

REAL PROPERTY SECTION OF THE VIRGINIA STATE BAR

MINUTES OF THE FALL MEETING
OF THE BOARD OF GOVERNORS AND
AREA REPRESENTATIVES

The regular fall meeting of the Board of Governors and Area Representatives of the Real Property Section of the Virginia State Bar was held at the Virginia State Bar Board Room at 111 East Main Street, Richmond, Virginia on Friday, October 5, 2018 at 10:00 a.m. The meeting was called to order by Section Chair, Kay Creasman. Vice Chair Ron Wiley and Board members and Area Representatives present noted their attendance in writing, and those joining by conference call emailed Lori Schweller to confirm their attendance by telephone. A list of those attending in person or by telephone conference is attached to these minutes.

The minutes of the Summer Meeting of the Board of Governors and Area Representatives, held June 15, 2018, were approved unanimously following a motion for approval from Robert Hawthorne, seconded by Lewis Biggs.

Kay noted that the financial report was included in the agenda packet, that the Section has a surplus, and that she ensured that she supplied actual expenses as schedules 2A-2C. The Section currently has 1,835 members. The Section may spend 80% of its budget at its discretion. Kay requested that original, executed reimbursement forms be sent to her by October 19th.

Ron Wiley, Chair of the Membership Committee, introduced suggestions about how to get new members to sign up for new programs. Ron has received feedback from Dolly Shaffner regarding the process. Ron will work with Kay on the initiatives, particularly as to increasing membership in southwest and Southside VA, areas of under-representation. New Area Representatives were nominated as follows:

1. John Hawthorne proposed David C. Hannah, Protorae Law, PLLC, Tysons (representation of national, regional, and local commercial lending and commercial leasing) and
2. Theodora Stringham, Offit Kurman, P.A. Tysons Corner (civil litigation with special focus on land use).
3. Josh Johnson introduced Sue B. Tarley, TarleyRobinson, PLC, Williamsburg (community association law), who will be co-chair of the Common Interest Community Committee.
4. Blake Hegemon nominated Ben Titter, Shaheen Law, Newport News (real estate transactions and corporate law and advice to non-profit clients).
5. Kay Creasman nominated Pam Faber, BridgeTrust Title in Virginia Beach (title insurance attorney with a focus on commercial transactions)

Ron Wiley moved to elect the above Area Representatives, and Whitney Levin seconded. The nominations were unanimously approved.

Kay asked committee chairs to encourage the new Area Representatives to join committees. Recommendations for increasing committee membership were discussed. Pam Faber volunteered to help with membership in the western part of the state.

Ron Wiley introduced for discussion a free membership opportunity. Ron suggested that, because one of the best benefits of Section membership is programs and program discounts, a good time to educate members on membership benefit is at such programs. Ron proposed offering free membership for the remainder of the year at the Advanced Program in March and Annual Program in May. Benefits, process, and availability was discussed. No vote was taken, but there was general consensus among those present to move forward with the initiative. (For those who join a Section April 1st or later in the year, the Bar already allocates their Section payment to the following full year.)

Ron suggested inviting real estate law practitioners to the Real Estate Law Society at University of Richmond and offered to work on the effort and encouraged members to attend. Discussion ensued regarding other membership drive efforts, such as interfacing with other universities' real estate groups, having a post-Bar exam gathering, and reaching out to the Young Lawyers Conference. Kay commented that only 1,250 attorneys are registered as RESA agents, which is fewer than in previous years.

The attendees discussed mentorship programs in other sections and how to connect with law students and new lawyers, such as reaching out to new attorneys through Young Lawyers Section and guest lecturing at law schools. Ron will follow up with liaisons at law schools. Kathryn Byler offered to contact existing mentorship programs at local Bar organizations.

Kay explained the purpose of honorary memberships – to continue to include those with institutional memory of the Section and allow them to continue to participate to promote inclusion and collegiality.

Steve Gregory gave the report of the Fee Simple Committee, for which a written report was also included in the agenda packet, including an update on the Fall issue and deadline for submission.

Kathryn Byler gave an updated report of the Programs Committee, for which a written report was included in the agenda packet. Ron noted that he is working with the Trusts & Estates and Taxations Sections on putting together a program to submit for consideration by those conducting the summer meeting.

Mark Graybeal gave a report for the Technology Committee, supplementing the written report in the agenda packet. He thanked Matson Cox, who has agreed to co-chair the committee and suggested putting a photo of the Board members on website to facilitate easier contact with the Section.

Josh Johnson noted that Sue Tarley is the newly-appointed co-chair of the Common Interest Community and gave the report for the Committee. He reported that the Committee had held three meetings this year and had discussed a variety of topics including bond releases, marketing creation of communities to developers, and submissions to The Virginia Lawyer.

Blake reported for the Ethics Committee, reporting that the Committee's current primary focus is to compile a compendium of LEOs and other materials organized to be user-friendly to practitioners and that could be contributions to the Fee Simple and Virginia Lawyers Weekly. Rick Richmond commented that the project could result in the Section making recommendations of LEOs as this group previously wrote the LEO on practitioners owning title insurance companies. Several members volunteered to help with the project.

Lori Schweller introduced Karen Cohen as the new co-chair of the Land Use and Environmental Committee. Karen reported for the Committee, including topics of expanding membership and reaching out to the commercial committee and the common interest committee to work on common initiatives; current legislation; a case presented by Preston Lloyd at the last committee meeting; and the committee's consideration of summer meeting topics regarding real estate fundamentals. Josh Johnson pointed out two cases of interest regarding local government reaction to proffer laws. Rick Richmond introduced a discussion of Opportunity Zones.

