

MEETING MINUTES
Real Property Law Section – Executive Committee
Friday, April 11, 2014
Harvard Club
35 West 44th Street, New York, New York
10:00 A.M. – 12:00 P.M.

1. Call to Order – Benjamin Weinstock, Chair: The meeting was called to order at 10:00 A.M. The Chair welcomed everyone to the meeting.
2. Approval of the January 29, 2014 Meeting Minutes – Mindy Stern, Secretary:
On motion made by Nancy Connery and seconded, the minutes were unanimously approved.
3. Agenda. (See Attachment No.1.)
4. Attendance: (see Attachment No.2.)
5. Chairman’s Remarks: The Chair invited Leon Sawyko to announce the passing of Keith Osber, a former Chair of the Section. Leon identified several ways in which Keith contributed to our Section over the years. Leon requested and received from the Committee a moment of silence in Keith’s memory. Bill Colavito noted that a tribute to Keith written by John Jones will appear in the Spring edition of our Section Journal.
 - (a.) Appointment of New Delegate to the House of Delegates. The Chair reported that Joel Sachs is term limited from continuing as a Section representative to the House of Delegates. Joel noted his surprise when advised of this but verified that his service as an alternate representative counts towards his term limit. The Chair thanked Joel for his years of service in the House of Delegates and announced that Michelle Wildgrube has been appointed as Joel’s successor.
 - (b.) Co-Sponsorships. The Chair encouraged members to attend events that the Section is co-sponsoring. He noted that “Smooth Moves: Career Strategies for Attorneys of Color,” was held at Lincoln Center on April 1, 2014, and that “Starting a Practice in New York” will be held in November at the NYSBA Law Practice Management Office.
 - (c.) Certificates in Recognition of Student Interns. The Chair stated that increasing Section membership will be a constant theme of this meeting. In an effort to do so, the Section will start distributing certificates to recognize student interns and committee representatives. He noted that it is a no-cost way to reward people for their contributions to our Section, provide a nice memento of their service, and provide a resume enhancer.

(d.) Elimination of Section Membership Fees for Law Students. As another way to increase membership, the Chair asked the Committee to consider eliminating Section dues for students. He explained that student members pay \$10 for annual dues and \$20 for Section dues. The Chair proposed that Section dues be waived or reimbursed from our surplus to law school students and attorneys during their first year of admission. He noted that the State Bar fee for the first year of practice is free but thereafter increases annually from \$125 to \$300 based on years of admission. The Chair proposed that if a young lawyer becomes a Section member and the Chair of a Section committee will attest that the young lawyer is an active member of the committee, our Section would reimburse the young lawyer for half of his or her State Bar dues for the first three years of admission. A motion to approve this was made by Harry Meyer and seconded by Robert Zinman.

Harry Meyer then asked the motion to be modified so that only first year associates who pay their own dues be reimbursed, to avoid reimbursing associates whose dues are subsidized by their employers. Harry also reported that he and David Berkey recently learned that the State Bar is going to eliminate dues for students at participating law schools. The Chair noted that although many firms do subsidize dues for young lawyers, most of the Section's members are from small firms which do not do so, so it would be a very meaningful gesture to small firm members and likely to increase membership. Larry Wolk commented that to require the young lawyers to fill out a form is too complicated and suggested that the subsidy program just be made available by request. Joel Binstok asked how it would be publicized to smaller firms. The Chair explained that it would be marketed first to students to try to get them to join as Section members. Tiffany Bardwell asked how the Section would measure who is an "active" member of a committee. The Chair explained that attendance at and participation in committee meetings would be required. The motion passed unanimously.

6. Meetings Reports.

(a.) 2014 Summer Meeting. Leon Sawyko reminded everyone that the 2014 Summer Meeting will be held July 17th through 20th at Niagara on the Lake in Ontario, Canada, with accommodations at The Queens Landing Hotel, and that they will need a current passport or enhanced driver's license. Leon reported that program topics will include economic development programs in New York State, land banking upstate, leasing issues including insurance and indemnity clauses, social media ethics, and hot topics including the new land title agency law and the revisions to the non-profit law becoming effective in July. He promised interesting programming with plenty of outdoor activities as well as many cultural activities in the village including the Shaw Festival. Larry Wolk

mentioned that our meeting will be held during the height of the theatre season so theater-goers should purchase tickets in advance. Leon noted that the schedule of programs and meetings being distributed soon will include the Shaw Festival schedule or a link to it to allow for theatre plans to be made ahead of time. Joe DeSalvo asked if Canada still requires at least six months of time left on a passport to be valid to enter the country. Leon didn't know, but the Chair noted that an enhanced driver's license or membership in Global Entry also are acceptable forms of ID for entry into Canada.

