

MEETING MINUTES
Real Property Law Section – Executive Committee
Wednesday, January 29, 2014
New York Hilton – Rendezvous, 3rd Floor
New York, New York
3:00 P.M. – 5:00 P.M.

1. Call to Order – Benjamin Weinstock, Chair: The meeting was called to order at 3:00 P.M. The Chair welcomed everyone to the meeting.
2. Approval of the October 11, 2013 Meeting Minutes – Mindy Stern, Secretary: On motion made by Nancy Connery and seconded by Gerry Goldstein, the minutes were unanimously approved.
3. Agenda: (see Attachment No. 1).
4. Attendance: (see Attachment No. 2).
5. New York Bar Foundation Presentation: The Chair introduced Richard Raysman, the Treasurer of the New York Bar Foundation, a charitable arm of the New York State Bar Association which raises money from individual lawyers, law firms and corporations to provide financial support for law-related projects in the form of grants to non-profit organizations and agencies, legal aid associations and bar associations. Richard noted that the Foundation owns the building at Elk Street in Albany and applies the approximately \$300,000 rent it receives annually from the Association to administrative costs, which enables the Foundation to use the donations it receives for grants rather than Foundation overhead. Richard reported that last year the Foundation distributed over \$400,000 to 66 organizations state-wide, including Buffalo Legal Aid, Rochester Legal Aid, Prisoners’ Legal Services, the Partnership for the Homeless, and Lawyers for Children. He noted that the Foundation also administers fellowships, scholarships and *cy-près* funds, and that in 2013 the Foundation distributed about \$2,000,000 in *cy-près* funds to New York Legal Aid. He reported that about \$800,000 in *cy-près* funds remains from a class action in the Southern District (Judge Preska). He requested that anyone involved in a class action suit with undistributed *cy-près* funds ask the judge to consider donating them to the Foundation, which Richard reported is well-known and respected by the judiciary. Richard made available for review the Foundation’s annual report outlining its accomplishments and activities as well as brochures for giving opportunities. He thanked the Real Property Law Section for its past support, and concluded by asking for its continued support.

6. Chairman's Remarks:

(a.) Nominating Committee. The Chair requested a report from Nominating Committee Chair Steve Alden. Steve noted that David Berkey, Leon Sawyko and Mindy Stern are moving up the ladder, and announced that Patricia Watkins has accepted its nomination as incoming Secretary. Steve noted that Patricia has been very active in the Section, most recently serving on the Professionalism Committee as well as the Association's House of Delegates. Patricia thanked the Section for the nomination. The Chair added that the Section officers enthusiastically support Patricia's nomination as Secretary, and noted that she attended today's officers meeting to begin her orientation. Steve also announced that nominees for all district representatives, including the 11th district which was vacant, were submitted. The Chair reported that the Section appointed Joseph Risi as the 11th District Representative, and announced that Alice Breeding and Nancy Connery have agreed to serve as Co-Chairs of the District Representatives. Steve asked the Executive Committee to recognize his fellow members of the Nominating Committee: Section Past Presidents Joel Sachs, Heather Rodgers, Anne Reynolds Copps and Harry Meyer. The Chair thanked the Nominating Committee for its work.

(c.) Co-Sponsorships. The Chair mentioned three important and interesting programs the Real Property Law Section is co-sponsoring: (1) "Social Media Ethics" event on January 28, 2014, (2) "The Presidential Summit", a sold-out event on January 29, 2014 and (3) "Smooth Moves: Career Strategies for Attorneys of Color," at Lincoln Center on April 1, 2014. The Chair noted that in the Liaison Report submitted to the Association by Tom Myers, our Section's liaison, Myers commended our Section for its Executive Committee meetings, its membership activities, its sponsorship of CLE Programs, its co-sponsorship of other Sections activities, and its involvement in legislation issues. The Chair noted that the Section receives many accolades for its activities. The Liaison Report is attached to these Minutes as Attachment No.3. The Chair announced that he and Anne Reynolds Copps are participating in a "Bridging the Gap" CLE event on January 31, 2014 sponsored by the Young Lawyers Section, taking place, in which they will describe differences between upstate and downstate residential real estate practices. The Chair hopes that the Section's participation will provide an opportunity to highlight the benefits of membership in the Real Property Law Section and encourage new membership.

