

REAL PROPERTY LAW SECTION – Executive Committee
Friday, October 16, 2015
10:00 AM to 12:00PM
Harvard Club
35 West 44th Street
New York City

1. Call to Order – The meeting was called to order by Leon T. Sawyko, Chair, at 10:00 A.M.
2. Approval of the minutes of the Executive Committee meeting held at the Basin Harbor Club on July 16, 2015 – Thomas J. Hall – Thomas J. Hall stated that the July 16, 2015 minutes were previously distributed to the Executive Committee and moved that they be approved. The minutes of the July 16, 2015 meeting were unanimously approved.
3. Remarks of Chair – Leon T. Sawyko
 - a. The Chair welcomed Gavin Lankford, the new Co-Chair of the Construction Committee.
 - b. The Chair reminded everyone to put July 14, 2016 on their calendar for the 2016 Summer Meeting
 - c. The Chair advised that we were asked to consider submitting candidates for the NYSBA Professionalism Award. The Chair also pointed out that two of our members, Peter Coffey and Anne Copps are prior recipients of this award.
 - d. The Chair reported that he was contacted by the State Bar Diversity Committee inquiring as to the status of the Section’s efforts in achieving increased diversity. The Chair acknowledged Harry Meyer for his efforts as long time chair of our Diversity Committee and suggested that we should work on stepping up our efforts even further. One thing that can be done is to reach out to other Bar Associations to make them aware of our Section and to try to recruit members who will meet our diversity objectives.
 - e. With respect to Committee member initiatives, the Chair indicated that we have received some excellent ideas, particularly from District Reps. John Jones has suggested that we create a brochure highlighting the different practices in real estate in the various Counties of the State. Nancy Connery has suggested that we have a brochure describing what our different Committees do. The Chair emphasized that these are two examples of excellent ideas that have come from our members. If anyone has other ideas for initiatives such as these, they should let the Officers know of their ideas and the Officers will do their best to implement them.
 - f. The Chair stated that our committee structure will remain strong if we continue to recruit new members and keep all members active and engaged. The Chair cited Joel Binstock’s recent efforts wherein he

scheduled a program designed to recruit new members to the Green Committee.

- g. The Chair reminded all Committee Chairs that it is the responsibility of each Committee to plan for their own succession. The Chair emphasized that the goal is not to oust experienced members; the goal is to keep the Committees vibrant and effective.
 - h. The Chair commented that there was a productive meeting with the NYSBA Foundation with regard to the scholarships offered by our Section. The Chair indicated that the Foundation was very supportive of our efforts and he believes they will continue to be supportive moving forward.
 - i. The Chair stated that there is a Women on the Move 2015 program, which is being co-sponsored by our Section, scheduled to be held in Albany on October 20, 2015.
 - j. The Chair advised that we should refrain from scheduling Committee CLE programs from November through January because the resources of the NYSBA are largely committed to the Annual Meeting during that time period.
 - k. The Chair advised that the Nominating Committee, which is being chaired by David Berkey is in place. The other members are Steve Alden, Ben Weinstock, John Privetera and Heather Rogers.
4. Meeting Reports
- a. 2015 Summer Meeting follow up – Mindy Stern reported that due to a combination of outreach and subsidy, the attendance at the summer meeting was exceptional with 171 attendees. Mindy also encouraged those who were paired up with a new attendee at the summer meeting under the “buddy system” continue to stay in touch in an effort to keep them involved and active members. Sam Tilton asked whether the subsidy will be tweaked so that people who can otherwise afford to pay do not take advantage of the subsidy. Spencer Compton indicated that the goals of the subsidy were laudable and that there will be tweaks made in an effort to avoid abuses. The Chair also pointed out there were successes with the subsidy as well as abuses and that the adjustments to the subsidy program will be targeted to try to focus on what works. Steve Alden suggested that the subsidy be limited to attorneys admitted to the Bar for less than ten years. Dan Zinman pointed out that the ten year requirement is arbitrary and does not make sense for a lawyer who, for example, may have been recently laid off. Mindy Stern stated that the point of the subsidy was not dependent on who can afford to pay, the point is to attract and engage new members, regardless of their ability to afford the meeting. Maureen Lamb suggested that we keep an eye on whether those who took advantage of the subsidy attend next year.
 - b. 2016 Annual Meeting – Mindy Stern reported that for the CLE program, there will be two panels: one on crowdfunding and one geared to a Q & A session of various experts. The Executive Committee dinner will be at Upper Story. The luncheon will be at the 21 Club.

