

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

**Charlottesville, Virginia
September 11, 2009**

The Fall 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 office of Virginia CLE, Charlottesville, Virginia on Friday, September 11, 2009, commencing at 10:07 a.m.

The following persons were in attendance in person: Joe Cochran (Chair), Paul Bellegarde (Vice Chair), Paul Melnick (Sec/Treas), Ken Dickinson, Larry McElwain, Eric Zimmerman, Philip Hart, Chuck Lollar, Barbara Goshorn, Rick Richmond, Lisa Graziano, Whitney Levin, Pam Sellers, Susan Walker, Jay Neal, Page Williams.

The following persons were in attendance via conference call: Dolly Shaffner, Jean Mumm, Sharon Pandak, Lawrence Daughtrey, Cooper Youell, Bill Nusbaum, Howard Gordon, Doug Dewing, Susan Pesner.

Joe Cochran started the meeting with a moment of silence in remembrance of the victims of the September 11, 2001 attacks on America. After the moment of silence, the meeting continued with the participants letting the others know how their practices were going and what real estate trends they are seeing in their practices.

Minutes of Last Meeting

Joe Cochran presented the minutes of the June 19, 2009 meeting of the Real Property Section (at Virginia Beach) and the following corrections were noted: 1. The location of the meeting should be changed to designate that the meeting was held in Virginia Beach, VA; 2. In the section listing officers for 2009-10, Joe Cochran should be listed as Chair instead of Vice Chair. With these changes, upon motion duly made, and seconded, the minutes were unanimously approved.

Financial Report

It was reported that the Real Property Section has \$46,170.00 as of July. After expenses our balance is now \$38,000.00+. We are fine budget-wise. It was reported that the \$10,000.00 in funds for copies of Doug Dewing's *Virginia Title Examiner's Manual* was not spent. There will be discussion on this later in the meeting.

Area Rep Nominations – It was reported that Lucy Davis (Area Rep from Richmond) cannot continue because she has a 23 month old child. She was thanked for the things that she has done while an Area Rep.

Larry McElwain nominated Lisa Graziano who is from Republic Title Services. She does title insurance work.

Jordan Samuel was discussed as becoming an Area Representative, but since he was not present he will not be considered.

Susan Pesner nominated Todd Condrin who is a lawyer in Northern Virginia. He is the manager of a local settlement company and a Reston attorney with Echo Title. He has expertise in short sales.

Susan Pesner also nominated Russ Drazin who has an office in the Washington D.C. office of Jackson/Campbell. He does defense work for title companies and does lectures for private companies that do seminars around the area.

Joe Cochran nominated Whitney Levin. She is already acting as an Area Rep. She organized two meetings in the valley that were well attended.

Joe Cochran lead a brief discussion concerning the distribution of Area Reps geographically. Susan Pesner mentioned that Steven Gregory has gone into private practice. Eric Zimmerman seconded the nominations. All nominees were accepted except for Jordan Samuel. Susan Pesner will follow up with him.

Larry McElwain noted that mentors are needed for Area Reps. If we will nominate someone, the nominating member needs to act as mentor for the new Area Rep.

Future Seminars

It was noted that Nancy Kern is on vacation. She has talked with Joe Cochran about the upcoming seminar developments.

A. Advanced Real Estate Seminar

The Advanced Real Estate Seminar will be held on February 19th and 20th 2010 at the Kingsmill resort. By the end of October Nancy wants to get the seminar flyer out. There are 1 ½ months to work on topics and speakers. There was a discussion as to whether we should use the same format or scale the program back. Joe Cochran noted that he thought that we should stay with the same format. There was a discussion about the location of the lunch and whether it should be in a separate room (Nancy thinks that would be more expensive). Concerning topics and speakers, we need to address this quickly. It was noted that Nancy Kern will take the results from a survey and narrow the topics down.

A general discussion was had about potential topics for the seminar: Chuck Lollar inquired about a possible eminent domain topic. He stated that his committee could provide a topic and a speaker. Concerning the Fee Simple, Doug Bumgardner is doing an article (right of ingress and egress when a utility acquires and easement). Chuck said that this is causing development problems. Barbara Goshorn recommended the subject of the litigation of various contract provisions. Eric Zimmerman recommended that committee chairs come up with speakers and topics in the next 3-4 weeks—that standing committees should be responsible for coming up with recommended topics for the advanced and annual seminars. Pam Sellers inquired about a local government topic. Bill Nusbaum inquired about an economic development incentives topic—perhaps put together a panel for the commercial real estate breakout? Sharon Pandak stated that the local government association is coming up.

