

MEETING MINUTES
Real Property Law Section – Executive Committee
Friday, October 17, 2014
Harvard Club
35 West 44th Street, New York, New York
10:00 A.M. – 12:00 P.M.

1. Call to Order – David L. Berkey, Chair: The meeting was called to order at 10:00 A.M. The Chair welcomed everyone to the meeting. [Agenda attached]
2. Approval of the July 17, 2014 Meeting Minutes – Patricia E. Watkins, Secretary: On motion made by Karl Holtzschue and seconded, the minutes were unanimously approved.
3. Chairman’s Remarks: The Chair reported on the following items:
 - a. The Chair introduced and welcomed Amy Jasiewicz who will be taking over for Tiffany. Amy’s e-mail is ajasiewicz@nysba.org.
 - b. The Chair also introduced and welcomed Shelby D. Green, professor at Pace Law School, as a new Co-Chair of the Law School Internship Committee. Thanks were extended to Prof. Stacy Wallach for his excellent work as a former Co-Chair of that committee and a long time member of the Executive Committee.
 - c. The Chair announced that Ira S. Goldenberg was selected as Section Member at-Large on the NYSBA Executive Committee. He was appointed to act as liaison to the Section Delegates Caucus.
 - d. Richard Fries and Thomas Hall drafted a Memorandum on behalf of the Section urging approval of S.3479-A (A. 1582-A), an Act to amend the Tax Law and Administrative Code of the City of New York, and made a compelling case to relieve referees from liability for interest and penalties in connection with transfer taxes on deeds. The law passed both houses and has been signed by the governor.
 - e. Karl Holtzschue was asked to report on the discussion that members of the Executive Committee became engaged in during the course of editing the Attorney Escrow Account Book as to whether the downstate contracts are in full compliance with requirements for disclosure and consent. The Chair reported that there are differences between upstate and downstate practices. The Chair announced that he is creating a Task Force on Escrow Accounts to study issues surrounding escrow accounts, its purpose being to educate and perhaps create a ‘Model Form’ to be used by attorneys holding funds in escrow in connection with contracts. Please e-mail David at dlb@gdbl.com if you would like to serve on this Task Force. The previous task force on

escrow accounts was created to address attorneys stealing funds; this new task force will be much broader in scope and address educating attorneys.

- f. The November-December issue of NYSBA News will profile the Real Property Law Section. It will include a message by the Chair and a substantive article by Brian Lustbader entitled "Gaining Access to Neighboring Properties for Protection during Construction."
 - g. It was announced that November 14 is the deadline for submission of proposals for Spring CLE programs through the NYSBA CLE Department, with agendas for programs due by November 21. These dates must be met in order to get credit through the CLE Department. Joe Walsh and Larry Wolk are available to assist any committees that wish to present a CLE. The other two avenues for providing CLE are through the Meetings Department or through the section officers.
 - h. Joel Sachs was asked to describe a proposed CLE on Casino Gambling and the Upstate New York Gaming Economic Development Act of 2013. This is a timely topic to be presented in conjunction with the Municipal Law Section and Environmental Law Section at the Annual Meeting in January on Friday afternoon. Harry Meyer moved that we support this CLE program, the motion was seconded and unanimously approved.
 - i. The Chair advised that our By-Laws set tenure for the chairs of the substantive committee chairs, although members may continue on the Executive Committee as a member-at-large or in other positions. Committee chairs should consider training younger committee members to take over as a co-chair of their committee.
 - j. The Chair introduced Michael Stevens and Susan Scharbach as co-chairs of the new Web Site and Electronic Communications Committee.
4. Meeting Reports:
- a. Leon Sawyko gave a wrap up of the Summer Meeting at Niagara-on-the-Lake. There were 101 in attendance and feedback was positive. He also described plans for the Annual Meeting in January 2015. The Executive Committee meeting will be held on Wednesday January 28 from 3:00 to 5:00 P.M., with a dinner for the Executive Committee that evening. The CLE program will be held on Thursday morning January 29 and will offer 4 hours of CLE credit. Topics will include adverse possession, title agent licensing bill update, commercial leasing, condos & coops and building loan mortgages. The luncheon on Thursday will again be held at the 21 Club.