- c. 2016 Summer Meeting – Trish Watkins reported that the 2016 Summer Meeting will take place from 7/14/16 through 7/17/16 in Boston at the Long Wharf Hotel. The CLE program is still being developed.
5. Financial Report – Spencer Compton. The Section continues to stay within budget. Although the final numbers are not in, the Section still has a surplus of approximately \$150,000.00. Spencer Compton stated that it has been suggested that the allowance for Executive Committee members who live more than 100 miles from the meeting should be increased from \$600.00 to \$750.00. Spencer further pointed out that the \$600 figure has been in place for a very long time and that the cost of attending the meetings, when cab fare, flights and hotel rooms are considered certainly exceeds \$600.00. Gerry Goldstein moved to approve increasing the limit to \$750.00 and the motion was seconded. Ira Goldenberg stated that he believed there was a concern with going over \$600.00 because once \$600.00 is exceeded, then a 1099 must be issued and NYSBA did not want to incur the additional accounting fees. The Chair asked that the motion to approve the increase be subject to approval of the NYSBA and the motion was unanimously amended accordingly. The Chair then called a vote on the motion and it was unanimously approved.
6. House of Delegates Report – Sam Tilton stated that there was nothing to report since he gave his House of Delegates report at the summer meeting and there had been no further House of Delegates meetings since. Sam also advised that the Finance Committee was starting to look at the various Section surpluses and that the RPLS is viewed as a Section that is taking appropriate steps toward putting our surplus to productive use. Steve Alden reported that at the upcoming House of Delegates November meeting, they will be taking up a discussion on revisions to the New York State Constitution.
7. NYSBA Executive Committee Report - Ira Goldenberg reported that there are two issues that will likely be addressed in the near future by the NYSBA: (a) pro bono representation, which is being actively pushed by Chief Judge Lippman; and (b) attorney ratings by outside companies. There are strong feelings and opinions on both of these issues and they are likely to be hotly debated and contested in the near future.
8. Section Projects and Initiatives
 - a. Section Calendar – the Chair advised that Gerry Goldstein continues to run the Section Calendar and that all committees should advise Gerry of any upcoming meetings, events, seminars, etc. All such matters should be sent to Gerry Goldstein at his new email address: geraldgoldstein939@gmail.com. The Chair reminded everyone that any Committee having a meeting in January at the Annual Meeting, the Committee Meeting should be put on the Section Calendar.
 - b. Task Force on Draft Insurance Department Regs – Gerry Antetomasso reported that nothing new has occurred and that in view of the fact that there is a vacancy in the position of Superintendent of the

Department of Financial Services, it is not likely that anything further will occur until that vacancy is filled.