B. Annual Seminar

Concerning the Annual Seminar, Joe Cochran stated that there will be 4 sessions in May, 2010. Attendance has been down from previous years. The highest attendance this year was in

Northern Virginia. Nancy Kern and Joe Cochran think that perhaps just 3 sessions should be offered in 2010—in Williamsburg, Lexington, and Fairfax. Susan Pesner noted that then you can get speakers for all three. Joe stated that speakers and topics are needed for this seminar. It was noted that offering lunch to the Area Reps may be a good idea (having a separate room for the Area Reps to meeting in). Joe stated that he will continue to talk with Nancy Kern about the Area Rep lunch idea. If another company is not paying for the lunch, then the section can pay for the lunch.

A discussion was had concerning why attendance at the Annual Seminar is down. It was noted that there is a trend downward in recent years. The effect of the economy in general was discussed. Also, the ability to see the presentation by video could affect attendance at the live seminar. Bill Nusbaum agreed that lunch would be a good inducement for the Area Reps and wondered if Board members would be included—the answer was yes.

C. VSB Annual Meeting 2010

Concerning the VSB Annual Meeting seminar in June, it was noted that the Real Property Section Secretary/Treasurer organizes this seminar on behalf of the section. Dolly Shaffner stated that topics are chosen in late November. September 29th is the meeting of Section Chairs. The Section chooses the topic(s) and whether to partner with another Section. Susan Pesner noted that to get a room for the seminar, you need a commitment for a certain number of attendees. Dolly stated that she will check on the availability of a room. Paul Melnick stated that perhaps our Section can partner with the Domestic Relations Section. A general discussion was had about ideas for a Real Property Section and Domestic Relations Section partnership and topic ideas. Some ideas mentioned were discussing the treatment of “bad” property in the context of a divorce, deeds (tax implications). It was proposed that maybe a partnership with the Tax Section could also work. Paul Melnick will investigate a possible partnership with the Domestic Relations Section and Tax Section. Dolly will email information to Joe Cochran and Paul Melnick concerning the Annual VSB Seminar.

Unfinished Business

A. “Board and Area Representative Handbook”/ Statewide meetings update

Joe Cochran reported that he and Larry McElwain had 4 meetings around the state with Area Reps (2 in Hampton Roads, and 2 in the Valley-Staunton and Harrisonburg). Larry McElwain noted that people in the Valley were happy to be recognized and visited. Larry thought the meetings were very productive. There will be a follow up to the meetings. Joe noted that everyone was interested in email discussions within the section—to have the section be a presence in their professional lives.

A general discussion took place concerning listserv groups. Perhaps there could be an Area Rep group and a general membership group, among other possible groups.

Joe Cochran stated that he is trying to get a meeting together in Roanoke and Southside Virginia. David Helscher can help with the Roanoke meeting. Joe stated that he is also looking to have a meeting in Northern Virginia. He noted that the meetings seem to be a good initiative. He presented the Board and Area Rep Handbook to the Board and stated that it is being handed out at the meetings.

B. Bylaws Revision

Joe Cochran noted that at the June 2009 meeting there was a discussion about amending the Section bylaws. This turned into a wholesale revision. Joe mentioned the members of the committee and stated that he sent out a clean and redline copy of the proposed bylaws. He noted that other Section bylaws were reviewed to come up with ideas for the revision. Joe stated that there is plenty of time with this project—the current bylaws state that they can only be amended at the Annual Meeting. Once the revisions are approved, the Virginia Bar Council needs to approve them.

Larry McElwain provided a history of the need for the bylaws revisions. He explained that the current bylaws prohibit more than 2 consecutive terms on the Board. The Board, however, thought this would shut out good people from being on the Board. The new bylaws said that a third term can be served, but no more than 2 terms can be served consecutively. Larry also described that that law student issue was addressed. He stated, however that the bylaw committee took a pass on the “past chair” issue. He said that maybe past Chairs of the Section would meet once a year as a committee—there would be a looser degree of participation. It was noted that we don’t hear from quite a few past chairs. It was thought that the bylaws were not the place to address this issue and that a committee structure was better. Larry described that there was also discussions of interpretation of policies and procedure. Policy would be handled outside of bylaws and procedure would be in the bylaws. After Larry’s presentation, other Board members discussed the proposed changes to the bylaws.

Rich Richmond wondered about automatic participation in a group for past Chairs, like an advisory committee. Susan Walker noted that the Virginia Bar has a preference for bringing on new people and rolling off the previous people. Mandatory “rolloffs” avoid hurt feelings. There was then a general discussion of the subject of people rolling off Boards and going onto them.

Philip Hart asked about Section 6, Article III of the revised bylaws. He wondered if the section refers to missed regular and/or special meetings—what about saying regular meetings only for this provision?

