

**MINUTES OF THE NOVEMBER 15, 2011 MEETING OF THE
EXECUTIVE COMMITTEE OF THE REAL PROPERTY LAW SECTION OF THE
STATE BAR OF NEVADA**

In attendance via teleconference were Michael Buckley, Chris Childs, Karen Dennison, Colleen Dolan, Mary Drury, Craig Howard, Angela Otto, DeArmond Sharp, Mandy Shavinsky and Matt Watson. Layne Butt, Elizabeth Fielder, Doug Flowers, Pierre Hascheff and Sandi Turner were absent. The meeting commenced at 4:00 p.m. Deborah Hayes, legal secretary at Jones Vargas, took the minutes for the meeting.

1. The minutes of the October 18, 2011 meeting were approved.
2. *Treasurer's Report:* DeArmond Sharp reported that he had not yet received the Profit and Loss Statement from the State Bar, however, one month's dues will have been added to the balance.
3. *CLE Programs: Professionalism in a Box (December 9th):* DeArmond Sharp reported the Professionalism in a Box scheduled for December 9th has been cancelled. It will be rescheduled sometime after the first of the year.

San Diego CLE (June, 2012): Michael Buckley reported the Board of Governors had not yet responded to the Mike Rubin proposal or the other additional proposals submitted. DeArmond Sharp stated he had spoken to Mike Rubin that the Real Estate Section would be interested in having him present a limited program at a later date.

4. *Listserve:* Michael Buckley stated there had not been much traffic on the Listserve and encouraged everyone to use it for topics/ issues they want discussed.
5. *Current Matters of Interest:* Matt Watson reported on a district court case that held that when you incorporate Covenant No. 9 from 107.030, a corporate resolution authorizing the substitution must be recorded. No Order has been issued yet. He suggested some proposed changes to correct the problem that can be worked on for the next Legislative Session.

Michael Buckley reported on several cases, one which is on appeal in the 9th Circuit Court that deals with the question of whether a hotel condo is a security or not. The Securities and Exchange Commission is not happy with the IntraWest No Action Letter and wants to look at the totality of the circumstances. It was suggested that a hotel condo where you can only live in it for so many days could ever be anything other than a security.

He also stated there is a case in Michigan, *Wells Fargo vs. Cherryland Mall*, where the lender obtained a ruling from the lower court that held that the borrower's insolvency was a violation of the separateness covenant and the guarantors had full recourse liability. This case is on appeal as people are saying that wasn't the intent of the separateness covenants and this would undermine all nonrecourse.

He reported there is a third case of interest with the California District Court of Appeals which involved a New York lender, California real estate, a Nevada guarantor and New York

choice of law. The court ended up applying Nevada law. Law firms in California have stopped issuing any choice of law opinions based on this case.

Karen Dennison reported there is a case in the 11th Circuit which dealt with the Interstate Land Sales Act and the use of exemptions. You must have a legitimate business purpose for using the exemptions and avoidance of registration is not good enough.

DeArmond Sharp reported on a 1987 Nevada case that dealt with foreclosure. The appellant argued that the value at the date of foreclosure should be the appraised value as of the date the loan was made, based on California case law. The Nevada courts have said no to this as this would discourage investment in real estate projects and would force lenders to secure higher equity margins in project loan approvals. He stated that AB 273 will result in the same thing the court was concerned about in this case. Karen Dennison informed the committee that two trial courts differed on the retroactivity of AB 273 and they expected to go to the Supreme Court.

6. *Subcommittee Reports:* Karen Dennison reported that the new Legislation Subcommittee has been formed. Members include Michael Buckley, Karen Dennison, Lance Earl, Doug Flowers, Garret Gordon, Pierre Hascheff, Angela Otto, John Sande, IV, DeArmond Sharp, Mandy Shavinsky and Matt Watson. The purpose of the subcommittee will be to correct unintended consequences of 2011 legislation, in particular AB 273, and any other unintended consequences of legislation from the prior year. Going forward with 2013, the subcommittee will be monitoring all legislation which affects real property.

There was no further business and the meeting adjourned at 4:40 p.m. The next meeting will be held on January 17, 2012, at 4:00 p.m.