- c. Scholarships – Mindy Stern reported that the scholarship amount for both the Lorraine Power Tharp scholarship and the Mel Mitzner scholarship has been increased to \$5,000.00. There should be greater awareness of the scholarships based upon the increased efforts of the NYSBA Foundation and due to improvements on the RPLS website. In an effort to attract more potential candidates, the GPA requirement has been reduced from 3.5 to 3.0. Mindy stressed that the GPA is just one of many factors considered in awarding the scholarships. The deadline for submission of applications will be moved to mid December. The recipients of the scholarship will be determined by mid-January so that they can be announced at the Annual Meeting and hopefully the recipients can attend the Annual Meeting. Joel Sachs reported that he was asked to do a dedication of the Attorney Escrow book, which is edited by Peter Coffey and Ann Copps. Joel's law firm had a ceremony and presented the Attorney Escrow book to Mel's widow, Roz Mitzner, who was very touched by the gesture. Subsequently, Roz Mitzner made a substantial additional donation to the scholarship fund. Bob Zinman suggested that the Section prepare a letter promoting the scholarships and that each member of the Executive Committee could send that letter to any law school that they have an affiliation with.
- d. Attorney Escrow Task Force – Gil Hoffman reported that the work of the task force is ongoing.
- e. Amendment to POA Statute – Joe Desalvo reported that the task force has been meeting on a monthly basis. The task force is working on a comprehensive re-drafting of the POA form and to eliminate the Major Gifts Rider. The task force is also revising some of the language regarding access to medical records so that it is clear that such access is not granting health care decision making. Gerry Antetomasso reported that there is broad representation on the task force from a number of sections including, RPLS, T & E, Elder Law and Business Law.
- f. By-Laws Task Force – The Chair reviewed the report of the By-Laws task force in view of the fact that the task force chair, Karl Holtzschue was unable to attend the meeting. The Chair indicated that he was hoping to have the proposed By-Law amendments approved at this meeting so that they could be brought to a vote before the entire Section at the Annual Meeting. The review of the By-Laws was prompted by a recognition that in many cases, our existing By-Laws would not permit many active members to be on the Executive Committee. In addition to making some technical amendments, the goal of the proposed revisions is to: (a) increase the length of time that members can act as Chairs of Committees; (b) create other classes of membership, such as Emeritus; and (c) clarify the

distinction between administrative committees and substantive committees. The intent is not to eliminate productive members of the Executive Committee; the intent is to be sure that we have places available for valuable experienced members who continue to produce as well as to bring in new blood. The Chair then went through the text of the changes proposed by the Task Force, which changes are addressed in the attached report of the By-Laws Task Force. Numerous comments were made to the changes proposed by the task force and a number of technical corrections were suggested by the Chair and others. A motion was made by Steve Alden to approve the By-Laws changes as recommended by the task force with the further changes as discussed during the meeting. The motion was seconded by David Berkey. Sam Tilton requested that the change to Section 9 be clarified that the Chair of the Section would appoint the Chair(s) of an Administrative Committee but that the members of the Administrative Committee would be appointed by the Chair of the Committee (and not the Chair of the Section). The Chair suggested that the matter be referred back to the Task Force to clarify that issue and the motion was amended accordingly. After clarification by the task force, the amended By-Laws were to be submitted to the Executive Committee of the NYSBA for approval so that they could be voted on by the RPLS Members at the Annual Meeting in January. The motion was unanimously approved.

9. Reports of Standing Committees

a. Substantive Committees

1. Attorney Opinion Letters – No Report
2. Commercial Leasing – Bob Shansky reported that the Committee was planning a CLE for early November, which could include ethics credits, on the topic of social media. The Committee was unaware of the November restriction on CLE Programs. Bob had also submitted a case of interest to discuss, but passed on doing so in light of the time constraints on the meeting. The case, *H.L Realty, LLC v Edwards*, 131 AD3d 573 (2nd Dept 2015), is attached to these minutes.
3. Condemnation and Certiorari – Karla Corpus reported that a downstate Co-Chair is still needed and that the Chair was assisting in trying to find a candidate. The committee is keeping an eye on legislation that is seeking to amend the Real Property Tax Law to allow tax exemptions under Section 420-a and 420-b to go into effect retroactively, even if the applications were submitted after the March 1 deadline.
4. Condos & Co-Ops - No Report.
5. Green Real Estate – Joel Binstock reported that he is making efforts to re-invigorate the Committee. His efforts include a social / non-CLE meeting on November 24th being put on at the

Architecture, Engineering and Planning firm of HLW, which will include a presentation on some of the projects HLW is working on. Harry Meyer reported on a project currently underway by the New York Public Library which is working on digitizing their entire collection of maps. Harry pointed out that this can be of significant value for real estate lawyers.

