

B. Administrative Committees:

1. Awards: Peter Coffey indicated that we received a lot of support for the professionalism award last year from the New York City law firms. He suggested that we reach out on a local level to have nominations made which might garner similar interests.

2. CLE: Scott Sydelnik indicated that Mark Belkin, who is the NYSBA liaison, just left NYSBA. They are waiting for the appointment of his successor. There are a number of CLE's planned for the ensuing year. Marvin Bagwell and Peter Coffey are going to present on title examinations. Bob Wolf and Susan Burger will be talking about residential foreclosures. Larry Wolk will be Co-Chairing advanced real estate topics. Joe and Larry will be staying on for a while to assist Scott and David as they are new to the CLE Committee.

3. Legislation: Sam Tilton had previously circulated a report of the Legislation Committee. Sam reported that the Zombie Housing Law was

buried in the budget bill at the end of the session and he reported on a water lien law that passed.

4. Membership: Harry reported that our membership is very near to T and E, the number one section other than the Young Lawyers Division, and that our goal is to surpass them.

5. Publications: Matt reported that there were several articles in the pipeline and prepared for publication. Mindy suggested that biographical information on student contributors also be included as opposed to simply school affiliation. This might be further incentive for students to write articles.

6. Student Affairs: David Berkey reported that Albany, Pace, Brooklyn, Cardozo, Touro, Hofstra, New York and St. John's participate in the intern program. They would like to see Syracuse and Buffalo participate and asked if anybody had contacts there they should contact David.

7. Website and Electronic Communications Committee- Susan Scharbach and Michael Stevens: There are currently 52 documents on the website and still growing. Our 2017 scholarship applications are already on the website. There are 932 different discussion threads and growing.

11. No old business.

12. No new business.

13. The Meeting was adjourned at 4:59 p.m.

Respectfully Submitted,

Secretary

Gerard G. Antetomaso,