

REAL PROPERTY LAW SECTION – Executive Committee
Friday, April 15, 2016
10:00 AM to 12:00 PM
West Rooms 1, 2 & 3, Harvard Club of New York
35 West 44th Street
New York, New York

1. Call to Order – The meeting was called to order by Leon T. Sawyko, Chair, at 10:00 A.M.

2. Approval of the minutes of the Executive Committee meeting held at the New York Hilton Midtown on January 27, 2016 – Thomas J. Hall stated that the January 27, 2016 minutes were previously distributed to the Executive Committee. A request was made by David Mineo to amend the minutes to correct the contents of his report as the 8th District Representative. The requested amendments were made to the minutes and a motion was made to approve the minutes as amended and the motion was duly seconded. The minutes of the January 27, 2016 meeting, as amended, were unanimously approved.

3. Remarks of Chair – Leon T. Sawyko
 - a. Section Sponsorships. The Chair reported that the Section supported the Law, Youth and Citizenship Committee in a program to send High School students to learn more about the workings of government. The Section also supported a number of Young Lawyer Events at various law schools, including the Barrister’s Ball. The Section has also sponsored three or four programs in the Pathways to the Profession program throughout the year. The Chair commented that these programs are helpful in recruiting new and younger members to the RPLS.
 - b. Activities. The Chair reported that a number of our Executive Committee Members (including Karl Holtzschue, Nancy Connery, Ariel Weinstock, Spencer Compton and others) have attended various programs at individual law schools.
 - c. By-Laws Revision. The Chair reported that the proposed amendments to the By-Laws were accepted by the Executive Committee of the State Bar and therefore the new amendments are now in place.
 - d. Reimbursement Policy. The Chair reported that the reimbursement policy as revised by our Section was, much to everyone’s surprise, disapproved by the State Bar’s Finance Committee. The Chair indicated that he would continue the dialogue with the Finance Committee in an effort to get them to reverse their decision. The stated rationale was that if they approved our request to increase the reimbursement limit from \$600 to \$750, for our Section then they would have to do the same for all other Sections. Joshua Stein stated that this rationale can be described as the bureaucrat’s first argument against everything. The Chair responded

that this is why he does not consider this to be a dead issue and will continue to pursue it.

- e. Committee Mission Statements. The Chair expressed his appreciation to the Chairs of all the Committees who have made the effort to bring their Committee Mission Statements up to date. The Chair indicated that the Mission Statements will be set forth in brochures and on the website and that the updates were critical because the Committees are the life-blood of the Section. The Chair also urged all Committee Chairs who have not done so to update their Mission Statements as soon as possible.
- f. Appointments. The Chair indicated that there have been a number of new appointments to various committees and other positions including the following: (i) Sam Tilton has termed out of his position as a House of Delegates Representative. Nancy Connery has been appointed as a new House of Delegates Representative and David Berkey is the new alternate; (ii) Sujata Yalamanchili is now the new upstate Co-Chair of the Commercial Leasing Committee; (iii) Steve Wimpfheimer is now the new downstate Co-Chair of the Condemnation, Certiorari and Real Estate Taxation Committee; (iv) Debra Goldman will be the new downstate Co-Chair of the Commercial Leasing Committee as of June 1st; (v) Matthew Leeds will be a new Co-Chair of the Publications Committee. The Chair thanked both David Zinberg and William Colavito for their many years of service as Co-Chairs of the Commercial Leasing and Publications Committee, respectively. The Chair indicated that there are a number of appointments that still need to be made, including: a new Co-Chair for the CLE Committee (to replace Larry Wolk); a new Upstate Co-Chair for the Low Income Housing Committee (to fill a vacant spot) and a new downstate Co-Chair for Land Use and Environmental Law (to fill a vacant spot). The Chair welcomes any suggestions to fill the vacant positions.
- g. Use of Surplus. The Chair reported that our Section's surplus is in excess of \$160,000 and there have been discussions among the Executive Officers about the appropriate use of that surplus. The Chair stated that it is appropriate to use the surplus on efforts that will attract lawyers, particularly young lawyers, to join and be active in the Section. One idea discussed is the possibility of working with law schools to help finance interns for foreclosure defense, eviction defense or other areas of public service. Spencer Compton stated that the best way to attract young lawyers is to engage them in projects concerning areas of social conscience. Spencer emphasized that such programs would help bring lawyers to the Section and is also the right thing to do. Steve Alden pointed out that we do not have the largest surplus; some have much more and some have much less. Steve Alden suggested sponsoring a Section scholarship to subsidize pro bono efforts related to real estate issues, such as Zombie Homes. Maureen Lamb suggested giving subsidies for new or young lawyers. Steve Alden stated that the problem with subsidies is that many people take advantage of them and then disappear. We need to use the surplus to get people engaged so that they become

active members of the Section. Ariel Weinstock concurred, that in his experience, many law students want to get involved and engaged in something substantive. The Chair urged the Committee Chairs to think of projects where they can get students involved.