(d.) Professionalism Award. The Chair introduced Peter Coffey, who announced that this year's Professional Award is going to Mike Berey. Peter noted that the announcement will be made at the Annual Meeting, and that there would be a short formal presentation during the luncheon. Peter reported that this is the

first year the Professionalism Committee solicited nominations from people outside the Section, and that it received two fantastic nominations articulating why the nominee fulfills all of the award criteria and why he is so incredibly worthy of this award. The Chair pointed out that this is the Section's highest award, and to avoid diluting the distinction, it is not given out annually, but rather only when there is a deserving recipient.

(e.) Scholarships. Joel Sachs announced that the first Mel Mitzner Scholarship will be awarded to a student from Albany Law School, Edward Clark. Mindy Stern announced that the Lorraine Power Tharp Scholarship was awarded to Leanne Welds, a student from Brooklyn Law School. Both awards will be mentioned during the Annual Meeting and both students will be briefly introduced at the luncheon as well.

(f.) Mortgage Finance Committee/Residential Mortgage Finance Committee. In recognition of significant legislative and judicial activity involving residential mortgages and foreclosure issues, the Chair announced that at Karl Holtzschue's recommendation, the Officers decided to create a separate standing committee to address residential mortgage finance matters, and to focus the existing Mortgage Finance Committee's activities on purely commercial mortgage finance matters. The Chair noted that this proposal was enthusiastically endorsed by Richard Fries, who Co-Chairs the Mortgage Finance Committee **[WHAT ABOUT HIS CO-CHAIR FRANK SARRATORI WHO WAS NOT MENTIONED?]**, and that Heather Rodgers has agreed to serve as upstate Co-Chair of the Residential Mortgage Finance Committee. A downstate Co-Chair is expected to be announced shortly.

7. Meetings Reports.

(a.) 2014 Annual Meeting. David Berkey reminded everyone that the Executive Committee dinner tonight is at Michael's Restaurant where there will be some surprise entertainment. He noted that the Section's Annual Meeting this year has the highest attendance for an Annual Meeting in the last ten years, with over 250 people expected to attend, and 120 people expected at the luncheon at The 21 Club. David credited Mike Berey for bringing people to the meeting and the luncheon. He noted the great line-up of speakers talking about such topics as the Osborn case regarding real property tax exemptions for not-for-profit corporations to be presented by Jim Grossman and Paul Goldman, lease negotiations being presented by Joshua Stein, a case law update from Karl Holtzschue, an update on mechanics' liens from Matt Cahill, and a presentation by John Santemma and Chris Denton on the Constitution Pipeline, the 120-mile pipeline project that will involve condemnation of properties all along the pipeline. David noted that during the last half hour of the luncheon, Fonda

Duvanel will make a timely and interesting presentation about the Hudson Yards Project – the largest development project being completed with buildings going up with major tenants, such as Time Warner Cable, for both condominium space and office space in the Project. The Chair thanked David for building a reputation as the superstar of meetings, with better attendance at our meetings this year than the Section has had in a decade, and noted that David deserves an enormous amount of credit for that. The Chair also thanked the officers for subsidizing the luncheon with surplus Section funds to lower the cost for attendees, which also contributed to the larger turnout.

(b.) 2014 Summer Meeting. Leon Sawyko reported 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. He reminded everyone to bring a current passport or enhanced driver's license, and recommended that air travelers fly into Buffalo Airport. He promised an interesting program at a quaint venue offering many cultural activities such as the Shaw Festival and outdoor activities including a jet boat ride up the river to the base of Niagara Falls. Leon mentioned that the January 27th issue of "The New Yorker" had a full page ad for Niagara on the Lake advertising "Great Theater in the Heart of Niagara Wine Country". The program will include a session on economic development throughout New York and the various programs that are available that we should be familiar with as well as a presentation on the ratification of the new not-for-profit corporation law going into effect in July. Leon noted that the program also will include the Section's regular presentations on ethics and current case law, and solicited suggestions for other presentations.

8. Report of District Reps. The Chair emphasized the need to increase the Section's membership. He reported that the Section's efforts to date have yielded mixed results. Noting that the primary mission of the District Representatives is to increase membership, he called upon them to give their reports.

(a.) 1st District. Nancy Connery reported two initiatives: a cocktail party for listserv members co-sponsored with the 9th District and a Habitat for Humanity volunteer day in Manhattan, probably at the beginning of May. They intend to ask another Section to participate, perhaps the Young Lawyers Section or the Trusts and Estates Section, to expand the project with at least one other Section. The Chair mentioned that ACREL has a standing Habitat for Humanity Committee that actually does a project at every one of their meetings regardless of what city they go to and suggested that the Section consider this for its Summer meetings.

