

## Minutes of the October 3, 2007 Real Estate Section Steering Committee Meeting

The monthly meeting of the Real Estate Section Steering Committee of the Boston Bar Association was held at the offices of the BBA on Wednesday, October 3, 2007 at 12:00 noon. Attending the meeting were Liz Garner and Bruce Tribush, Co-Chairs, Deborah Eliason, Dayna Hutchins, Linda Bosse, Peter Farrow, Andrew Cohn, Raymond Estes and Robert Parker.

Liz Garner opened the meeting by welcoming Raymond Estes of Sherin and Lodgen LLP to the Steering Committee as the new Chair of the Newsletter Committee. Ray will also serve as the Young Lawyers Section liaison to the Real Estate Section. Liz noted that involving more younger or less experienced lawyers in the section was a priority as well as expanding on diversity initiatives and opportunities both within the section and the BBA overall. Liz also announced that the Bankruptcy Section has scheduled a Brown Bag lunch for October 16, 2007 focusing on initiatives of the Attorney General's office to combat predatory lending practices in light of the current credit crunch. Featured speakers at the seminar include Chris Barry-Smith, Assistant Attorney General, and Judge Carol Kenner, Special Assistant Attorney General who will highlight current enforcement litigation, c. 93A regulations governing mortgage brokers and lenders as well as foreclosure rescue transactions and services, and the pro bono attorney referral hotline for MA borrowers facing foreclosure.

Reporting for the Title and Conveyancing Committee, Deborah Eliason confirmed that there are Brown Bag lunch seminars scheduled through January and that the one held in September focusing on the *Kelo v. New London* decision and its consequences for planning and urban development in Massachusetts was both well attended and received.

Dayna Hutchins and Linda Bosse, reporting for the Affordable Housing Committee also indicated their Committee Brown Bag lunches are well scheduled for the coming months including one co-sponsored by the Title and Conveyancing Committee focusing on c. 40R. They also highlighted one scheduled for October 4, 2007 in which State Senator Susan C. Tucker, co-chair of the Joint Committee on Housing, planned to discuss current legislative initiatives for affordable housing in the Commonwealth. Linda and Dayna also indicated they were working on trying to schedule a CLE seminar focusing on an introduction to bond financing. Steering Committee members all agreed there is a need to help provide a basic understanding to lawyers on such specialty areas of transactional practice that many aren't exposed to on a regular basis.

Reporting for the Legislative and Public Policy Committee, Peter Farrow focused on the proposed Statutory Housing Covenants introduced to the legislature last term. If enacted, these covenants would be available to developers of affordable housing much like the statutory mortgage covenants currently available to lenders. Peter reiterated that Massachusetts remains the only state in the country which still has not adopted automatic homestead protection. Committee members expressed some concerns about the legislation and determined a joint meeting of those from other BBA sections interested in the legislation and its potential effects might be a good next step in the process to help garner support for the initiative.

Andrew Cohn, reporting for the Pro Bono Committee, indicated a second round training session for both return and new participants is scheduled for December 10, 2007 at 4:30 p.m. The session will include a segment entitled "Running the Mile" which is the name given to the

process of formulating and organizing ones case for trial. Andy indicated that the litigators are getting some valuable trial experience even though many of the housing cases are settling once the parties realize lawyers are showing up ready to proceed to trial.

F. Robert Parker, reporting for the Leasing Committee, summarized the Committee's first meeting last month in which they focused on recent court decisions and related developments in the field. Rob discussed the recent SJC decision of *Cummings Properties, LLC v. National Communications Corp.*, 449 Mass 490 (2007) and the resulting lack of clarity now being experienced by leasing practitioners as to how to draft liquidated damages clauses. Rob indicated the Committee was planning a CLE seminar for April on a topic to be confirmed.

To close the meeting, Liz Garner mentioned the recent decision of Zelinski v. Connecticut Valley Sanitary Waste Disposal, Inc., No. 06-P-1138, slip op. (Mass. App. Ct. Oct. 1, 2007), which limits the decision set forth in DiBella v. Fiumara, 63 Mass. App. Ct. 640 (2005) to the facts in a lease with regard to the failure to include an express right of termination due to a default. Liz promised more exciting case updates in the months to come.