(b.) 2015 Annual Meeting. The Chair stated that the 2015 Annual Meeting will be held on January 28 and 29, at the New York City Hilton. Leon will be responsible for planning that meeting and he welcomed suggestions for CLE programming for that event. The Chair reported that Mindy Stern and Lori Nicoll are exploring venues for the 2015 Summer Meeting and that Mindy will announce the selection at our next meeting.

7. Report of District Reps. Continuing the theme of increasing Section membership, the Chair asked Nancy Connery to report on the activities of the District Representatives. Nancy reported that at the first meeting of the District Representatives on April 10 several great ideas were discussed. Future meetings of the District Representatives will be held quarterly, a month before each Executive Committee meeting. They plan to host events intended to attract young lawyers and increase Section membership. Nancy stated that at this first meeting they focused more on planning events but also discussed what more the State Bar can do to service its members and obtain input from the various Sections. The minutes of the meeting are attached to these minutes as Attachment No. 3.

(a.) Third District. Alice Breeding then described a Third and Fourth District event that centered on animal activism and animal health and welfare: "Bark in the Park" at the Tri-City Valley Cats baseball game on Monday, July 7th, for dog lovers and well-mannered dogs. Before the baseball game, there will be veterinarians, groomers and a charitable organization called Out of the Pits, the leading organization for animal rescue and animal rehabilitation. Alice explained that the event would be both a networking event and membership drive for both the Real Property Law and Young Lawyers Sections. She reserved the picnic pavilion and proposed a ticket price of \$25, with \$10 from each ticket purchase to be donated to Out of the Pits. A State Bar representative has been asked to attend to present the check, and throw the first pitch of the game. Alice has arranged for a one-hour all-you-can-eat buffet before the game with reserved box seats on the first baseline for the game as well as a free baseball cap and a swag bag filled with items such as sunscreen, lip balm, paw-shaped bottle opener key chains and information about both sponsoring Sections. In addition to

existing membership of the Third and Fourth Districts, she plans to invite third year law students, young lawyers, potential members of the Third and Fourth Districts, local realtors and members of the four local bar associations in the area. Alice believes that the event will foster a sense of community, raise support for a local baseball team and a local animal organization and provide an opportunity for attorneys in the area to see how influential and exciting our Section is. The Chair noted that with the \$25 ticket price, the Section would incur approximately \$3,500 based on 100 tickets being sold. He explained that our Section's growing surplus is currently at \$148,000 and that the Officers approved this event because it is an effective use of the surplus in one of our most important undertakings – driving membership.

(b.) First and Ninth Districts. Nancy Connery and Lisa Stenson Desamours announced a cocktail party that the First District and Ninth District plan to co-host for listserv members. The event will be held at Nancy's firm for members of the listserv and honor one or two of the most active members of the listserv. Nancy explained that some listserv members respond to every question regardless of how simple or complex. The Chair noted that the \$1,600 budget for this event was approved by the Officers.

(c.) Second District. Larry DiGiovanna reported that the Second District continues to reach out to each new member. He noted that many of them are more active in their local bar associations than in the State Bar.

(d.) Fourth District. Michelle Wildgrube reiterated that the Fourth District is co-sponsoring the Valley Cats baseball game with the Third District. The Fourth District also plans to co-host a holiday party with the Third District. Last year's holiday party was held in Saratoga. This year's will be held in the Schenectady area to draw young lawyers and Section members from that area.

(e.) Fifth District. No report.

(f.) Sixth District. John Jones noted that the other Districts have given the Sixth District good ideas for events. He expressed appreciation for the condolences on the loss of his partner, Keith Osber, noting that he shared many of them with Keith's family.