- (b.) 2nd District. Larry DiGiovanna reported that they helped locate 11th District representative Joe Risi, and that they are outreaching to new members and will plan a joint event with Joe.
- (c.) 3rd District. Alice Breeding reported that they had cocktails with the Young Lawyer's Section. There was a good turnout and they collected toys for Toys for Tots. They are meeting with the Young Lawyers Section and local bar associations to plan a Valley Cats (Houston Astros Farm Team) charity event.
- (d.) 4th District. Michelle Wildgrube reported that they joined with the 3rd District to do the Holiday Cocktail Party and they are trying to do so with the Valley Cats game as well. She stated that the 4th District may try to offer a CLE program perhaps before the summer.
- (e.) 5th District. No report.
- (f.) 6th District. No report.
- (g.) 7th District. Scott Sydelnik sent his report via email and Heather Rodgers reported for him that the 7th District is partnering with the Young Lawyer's Section to co-host a networking event in downtown Rochester to be held in early May. He hopes this event will encourage new members to join the Section.
- (h.) 8th District. David Mineo reported that they co-sponsored the 24th Annual Conference with New York State Bar Association, during which they distributed literature about our Section.
- (i.) 9th District. Lisa Stenson Desamours reported that they are co-sponsoring with the 1st District a cocktail party for listserv members and a Habitat for Humanity volunteer day in Manhattan, probably at the beginning of May.
- (j.) 10th District. No report.
- (k.) 11th District. Joe Risi was introduced as the new District Representative for the 11th District. He has practiced for over 30 years. He is a former member of the title insurance department and serves on the Grievance Committee.
- (l.) 12th District. No report.
- (m.) 13th District. Toni Ann Barone reported she has been working with the Richmond County Young Lawyers Association as well as two members at the state level to plan a networking event at the end of February or beginning of March. They hope to organize a "meet and greet" with a local attorney in private practice to identify what young lawyers are most interested in learning about

real estate practice, then hold a CLE program to address those needs. The district hopes that such an event will increase Section membership.

The Chair noted that the best practices learned in one district can be passed along to another district and encouraged neighboring districts to coordinate and co-sponsor activities. The Chair expressed hope that this would be coordinated through the Co-Chairs overseeing the District Representatives.

9. Report of House of Delegates. Sam Tilton reported on the status of the proposal for pro bono reporting, which is currently being widely reported in Bar media as well as the media generally, and generating much controversy. Mandatory reporting of pro bono hours and contributions under a new court rule is being considered. Many people, including some led by Robert Ostertag, a past Association President, have expressed concern that this requirement will lead to mandatory pro bono. Sam noted that although he believes the discussion is worthwhile, he questions whether the House of Delegates is the best forum in which to do so. He noted that the remarks of many lawyers at the meeting were misinterpreted to suggest that they do not support pro bono activities, which is unfortunate. The matter of conforming the comments to the rules was tabled and a special committee was formed. That committee has been wrestling with this matter and is expected to report to the House on Friday. Sam noted that they have not produced anything yet because the House was told that the Executive Committee would debate this issue before the full House meeting and we would then hear the recommendations.

Ira Goldenberg, a member of the Association's Executive Committee, confirmed that the Committee has been wrestling with this issue and that he expects a spirited debate at the House of Delegates meeting. He could not predict the outcome of the discussion, noting that the Special Committee has made 20 different recommendations as to various tactics that can be used.

Ira also reported on another consequence to the pro bono debate to be played out at the House of Delegate's Meeting on Friday morning - the first contested election for President in many years between Dave Miranda, the candidate chosen by the Nominating Committee of the Bar Association and Tom Liotti, a write-in candidate from Long Island. Ira noted that Liotti's platform seems to be the pro bono issue, and a concern that the Association is not actively pursuing this matter. Ira noted that Liotti has solicited support from many people but both candidates have distributed e-blasts requesting support. Ira also noted that President-elect Glen Lau-Ki anticipates a spirited discussion. Steve Alden clarified that under the new rules attorneys will be required to report not only pro bono hours but also financial contributions with the Office of Court Administration publicizing that information. The Office of Court

Administration has already told the Bar Association through Chief Judge Lippmann that they are going to defer publicizing the monetary aspect of that requirement for at least two years.