6. Land Use and Environmental Law – No Report
7. Landlord and Tenant – Peter Kolodny reported that a CLE program was held by the Committee the previous night; the topic was Reasonable Accommodations for Animals in Housing. Paul Gruber reported that they have circulated cases dealing with the issue of the weight that the Courts will give to the tenant’s tax returns in determining whether an apartment is the tenant’s principal residence for rent stabilization purposes. The cases discussed, *Matter of Ansonia Assoc LP v Unwin*, 130 AD3d 453 (1st Dept 2015) and *Goldman v Davis*, 2015 Slip. Op. 25310 (App Term, 1st Dept 2015) are attached to the minutes.
8. Low Income and Affordable Housing – Richard Singer reported that he was trying to find an upstate Co-Chair and will then work on the succession plan for the Committee.
9. Not-for-Profit Entities and Concerns – No Report.
10. Professionalism – Trish Watkins reported that the project of summarizing Ethics Opinions and putting them on-line is ongoing.
11. Public Interest – No Report.
12. Real Estate Construction – Gavin Lankford reported that the Committee has been asked to support the NY City Bar’s report and recommendations urging the use of Design Build and Construction Managers on public projects. The Committee is reviewing the City Bar’s report and expects to have an update at the next meeting.
13. Real Estate Financing – Heather Rogers reported that the committee is considering the Uniform Home Foreclosure Procedures Act to determine whether it should be commented on. While many lenders groups have participated in the Uniform Act, virtually all consumer groups have refused to participate in its adoption. The Committee decided that no action would be taken unless and until the Uniform Act gains any traction for consideration in NY. A copy of the Act is attached to the Minutes. The Committee is also considering an educational program or lobbying effort to educate legislators about the causes of vacant homes (sometimes referred to as “zombie homes”). Richard Singer provided a recent article discussing the NY Attorney General’s recent efforts regarding “zombie homes”, which is attached to the minutes. Heather also mentioned that in view of the fact that the Residential and

Commercial Finance Committees have merged, they should no longer be mentioned as separate committees on the website. Richard Fries reported that there is another Uniform Act recently proposed: The Uniform Commercial Receivership Act. The proposed Act is attached to the minutes. The Uniform Act gives Receivers the power, with leave of Court, to sell the real property during the pendency of the foreclosure action. Joel Sachs suggested that it may be worthwhile to set up a task force to deal with the issue of zombie homes. The Chair agreed that the issue should be looked at and suggested that Heather Rogers, Richard Fries and Joel Sachs confer as to whether a task force is appropriate and what the scope of the issues are that should be addressed.

14. Real Estate Workouts and Bankruptcy - Dan Zinman reported that the Committee was working on putting together a panel to do CLE with other committees including a CLE with the Condo & Co-Op committee to do a Bankruptcy seminar focusing on issues particular to Condos & Co-Ops such as automatic stay issues, serial filings, lien stripping and landlord caps on commercial units.
 15. Title and Transfer - Gil Hoffman reported on a recent case from the Supreme Court, Clinton County, *Champlain Gas & Oil, LLC v Willis*, which illustrates the problems that can be created by ancient mineral rights conveyances. A copy of the decision is attached to the minutes. Gil suggested that it may be appropriate to consider a Marketable Title Act.
- b. Administrative Committees
1. Awards - The Chair reported that Peter Coffey was unable to attend the meeting but has advised that a number of nominations have been submitted and will be considered for the Professionalism Award.
 2. CLE - Larry Wolk reported that the Advanced Real Estate Transactions Seminar was scheduled for Monday December, 7th and that everything else regarding CLE was moving forward smoothly.
 3. Legislation - Sam Tilton advised that because the Legislature is presently out of session that there was nothing new to report.
 4. Membership - Harry Meyer reported that many district reps have been using a hands on approach which has been helpful in retaining and attracting new members. He also emphasized that we all need to be proactive in trying to get active members into the Section.
 5. Publications - No Report. The Chair indicated that the fall issue should be out in the next week or two.
 6. Student Affairs - Ariel Weinstock requested that any of the committees let him know if they need a law student for a project

or anything else and also asked that any professors or other members of our committee that have contact with law students let them know that this opportunity is available. These activities would fall under the special assistance program – the student is volunteering but gets no credit. Shelby Green advised that the ABA is pushing for more experiential training for law students through legal clinics, externships, etc. Many law schools have adopted full time externship programs, including Pace. Any firms interested in taking on a student (either full time or part time) under the program should contact Shelby Green. David Berkey reported that after four years of effort, Cardozo Law School has agreed to participate in our student internship program.