(g.) Seventh District. Scott Sydelnik reported that the Seventh District is partnering with the Young Lawyers Section to co-host a happy hour and trivia contest networking event in downtown Rochester in late June or early July. They are preparing a budget and expect to submit their proposal for the event to the Officers shortly for approval.

(h.) Eighth District. David Mineo reported that the Eighth District co-sponsored the Erie County Bar Association's 24th Annual Real Estate Conference on

March 22. He thanked Tiffany for providing pens and flashlights with the State Bar logo, and hopes the event will generate some new members. On behalf of himself and Harry Meyer, they are asking the Officers to approve an ad in the Bar Association Journal in June soliciting members in the Buffalo area. The Chair requested that districts seeking permission to offer discounted memberships at an event submit to the Officers an email describing the event, the cost and the expected outcome.

(i.) Tenth District. The Chair reported that Abe Krieger resigned from the Executive Committee due to lack of time to devote to Section activities. The Chair solicited suggestions for a new Tenth District Representative.

(j.) Eleventh District. No report.

(k.) Twelfth District. No report.

(l.) Thirteenth District. Toni Ann Barone reported that although she was unable to participate in the April 10 conference call among the districts representatives, she read the minutes of the meeting and commended the great ideas. She has contacted the new member of the Real Property Law Section in her District and will continue to be in touch with him. She liked Alice's idea for the baseball event and will consider reaching out to the Young Lawyers Section to set up such an event at a Staten Island Yankees baseball game, perhaps even this summer.

The Chair thanked Nancy Connery for the formal minutes she prepared of the conference call meeting held among the district representatives.

David Berkey reported that this year our Section lost 521 members. He is working with Tiffany Bardwell to make the spreadsheet of dropped members more user friendly and to provide it to each district. He suggested that Nancy and Alice have each district representative contact dropped members in their district to inquire if a particular problem caused them not to renew, or if it was just an oversight. Tiffany noted that the two Executive Committee members who had not paid their dues have been contacted. The Chair noted that our Section's current membership, now 3,900, was over 5,000 when he first joined, and noted that the State Bar has lost 23% of its membership in the last few years. He noted that is not a healthy sign for our Section because our surplus can quickly become a deficit. The Chair also that there is a "seasonal bump" in membership every March because that is when the State Bar drops non-dues paying members. Some members are reinstated in March and April when this oversight is brought to their attention. The Chair anticipates that a personal phone call to the dropped members might restore as many as half of them. Leon Sawyko suggested that the district representatives reach out to both dropped members and new members, and inquire what specific committee(s) the person

may be interested in, and have that particular committee chair(s) contact the member in a further effort to actively engage the members. He said that a real push needs to be made to get people involved. Joel Sachs asked if the State Bar has analyzed why membership is falling. Is it more an economic issue or an issue of services not being provided? The Chair asked David Berkey to respond. David reported that it is primarily economic, noting that the State Bar has lost 23% of its membership, our Section has lost 12% of its membership and the Young Lawyers Section has lost 49%. They believe that the Young Lawyers Section drop is so high because young lawyers are offered a free membership for the first year and then do not renew when the free membership lapses. Harry Meyer noted that 30% to 40% of young lawyers drop within five years after law school graduation, and the majority of lapsed members are women. The demographics report shows where our Section needs to focus our efforts to retain and increase membership. David also reported that on a more positive note, the Schenectady Bar Association and other local bar associations are holding a meeting on May 15th to discuss real estate issues; and they have invited us to send a representative to speak about how the Real Property Law Section functions. He plans to attend to speak in detail about our Section and our initiatives and how our Section works with county bar associations. Steve Alden noted that he has attended town meetings in the past and it is important to have a senior officer attend such meetings. Peter Coffey mentioned that this will be a very well-attended meeting and having a Section representative attend is a way to showcase our Section. Peter attributes the decline in membership to (1) a cultural change and (2) the State Bar leadership which in his opinion represents judges more than lawyers. He further opined that if the State Bar expects lawyers to pay \$400 or \$500 for dues it should protect the interests of lawyers. The Chair noted that the President of the Association strongly supported agent licensing for us – a point which will be discussed later in this meeting. Maureen Lamb suggested that district representatives calling members should find out how we are “falling off the wagon” and what we can do to “get them back in the fold” as members. She recalled that there used to be a hardship fund. The Chair confirmed that the fund is still available by application. Maureen asked if the hardship fund can be better publicized and Tiffany confirmed that the district representatives were welcome to mention the fund is available; and that she would email the application to all the district representatives.