4. Meetings Reports

- a. 2016 Summer Meeting – Trish Watkins reported that the Summer Meeting will be in Boston from July 14th to July 17th. The Speakers are all lined up and she is working on the activities now. The CLE program will include: a presentation by an Attorney-Surveyor; a speaker from the Lincoln Institute of Land Policy will discuss the “Big Dig” project in Boston; John Privetera will speak on property rights for properties located on the water; Bruce Lederman will give a presentation on Real Estate Brokers; a panel discussion on tax certiorari and condemnation; a case law update by Peter Coffey and Michelle Wildgrube; Bankruptcy 101 for Real Estate Lawyers by Dan Zinman; Spencer Compton will speak on EB-5 financing and Anne Reynolds Capps will speak on ethics.
- b. 2017 Summer Meeting – Thomas Hall reported that the 2017 Summer Meeting will be at the High Peaks Resort in Lake Placid, New York from July 27, 2017 to July 30, 2017.
- c. Future Executive Committee Meetings
 - July 14, 2016 – Marriott Long Wharf Hotel, Boston MA
 - October 14, 2016 – Harvard Club

5. Finance Report – Spencer Compton. The Section spent \$2,000 more than it took in over the past year. Despite this overage, the Section still has in excess of \$161,482.00 in surplus. In all other respects, the Section is on track with its budget for the current year.

6. House of Delegates Report – Steve Alden reported that there were no controversial issues at the most recent House of Delegates Meeting. There was still discussion about pro bono issues and mandatory pro bono issues. More interesting was the Section Delegates Caucus Meeting where there was discussion of issues facing all sections, including dealing with Membership issues and dealing with the Surplus. Some are concerned that the State Bar may appropriate Section Surplus funds if the Surpluses become too large. Steve Alden indicated that our Section was in a good position because we have a comfortable Surplus, but certainly not the largest Surplus. The prevailing thought in the Section Caucus is that using the Surplus for membership initiatives is one of the best uses of the Surplus for any Section. There was also talk about attempting to create more Section Representatives on the House of Delegates. There is a constant tension in the House of Delegates between geographic representation versus Section representation. Nancy Connery stated that she felt that the Section Delegates Caucus tends to spend too much time on minor issues and posturing by certain members. But she does believe that the goal of the Caucus is a good one and that it has

potential. Michelle Wildgrube indicated that she agreed with Nancy's comments but pointed out that the Caucus is a fairly new entity and its role is still evolving. Michele's take away was that our Section is doing the right things. Ira Goldenberg stated that he agreed with many of the comments made by Steve, Michele and Nancy but felt that many good ideas come out of the Section Delegates Caucus. In particular, Ira noted that the Section surpluses are a big issue but he feels our Section is doing the right thing by being not too big and not too small. Ira also pointed out that there is a big focus on membership issues. Finally, Ira pointed out that a new CLE committee has been appointed by the State Bar which will focus on the fundamental structure of how CLE is delivered and the role of the CLE Committee versus the role of the Sections.

7. Section Projects and Initiatives

- a. Section Calendar – Gerry Goldstein indicated that two new meetings have been added to the Section Calendar: one for the Green Committee and one for the Condos and Co-Ops Committee.
- b. Task Force on Draft Insurance Department Regs – Gerry Antetomaso reported that Kevin Kerwin attempted to set up a meeting with the Department of Financial Services (“DFS”) but was unsuccessful in doing so despite numerous attempts. The task force is trying to make contact with DFS so that it can have input on the regs, but it appears that this is just not a top priority for DFS. Joe DeSalvo pointed out that there will likely be continued delay because the confirmation of the new Superintendent of DFS still has not occurred. Joe further stated that the emergency regs currently in place will likely be dealt with first and that the most contentious area among the stakeholders will probably be affiliated business arrangements. Joe also indicated that there is some discussion about re-establishing advisory boards for DFS.
- c. Scholarships – Joel Sachs reported that the scholarship applications have been revised and the deadline is now November 30th. The Chair inquired as to who will be monitoring the publicity. Joel indicated that at this point we are relying on the Foundation but that he and Mindy may have to revisit that issue. David Berkey indicated that his committee can easily distribute the literature to the Law Schools. Joe DeSalvo suggested that we publicize the scholarships in the RPLS Journal. Joshua Stein volunteered to send the information to a number of real property professors in New York State that he has contact information for. Mindy Stern stated that, in the prior year, an enormous outreach was done which helped get a response.
- d. Amendment to POA Statute. The report that was previously circulated has been approved by the State Bar.
- e. Zombie Houses Task Force – Joel Sachs reported that Leon Sawyko has agreed to Co-Chair the task force. Joel stated that the task force will need to focus on preventing creation of new Zombie Homes as

