Pursuant to due notice, the Winter meeting of the Virginia State Bar ("VSB") Real Property Section Board of Governors and Area Representatives convened at 1:00 p.m., January 24, 2014, in the East Lounge of the Williamsburg Inn, Williamsburg, Virginia. Section Chair, William L. Nusbaum, presided, and Secretary/Treasurer, Susan Walker, recorded the minutes. Also present in person were Vice Chair Cooper Youell, Ken Dickinson, Whitney Levin, Randy Howard, Christina Meier, Ron Wiley, Howard Gordon, Philip Hart, Ben Lay, Larry McElwain, Page Williams, Susan Pesner, Mark Graybeal, Paula Caplinger, Ed Waugaman, Steve Wood, Steven Blaine, Rick Richmond, Eric Zimmerman, David Helscher, and Katja Hill (Chair, VBA Real Estate Council). Participating by teleconference were Kay Creasman, Doug Dewing, Paul Melnick, Jean Mumm, Lewis Biggs, Dianne Boyle, Steve Romine, Paul Bellegard, and Steve Gregory.

I. Welcome. The Chair called the meeting to order, welcomed everyone, and asked each participant to introduce him/herself.

II. Approval of Minutes. The Chair presented the minutes of the Fall Meeting of the Section held on September 13, 2013, and asked for any corrections, modifications or comments. Mr. Blaine moved for the minutes to be adopted as drafted, and Mr. Zimmerman seconded the motion. The minutes were unanimously approved, and copies of the approved minutes are filed in the Minute Book.

III. Financial and Membership Reports. The Chair presented the Section’s income and expense statement reflecting expenditures through October, 2013. A copy of the ledger is attached to these Minutes. The Chair noted that the financial statement, showing $693 in expenditures through October 31, 2013, and $41,186.00 remaining, does not reflect the cost of the Fall issue of Fee Simple, which cost will be reflected on the next financial statement. There being no comments from Board Members or Area Representatives regarding the financial report, upon motion made by Ms. Meier and seconded by Ms. Caplinger, the financial statement was unanimously accepted. With regard to membership, the Chair had no new membership numbers and deferred further discussion to the Membership Committee Report to take place later in the meeting.
IV. **New Area Representatives.** The Chair recognized Mr. Hart, who on the recommendation of Ms. Byler, presented Naveed Kalantar of the Suffolk office of Pender and Coward for election as an Area Representative. Mr. Hart noted that Mr. Kalantar is doing primarily eminent domain work at Pender and Coward and prior to that had worked for BWW doing foreclosure and bankruptcy work. Mr. Hart then moved for Mr. Kalantar’s election as an Area Representative from the Tidewater region, and Mr. Wood, who commented favorably on Mr. Kalantar based on his work at BWW, seconded the motion, and it was unanimously adopted.

V. **Report on the VBA Real Estate Council.** The Chair recognized VBA Real Estate Council Chair, Katja Hill, who gave a report on the work of the Council. First, the VBA is carrying a package of legislation to amend recording statutes in order to clean up and clarify the statutes and to allow the additional information required by the Clerk to go on a cover sheet rather than on the instrument itself. Second, the VBA has proposed a scrivener’s error bill to allow an attorney to correct errors in a legal description if the correction is obvious from the four corners of the instrument and the recorded plat. This bill is meeting with opposition, and the proposed amendments, including a liquidated damages penalty and written notice to neighboring property owners, are unacceptable. The Chair stated that he and Ms. Hill are keeping in touch in order to increase cooperation between the VBA and VSB sections, noting that the VBA Real Estate Council chair is considered a liason to our section. The Chair noted that he discovered there had been in times past joint meetings of the VBA and VSB sections, and he would like to explore the possibility of resuming such a practice, tentatively at the time of either the Summer or Winter meeting of the Section.

