

**MINUTES OF THE MEETING OF THE BOARD OF GOVERNORS OF
THE REAL PROPERTY SECTION OF THE VIRGINIA STATE BAR**

**Williamsburg, Virginia
February 26, 2010**

The Spring meeting of the Board of Governors of the Real Property Section of the Virginia State Bar, and Section Area Representatives, with section members and other attendees, was held at the Kingsmill Resort, in Williamsburg, Virginia on Friday, April 22, 2010, commencing at 10:30 a.m.

The following persons were in attendance in person: Joe Cochran (Chair), Paul Melnick (Sec/Treas), Paula Caplinger, Will Sleeth, Brian Dolan, William Nusbaum, Chip Land, Mike Barnes, Page Williams, Howard Gordon, Larry McElwain, Mark Graybeal, Courtland Traver, Whitney Levin, Jay Steele, Nancy Kern, Paul Bellegarde (Vice-Chair), Suzanne F. Thomas, Mark Reed, Barbara Goshorn, Lisa Graziano,

The following persons were in attendance via conference call: Philip Hart, Randy Howard (Immediate Past Chair), Ken Dickinson, Doug Dewing, Eric Zimmerman, Steve Gregory, Cooper Youell, and David Helshcher.

Minutes of Last Meeting

Joe Cochran called the meeting to order and, with Secretary Paul Melnick, presented the minutes of the January 22, 2010 meeting of the Real Property Section Board of Governors (in Williamsburg, VA). Upon motion duly made by William Nusbaum, and seconded by Paula Caplinger, the minutes were unanimously approved as written.

Financial Report

Joe Cochran reported that through the end of January 2010 the remaining balance in the section account was \$31,150.09. This is after paying for the printing of the Fee Simple for Fall 2009 and mailing. Joe noted that there will be other expenses on that, also. The budget is in great shape!

Appointments to Standing Committees

Joe Cochran reported that Paula Caplinger has stepped down as the Chair of the Title Insurance Committee. She has found a replacement: Brian Dolan. Thanks, Paula, for serving as Chair, and thanks Brian for becoming Chair. Our new Area Representative, Mark Graybeal will be on the programs committee. David Bollington will serve on both the Residential and Ethics Committees.

New Area Representatives

Nominations were taken for new Area Representative:

Will Sleeth (from LeClair Ryan) was nominated by Jean Mumm and Ray King. Joe made a motion that Will be accepted as a Tidewater Area Representative. Brian Dolan seconded the motion and it was unanimously approved.

Future Seminars

A. ADVANCED REAL ESTATE SEMINAR – Nancy Kern from Virginia CLE reported that the seminar is all set up. Thanks went out to Howard Gordon for arranging many speakers.

B. ANNUAL SEMINAR – Joe Cochran reported that something new will be tried this year: there will be 3 locations. The locations will be William and Mary Law School, Fairfax, and Washington and Lee Law School. There will be the case law and statutory update. Ethics will be presented by the Virginia State Bar. John Altmiller will be discussing real estate contracts for 1.5 hours, and there will be a RESPA subject presented by Kay Creasman. David Helshcher noted that he was disappointed that Roanoke had been bumped as a location for the seminar. He stated that he wanted to be involved with this seminar in the future. It was noted that moving the seminar one hour north affects people's attendance.

C. VSB ANNUAL MEETING JOINT SEMINAR – Paul Melnick reported that our Section is going to partner with the Construction Law Section and the Tax Section to put on a joint seminar. The subject concerns 1031 Exchanges when construction is involved. Things are progressing very well with the seminar.

D. ANNUAL SEMINAR 2011 – A discussion was had about the 2011 Advanced Real Estate Seminar including when the seminar should occur. It was noted that the section missed out on the big room at Kingsmill this year. It was also noted that we need to avoid the Council meeting weekend. Joe Cochran stated that the timing of the 2011 Advanced Real Estate Seminar was a very good topic for the Program Committee for this Spring. There was a general discussion about seminar being at the Tides Inn—it was noted that the last time it was there it was opening weekend and it did not turn out well. It was noted the Boar's Head Inn did not work out well, either. The best attendance that we have had has been at Kingsmill Resort. The usual time of year for the seminar is a very busy time of year—if you move the seminar

to April, then you get into Spring Break. The discussion concluded with the idea that the Program Committee needs to come up with a good date for the seminar. That committee needs to be on schedule and coordinate with Nancy Kern. The committee should even look at 2012. Joe thanked all those who have worked on the Advanced Seminar.

Unfinished Business

A. STATEWIDE MEETINGS UPDATE - Joe Cochran asked if there was going to be a meeting in Roanoke this week? David Helshcher said that there probably would not be such a meeting this week. It was noted that there is an interest in a lunch meeting there.