well as dealing with the issues presented by the numerous presently existing Zombie Homes. The first meeting will be held in the next few months. A copy of a report from the Task Force is attached.

- f. Support of New York City Bar Position on Construction Law Issues – Brian Lustbader requested that our Section support the recommendations set forth in a report by the New York City Bar addressing a number of Construction Law Issues. Brian reported that over half of the NY Construction Laws were enacted more than fifty years ago and there are many needed revisions. The main proposals in the report are: (i) to renew the Infrastructure Investment Act which has sunset. This Act is important because it allows Public/Private partnerships for large projects (such as the Tappan Zee Bridge); (ii) promote the use of Design/Build by lessening the regulatory burdens which presently exist and have a chilling effect on Design/Build projects; and (iii) to expand the Education Construction Fund, which presently covers only certain school districts to cover all school districts. The Chair inquired whether the Construction Law Committee was recommending that our Section support the positions set forth in the report and Brian confirmed that this was in fact his committee's recommendation. Brian Lustbader then moved that our Section endorse the report and that our Section recommend to the State Bar that it should also approve it. Numerous members seconded the motion, which passed unanimously. **A copy of the report is attached to these minutes.**
 - g. Formation of Women in Real Estate Committee. The Chair reported there was a line of discussion on the ListServe started by an attorney named Liz Kaufman that sought to form a group consisting of women who practice primarily residential real estate. A number of women on the ListServe expressed their interest and the group apparently did meet. The Chair reached out on a few occasions to Liz Kaufman to offer the Section's support of their efforts to further the practice of real estate law. The Chair indicated that he had no response as of yet but will follow up one more time.
8. Reports of District Representatives.
- a. 1st District – Nancy Connery circulated the most recent Committee Descriptions, which are attached to the minutes. Nancy urged any Committee Chairs that have not yet done so to review and update their Committee Descriptions. One of the goals is to create an interesting brochure for the Section that will be helpful in recruiting new members. Nancy also indicated that she will be trying to get a block of free or inexpensive seats for Young Concert Artists. Nancy and Lisa Stenson Desamours will be monitoring the Morgan Library for events or shows that would be of interest for an inexpensive theater trip. Finally, Nancy is interested in sponsoring an Ethics CLE coupled with a cocktail party and/or pizza, Mexican food or something similar. Nancy feels that a

lighthearted seminar that provides ethics credits at the end of the year would be successful because many people are looking for ethics credits at that time of the year.

- b. 2nd District – Lawrence DiGiovanna indicated that he continues to welcome all new members and encourages them to actively participate in the section. The Chair mentioned that his welcome letter is very nicely done and recommends that other District Reps consider adopting its use. **A copy of Lawrence’s welcome letter is attached to the minutes.**
 - c. 3rd District – No Report
 - d. 4th District – Michelle Wildgrube reported that she is gearing up for the Schenectady County Bar Association’s annual real estate seminar.
 - e. 5th District – No Report
 - f. 6th District – John Jones continues to work on a reference guide which describes the variations of local customs for real estate transactions in different areas of the state. He intends to seek the input of the other District Reps to assist with the project.
 - g. 7th District – Heather Rogers reported for Scott Sydelnik that he sends emails welcoming all new members.
 - h. 8th District – No Report.
 - i. 9th District – No Report.
 - j. 10th District – Sandy Pomerantz indicated there was nothing new to report and indicated that he is looking forward to participating in the tax certiorari portion of the summer program in Boston.
 - k. 11th District – No Report.
 - l. 12th District – No Report.
 - m. 13th District – No Report.
9. Reports of Standing Committees
- a. Substantive Committees
 - 1. Attorney Opinion Letters – Chip Russell advised that the Committee is still reaching out to the City Bar Association to see if there is any interest in updating the 1998 Mortgage Loan Opinion Letter report.
 - 2. Commercial Leasing – Bob Shansky thanked David Zinberg for his long tenure Co-Chairing the Committee. Bob also reported that the Committee had a successful CLE program, that was well attended and well received. The Chair added his thanks to David Zinberg for all of his hard work over many years.
 - 3. Condemnation and Certiorari – Karla Corpus reported that the Committee is working on putting materials together for a presentation at the summer meeting.
 - 4. Condos & Co-Ops - Steven Sladkus reported that the Committee has a seminar planned for June 2nd that will include a report from the AG’s Office, a section on Article 81 Guardianship proceedings, a section on title issues and permitted encumbrances as well as a case law update. The