It was asked whether the historical provisions of the bylaws are really necessary? For instance, is the tortured language in Section 2 of Article III really necessary? Larry McElwain stated that such historical provisions don’t serve a current purpose and they can be streamlined easily.

Joe Cochran stated that he will pass on the edits to the Bylaw committee. He said that he wants to get the draft bylaws into the November Fee Simple.

Dolly inquired about the possibility of changing the location of the Annual Meeting of the Real Property Section. Joe Cochran wondered if there should be some other mechanism for changing the bylaws except for at the Annual Meeting? Dolly said that some sections pick seminars that are heavily attended for the Annual Meeting. Dolly added that the Virginia Bar says that bylaws can be made at a “business meeting” of the section. Notice to members of sections is required for a business meeting. Dolly said she will check on this concerning whether the meeting can be at a Board meeting rather than at a section meeting. Dolly will check on notice requirements also (in addition to venue of the meeting).

C. Purchase of Title Examiner’s Handbook

Doug Dewing reported that he low-balled Michie more than he should have and they said nothing—silence. He did not “up the ante.” The price is now \$130.00 per copy and Doug offered \$3.50 per copy—they did not respond. Doug also reported that there are just under 300 copies left. Michie raised the price \$10.00 per copy after they discontinued production. Doug said he would be happy to raise his offer. The \$10,000.00 allocated has been lost since was not spent last year, however. Doug said he can do a fourth edition.

Larry recommended that Doug and Barbara Goshorn should see how low Michie will sell the books for and we will revisit the issue. Barbara stated that she will contact her editor to see who would be a good contact. Joe Cochran thanked Doug and Barbara for helping with this project.

New Business:

Substantive Subcommittee Reports – The discussion started with Joe Cochran explaining that he and Philip Hart had had a discussion about section committees and he wants to have the Committee Chairs discuss plans the Chairs have for their committees. This will help on many fronts such as seminars, the Fee Simple etc.

MEMBERSHIP: Dolly Schaffner stated that we are the number 3 section with numbers of members at 1,957. There was then a general discussion about free memberships for new bar members.

FEE SIMPLE: No report. Susan Pesner noted that she knows of 2 people who are to write articles. This was sent to Felicia. Joe Cochran noted that there is a new person that will serve on this committee and Felicia has been in touch with them. Larry McElwain noted that the “split county case” would make a good article. Barbara Goshorn noted that “Quick Tips” are needed. Susan Walker inquired about a short sale subject. Susan Pesner noted that a guy she knows has materials on short sales. The case of Martin General Contractor (mechanics lien case) might make a good article—a commitment to lend is not funding. Eric Zimmerman inquired whether the 1031 case involving LandAmerica would make a good article. Joe Cochran stated that he would contact Rich Maxwell who represents the claimants in that case.

TECHNOLOGY – See Doug Dewing’s written report attached hereto for reference. Doug discussed the case of *Casella v. Borders* in which Judge Moon stated that a female plaintiff had no “objectively reasonable expectation of privacy in the images stored” on her cell phone which was passed around the precinct house. In rejecting the Section 1983 claim, the judge noted the lack of security on the phone. Doug’s report also covered links to features within Adobe Acrobat which may be of interest (so you can “primp your PDF”). Doug next described Apple’s new suite of applications for its iPhone such as a GPS driven system which assists in locating a lost phone, and can wipe the memory clean on remote command.

COMMERCIAL REAL ESTATE – No report.

CREDITOR’S RIGHTS AND BANKRUPTCY – Phil Hart reported that Chris Jones is a new member of the committee. He did a seminar last year, he is not sure about this year. He will contribute an article to the Fee Simple.

EMINENT DOMAIN – Chuck Lollar stated that his committee will submit an article to the Fee Simple. Concerning Title 25.1, they want to make recommendations for changes but they don’t want to violate lobbying restrictions. Howard Gordon noted that we can lobby on behalf of the public, just not on behalf of attorneys. Chuck Lollar continued that he is trying to identify

publications which exist for property owners (homeowners)—this will help the general public understand the eminent domain process. The committee is looking at existing publications. Joe Cochran mentioned that Chuck should look to Rick about funding.

ETHICS – Susan Pesner discussed her article about title companies representing sellers of real property. She is calling title companies and asking for their attorney. The attorney for the closing company representative is charging for “deed preparation” and the closing fee is an administrative fee. She will send this issue to Jim McCauley and he will determine if this is OK on an ethical basis.

LAND USE AND ENVIRONMENTAL – No report.

RESIDENTIAL REAL ESTATE – Barbara Goshorn stated that the Quick Tips article is underway. Susan Pesner discussed an upcoming article-Real Estate Settlement Bootcamp—she has an associate who wants to write an article in the November issue. He will be in touch with Barbara Goshorn.