8. Section Projects and Initiatives.

(a.) Student Internship/Thanks to Outgoing President. David Berkey reported that at the last meeting we authorized the formation of a Standing Student Internship Committee to replace the Student Intern Section Project. He then took the opportunity to thank the Chair because this is the last meeting Ben will be chairing. David thanked Ben for being extremely dedicated, approachable and

friendly to all members and especially for all of his endeavors with respect to the agent licensing bill. David stated that leaders of the Section will find it hard to replicate what Ben did to change the position of the President of the State Bar from “opposed” to “in favor of” the agent licensing bill. David told Ben that he has set the bar very high and offered a heartfelt “thank you” for the entire Section.

Stacy Wallach then reported that the Student Internship Committee has two goals. The first is to recruit students from law schools statewide to help with committee and task force administrative projects and provide research and drafting assistance. The Student Internship Committee will administer the program. The other goal is to use law school students to recruit younger people for membership by developing connections with young lawyers early on. The Committee will track membership to provide statistics for more educated decision-making. The goal is to have all Committee chairs and task force Chairs appoint one or two students per school year to create both substantive interest for the interns and to connect them socially to our Section. Stacy noted that a small travel budget will be needed to have student interns travel once or twice a year to a gathering in New York City, to keep the enthusiasm level high.

The Chair introduced Ariel Weinstock, the newest member of the Executive Committee. Ariel further explained that the Student Internship Committee would integrate the student interns, welcome them and then follow up with them when the work was completed. The purpose of the meetings of all student interns would be two-fold – first, an orientation session with the Committee chairs and task force chairs and second, a social aspect to bring the student interns together to create their own peer group. The Chair interjected “to get them from cradle to grave”, noting that the Student Internship Committee is primarily focused on getting law school students involved and keep them involved and active in the Standing Committees which should have a positive effect on membership. (See Attachment No. 4 for the complete mission statement of the Student Internship Committee.)

Ariel then noted that the Committee will contact the career centers at the law schools to continue to develop more formal relationships between law schools and the Association, keeping in mind that some law schools are not permitted to provide student interns to commercial law firms. The students would work on a pro bono basis, not for school credit. Ariel stated that he and Stacy are confident that they can make this a worthwhile endeavor.

(b.) CLE. Joe Walsh reported that they have been in touch with some of the new personnel at the Association’s CLE Department and they are working on programs for this year. Karl Holtzschue and Scott Sydelnik will be chairing the

“Practical Skills: Purchases and Sales” program which is our flagship program based on the number of attendees. Karl and Scott have organized the materials and the program will be held during April and May in seven locations statewide. Joe thanked Karl and Scott for their dedication to the program. “Advanced Topics in Real Estate” will be presented again in the Fall. Joe explained that they are contemplating other possible programs including perhaps one for attorneys involved in the regulatory aspects of lending issues. He asked anyone interested in running that program to contact him. Joe further reported that the CLE Committee also is exploring a couple of new programs -- one dealing perhaps with commercial lending more on a basic level for practitioners doing commercial transactions and also representing lenders. Joe concluded his report by soliciting names of attorneys who may be interested in putting together such a program.

Larry Wolk reported that Steve Alden and Meredith Kane, who have chaired the Advanced Topics in Real Estate program in the past, have asked that new co-chairs be appointed for this program, and asked anyone interested in co-chairing this program to contact him. He would like one Executive Committee member who has done this before and one “rookie” to co-chair this program. Larry also noted that Ben asked Joe and Larry to organize a webinar in the Fall on agent licensing. Larry explained that the State Bar used to push for CLE programs but now the State Bar is concerned that there are too many, so having more than two CLE programs per year is difficult. In the past we had one person organizing Practical Skills and we now have one or two CLE people at the State Bar designated to our Section for all CLE programs regardless of the content, which will be beneficial. Larry asked anyone with an idea for a limited audience or short program to please contact Joe or himself. They are considering the topics of foreclosures or title insurance for the Spring.