VI. **CLE Programs.** The Chair asked for reports on the Section’s three CLE programs:

a. **Advanced Seminar.** Program Chair Larry McElwain reported that there is a full roster of speakers for the Advanced Real Estate Seminar on March 7 and 8, 2014, at Kingsmill Resort. Two hours of ethics are included. The Chair urged us to remind colleagues in our firms that if they join the section for $25.00, they will receive a $50.00 discount on the Advanced Seminar tuition.

b. **Annual Real Estate Practice Seminar.** Program Chair Larry McElwain reported that the program for the Annual Seminar is 90% set. Topics include the legislative and case law updates, ALTA best practices, and title policy coverages. The seminar will take place on May 13th at Washington & Lee, May 14th in Williamsburg, and May 20th at the Waterford in Fairfax.

    c. **Annual Meeting Program.** The Secretary reported that the Section is participating with the Business, Construction Law, Local Government and Environmental Law sections to present a “Showcase” seminar on public-private partnerships, focusing on the Elizabeth River Crossing projects and possibly Fort Monroe. The seminar
will take place at 9:30 a.m. Friday, June 13, 2014, at the 31st Street Hilton in Virginia Beach. The Chair related that the "center of gravity" of the VSB annual meeting is now the Hilton. The Chair also explained that we were strongly encouraged to join with other sections on a "Showcase" topic, rather than adhere to our usual format, seminar time and location. The Section’s business meeting will take place at the Ocean Beach Club three blocks north of the Hilton a half hour after the seminar, and lunch will be served.

d. **The Fee Simple.** The Chair confessed to alternating between feelings of mortification and flattery with respect to his photo on the cover of the Fall issue of the Fee Simple. Turning to the Spring issue, the chair recognized Mr. Gregory, who reported that the deadline for article submission is April 11th and that a number of article topics are in circulation, in addition to the legislative review. Amongst other topics: a) Katja Hill is seeing issues pertaining to controlled business arrangements even in the commercial context, and an article is anticipated on this topic; b) Ms. Creasman will write an article, in conjunction with others, on transfer on death deeds. Messrs. Richmond, Melnick and Mr. Dickenson identified lawyers who had addressed this topic at recent seminars (James Cox at the Michie firm in Charlottesville and Robert Fredericks in Northern Virginia) as potential collaborators with Ms. Creasman; c) The Chair hopes to secure an article about real estate transfers involving same sex couples, to which end he has spoken to David Nelson of Commonwealth Title and is trying to land Claire Gastanaga of the Virginia ACLU. If the article has broad enough applicability, he hopes it could be republished more widely. d) Mr. McElwain has found a lawyer who might be a candidate to write an article on aqua-farming, a subject on which there is much federal legislation; e) Mr. Wiley suggested an article on how abusive claims of the need for service animals are causing problems for property owners associations.

VII. **Unfinished Business.**

a. **Budget Surplus.** The Chair observed that the Section has been eating away at its budget surplus. He recalled that the original idea of using the surplus to provide a VACLE book credit for area representatives did not gain traction with the Board. Instead, it was decided to apply the budget surplus, including the $5,000.00 returned by the Bar from last year’s surplus, to subsidize Section members’ tuition for the Advanced and/or the Annual Practice seminars. After being initially warned that the Bar might oppose this plan, as they had only approved the use of the surplus for books, the Chair received later assurances that the Bar would not challenge the CLE subsidy plan. Whether the CLE subsidy is furthering the goal of democratically allocating the surplus amongst Section
membership will become evident in March once registration for the Advanced Seminar is complete.

b. List Serve/Share Point Portal. The Chair reported that he has proposed to the VBA Real Estate Council that the VBA undertake the list serve/web portal which our Section has been essentially blocked from implementing. Having the VBA, rather than the Section, host the portal/list serve avoids State procurement rules and avoids the possibility of negative ramifications for the Bar if, for example, the dialogue became political. Either the VBA could open the site to the Section’s 1800 members, or if the VBA limits the site to VBA members, than perhaps more Section members would join the VBA in order to participate. The Chair noted that Ms. Hill and Mr. Lay will look into implementation, and he will facilitate a separate conference call for Paul and Diane Bellegarde to brief Ms. Hill and Mr. Lay on the Bellegardes’ past work on the portal. Mr. Bellegarde and Mr. Dewing then explained the differences between a list serve and a share point portal, and Mr. Bellegarde opined that the VBA should implement a web portal rather than a list serve, as list serves are outdated and cumbersome in comparison.

c. Items from the Floor – None.

VIII. New Business.

a. Committee Reports.

i. Standing Committees.

A. Fee Simple. The newsletter committee’s written report, which contained rave reviews of the new editorial assistant, Caitlin Cater, was submitted by Mr. Gregory and circulated prior to the meeting.