- b. The Chair reported for Mindy Stern on plans for the Summer 2015 (July 16-19) meeting at the Basin Harbor Club and Resort on Lake Champlain in Vermont. Spencer Compton reviewed the discounts that were approved to induce younger members to attend the Summer Meeting – a discount of 75% will be offered to those attending for the first time and to those in practice 10 years or less.
5. House of Delegates Report. The HOD has not met since our Summer Meeting; the next HOD meeting will be on November 1. Sam Tilton reported that the issue of pro bono reporting will not be on the agenda for November, but it has been reported that progress is being made in negotiations on this matter. The Section Caucus is focusing on two topics: advocacy guidelines and revamping CLE/CLE Guidelines. Ira Goldenberg reported on two other issues being addressed by the HOD: how to comment and lobby on proposed legislation through the sections and the NYSBA Government Relations Department; amending the by-laws to provide that if a full time employee of the judiciary addresses the NYSBA they should be required to respond to questions.
6. Nominating Committee. Ben Weinstock chairs this committee. He will be seeking a member to become an officer, who would ultimately become chair of the section.
7. Section Projects and Initiatives.
 - a. Budget – Spencer Compton reported that the deficit from our Summer Meeting was \$5,700 and that our surplus is currently approximately \$148,000. He expects we will add a bit more to our surplus this year. We are encouraged to spend our surplus on initiatives that will increase membership in our section.
 - b. Section Calendar – Everyone is reminded to e-mail Jerry Goldstein, with a copy to Amy, when CLE programs and meetings are scheduled so that he can include them on the section calendar.
 - c. Task Force on Draft Insurance Department Regulations – Jerry Antetomaso reported that the draft regulations previously provided have now been implemented as emergency regulations which will expire on December 23. There is concern because the regulations fail to include statutory language which clarifies that an attorney may write title insurance for the attorney’s own client(s) without violating the multiple business source requirement. Although we have been assured of this interpretation, it is important that the regulations be clarified to avoid an ambiguity between the statute and the regulations.

- d. Student Internship Program – This program continues. Ariel Weinstock provided a form to be completed by Committee Chairs requesting interns in order to provide the schools with the information needed in order for students to receive credit.
 - e. Diversity – Harry Meyer urged members of the Executive Committee to attend the diversity event that is held during the Annual Meeting each year on Monday evening (this year, on January 28.) It offers an opportunity for us let minority students get to know us and become familiar with what we have to offer.
 - f. Scholarships – The Lorraine Power Tharp Scholarship and the Mel Mitzner Scholarship now each award \$2,500. Joel Sachs reported that the scholarship process is moving forward.
8. Report of District Reps.
- a. First & Ninth Districts – Lisa Desamours reported on a joint district Evening at the Theater Event held in conjunction with the Young Lawyers Section. Amy assisted in planning the event. A reception was held at a bar across the street from the theater, followed by attending the play and then a question and answer session with the play write.
 - b. Second District – Lawrence DiGiovanna participated in the quarterly conference call with the districts reps. He has been reaching out to new members to welcome them to the section. He is thinking of having a light dinner to welcome new members.
 - c. Third District – Alice Breeding also was on the conference call with district reps. She would like to have some written information on the benefits of section membership for the district reps to share with prospective members. She also reaches out to welcome all new members in her district.
 - d. Fourth District – Michelle Wildgrube shared that Peter Coffey and Lorraine Power Tharpe are both being recognized by Legal Aid of NENY for their efforts with that organization. Michelle is planning a Holiday Party at Mexican Radio in Schenectady. As in the past, this will be a benefit for Toys for Tots. This will be a joint event of the Third and Fourth Districts in collaboration with TICL, Intellectual Property, Young Lawyers and Real Property Law Sections.
 - e. Sixth District – John Jones reported that he is looking for opportunities.

- f. Seventh District – Scott Sydelnik submitted a proposal to Tiffany last Spring for a Trivia Night to be held in conjunction with the Young Lawyers Section. He will follow up with Amy.
 - g. Eighth District – Dave Mineo has planned a CLE to be held on November 20 with the Monroe County Bar on real estate practice in New York and Canada.
 - h. Tenth District – Dan Baker reported that he and Sanford Pomerantz are discussing plans. Sanford Pomerantz reported that he will be speaking at a Nassau County Bar meeting next week.
 - i. Eleventh District – Steve Wimpfheimer is new and is getting ideas from the other district reps.
 - j. Thirteenth District -- Toni Ann Barone thanked Nancy Connery for holding the quarterly conference calls and thanked Harry Meyer for providing membership lists. She has been reaching out to members who have dropped membership as well as new members and is planning a joint CLE with the Young Lawyers for February of 2015.
9. Reports of Standing Committees. The Chair encouraged the Standing Committees to use this time at meetings to educate the members about matters of interest.
- a. Web Site and Electronic Communications — This new committee is just off the ground. The new Co-Chairs have been consulting with Mike Berey. They are open to suggestions on how to improve the Section's web site and electronic communications. Susan Scharbach reported that they had a conference call last week. They are honing in on a RPLS "Community." They are soliciting ideas for the list serv and looking for ways to better serve the entire RPLS.
 - b. Awards – Peter Coffey reported that the committee would be meeting shortly and is requesting nominations for the Professionalism Award.
 - c. CLE – Richard Fries reported that a CLE on Advanced Real Estate to be held on December 5 will have a great panel of speakers.
 - d. Commercial Leasing – David Zinberg reported that the committee held a successful program earlier this week on the Americans with Disabilities Act Issues as these issues affect commercial leasing. The committee has also organized a program for December 10 with Nancy Connery speaking on recent cases on commercial leasing.