Committee is endeavoring to have the seminar qualify for CLE credit.

5. Green Real Estate – Joel Binstock reported that the Committee has a Seminar planned for May 18th with the representatives from the Racer Trust which was established to deal with the Brownfields issues on properties owned by General Motors.
6. Land Use and Environmental Law – No Report.
7. Landlord and Tenant – Paul Gruber reported that the Committee is working on putting together a seminar on self-help, illegal lockouts and unlawful evictions and hopes to schedule the seminar for sometime in June. The Committee is also discussing the possibility of doing a future Seminar on practicing before the Tenant Protection Unit of the Division of Housing and Community Renewal (DHCR). Paul also reported that the Committee had a very successful meeting at the Annual Meeting with updates on the 2015 Rent Law and recent developments under Article 7 of the RPAPL. Peter Kolodny reported that the Committee frequently has a CLE meeting to have an update because Landlord – Tenant Law is constantly evolving.
8. Low Income and Affordable Housing – Richard Singer reported that the Committee had recruited some new members and that he was hoping to get an upstate Co-Chair. The Committee also had a discussion with a member of the Charities Bureau of the AGs Office regarding 511 Petitions. Richard indicated this may be a good topic to have a joint seminar with the Not-for-Profit Committee.
9. Not-for-Profit Entities and Concerns – Susan Golden reported that the Committee had a very lively hot topics seminar at the January Annual Meeting, including a program on “not in my backyard” (NIMBY) for controversial Not-for-Profits, a speaker on turning around a troubled not-for profit, an update on the Not-For-Profit Revitalization Act and case updates.
10. Professionalism – Nancy Connery reported that the Committee is working on summarizing some new ethics opinions. Ariel Weinstock has volunteered to find an intern to help summarize the Ethics Opinions.
11. Public Interest – Maria DeGennaro reported that the Committee has been working on legislative issues, particularly with respect to vacant and abandoned properties, and is looking forward to taking an active role in the Zombie Homes task force.
12. Real Estate Construction – Brian Lustbader reported that the Committee is completing its rider to the Architect’s Agreement, having completed a rider for a Contractor’s Agreement (both riders being Owner oriented). The Committee will hopefully

take a look next at the Design/Build Agreement. Ariel Weinstock discussed issues with insurance binders and insurance policies often not providing the coverage one would expect. Ariel discussed a case where a contractor was doing roof work on a Co-Op. The Contractor hired a sub-contractor which provided a certificate of insurance from Utica First Insurance Company naming the Co-Op as an additional insured. An employee of the subcontractor was injured and sued the Co-Op. The Co-Op submitted the claim to Utica who disclaimed coverage because their policy excludes: (a) coverage for workers injured on the job; (b) liabilities assumed under a contract; and (c) injuries from roofing operations. The Board sued for coverage alleging that the policy was an illusory contract. The Court held that there was nothing illegal about a company providing insurance which excludes coverage for items someone might expect to be in the policy. Ariel emphasized that the case underscores the importance of having an insurance consultant to be sure that the necessary coverage is in place and to not simply rely on a binder. Brian Lustbader recommended that attorneys must read the policy.

13. Real Estate Financing – Heather Rogers reported that the Committee circulated its recently revised description of its activities and it resulted in at least 68 new members for the Committee. The Committee was also contacted about a Law School committee member and Heather recommended that the student could be used to assist in the Zombie Homes task force. Heather reported that she was working on the Zombie Home issue in Monroe County and emphasized that the existence of numerous different approaches across the State is one of the challenges that the Task Force faces. The Committee also submitted a written report which is attached to the minutes. The Chair noted that many municipalities are imposing charges for securing or cleaning up Zombie properties but this merely adds more charges to the tax bill and does not ultimately accomplish anything. Heather also noted that many municipalities now require lenders to register and pay a fee for the Zombie Homes and that this too does not really accomplish anything. Heather mentioned that RPAPL 1307 requires Lenders to maintain the properties once they obtain a judgment of foreclosure. This is problematic however, because of the length of time the foreclosure process takes in NY and because now the Banks may simply not go to judgment if the property is in such bad condition that it is not worth it to assume the obligation of maintaining the property. Joe DeSalvo asked if the legislation could be amended to impose the obligation for the Banks to maintain the properties earlier