B. Membership. The Membership Committee’s report of its January 22, 2014 conference call meeting was circulated prior to the meeting. Committee co-chair, Mr. Hart, recapped the Committee’s five initiatives for increasing membership, which are: 1) resurrect the Section’s role in the first day in practice seminar; 2) write letters to section drop-outs to encourage them to reconsider; 3) offer seminar discounts to members; 4) provide the first year of membership free to new Bar members (fiscal impact will be analyzed prior to the next meeting); and 5) offer to each Virginia law school 2-3 seminar vouchers for free attendance at the annual seminar to be awarded by the law school to top students. Regarding the last initiative, Ms. Pesner suggested that perhaps vouchers could likewise be provided to professors. Perhaps the
fact that the students and likely the professors would not be taking the CLE for credit would reduce the impact. The Chair took this opportunity to relate that Ms. Byler is now teaching an advanced real estate transactions course at Regent University.

C. Programs: Mr. McElwain had no report in addition to the discussions above.

D. Technology: The Chair renewed the request for someone to lead the technology committee. In lieu of a report, Mr. Dewing reported that according to a recent article in the ALTA title news, the Washington State Attorney General is going after companies that offer to sell consumers copies of their deeds. Ms. Pesner related that the Virginia State Bar had determined not to pursue these companies because the solicitation letter discloses that it is a solicitation. Mr. Gordon said that there are companies sending similar solicitations to Virginia entities with regard to the annual SCC filings.

ii. Substantive Committees.
A. Commercial Real Estate. The Committee’s report of its January 21, 2014 teleconference meeting was submitted and circulated prior to the meeting by Chair Whitney Jackson Levin.

B. Common Interest Communities. A report of the Committee’s January 15, 2014 teleconference meeting submitted by Chair David Helscher was circulated prior to the meeting.

C. Creditors’ Rights and Bankruptcy. A report of the Committee’s January 21, 2014 meeting submitted by Chair Lewis Biggs was circulated prior to the meeting.

D. Eminent Domain. No report.

E. Ethics. The Committee’s report of its January 14, 2014 teleconference meeting submitted by Chair Paul Melnick was circulated prior to the meeting.

F. Law School Liaison. No report.

G. Land Use and Environmental. No written report was submitted; however, Committee Chair Steve Romine offered that the committee intends to meet and to provide a Fee Simple article.

H. Residential Real Estate. A report of the Committee’s January 16, 2014 meeting submitted by Chair Eric Zimmerman was circulated prior to the meeting.

I. Title Insurance. No report.

b. Items from the Floor – None.
IX. Chair’s Comments. The Chair opened discussion of two substantive issues:

a. Real estate issues for same sex couples in Virginia – A lengthy discussion of the subject touched upon: i) what tenancy language should be used in a deed for a same sex couple who is legally married in another state; ii) what, if any, title insurance implications are there; iii) whether a judgment will attach to proceeds of property held as tenants by the entirety in a state which recognizes same sex marriage when the proceeds are invested in property in a state where same sex marriage is not recognized; iv) how to advise same sex couples with regard to achieving their title objectives; v) what disclosure to make to such clients.

b. Transfer on death deeds – The Chair polled the meeting participants to see who had used TOD deeds, and three had. Questions arose as to what gave rise to the enactment of the statute in Virginia. Mr. Richmond stated that 16-18 states have enacted such statutes so far. Ms. Creasman touched on various problematic implications with the language of the existing statute, including that: i) the deeds are revocable even if consideration has been given; ii) there are no covenants or warranty of title; iii) the mental capacity of the grantor has to be that of a testator, not of an ordinary grantor; iv) the deed has to be recorded prior to death, and so recording snags could undermine the effort; and v) there could be augmented estate issues if there is no consideration and the spouse does not join. Mr. Lay stated that he had come to see TOD deeds as a tool, not as the grand solution.

X. Next Meeting. The Chair announced that the next meeting will be held on Friday, March 7, 2014, at 10:30 a.m. at Kingsmill. The meeting room will be determined at a later date. Conference calling will be available for the meeting.

XI. Adjournment. There being no further business, the Chair adjourned the meeting at approximately 2:50 p.m.

Respectfully submitted,

[Signature]

Susan S. Walker,
Secretary/Treasurer

APPROVED:

[Signature]

William L. Nusbaum, Chair