B. BYLAWS REVISION – Joe Cochran stated that the bylaw committee has been working last summer and through the Fall. At the Fall meeting, comments were received. The timing on this project is cumbersome. The Bar Council has to approve the bylaws in the Fall. The Real Property Section membership has to vote on the changes at the Annual Meeting with 60 days notice. Joe said that he wants, in the next 30-45 days, to get the final version of the proposed bylaws sent to the membership of the Real Property Section. The proposed bylaws will go out as an email blast giving the 60 days notice. Michael Barney, who is on the bylaws committee, said that he is a scrivener and is neutral on most of the changes. He said that most of the substantive items have to do with notice provisions. The other changes are mainly to make the document more readable. A discussion then ensued about which further revisions need to be made to the bylaws:

1. William Nusbaum wondered whether, in Section 6 of Article IV, mentioning secretaries of committees was really necessary. He wondered if the Chair of the Section does this appointing of secretaries or if the committee does that. Michael stated that the committee secretary provision will be removed. In Section 7 of Article 4 it was noted that reference to judicial issues should be taken out. In Article 5, Section 1, the Chair of the Section should determine the order of business at the Annual Meeting, not the Board of Governors. Also take the word “program” out of Article V, Section 1. In Article VI, Section 2, re-title the section “Bills and Funds” and add in that the Executive Director manages all funds. In Article VIII, Section 2, is the reference to the Annual Meeting of the Virginia State Bar supposed to refer to the Virginia Bar Association? Michael stated that the provision is duplicative—that it refers to the Section Annual meeting which is at the same time as the Virginia Bar Annual Meeting.

2. There was then an extended discussion concerning Article III, Section 1 concerning the terms and makeup of the Board of Governors. There was discussion about how there needs to be “new blood” on the Board. There was discussion as to whether the bylaws should allow 3 consecutive terms. William Nusbaum discussed the possibility of being able to continue as an officer without being elected to the Board (the proposed *Nusbaum Rule*). Joe Cochran proposed leaving the terms as they are in the current draft and voting on it in June. William Nusbaum then withdrew his suggestion concerning officers staying on without being elected to the Board (to be remembered as the *Nusbaum Compromise*).

3. The bylaw discussion continued concerning possibly eliminating Article III’s provision about no more than 2 Board members serving their third three year term at any one time. Also provisions about vacancies were discussed.

Legislative Matters

Joe Cochran stated that he will email the legislative matter reports. Grice McMullen sent him the report.

New Business:

Joe Cochran wants to get the Programs Committee schedule together so that committees can give the Program Committee ideas by September 1. The Programs Committee can then meet in September to discuss the programs.

Subcommittee Reports:

TECHNOLOGY: No report. I was noted, however, that about 1-2 years ago there was news about financial scams from overseas. This has resurfaced.

COMMERCIAL REAL ESTATE: William Nusbaum reported that the committee had a meeting. He does not have minutes of the meeting, however. There was a conference call on February 3rd. During the call, the committee reviewed the topics for the Fee Simple. They are trying to get presenters to put their subjects into print. William discussed possible topics.

CREDITOR’S RIGHTS AND BANKRUPTCY: Phil Hart reported that this subcommittee had a meeting on January 29th. They reviewed the Board of Governor’s meeting from January 22nd—they reviewed the expectations concerning the committee. With regard to the Fee Simple, they have recruited people to write articles including such subjects as an update on litigation regarding residential foreclosures. This subject would have a broad interest. Also, seminar topics will be delivered by September 1st. There is a lot of “grist for the mill” regarding bankruptcy, foreclosure, workouts, etc.

FEE SIMPLE: Joe Cochran discussed the March 1st deadline for articles to be turned in to the Fee Simple Committee this year. The Fee Simple will be done by April 9 this year.

RESIDENTIAL REAL ESTATE: Barbara Goshorn stated that 4 conference calls are scheduled this year for the committee. There was a discussion about a case in SW Virginia where real estate was located in two counties but the deed of trust was only recorded in one of the counties. The particular case was appealed to the Virginia Supreme Court, but it settled. She is working on an article about this subject.

TITLE INSURANCE: Brian Dolan reported that no meeting is currently scheduled. A Fee Simple article is being prepared concerning whether title insurance company can recover as an aggrieved party under a CRESPA bond. William Nusbaum stated that a good article idea could be about the helping families save their homes Act of 2009. This accords tenants protection as if the lease was recorded. William stated that he would send the article around. There was a general discussion about this subject.

There being no further business, upon motion duly made, and seconded, the meeting was adjourned at 12:05 p.m.

Respectfully Submitted,

Paul H. Melnick
Secretary/Treasurer