The Chair mentioned that Joel Sachs also has termed out as our Section representative to the State Bar CLE Committee, so we will need a replacement for that position.

(c.) Membership / Diversity. Harry Meyer thanked the district representatives for their efforts to reach out to new members. He also thanked the members of the Executive Committee who contribute in various ways to attract new members. The issue of opinion letters regarding seller concessions is an example of the work that the Executive Committee performs. In March the Erie County Real Property Committee had a meeting. Peter Coffey and Anne Copps both participated via conference call, answering a series of questions raised by the Schenectady County Bar Association’s position opposing the State Bar’s most recent opinion on seller concession. Apparently the Erie County Bar Association is taking the same route.

Harry also noted that although our Section had a 12% drop rate, when compared to the other Sections we are actually doing well. Eight out of 25 sections had record drop rates. Harry applauded the district representatives' efforts.

Harry also touched on the Section's diversity efforts and the positive experience he and Marvin Bagwell had when they manned our Section's table at the reception in January. He stated it was a wonderful experience and encouraged future participation by other members of the Executive Committee.

The Chair concluded the discussion on membership by stating that he wanted to make membership one of his key achievements as chair of the Section. Although unfortunately our Section has lost hundreds of members, we are very focused on membership at the district representative level and various other ways, and he hopes that people will again see the value of the Bar Association and membership.

(d.) Task Force on Agent Licensing. Tom Hall described the Task Force's time consuming and difficult efforts and Ben Weinstock's tireless, zealous and effective leadership in protecting the members of the Section, along with other Task Force members past and present, among them Karl Holtzschue, Jerry Antetomaso and Sam Tilton. Approximately one month ago Kevin Kerwin and Ron Kennedy confirmed that after many years things were finally going to happen. The Task Force stated our position and began receiving phone calls from legislative staff. With a quickly worded stipulation, Ben, Karl, Tom and Jerry travelled to Albany where they set a record for the number of visits with legislators in one day (nine to ten). The legislators wanted the Association and NYSLTA to agree on language. Ben engaged in extensive negotiations with Mike Berey of NYSLTA and distilled our Section's position to a single objective: to enable practicing attorneys to be able to continue to act as title insurance agents. Our role was to ensure that just one sentence was in the bill: that an attorney or his or her law firm may represent a client in a matter and may also act as a title insurance agent. There was some opposition to that and in a stroke of genius Jerry Antetomaso convinced them to add "subject to applicable law", which got the bill to Albany. Now any title insurance agent will have to be licensed, whether an attorney or not. There will be testing provisions and CLE provisions from which attorneys will be exempt. It was a very good result for our Section and the practicing attorneys who act as title insurance agents. It affects many smaller firms throughout New York State.

Karl Holtzschue noted these efforts have been ongoing for eleven years, including those of Larry Wolk and Tom Hall, and that Tom was the chief scribe on the memorandum. Karl focused on getting our memos released and twice had difficulty with the Association because they did not want us to propose statutory language that had not been approved by its Executive Committee. Difficulties

surmounted included the short time frame and then dealing with a question about whether the Section's proposal would conflict with an ethics opinion. Ben had the brilliant idea of asking the President of the State Bar to write a letter on our behalf, resulting in complete support from the State Bar. When Ben was unavailable for a sit-down meeting to settle the issues (he was scheduled to give a CLE for the Leasing Committee), Jerry Antetomaso stepped in and performed a great job in the final negotiations with Mike Berey and the lobbyists. Our former Executive Committee member, George Haggerty, now in State government, probably is responsible for getting the bill in the Governor's budget, which was key. If it had not been in the Governor's budget, we would still be mired in the normal legislative process and it might not have been passed. We obtained essentially all we needed, including a disclosure requirement for fees and service costs that the Section has long promoted. It was a terrific victory with a tremendous amount of work by a lot of people.

Larry Wolk mentioned that he started working on this issue with George Haggerty when George was a member of the Executive Committee. Larry believes George was instrumental. Nancy Connery suggested that one of the ways our Section can be of service to its members is to distribute a copy of the new bill on the list serve and explain our role. The Chair responded that the Task Force already discussed this and intends to update the disclosure letter we now have on the website. There are no regulations yet so we are not clear about that. But there will be an email blast to all the members, telling them about the new law and giving them a link to the new law. The goal is to let attorneys statewide know that they are protected. They also want to schedule some CLE programs on the topic. Based on the Chair's calculations, the law becomes effective on September 27, which is 180 days after the Governor signs it and the Chair believes the Governor signed it on April 1.