Hope Payne reported for the Residential Real Estate Committee, including the topics of when closing is complete, and how that varies in different localities, and whether a settlement agent should be listed as trustee on a deed of trust. The group discussed the process and timing of closing.

Max Wiegard reported on behalf of the VBA that the codification of Title 55 is in process and that he will have update at the January meeting. Max invited members to visit the VBA's new office/co-working space and to attend a case study seminar to discuss legislation being crafted by the VBA to respond to The Game Place decision. Max reported on additional legislative work of the VBA, such as working to clarify that 55-218.1 should only apply to individuals, not entities, and studying potential legislation to provide guidance as to when a deed of trust modification should be required.

Lewis Biggs updated the group on the Section's contribution to The Virginia Lawyer Real Estate Edition, noting that it is a good opportunity to increase membership by reaching 53,000 recipients of the publication to promulgate the Section's mission, which is to raise the level of real estate practice in the Commonwealth. Lewis said the steering committee is considering proposing three 2,000-word articles geared toward non-real estate practitioners on topics such as the components of a deed, lien-avoidance, and order/judgments attached to liens not voided by bankruptcy. Lewis invited topic ideas and attractive titles for cross-sectional articles that will appeal to practitioners in other sections. Robert suggested Medicaid spend-down and real estate.

Kay introduced the concept of committee co-chairs in order to encourage collegiality and share responsibility. Kay suggested that committee chairs establish a schedule of meetings rather than call meetings at the last minute and turn in reports immediately prior to the section meetings. The group discussed whether establishing co-chairs is authorized by the Section Bylaws and discussed interpretation of the Bylaws and precedence for co-chairs. Ron noted that any

amendment of Section Bylaws requires approval of the State Bar. Lewis requested an opportunity to study the Bylaws before taking a vote on the matter. Steve Gregory expressed his feeling that the chair position of the Fee Simple Committee differs from other committees as a publication, that any co-chair should be participating member of the committee, and offered to give his resignation as chair of the committee. Ron read the relevant section of the Bylaws and encouraged deferral of the decision to give time to weigh the advice of the Board of Governors. The group discussed the chairmanship and how to increase publication by section members in other journals. Lewis motioned to table the issue to take up at another meeting; Max seconded. There was unanimous approval to consider the issue at a subsequent special meeting. *[NOTE: via email communications on October 10, 2018, the special meeting was deemed unnecessary after Rick Chess was appointed as co-chair of the Publication/Fee Simple Committee along with Steven Gregory; the Executive Director of the VSB has directed all Section liaisons to read the Chair's/Editor's message in advance of its being printed. Dolly Shaffner as Real Property Section liaison will do so for The Fee Simple.]*

Kay applauded Jeremy Moss' pamphlet from the Common Interest Community Committee and stated that the title insurance committee is working on a pamphlet. Sarah Petchner noted that realtors could use additional education through articles or seminars tailored to realtors' issues. Blake informed the group of the VAR-real estate attorney roundtable. Rick Richmond commented on the good relationship in the '80s between the section and the VAR and work drafting the current VAR 600. Kay also suggested the importance of educating tax assessors. Lewis discussed his experience litigating issues involving tax maps and that legislation may be needed to solve certain issues.

Kay referred to Chief Justice Donald W. Lemon's letter dated April 15, 2018 regarding pro bono hours. Rick Richmond informed the group that he has been involved in forming a pro bono committee within the Charlottesville-Albemarle Bar Association.

Kay noted that other sections are receptive to receiving articles from our members for their section publications.

Kay informed the group that the border of Virginia with North Carolina is an issue under discussion. North Carolina and South Carolina previously worked together to establish their common boundary line. Hurricanes change river boundaries, and there are errors in old plats of survey as compared with metes and bounds property descriptions. Owing to current weather conditions in North Carolina, any resolution of this issue may be years in the future.

With respect to new membership, diversity, and real estate attorneys, Kay said the Section has a goal of getting more people involved in the section who are active real estate practitioners in all parts of the state, in all types of real estate practices.

Sarah informed the group that the Virginia Real Estate Board regulations are being updated, which occurs every five years. Christine Martine is head of the group and has asked for feedback from the Section. Email Sarah or Blake. Blake described the issue of disbursement of broker's agent fees.

Kay noted that statutory changes have occurred with respect to certain statutes of limitations, which will impact real estate transactions.

Kay announced the Programs Committee meeting following the present meeting and the winter meeting to coincide with the Annual Meeting of the VBA in Williamsburg on Friday, January 25, 2017.

The meeting was adjourned at 12:20 p.m.

Respectfully Submitted,

Lori H. Schweller, Secretary

VIRGINIA STATE BAR
Real Property Section

Fall Meeting
October 5, 2018

List of Attendees

Board Members

Kay M. Creasman, Chair
Ronald D. Wiley, Jr., Vice Chair
Lori H. Schweller, Secretary-Treasurer
Whitney J. Levin
Karen L. Cohen
Richard B. "Rick" Chess*
F. Lewis Biggs
Kathryn N. Byler
Robert E. Hawthorne, Jr.,
Stephen Gregory*
Blake Hegeman
Mark Graybeal*
Tracy Winn Banks, VaCLE
Max Wiegard, VBA

Area Representatives

Josh Johnson
Wayne Glass
Rick Richmond
Paula Caplinger*
Susan H. Siegfried
Sarah Louppe Petcher
Hope Payne
Ben Leigh
Pam Faber*
Tom Lipscomb*
James Johnson*
Bill Nusbaum*
Cartwright Reilly*
Susan Walker*
Philip Hart*
Susan Farley*
Pam Fairchild*
Tara Boyd*
John Hawthorne*
Richard Campbell*
Paul Melnick*

*Attended by conference call