

**MINUTES OF THE MEETING OF THE COUNCIL OF THE
REAL PROPERTY LAW SECTION
OF THE STATE BAR OF MICHIGAN**

OCTOBER 16, 2019 AT 12:00 PM

**OFFICES OF BUTZEL LONG
41000 WOODWARD, BLOOMFIELD HILLS**

**(Conference Call-In Number: 1-888-240-2560
Code: 248-258-1616**

To join the meeting on a computer or mobile phone:
<https://bluejeans.com/2482581616?src=calendarLink>

A meeting of the members of the Council of the Real Property Law Section was called to order at approximately 12:00 PM. Chairperson LaMont confirmed that a quorum of voting members was present.

Present:

| <u>Council Members</u> | | <u>Past Chairs</u> | |
|--|--|---|-----------------------------------|
| <u>In Person</u> | <u>Via Conference Call</u> | <u>In Person</u> | <u>Via Conference Call</u> |
| Catharine B. LaMont (Chair) Brian P. Foley John D. Gaber Gregory J. Gamalski Thomas A. Kabel Jason C. Long (CLE) Michael A. Luberto Dawn M. Patterson Roxana Gale Zaha Lorri B. King Stephen R. Estey Nicholas P. Scavone, Jr. (Immediate Past Chair) | J. Scott Timmer Leslee M. Lewis Jessica Hallmark Brandy Mathie Brian Page (Land Title) | | |
| | | <u>Section Administrator</u> Karen Schwartz | |
| | | Other Attendees | |
| | | | Tim Bliss – Commercial Leasing |
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Introductions/Announcements:

Chairperson LaMont welcomed Tim Bliss from the Commercial Leasing Committee.

Approval of Minutes:

Chairperson LaMont proposed unanimous consent of the minutes from the September 11, 2019 Council meeting. Mr. Long made the motion for approval and the motion was seconded by Mr. Luberto. No members raised an objection, so the Motion passed unanimously.

Consent Agenda:

Chairperson LaMont proposed unanimous approval of the Consent Agenda as to the following reports: Administrative, Committee on Committees, Membership Committee, Pro Bono Committee, Sponsorship Committee and Technology Committee.

Chairperson LaMont mentioned the success at the day of service working in conjunction with Michigan Community Services in Avalon Village earlier this month. They had great weather and a good turn-out. Brian's vision is to continue this day of service and to have it run the first Wednesday in October each year.

Mr. Gamalski moved to approve and receive the Consent Agenda without discussion. Mr. Estey supported the motion. Nobody raised objections so the Motion to approve and receive the Consent Agenda without discussion passed unanimously.

Standing Committee Reports:

The following Standing Committee reports were discussed:

Continuing Legal Education (CLE) Committee:

Mr. Long submitted the CLE Committee Report for review and discussion by the members. Mr. Long then specifically mentioned the following items:

- The "2020 Real Estate Outlook" program will take place on October 17, 2019 at the DAC. We have over 60 people registered. We added roundtables to accommodate this anticipated attendance.
- Mr. Long mentioned that the January Homeward Bound/Legislative Update is developing well. We need to see how this January programs goes and then can book a program for Spring or June if needed.
- Winter Conference is on track. Erica Payne has most of the speakers locked down.
- SC 2020: Ms. Zaha commented that the summer conference program is underway and that they have most topics determined. They are still looking for roundtable speakers. They will have a better-defined program in November.
 - Mr. Estey suggested a topic on solar panels. The pathway has been cleared due to changes in PA 116 agreements and agricultural land. He mentioned that most municipalities do not have ordinances in place for commercial development of agricultural land.
 - Ms. Zaha welcomes speaker suggestions for Summer Conferences
- Mr. Long brought up whether we should have a council meeting in April in Grand Rapids. Chairperson LaMont mentioned it was hard to get many in attendance even with a Grand Rapids event. Mr. Luberto mentioned that we should focus on quality and not quantity. It was also suggested that maybe next year we can tie the west side council meeting with the Academy session.
- We are planning to video tape our next conference. The video would be included with the registration. Otherwise, the webcast can be purchased. Mr. Scavone suggested that the video would be useful regardless.
- Mr. Long reported that we have one podcast in the tank. More are in the hopper. Mr. Long is trying to get a couple in the queue before releasing the first one.

Legislation Committee:

Mr. Gamalski submitted the Legislation Committee Report for review and discussion by the members. In particular, Mr. Gamalski noted the following:

- 1) HB 5086 Assignment of Rents statutes - The legislative committee is monitoring this. It is based on a uniform act. Our Business Law Committee and the Title & Conveyancing Committee will review this.
- 2) Mr. Gamalski mentioned that HB 4915 addresses the liability for trees falling onto a neighbor's lawn. The proposed legislation would hold the owner responsible for all damages and essentially equate to strict liability. This is a dramatic change from common law. Mr. Gamalski will prepare a memorandum. We may have to do a vote by e-Mail. This bill was introduced in September.

Publication Committee:

Ms. King

- We are on track for Fall/Winter edition of the Michigan Real Property Review.

Chairperson LaMont indicated that the February 2020 RPLS State Bar of Michigan Journal Issue is all set.