Jerry Antetomaso reiterated that the legislation has taken years and is the culmination of a lot of work by many people. He agreed with Nancy Connery that we should communicate what the Association does for its members. Mindy Stern suggested that our Section do two email blasts – one now because it is hot off the press and then a second one when the regulations come out. The Chair indicated that this was the intention and said that he will check his notes to see who was responsible to get out the final email blast and he said if it was him he would get it out on Sunday.

The Chair then explained that when we gave the memo to Kevin Kerwin and Ron Kennedy to deliver to the legislators they first showed it to Association President David Shraver and the Association's in-house counsel who concluded that it might violate ethics opinions. David Shraver wrote a letter that effectively said that it is not his role to pick between the different sections and

their differing views but that as long as the State Bar has published ethics opinions, the Bar Association should adhere to those opinions, and further expressing the opinion that the Section's position violated ethics opinions and that our memorandum should be disapproved. The Section responded there was nothing in our memorandum that was in any way contrary or challenging to an ethics opinion. To President Shraver's credit we promptly received a letter from him confirming that he agreed that we were not doing anything contrary to the ethics opinion, and that allowed us to release our memorandum. When the Committee's representatives approached Albany there were five or six different changes the Committee wanted in the proposed licensing legislation. It became clear to the group that if the Section were to ask for five or six changes, it would receive only one or two of them, and that NYSALTA would not compromise on its core issues. Therefore at the last minute the group narrowed its proposed modifications to one sentence. The Section prevailed and then asked President Shraver to write a letter to the Governor (not the legislators) and to the heads of the Assembly and the Senate in favor of the legislation as modified. George Haggerty was instrumental in getting both sides to the table and encouraging them to come to a workable solution that both sides could live with. Kevin Kerwin and Ron Kennedy were tremendous advocates on behalf of the lawyers in the State. The Bar Association represents between 70,000 and 80,000 lawyers; but does not make any political contributions. Therefore, we had the numbers but not the money and NYSLTA had the money but not the numbers -- so it was a different equation for the legislators. At the end of the day it was a good settlement because everyone was a little unhappy but also happy. We ended up in a good place with this legislation.

Peter Coffey asked "Why not gloat"? He stated he has been a member of this Section and the House of Delegates since the mid-80's and a member of the Executive Committee of the State Bar and he has never seen in his entire experience any achievement by anybody that did so much for the pocketbook and the practice of lawyers. This is the singular achievement he has seen in his entire history of the Bar Association and he thinks we should gloat. The Chair disagreed and explained that what the Section did was maintain the status quo. We did not change anything. Larry Wolk stated that this is not a big issue downstate but Jerry Antetomaso and other practitioners have explained how important it is to upstate lawyers. If upstate lawyers cannot both represent buyers and act as title agent (with the premium subsidizing part of the legal services), buyers will use brokers instead of lawyers to negotiate contracts, which would not be protective of buyers. Larry thought that the bill modifications were important because they affect the livelihood of upstate lawyers and small practitioners.

Bob Zinman noted that tangible accomplishments promote membership and the fact that we are able to maintain the status quo against pressure to change that status quo was a great accomplishment. He suggested that we make clear in the memo to our membership that it was due to the efforts of this committee and certain people on this committee. Lisa Stenson Desamours further stated that this tremendous effort demonstrates the advocacy of our Section to protect lawyers statewide. The Chair replied that we did not sell it on that basis; instead, we sold it on the basis that it was good for consumers, the legal system, and for New York State. Leon Sawyko noted that the recipients of the memo are lawyers, not consumers, so we should emphasize this positive and important accomplishment. Nancy Connery added that it also benefits consumers. The Chair responded that he will circulate the draft of the memo to the other members of the task force for review.