in the process. Thomas Hall pointed out that in New Jersey there is an expedited foreclosure process for properties that are vacant and a blight on the neighborhood and essentially allows the foreclosure plaintiff to go to sale in a very short period of time. Heather pointed out that the concern with that type of remedy is who is going to make the determination that the property is vacant and blighted. The Banks will not take on the potential liability of making the determination that a property is vacant.

14. Real Estate Workouts and Bankruptcy – No Report.
15. Title and Transfer – No Report.

b. Administrative Committees

1. Awards – No Report.
2. CLE – No Report, but Joel Sachs observed that there seems to be a distinct increase in free real estate CLEs being provided by title companies and abstract companies, which obviously is in competition with the State Bar. Gerry Goldstein says that these seminars are essentially a sales device by the title companies.
3. Legislation – Richard Nardi indicated that as of this month the new bills have started coming in and the Committee will begin updating its legislation chart.
4. Membership – Harry Meyer reported that he and Michelle Wildgrube, as members of the State Bar Membership Committee, were given up to 25 free memberships to give out. Harry still has free Memberships available to be given out and encouraged Members of the Executive Committee to use those free membership offers to help get new Members for our Section. Harry requested that the Officers consider that new members who join after July 1st of a given year be given Section Membership for the remainder of the year and all of the following year and then those Members would get on the calendar year cycle. This would prevent new members who join late in the year from being charged a full \$40 for a partial year membership in our Section. Harry also reported that our Section continues to narrow the gap with Trusts & Estates Section for the largest Section.
5. Publications – Vincent DeLorenzo stated that he was sorry to lose Bill Colavito as a Co-Chair but was happy to have Matthew Leeds join as a new Co-Chair. Vincent also reported that the Spring issue was just sent out. The article on the new Condo contract was unfortunately missing an introductory paragraph explaining where the new contract came from. The Committee is now working on the summer issue. Vincent asked for submission of Articles. Vincent also stated that Committees should consider submitting Committee reports for publication especially if they

discuss current law, problems with current laws or suggested changes to current laws.

6. Student Affairs – Shelby Green reported that there is a new ABA Opinion which allows a firm to bill for the work of a student intern even if the intern is an unpaid intern. David Berkey advised however that the Department of Labor prohibits an employer from receiving a financial benefit from the work of an unpaid intern. Ariel Weinstock reported that he and Spencer Compton participated in a meet and greet reception at Cardozo Law School which was well attended and very well received. They would like to extend the program to other law schools. David Berkey indicated that in about two weeks an email blast will be sent looking for host law firms for interns in the fall.
7. Website and Electronic Communications – Michael Stevens reported that the RPLS website was updated to include photos from the January Annual Meeting. Michael also noted that the online communities seem to be taking off. He noted that last year there were 726 discussion threads containing more than 3,200 posts. The library now includes 43 documents including, cases, templates, contract riders and other useful materials. The Committee is still looking for members to submit blog entries for the online communities.

10. Old Business – None

11. New Business – The Chair expressed his appreciation of his experience as Chair for the past year. He stated that the people who make up the Committees and the work that they all do is what makes the Section so great. David Berkey expressed the sincere appreciation and thanks of all Executive Committee Members for the outstanding work that Leon Sawyko did during his entire tenure as Chair of the Section. The Chair received a well deserved round of applause for his hard work, dedication and excellent leadership of the Section.

12. Future Executive Committee Meetings

- a. July 14, 2016 – Long Wharf Hotel, Boston MA
- b. October 14, 2016 – Harvard Club, NYC

13. Adjournment – The Meeting was adjourned at 11:58 AM

Respectfully Submitted

Thomas J. Hall, Secretary

Attachments:

1. List of Members attending in Person
2. List of Members Attending by Phone
3. Zombie Houses Task Force Report
4. New York City Bar Association Construction Law Committee Report dated February 2014: *21st Century Construction, 20th Century Construction Law*
5. Most Recent Revisions to Committee Descriptions
6. Form Letter Welcoming New Members for Use By District Representatives
7. Report of Real Estate Financing Committee