Treasurer's Report:

Mr. Kabel discussed the following matters:

Presented his report titled: Treasurer's Report for October Council Meeting

Members of council mentioned that we are trying to get more realistic projections. There is an anticipation of a \$65K loss. Over the last few years, there has been an average loss of 74 members per year. We project an ending account balance of \$135,000. The Strategic Plan recommends that the Section set an operating reserve goal of one (1) year's operating expenses. We may want to revisit what the reserve amount should be. The proposed budget includes videotaping of the Summer Conference, Homeward Bound and Winter Conference. Videotaping the Winter Conference will be discussed again prior to the conference.

Ms. Mathie proposed we add \$10 to our dues. Instead of \$45, we would be at \$55. There is a 12% decrease of overall membership in State Bar. Our Section has been losing about 6% per year. The dues increase will go into effect in October of 2020.

Budget concerns were discussed. Chairperson LaMont indicated that she will meet with the Editor of the Michigan Real Property Law Review and then report back to Mr. Kabel and the Council.

- The donation to Michigan Community Resources was discussed. Concerns were expressed that this is not a direct value to the members and that we must address the current budget concerns. We have a fiduciary duty to members.
- It was mentioned that we need to reach out for sponsorships.
- As a cost savings matter, it was suggested that we no longer print the Michigan Real Property Law Review and only offer it in electronic format. Discussion followed. Discussions continued and led to many having opinions to not offer a printed version.
- Ms. Schwartz' Administrative Salary was discussed.
 - Ms. Schwartz received high reviews from all of the council members. The executive officers met previously. A raise of \$1750, bringing Karen's salary to \$60,550 and a \$1500 bonus (for 2018-19) were proposed.

- Mr. Kabel read into the record a note from the director of finance at the State Bar complementing Karen on her submitted financial reports.
- Mr. Estey made a motion to (1) approve the Proposed Budget for 2019-2020, (2) increase the dues for the Real Property Law Section by \$10.00 beginning October, 2020, (3) eliminate the Michigan Community Resources donation, (4) zero out the C. Robert Wartell award for this year (\$1000), (5) offer the Michigan Real Property Review in electronic form only and (6) increase Karen Schwartz' salary to \$60,550 and award a \$1500 bonus (for 2018-19). Mr. Scavone seconded the motion. A vote was held by the members of the council present. 15 members supported the motion. The vote was unanimous. **The Motion was approved (via a hand vote of those present and a direct verbal from those on the conference call) with 15 in favor, 0 against with 0 abstention out of 15 voting members in attendance at the time of the vote of a total of 17 voting members.** (Ms. Zaha was not present for the vote.)

Old Business:

None

New Business:

- 1) Membership Dues Discussion
 - a. Addressed above in Finance report
- 2) E-Newsletter Guideline Discussion
 - a. Chairperson LaMont started a discussion regarding articles from non-lawyers or lawyers who are not members. Mr. Gamalski will write a draft of guidelines.
- 3) Marketable Title Shock Team: Nick Scavone, Brian Page, Greg Gamalski, Melissa Collar, Cathy Lamont.
 - a. Footnote 14 of an article published on the amendment to the Marketable Record Title Act mentions that the current owners' names are not required for the notice referenced in the Act. If the property is not in a county where a tract index is maintained, the notice will be lost. There were discussions about eliminating the grantor/grantee index. There were suggestions to formalize the tract index as the official index. Alternatively, options were discussed to pursue a legislative fix to require names be added to the notice under the recent amendment to the Marketable Record Title Act. Ms. King and Mr. Luberto are joining the Shock team.
- 4) Michigan Bar Journal Update
 - a. The articles are in peer review.
- 5) Amicus Brief Committee: Chair: Scott Timmer
 - a. Two requests
 - i. JTWROS deed held by an individual and a trust case – Mr. Timmer suggested that we file an amicus brief. That brief may entail adopting the dissenting opinion. (*Schaaf v Forbes*, unpublished Court of Appeals opinion No. 343630, LC No. 2016-009008-CH, Antrim Circuit Court)
 1. A Motion made by Chairperson LaMont, and duly seconded by Mr. Luberto, to prepare and submit an amicus brief in opposition to the decision of the Court of Appeals in the case of *Schaaf v. Forbes*, unpublished Court of Appeals opinion No. 343630, and to support parts of the dissenting opinion in this case. The Motion was approved with 13 in favor, 0 against with 0 abstentions out of 14 voting members in attendance at the time of the vote of a total of 17 voting members. Mr. Timmer will reach out to the Special Committees for volunteers to draft the brief.
 - ii. Mr. Timmer mentioned the Packard Square case dealing with a judicial foreclosure. The redemption expired on the Sheriff's Deed while the case was pending in Court of

Appeals. The motion to extend the appeal period was procedurally rejected. Mr. Timmer will prepare a summary and recommendation.

6) MLTS Request for Legislation

- a. The Committee is requesting that the Council explore the feasibility of adding a tract index in those counties that currently do not maintain a tract index. The Marketable Title Shock Team will review this and determine how to proceed.

Chairperson LaMont reminded everyone that the next Council meeting would take place at Noon on Wednesday, November 20, 2019, at Butzel Long, 41000 Woodward Avenue, Bloomfield Hills, Michigan.

Chairperson LaMont adjourned the meeting at 1:54 p.m., after a motion to adjourn was made by Mr. Scavone and seconded by Mr. Kabel. The motion was approved by unanimous consent.

Respectfully submitted,

Dawn M. Patterson, Secretary