John Privitera asked Ira who is allowed to vote on this matter. Ira responded that any member in good standing of the House of Delegates may vote. He reminded the Committee that because of its size, our Section has four active members of the House of Delegates who are entitled to vote. Peter Coffey, a member of the Nominating Committee and House of Delegates, stated that the House is not against pro bono but rather the requirement to report pro bono hours, similar to concerns about other governmental reporting requirements. He remarked that it is an interesting debate and a microcosm of the issues we all face, and that he does not envy the Executive Committee having to struggle with this difficult issue. Peter opined that the House tabled the issue because it does not want the public to perceive incorrectly that the Bar is against pro bono.

Peter also advised the Committee that the Association's past Presidents and other members as well as its Executive Committee are concerned that the Courts failed to consult with the Association before proposing these pro bono requirements. He noted that unlike years past, the Courts are now passing rules without asking the Bar Association for input, which the Association believes is contrary to what the public wants – Association input into how we are regulated.

The Chair identified the four current delegates of our Section: Steve Alden, Sam Tilton, Larry Wolk and Joel Sachs. He reported that he was informed by the Association that Joel is ineligible to continue due to term limits, and that the Section has been asked to appoint a replacement. He also noted that we currently have one alternate – Joel Walsh. The officers will select and recommend someone to fill the vacancy in the House of Delegates and advise the Section when that is decided.

Matt Leeds asked if our Section's Delegates will be directed by the Executive Committee as to how they should vote. The Chair invited discussion as to whether the Executive Committee wants to direct the vote, or allow the Delegates to use their good judgment and wisdom to vote on behalf of our Section. The Chair indicated that he would like to know what other Committee members think, but that he would prefer to allow the Delegates to use their own judgment, especially because the recommendations that will be made at tomorrow's House of Delegates meeting are not yet known. **[Someone]** stated that being asked to serve as a Delegate means that you are being asked to exercise your best judgment on behalf of your Section during the meeting. **[Someone]** asked if Section Delegates would be required to vote together on

behalf of the Section. The Chair could not recall a situation where the Section directed its Delegates to vote unanimously on an issue. The Chair stated that he believes that most members of the Section recognize that pro bono service is valuable for all lawyers, and that the reporting requirement is the real issue. Jim Grossman noted that in the past the Section reported to the Bar its position on issues but never bound the Delegates to vote in a certain way. The Chair asked the Committee to confirm (and they did) that the members are not opposed to pro bono but rather the mandatory reporting requirements.

Matt Leeds then inquired about the vote for President of the Association. The Chair did not support the idea of directing the Delegates how to vote. Gerry Goldstein asked if anyone has had any personal interactions with either of the candidates or if anyone is familiar with their positions that affect the Bar Association or is it just a matter of one person moving up the chain of command and another person coming in. **[Peter Coffey?]** noted that Dave Miranda practices with an intellectual property law firm in the Albany area, and is a former President of the Albany County Bar.

Bob Zinman stated that Matt's question about voting is broader than the particular questions that are coming up before the House of Delegates now. It is really a fundamental question as to whether the Section's representatives should be instructed on how to vote. Larry Wolk suggested that we table the discussion, because in this instance, we do not know what recommendation the House of Delegates is going to propose but perhaps in circumstances where the Section knows what a particular vote will be, the Delegates should be directed on how to vote.

In an effort to move along the meeting, the Chair requested that we table the issue of whether Delegates should be instructed on how to vote for the Section for discussion at a future meeting. **[Someone]** asked if the Delegates need to vote together as a block; and **[someone else]** clarified that the Delegates do not have to do so.

10. Section Projects and Initiatives.

(a.) Section Budget. Spencer Compton reported that the Section is having another good year with a surplus, noting that revenue from publications is 415% over budget (*i.e.*, \$1,200 rather than \$300), and that the Section now has a surplus of approximately \$149,000. He noted that we have been modestly using it to subsidize membership activities. He also noted that the Officers are considering recommending increasing our grants for students; and is discussing ways to use it to increase membership and promote other Section activities and initiatives. As to the scholarship grants, Spencer reminded the Committee that