7. Website and Electronic Communications – Michael Stevens reported that the committee has updated the legal links of interest on the website and the upcoming events section. Andy Posil reported that they worked on getting new information out on the Tharp and Mitzner scholarships and was able to get that out to every law school in the state.

10. Reports of District Reps

- a. 1st District – Nancy Connery advised that she is working on updating the committee brochures. She still needs some work on some committee descriptions.
- b. 2nd District – No Report.
- c. 3rd District – Alice Breeding reported that she had a summer charity event for the Animal Protective Foundation of Schenectady which had 45 attendees and 8 corporate sponsors. Alice stated that she got one new member for the Section and continues to focus on recruiting other new members. Alice is now going to re-focus her efforts at Albany Law School to get students involved.
- d. 4th District – Michele Wildegrube will be attending a program at Lake Placid next week and will try to recruit members from the North Country.
- e. 5th District – No Report
- f. 6th District – John Jones is working on a reference guide which describes the variations of local customs for real estate transactions in different areas of the state.
- g. 7th District – Heather Rogers reported for Scott Sydelnik that they had a successful party in the spring with the young lawyers division. Their next project is slated for the first quarter of 2016.
- h. 8th District – David Mineo reported that he will be conducting a free one hour CLE on basic real estate transactions targeting law students and new attorneys.
- i. 9th District – Lisa Stenson Desamours is planning 2 events: (a) “Escape the Room”; and (b) an event at the Morgan Library, Ernest Hemingway Exhibit. Lisa is also looking into holding a function at the Newburger Museum on the SUNY Purchase campus.

- j. 10th District – Dan Baker reported that there will be a holiday party in conjunction with the Young Lawyers Section and the young lawyers group of the Nassau County Bar Association.
 - k. 11th District – No Report.
 - l. 12th District – No Report
 - m. 13th District – Toni Ann Barone reported that she is currently working on contacting dropped members. She also suggested that the scholarship information be given to District Reps to disseminate the information directly to the local County Bar Associations.
11. Old Business – None
12. New Business – John Christopher, our Young Lawyers Liaison stated that if anyone wants to run an event with the Young Lawyers Division they can contact him and he will put you in touch with the appropriate District Rep from the Young Lawyers Division. He also stated that every law student is now a member of the Young Lawyers Section. The Chair indicated that he wanted to have the Officers confer with John to brainstorm as to how to best reach and attract the young lawyers for membership in our section.
13. Future Executive Committee Meetings
- a. January 27, 2016 – Annual Meeting – New York Hilton
 - b. April 15, 2016 – Harvard Club, NYC
 - c. July 14, 2016 – Boston Long Wharf Club
14. Adjournment – The Meeting was adjourned at 12:10 PM

Respectfully Submitted

Thomas J. Hall, Secretary

Attachments:

- 1. List of Members attending in Person
- 2. List of Members Attending by Phone
- 3. Proposed By-Law Amendments – Explanation
- 4. By-Laws with Proposed Amendments (Redlined)
- 5. *H.L. Realty, LLC v Edwards*, 131 AD3d 573 (2nd Dept 2015)
- 6. *Matter of Ansonia Assoc LP v Unwin*, 130 AD3d 453 (1st Dept 2015) and *Goldman v Davis*, 2015 Slip. Op. 25310 (App Term, 1st Dept 2015)
- 7. Real Estate Finance Committee Report
- 8. Uniform Home Foreclosure Procedures Act
- 9. Article Discussing NY Attorney General's recent efforts on Zombie Homes
- 10. Uniform Commercial Receivership Act
- 11. *Champlain Gas & Oil, LLC v Willis*