TITLE INSURANCE – No report.

LEGISLATIVE MATTERS – Ken Dickinson stated that the Virginia Trial Lawyers Association wants the mechanics lien statute to apply to residential and commercial property. Susan Pesner noted that there is an upcoming UPL Symposium at the Ritz Carlton October 9th and 10th. Charges and new HUD rules will be covered. She will send this information out to everybody.

Next Meeting:

The next meeting will be January 22, 2010 at 10:00 a.m. (we may go with 1:00 p.m., however). Joe will confirm the final time of the meeting. The meeting will be at the Lodge, not the law school, and there will be teleconferencing capability. The VBA meeting will be from 8-10 a.m. then the seminar will be afterward.

There being no further business, upon motion duly made, and seconded, the meeting was adjourned at 12:23 p.m.

Respectfully Submitted,


Paul H. Melnick
Secretary/Treasurer

Exhibit to Sept. 11th 2009
meeting minutes

To: Joseph M. Cochran, Chair
From: Douglass Dewing
Date: September 11, 2009
Re: Technology Committee Report – September 2009

ABA TECHSHOW 2010 will be held in Chicago from March 25 – 27, 2010. The 24th annual ABA TECHSHOW educates lawyers and legal professionals through three days of CLE sessions and a two-day EXPO. Visit the new site at www.techshow.com for details about the March conference.

Brett Burney identifies a number of features within Adobe Acrobat which may be of interest <<http://www.abanet.org/genpractice/ereport/2009/vol8/num3/technotes.html>> and references two resources for those who might want to know more: Rick Borstein's Acrobat for Legal Professionals <<http://blogs.adobe.com/acrolaw/>> and PDF for Lawyers <<http://www.pdfforallawyers.com/>> authored by Ernest Svenson.

Apple has released an applications upgrade for its I-phone. If you can't find your keys, or your glasses, then you may, from time to time, also have trouble finding your phone. The new application addresses that problem in GPS-capable phones if you also have a MobileMe account. While the mapping is not precise enough to tell you if the phone is in the kitchen or the bedroom, it can (unless you have a home office) answer the question of whether or not you remembered to bring the phone to the office. Once you think you are within range, the phone can be instructed to play an "alert" sound to help you reclaim your lost partner. You can also have the phone display a message on the home screen identifying you and asking that it be returned to you. Most importantly, for data security purposes, you can do a remote wipe of the phone's memory, restoring it to factory settings and a blank memory. Jeffrey Allen describes this, and other applications, in his MacNotes column at <http://www.abanet.org/genpractice/ereport/2009/vol8/num3/macnotes.html>.

Speaking of wiping a phone's memory, the plaintiff in *Casella v. Borders* <<http://www.vawd.uscourts.gov/OPINIONS/MOON/CASELLAPUBLISHED.PDF>> may be wishing she had had such an I-phone. After she and her (now former) boyfriend were arrested, digital photos on the cell phone were passed around the precinct house. The plaintiff in a suit against Culpeper police for an unauthorized game of show-and-telephone of her nude pictures on a cell phone had no "objectively reasonable expectation of privacy in the images stored" on the phone. In ruling against the plaintiff's § 1983 suit and her emotional distress claims, Judge Moon noted that given the lack of security, a police search wasn't the only exposure Casella had to worry about. The full article by Deborah Elkins appeared September 3, 2009, in Virginia Lawyers Weekly. <<http://valawyersweekly.com/vlwblog/2009/09/03/show-and-telephone/>>

Fun Facts from cellforcash.com:

The cell phones retired each year...

- ...if laid end to end would stretch from NY to LA 6.6 times.
- ...would fill 199 boxcars.
- ...would feed school lunch to the 12 million food insecure (either hungry or unsure of where their next meal would come from) American children for 43 days.
- ...weigh more than 174 space shuttles.
- ...would pay the salaries of members of Congress for over 15 years.
- ...would pay the budget of the City of Sacramento, CA for nearly two years.
- ...would buy every man woman and child in the United States two double cheeseburgers and a medium coke at McDonalds...and \$1 change.

The company advocates recycling old phones for fun and profit at its website: <http://www.cellforcash.com>.

Sarah Rodriguez explores some of the niche data bases and other features at Google in the September 9, 2009, Virginia Lawyers Weekly <<http://valawyersweekly.com/blog/2009/09/07/exploring-google%e2%80%99s-niche-search-engines/>>, including: news and archives, patents, books (you can read about the litigation in the news section), blogs, "knols" (a knowledge unit - a wiki by another name), maps, definitions, e-mail (this IS google, so it is now g-mail), even a browser.