the Section currently offers two scholarships annually in the amount \$1,500 each and that the Officers recommend increasing both scholarships to \$2,500 each. In addition, the Officers recommend adding \$5,000 to each scholarship fund this year and annually thereafter to secure the scholarships for the future, and hopefully raise our Section's profile. The Chair stated that we finished last year with a \$107,000 surplus and that we have increased our surplus this year to almost \$150,000. He reminded the Committee that the Association discourages Sections from having too large a surplus, and that a memo from the Association advises that our surplus must be reasonable and describes what we are permitted to use it for, such as supporting law students, charitable activities involving the law, membership activities involving our Section -- all of the things that one would intuitively use the surplus for. He noted the ways our Section has tried to use those dollars wisely, such as subsidizing the cost of the luncheon, offering scholarships to our meetings, making money available for law students' transportation to events, and offering to provide steeply discounted registration and attendance fees to the Summer Meeting for young lawyers. The Chair stated that based on information provided to the Officers, we believe that our scholarship awards (*i.e.*, Lorraine Power Tharp Scholarship and the Mel Mitzner Scholarship) of \$1,500 are low and therefore do not compete well with other scholarship awards of \$2,500 and higher. The Chair made a motion to give the Lorraine Power Tharp Scholarship and the Mel Mitzner Scholarship additional funds of \$5,000 each from the Section and to increase the amount of each scholarship awards to \$2,500. The motion was seconded by Gerry Goldstein and passed unanimously with no further discussion.

In light of the Association's transition to on-line CLE materials, Larry Wolk suggested using some of the surplus funds to distribute hard copies of materials for Section CLEs in certain circumstances where the Bar is only providing on-line materials and attendees prefer hard copies.

Gerald Goldstein noted that when he paid his dues this year he noticed a "Retired" rate and called the Bar to inquire about that reference. He was informed that if an attorney is over 70 years of age and has been a member over 25 years, the annual dues are \$100.

(b.) Section Calendar. Gerald Goldstein reported that he is waiting for notice of events to add to the calendar.

(c.) Section Website/Blog. Mike Berey reported that he has not been able to do a blog for a couple of months because he cannot log into the site. He has had discussions with Barbara at the Bar who informed him that it is fixed, but it is not, and he does not know why. Mike reported that the website is a work in progress and that he is not sure how functional it is yet.

(d.) Task Force on Electronic Recording. Mike Berey reported that 15 counties now allow electronic recording and 15 counties statewide plus the ACRIS counties in New York City. In Westchester you have to go through a third party provider; you cannot do it directly.

(e.) Task Force on Draft Insurance Department Regulations. Tom Hall reported that there was a hearing on title insurance a couple of weeks ago and that Ben Weinstock, Joe DiSalvo and Karl Holtzchue attended on behalf of various entities, and referred questions about the hearing to them. With respect to title agent licensing, a new bill has been proposed as part of the Governor's budget. Tom characterized the new bill as "a pretty clean licensing bill that simply does not much more than tries to license agents as well as title closers and title insurance solicitors" and that will be discussed in the Title and Transfer Meeting on January 30, 2014. The Chair explained that Section 6409D of the Insurance Law -- the kickback section -- has not been resolved. The greyness of whether or not lawyers can act as title agents in the same matters as they represent the buyer or seller or lender or borrower remains as ambiguous as ever. The second problem with Section 6409D is that while they have confirmed that up until now it has only been unlawful to give something of value to induce title business but not unlawful to receive it, if the bill passes, it will now be unlawful to receive something of value to induce title business so, if for instance the title company offers you tickets to a Yankee game, you will have to consider if you are violating Section 6409D of the insurance law by accepting them. Tom also noted that it comes with the budget bill; it is not a title agent licensing bill in a vacuum. Buried in the bill is a provision accompanied with a press release from the Governor's office in which he said that there are rampant abuses in the title insurance business causing people to pay too much money for title insurance in New York; and the insurance regulators, the Department of Financial Services, will lower the residential title insurance rate by 20% and will lower the residential refinance rate by 60% so there is a lot buried in this title agency licensing packet with the Department of Financial Services that is part of the Governor's budget. The Chair stated that more information will be available at the following day's Title and Transfer Committee meeting.

Sam Tilton reported that another section of the proposed bill deals with disclosing closing fees and other disclosure items. At tomorrow's meeting, we are going to prepare a memo and present to the Assembly and the Senate by early February according to Kevin Kerwin so that they can consider our comments as they draft their own bills and then put the three bills on the table -- each of theirs and the Governor's -- and decide what they are going to do. The Chair explained that this needs to move at a rapid pace so there will not be a meeting to approve this legislative memo -- it will be handled via email. Sam suggested

that we change the name of the Committee because there has not been any Draft Insurance or Regulations in a long while and the Chair responded that the name is going to be changed and corrected in the next agenda.