The Chair then read a letter, attached to these minutes as Attachment No. 5, from Mike Berey, who is winding down his career, thanking the Section for the generous award presented to him in January, which Mike describes as “unquestionably the highlight of my career.” Mike explained that due to his move to a warmer climate it is impractical for him to continue participating on the Executive Committee. Mike extended good wishes to the Executive Committee. The Chair noted that our Section has a very large vacancy to fill because Mike has handled our website blog and a variety of other matters, and that the Officers are considering successors for these roles.

(e.) Legislation. Karl Holtzschue reported that not much has happened since the chart was distributed in January because all the legislation efforts were on the Governor’s budget bill. Karl advised the Committee that he notified the Chair and incoming Chair David Berkey, Ben’s successor, that after six years as Chair of the Legislation Committee, he will step down. He noted that they have implemented a good procedure to deal with legislation and asked anyone interested in the position, to please let the Chair or David know.

(f.) NYSBA Mentoring Program. Toni Ann Christine Barone reported that not much is happening. She has been in contact with her mentee every few weeks developing a good relationship and believes it is a great project to be involved in. She will investigate what is happening with this program at the State level.

(g.) NYSBA Publications. John Hall reminded the Committee that he was asked to investigate the caliber of publications that are produced at either section-sponsored CLE programs or non-Section sponsored CLE programs. The concern is that the some of the CLE materials are not up to the standards that this Section holds itself out to achieve. Politically it is a hot topic because non-Section authors may write competently. John has concluded that the only way to resolve this is to gather together every State Bar real estate publication, solicit

Section members to review them based on their relative expertise, and provide feedback as to the caliber of the publications. Based on that we would then decide if we want to have some input into such publications, assuming we even have the jurisdiction to do so. John asked for funds to acquire the publications from the State Bar unless the Bar would give them to us free of cost. A motion in favor was made by Karl Holtzschue and seconded by Nancy Connery.

Karl noted that he may be one of the people who initiated this and explained that the concern is not the CLE materials for Section sponsored programs, but rather the substantive publications that the State Bar publishes on real property topics, because they are published by the State Bar publications department without Section input. For one of the practical skills programs they substituted one of those books for the course materials; and, while the book was good, it did not cover the course topics, which is a problem because the book was presented as if it was a product of our Section. Karl reviewed the book and he questioned some of the information in it. One option is to maintain the status quo, in which event we should coordinate Bar publications with the materials used by Section sponsored CLE programs.

A long discussion ensued about what role our Section should play in the review and approval of materials other than those for Section-sponsored CLE programs. Various suggestions were made, including adding legends either expressly endorsing materials for Section-sponsored CLE programs or expressly disclaiming any responsibility for other Association publications on real estate topics. Concerns were expressed about how we would deal with publications we deem deficient in some respect, and what influence we would have with the Association to rectify this.

Richard Singer asked what other sections do when they have a similar problem. Tiffany responded that as far as she knows the issue has never been raised.

John stated that he would not like to see a schism develop between the State Bar CLE and the Real Property Law Section. Larry Wolk echoed that concern. The Chair suggested that the committee adopt John's suggestion to review the publications and then decide on a course of action. Larry suggested we not read the books. The Chair suggested that we bring the discussion to a close and vote on the motion to approve purchasing the handbooks for review. The motion was approved unanimously.

Report of Standing Committees.

(a.) Residential Mortgage Financing. Richard Fries reported that on April 7 the Southern District rendered a lengthy and potentially controversial decision on bad boy guaranties in which the court concluded that the "full recourse trigger"

in the bad boy guaranty would not apply upon the filing of certain mechanics' liens. The lender had argued that they were voluntary liens triggering full recourse. This is the second bad boy guaranty case decided in favor of the guarantor in New York. The first one involved the Park Avenue Hotel in Manhattan.

Richard also advised the Committee that the National Conference of Commissioners on Uniform State Law is drafting a model act on the appointment and powers of real estate receivers. It is modeled after Minnesota and California and empowers the receiver to sell mortgaged property (a power that already exists in a number of other states). There are due process issues and the Committee will be watching to see how it plays out. He noted that in New York there is a federal receivership statute that also empowers a receiver to sell, but the statute is rarely employed because it requires diversity jurisdiction. Richard noted that at some point our committee may have to weigh in on this.

A copy of the Residential Financing Committee's report is attached to these minutes as Attachment No. 6.

