

DELAWARE STATE BAR ASSOCIATION
REAL AND PERSONAL PROPERTY SECTION MEETING

Minutes from September 12, 2018 Section Meeting

- (1) September 2018 meeting of the Real and Personal Property Section was held at 4:00p.m. on September 12, 2018 in the offices of Baird Mandalas Brockstedt, LLC in Wilmington, Delaware.
- (2) Attendees:
 - a. On location: Bill Brady, John Conly, David Matlusky, Robert Krapf, Nicole Faries, David Zerbatto and Tim Rafferty.
 - b. By phone: Sara Auerbach, Lisa Bell, Brian McLaughlin, Virginia Zrake, Ken Feaster, Adam Singer, Peter Kirsh, Jim Harker, Brian Riggan, Todd Rowe, Tom Carney, Billy Scott, Brian Funk and Andy Taylor.
- (3) Approval of Minutes: The Minutes for the June 2018 meeting were approved without objection.
- (4) Old Business:
 - (a) Steve A. Spence gave an update on the legislation to exempt banks from the non-resident withholding requirements. The legislation was passed and signed by the Governor of the State into law so banks that have obtained ownership of real property, for example by deed-in-lieu or foreclosure, are not subject to withholding on the sale.
- (5) New Business:
 - (a) Discussion of recording quit claim deeds, concerns about fraud, and possible measures to reduce risk including requiring involvement of Delaware real estate attorney in drafting or recording deeds.
 - a. Attorney certification was discussed. There is precedent in other states to have a licensed attorney required in the preparation of deeds (Maryland), and the deed must include the attorney's certification (bar number) in order to be recorded. There is also precedent in Pennsylvania that requires recording costs to be paid in the form of a check from an attorney's office in order to record a deed.
 - b. There was enough positive feedback on the potential proposals discussed in subsection (a) to continue the discussion. As such, the Section will get the opinion of Michael E. Kozikowski, Recorder of Deeds, on the above-referenced ideas and look into if there was a change how that would come about (i.e. amendment to Code requirements, recorder regulations, etc.)
 - (b) Update on the revised Form 5403, postponement of implementation to January 1,

2019, and CLE course on the revised Form to be held at the DSBA Wilmington offices on October 2, 2018 (Live Webcast in Kent and Sussex).

- a. After the attorney CLE, the Section will reach out to the Board of Realtors to discuss the practical implementation of the withholding on the ground level with realtor that will be representing non-resident sellers on the sale of property.
 - (c) There was a discussion of rotating Section meeting locations through all three counties, and the Section members were very supportive of this proposal. The Section will be rotating monthly meetings throughout the counties.
 - (d) There was a discussion of Steven Goldberg's proposal to adopt as a formal statement of the DSBA Real Estate Section Robert J. Krapf and Antonios Roustopoulos' law review article on third-party legal opinions which was tabled for further discussion.
 - (e) The Section discussed the forms and letter template for requesting Death Certificates that the Delaware Office of Vital Statistics' requires practitioners to use.
- (6) There being no further business, the meeting was adjourned.

Respectfully submitted,
Thomas P. Carney
Secretary