(f.) Student Intern Program. David Berkey reported that the program has been in effect for about three years, and that many firms have established relationships where they act as mentors for the student interns with the actual schools, so there is a more direct give-and-take now between the host firms and the schools that are supplying the interns. David noted the Officers' interest in expanding the use of student interns to benefit our Section and its Committees. For example, we could ask a school to provide an intern to work with the committee studying issues involving new licensing or title issues, or tenant-landlord issues or any other substantive area where a committee might find it helpful to have several interns working under the direction of the committee chair. To develop that resource pool, the Officers concluded that the intern project would be best served by converting it to a standing committee. David reported that Stacy Wallach has agreed to chair the new committee, and that Ariel Weinstock has been asked to be a co-chair because we wanted to find someone that was a generation younger than Stacy and David. David made a motion to establish a Standing Student Internship Committee for the purposes of coordinating with the law schools and coordinating with our committee chairs thereby providing the best opportunities for student interns to work both with law firms and with our committees. This motion was seconded and passed unanimously with no further discussion.

Stacy Wallach reports that Pace Law School may now be ready to participate in the student internship program thanks to some personnel changes at the law school. He commended David's idea for a Student Internship Committee and student interns working directly with our committees and hopes that it will help him get Pace Law School involved.

(g.) NYSBA Mentoring Program. Harry Meyer reported that he received a request from the Bar on the mentoring program and received prompt commitments from David Berkey, Toni Ann Barone and Jaime Lathrop to mentor the initial applicants. Harry noted that this demonstrates our Section's consistent cooperation and community spirit. Harry also thanked Marvin Bagwell for his assistance with a reception given for the diversity and inclusive award, again demonstrating the Section's cooperation with requests from the Bar to participate in its activities. Harry concludes by stating that our membership has stabilized about 4,300. He noted that April 1st is the date used by the State Bar to measure membership and all district representatives to "beat the bushes" for new members.

11. Report of Standing Committees.

(a.) Attorney Opinion Letters. Chip Russell reported that the attorney opinion letter committee met earlier today. Attended by about 6 people, they discussed a variety of topics including recent case law, potential limitation of liability clauses, and relevant case law. Greg Pressman added that the discussion of recent case law was quite brief because there was virtually nothing to discuss, which tells you something about how opinions are regarded.

(b.) Legislation. Sam Tilton reported that the Legislation Committee distributed its report prior to this meeting in which it was noted that none of the bills we opposed were passed and the two bills that we supported were not passed either. The minutes from October mentioned getting a working group started and that has occurred.

(c.) Real Estate Financing. Richard Fries sent an email report which Mindy Stern reported for him. With Karl Holtzschue's assistance, we continue to actively monitor and weigh in on proposed legislation. In this regard a number of recent memoranda have been submitted on behalf of our Section. We are currently in the process of reviewing Senate 5714 -- a bill to add a new Section 1308 to the RPAPL. This new section would provide for an expedited procedure for the foreclosure of residential mortgages on abandoned or vacated property. The proposed new legislation sets forth in elaborate detail the procedure for demonstrating to the Court that the property has in fact been abandoned and upon such demonstration for obtaining a judgment of foreclosure without the appointment of a referee to compute. There are a number of issues to consider including the impact on the deficiency judgment rules and whether the Court would be too overburdened to review statements of the indebtedness without a third party referee being engaged to provide that service. The Financing Committee report also noted (as previously discussed in today's meeting) that the Committee was considering forming a subcommittee to deal with residential mortgage loans. The Chair states that he received an email from Richard after the report was written confirming that the Real Estate Financing Committee fully supports creating a separate Standing Committee for residential financing issues.

(h.) Real Estate Construction Committee. Ken Block presented the Construction Committee's proposal that we try to reverse the position taken by the plaintiffs' bar ten years ago with respect to the scaffold law (Labor Law Section 240 subdivision 1), which poses strict liability on a contractor or owner for injuries to workers on a fall from heights (described as elevation injuries or gravity injuries). Ken explained that under the current law, if a worker falls from a height of about 16 inches, the law imposes strict liability, and the only defense is

if the employee was the sole proximate cause of the injury. So if the facts are mixed – for example, the scaffold was not properly secured but the employee was drunk when he or she fell off the scaffold, strict liability is imposed. Ken noted that this has resulted in a dramatic increase in construction insurance premiums in New York, which probably are now the highest in the country, and that this has reduced construction jobs in both the private and public sector. He also noted that New York is the only remaining state with a strict liability standard for scaffold or height-related injuries, and that the issue recently was discussed in Crain's.