- e. Condemnation, Certiorari and Real Estate Taxation – Jim Grossman reported on Matter of FFT Senior Communities, Inc. v Town of Canandaigua, 2014 App. Div. LEXIS 6448 (September 26, 2014) an important recent decision (copy attached) affirmed by the Fourth Department where the lower court held that a reduced assessment determination would apply for 3 years, even if no assessment challenge had been made in each year. This is a substantively significant case.
- f. Condos & Coops—Dennis Greenstein reported that a committee meeting is scheduled for October 30 where a representative of the AG's office will speak. The committee also has planned a 3 hour CLE to be held in January. Steven Sladkus reported on AG's office analysis of Airbnb.
- g. Green Real Estate – Joel Binstok reported that he has spoken to the Construction Committee about developing a program on Green Buildings to highlight advances, advantages, grants, etc.
- h. Landlord and Tenant Proceedings – Ed Filemyr reported that the committee held a meeting on September 18 where Dan Blumenthal, the new commentator for the Real Property Law, gave a preview of his first commentaries. Ed reported on an Airbnb decision where an attempt was made to evict a tenant in an unregulated tenancy where the tenant who cured after judgment was permitted to remain; the result would probably be different if it were a regulated tenancy. More cases can be expected regarding Airbnb.
- i. Legislation – Sam Tilton encouraged members and substantive committee chairs to let the Executive Committee know of any legislative priorities. Sam discussed a new procedure proposed by the NYSBA which would add another layer of review by a subcommittee before going to the NYS Bar President; no time limit is included in the proposal. The goal is for the NYSBA to be sending out a uniform message 'with the right tone.' This presents a practical problem because often we are given a very short time limit to respond when legislation starts to move at the end of a legislative session. The committee will continue to monitor legislation and post a legislation chart on the web site.
- j. Membership -- Harry Meyer thanked the District Reps for all they are doing to encourage membership. He would like feedback from District Reps as to results from various efforts being made to promote membership. He suggested sending personalized 'thank yous' to those attending CLEs. He also spoke about a social media 'tutor' to assist practitioners with the practical use of social media.

- k. Not-For-Profit Entities – Anne Copps reported that the CLE sponsored at last year’s Annual Meeting sold out, with standing room only. They are planning another CLE during the annual meeting in 2015; the topic will be the NFP Revitalization Act and a case law update. They are also planning a CLE for March.
 - l. Public Interest – Elizabeth Woods reported that they are working on recruiting new committee members, and are looking at various substantive issues, including Social Services withholding rent as a result of housing code violations, availability of affordable housing and NYS Land Banks.
 - m. Publications – contact the co-chairs if you have ideas for articles.
 - n. Real Estate Financing – Richard Fries reported on the MPM Silicones, LLC, 214 Bankr. LISIX 3926 (September 9, 2014) case in the bankruptcy court which makes the law of prepayment premiums murkier. The case held that if prepayment is due to bankruptcy, no prepayment penalty is due. If representing a lender, it is important to be clear on this issue. An e-mail from Richard and relevant materials are attached which supplement his committee report.
 - o. Workouts and Bankruptcy – Bob Zinman reported that the committee has an interesting meeting coming up. On Wednesday during the annual meeting in January morning this committee will be meeting with the Real Estate Financing Committee.
 - p. Title and Transfer – The committee has a meeting scheduled for 2 PM on Thursday of the Annual Meeting.
 - q. Real Estate Construction – Ariel Weinstock reported that a CLE is scheduled for December 9. A joint meeting was held last month with the County Bar and City Bar. This year the joint committee proposes to address NWBE accrediting issues in New York City. The committee continues to work on forms.
10. Next Executive Committee Meeting: The next meeting of the Executive Committee will be held on January 28, 2015.

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

Respectfully Submitted,

Patricia E. Watkins, Secretary