(b.) Real Estate Construction Committee. Ken Block reported on scaffold law reform. He authored an article in his private capacity supporting scaffold law reform because the State Bar is on record opposing it. Ken noted that NYCLA is the only association in support of scaffold law reform. A report is being prepared and Ken will circulate the report when it is authorized for release. The Chair noted that getting the State Bar to change its position would be a monumental effort with a low probability of success. Ken concurred, stating that all we can do is publish our report and continue to work with NYCLA.

On a more positive note, Ken reminded everyone that several years ago the construction committee prepared Rider A107 to the owner contractor agreement. They are now working on the owner architect abbreviated B104 Rider which is the companion to A107. This is a joint effort with NYCLA co-chaired by Ariel Weinstock who also is secretary to the State Bar Construction Law Committee. Ken noted that Nancy Connery is heading the subcommittee project whether she knows it or not. The construction committee is having another joint committee meeting on April 28 when it will continue the discussion of Rider B104. Ken hoped to have some progress on it by the summer. Someone asked when State Bar-sanctioned Rider A107 will be available again on the website. Tiffany will look into that and report back.

(c.) Real Estate Workouts and Bankruptcy. Bob Zinman noted that his committee could work with the Student Internship Program in connection with a potential empirical study on trends in real estate work-outs and bankruptcies on

questions regarding pre-packaged bankruptcies and what has happened with the new value exception. He stated that a factual study could be very helpful.

(d.) Landlord and Tenant Proceedings. Ed Filemyr reported that the Landlord and Tenant Proceedings Committee will hold their May 6 meeting at Patterson Belknap's offices where they will have a speaker on the recent amendment to the rent stabilization code.

(e.) Green Real Estate. Joel Binstok reported that the Green Real Estate Committee is organizing a program on energy. Chip Russell and Bill Flynn, former head of the New York State Power Authority, will be working with the committee on the program to be held in the next few months.

(f.) Professionalism. Patricia Watkins reported that the Professionalism Committee has a conference call meeting scheduled in about a week. At Nancy Connery's suggestion the committee plans to review ethics opinions pertinent to the practice of our members. The summary of each opinion would be posted on the listserv to generate discussion about the opinions. Nancy circulated a sample summary of an opinion, attached to these minutes as Attachment No. 7. Nancy added that they need the cooperation of Anne Copps because she is our "in" on ethics opinions. Nancy solicited ethics opinions of interest and noted that the committee could use interns to draft summaries of the opinions.

(g.) Not-for-Profit Entities and Concerns. Anne Reynolds Copps reported that the Not-for-Profit Entities and Concerns Committee's CLE in January was very well-attended. Jim Grossman, Paul Goldman, the tax assessor from Henrietta and Maryanne Kenyon were the speakers. The committee plans another CLE next January and will try to do one with each of our annual meetings. The committee hopes to author articles for the Journal. Anne reminded everyone that the committee also can provide speakers for other committees as needed.

(h.) Low Income and Affordable Housing. Richard Singer reported that David Berkey referred to him two new members who have a lot of enthusiasm and good ideas. Richard stated he was very much interested in the Student Internship Program and would probably be able to use them for drafting assistance on some ideas they have.

(i.) Commercial Leasing. David Zinberg reported that the Commercial Leasing Committee held a fine leasing program on high-end retail leasing presented by Ben Weinstock. The next program will be held on June 12 and they are currently working on the content for that meeting.

(j.) Awards. Peter Coffey reported on a publication backed by our Section entitled "Escrow Accounts and Related Topics". Peter stated that this is one of the best-selling publications in the history of the Bar Association and they have

now asked for a fourth edition and they are working with the editors on that. Mel Mitzner and Joe Walsh wrote the original article on escrow agreements, and Karl Holtzschue agreed to be an editor of that section.

9. New Business. The Chair took a moment before closing the meeting to thank everyone for all their support during his term as chair of our Section. He stated that it was an enormous amount of work with much effort and dedication but that he found it personally rewarding and thanked everyone for trusting him with the position.
10. Next Executive Committee Meeting: The next meeting of the Executive Committee will be held on Thursday, July 17, 2014, from 3:00 P.M. to 5:00 P.M. at The Queens Landing Hotel.

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

Respectfully Submitted,

Mindy H. Stern, Secretary