Ken informed the Committee that momentum is building among many different sectors of the real estate industry to amend the CPLR to replace strict liability with a comparative negligence standard that would permit a defendant to assert comparative negligence (*i.e.*, in the prior example, that the worker was drunk) and that there be a sharing of negligence. Ken noted that this proposal was the subject of a bill in 2003 opposed by the Association after a report published by the Tort Reform Task Force in 1999 (the plaintiff's bar), opposing tort reform generally. In its report the Task Force opined that there is no need to change the Scaffold Law because it has been narrowly interpreted and there are defenses available.

Ken reported that although the Association opposed the comparative negligence bill in 2003, it stated at the time that it might consider a recalcitrant worker doctrine (*i.e.*, if the worker refuses to use a safety harness or tie-off). Ken noted that very few cases have allowed that as a defense. He also reported that lobbyists in Albany are trying to modify the pending comparative negligence bill to incorporate this doctrine.

Ken stated that the Construction Committee has concluded that the Section should revisit this issue. He noted that Karl Holtzschue informed Ken that we need a consensus vote to support such a reform. Ken advised the Committee that the pending comparative negligence bill does not fully address the issue and that in the Construction Committee's opinion we should defer to the personal injury lawyers to do so. The Construction Committee's position is that the current bill is a start – it is not fully there – but we should support in concept a change to a comparative negligence standard.

Ken requested that the Committee discuss whether it is willing to propose or support Scaffold Law reform. The Chair noted that according to Kevin Kerwin, the Sections are permitted to support or oppose legislation, but not to propose legislation. The Chair further explained that when there is a conflict among the Sections, the Conflict Committee of the Association decides how to resolve them. So in this case, the Conflict Committee will decide whether to support the

position of the tort lawyers (the plaintiffs' bar), or the position taken by our Section and other interested Sections. The Chair noted that although there does not appear to be anything currently pending to vote on, he agreed with Ken that we should be discussing it. He described it as a unique challenge for our Section, and noted that he has discussed it with the President of the Association, David Schrauer, who acknowledges that this conflict may need to be confronted during his term.

Brian Lustabader added that he and Ken have been discussing it with two other bar associations – New York County Lawyers and the Association of the Bar of the City of New York. Brian reported that the New York County Lawyers is in favor of the pending legislation and that he expects the Association of the Bar of the City of New York to support it as well. He noted that various constituencies supporting reform view the current bill as a last chance to get something before the legislature, so there is strong momentum to move forward with it this year. Ken advised the Committee that the Construction Committee is developing informational programs jointly with the New York County Lawyers and the Association of the Bar of the City of New York, but that the Construction Committee is not expressing a position in support because the Association's last stated position is to oppose Scaffold Law reform. John Hall asked if New York is already a comparative negligence state so this bill would be change strict liability to comparative negligence rather than strict liability to negligence. Ken responded that New York has a comparative negligence standard in most areas but the Scaffold Law is an exception. The proposed amendment to CPLR Section 1414 would clarify that comparative negligence applies in the case of the Scaffold Law too. It is judge-made law that makes it strict liability. John Hall suggested that we tread carefully because in some instances it could be the employer pressuring an employee to use an unsafe scaffold. Ken responded that a comparative negligence standard does not undermine that concept.

Ken Block made a motion that the Section support some type of reform to the Scaffold Law. The motion was seconded and passed unanimously with no further discussion. Brian added that at Friday's section meeting, they will continue to discuss the Scaffold Law and continue amending an architect's agreement as was previously done with a contractor's agreement.

(d.) Real Estate Workouts and Bankruptcy. Bob Zinman reported that regrettably our annual joint meeting with the Real Estate Finance Committee scheduled for earlier today had to be postponed due to prior commitments but it will be rescheduled. He noted that there have not been any great economic disasters lately that would cause the Committee to have pressing issues to discuss.

(e.) Publications. Marvin Bagwell reported that the Winter edition of the “Real Property Law Journal” was published and distributed via mail, that the Spring edition is being compiled, and that more articles are needed by February 4, 2014.

(f.) Professionalism. Patricia Watkins reported the Committee hopes to meet shortly, and that Nancy Connery has suggested some great ideas for Committee activities, one of which may require the assistance of an intern, in which case the Professionalism Committee will contact the Student Intern Committee.

(g.) Not-for-Profit Entities and Concerns. Sue Golden reported that the Not-for-Profit Entities and Concerns Committee is presenting its CLE program on January 31, 2014, on real property tax exemptions. An assessor will present the assessor’s perspective and other speakers will discuss recent case law and practice tips on preparing the application and related issues. The Chair added that there is a new statute in New York just signed into law a few weeks ago; it is the first overhaul of the not-for-profit law in 40 years that deals with the transfer of property by a not-for-profit organization. He noted that the process has been streamlined to make it easier for not-for-profits to obtain approval to sell property by possibly eliminating court orders in some instances. **[Someone]** added that the statute required that all real property transactions be approved and now executive committees or other committees can now actually approve minor leases and those kinds of things that they could never do before.

(h.) Condominiums and Cooperatives. Dennis Greenstein reported that the Cooperatives and Condominiums Committee’s annual CLE program, to be held this year on January 30, 2014, will discuss affordable housing, ethics and the illegal use of apartments. He noted that the latter is becoming a problem, particularly in Manhattan, when people use their apartments as bed and breakfasts, and the implications go beyond just affecting the buildings but also other laws that are being violated. Dennis also reported that the Committee has been conferring with the City Bar Association’s Committee on Condominiums and Cooperatives about possibly amending the Condominium Act to minimize personal liability of board members in light of the **[Heckel Ny]** appellate division case which held that there was a defective fence on the roof of the building and someone was seriously hurt, but because the Board had no control, the Board members were not personally liable. He noted that this has frightened many people who serve on Boards, and that concerned lawyers are discussing whether to seek statutory relief rather than relying on court decisions, which may be inconsistent.

(i.) Low Income and Affordable Housing. Richard Singer noted that it is a time of transition right now, with changes being made in appointments to head the HPD in the City and HUD.

(j.) Commercial Leasing. David Zinberg reported that the Commercial Leasing Committee completed two successful CLE meetings in the fall – one on good guy guarantees and the other on construction law issues for leasing attorneys. He thanked Brian Lustbader for both hosting and presenting the second program. The Committee is working on two more CLE meetings for the Spring, details to follow.

(k.) Landlord and Tenant Proceedings. Ed Filemyr reported that the Landlord and Tenant Proceedings Committee is sponsoring a program on January 30, 2014, focusing on a Fair Debt Collections Practices Act case which held that a L&T practitioner violated the Act because he relied solely on information provided to him by the managing agent. There also will be a presentation on risk management for landlord tenant counsel. Ed reported that the Committee also is developing an update program to be held in the Spring.

(l.) Green Real Estate. Joel Binstok reported that the Green Real Estate Committee held a CLE program in the fall focused on what real estate lawyers should know about green real estate and sustainability, and that another program is being planned, either on the controversial topic of fracking, or on solar energy.

(m.) Condemnation, Certiorari and Real Estate Taxation. Karla Corpus sent an email report which Jim Grossman reported for her. Governor Cuomo's budget bill has a two year property tax freeze for homeowners with income under \$500,000. Another significant change is that school districts can now buy into the veteran's exemption where they could not do so before. Karla's report also focused on a significant change in the way property tax exemptions are granted for religious organizations. Karla explained that for many years New York denied exemptions to people who create a religion and then try to obtain exemptions for the homes in which that religion is practiced, but in 2013 the Third Department, in the *Maetrum of Cybele, Magna Mater, Inc. v. McCoy* case [11AD Third 2013], granted an exemption to the owner of a twelve bedroom main house and caretaker's cottage with an outdoor temple and processional pass to further the religious practice of the Cybeline Revival – a pagan religion whose fundamental religious principle is that the divine feminine – the mother goddess – Cybele, who is present in everything thereby creating a connection in all living things as well as giving rise to an obligation to do charitable work and responsibility to improve the conditions of all people, particularly women. Summary judgment was denied by the Supreme Court, and the Third Department granted the exemption.

(n.) CLE. Joe Walsh reported that within the last two weeks we have lost our two liaison people at the State Bar – Kim Francis who handled the practical

skills programming, has moved to another position within the Association, and **Carl Copps** has retired officially. He and Co-Chair Larry Wolk will meet with Kim's replacement and Alex [____], [Carl's] successor soon to develop the programming for the Spring and the Fall. The Practical Skills Purchases and Sales program chaired by Karl Holtzschue and Scott Sydelnik will be held in seven locations (one possibly a webcast) in late April or early May. Advanced Topics in Real Estate was not held last fall, but probably be presented again in Fall 2014. 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 program ideas and speakers, encouraging members to speak with him or Co-Chair Larry Wolk.

12. New Business. Joshua Stein announced that he has produced note cards for everyone with ten paintings done by his father, Sherman Stein.
13. Next Executive Committee Meeting: The next meeting of the Executive Committee will be held on Friday, April 11, 2014, at 10:00 A.M. at the Harvard Club.

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

Respectfully Submitted,

Mindy H. Stern, Secretary