

The **NEWSLETTER** of the **AALS** Section on Real Estate Transactions

AALS Annual Meeting
San Francisco, California

January 4–8, 2011

Looking Forward to the 2011 Annual Meeting

Wilson Freyermuth, Section Chair
University of Missouri

I am honored to serve as the Chair for the Real Estate Transactions Section for 2010. We had an outstanding Section program and field trip at the recent Annual Meeting in New Orleans (which are discussed elsewhere in this newsletter). I want to say “Thank You” to our immediate past Chair, Tom Wilson, and our Chair-Elect, Carol Brown, for their work putting together the outstanding Section program in New Orleans, and special thanks to Tom for his four years of excellent service as an officer of the Section.

In addition to Tom and Carol, our Executive Committee for the year ahead includes the Section Secretary, Debra Stark (John Marshall), the Section Treasurer, John Lovett (Loyola New Orleans), and at-large members Joyce Palomar (Oklahoma), Julie Forrester (SMU), and David Reiss (Brooklyn).

The 2011 Annual Meeting

Plans are taking shape for our 2011 Annual Meeting in San Francisco, CA. We will hold a joint program with the Section on State and Local Government, entitled “Climate Change, Green Building Standards, and Renewable Energy Sources: Transactional and Policy Implications.”

Climate change has generated substantial interest in energy-efficient building standards. Local governments are adopting “green” building standards like LEED into their permitting processes, and bestowing tax benefits on owners who develop or retrofit green buildings. Many companies are demanding that their leases and

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Reflections

Lloyd T. Wilson, Jr., Former Section Chair
Indiana University School of Law–Indianapolis

In our Section’s relatively brief existence, we have developed several valuable traditions. I think these traditions are to our credit, for among other benefits they contribute to our identity as a community.

Perhaps the most visible tradition is our annual field trip, which always provides a valuable learning experience and promotes camaraderie. On those occasions when a colleague is unable to attend an annual meeting, the comment I hear most frequently is “I’m really sorry I will miss the field trip.”

Other traditions are found in this Newsletter. The distinctive appearance identifies the document as *our* Newsletter. Tradition also impacts the content. Even though each issue contains innovations as our Section grows and undertakes new

initiatives, we know we can count on the Chair to tell us about plans for next year’s program and on the Chair-Elect to tell us about the upcoming field trip. We also know we can count on a column where the outgoing Chair will reflect on his or her term. This is that column.

In New Orleans, members of our Section were able to hear presentations by six accomplished scholars: Steven Eagle (George Mason), Thomas Mitchell (Wisconsin), Robin Paul Malloy (Syracuse), Rigel Oliveri (Missouri), Eduardo Peñalver (Cornell), and Aleatra Williams (Charleston). Over sixty professors attended this program, co-sponsored by the Section on Property Law. I thank each of the speakers for the effort

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Looking Forward to the 2011 Annual Meeting

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properties be “green.” Likewise, climate change has renewed emphasis upon developing renewable energy sources (such as wind and solar).

Again, governments have bestowed significant tax incentives for installation of renewable energy production equipment. As more owners implement such technology, issues of land use control will assume increasing importance.

This joint program will be held on Thursday, January 6, 2011, at 2:00 p.m. The program will address topics such as:

- What is the appropriate role for municipalities in facilitating sustainable development?
- Should municipalities mandate green building standards? If so, are trade-group standards appropriate?
- How should municipalities foster green building in the residential market?
- How are green building standards influencing the permitting and negotiation of real estate transactions, and what should we be teaching our students about green building standards?
- What is the appropriate role for municipalities in facilitating the development of renewable energy sources (through tax policy and/or land use regulation)?
- How should the law resolve land use disputes that arise due to installation of renewable energy technology?

The program will be divided into two panels. One will address transactional and policy implications of the green building movement. This panel will feature:

- Carl Circo (Arkansas)
- Jim Smith (Georgia)
- Michael Wolf (Florida)
- Ngai Pindell (UNLV)

The second panel will focus upon renewable energy, and will feature:

- Sara Bronin (Connecticut)
- Ron Rosenberg (William Mitchell)
- Troy Rule (Missouri)

These speakers were chosen in response to a Call for Papers, and their articles will be published in the Spring 2011 issue of *The Urban Lawyer*. Special thanks to the committee that reviewed the proposal, which included former Section chair Dan Bogart (Chapman) as well as State and Local Government Section members Patty Salkin (Albany) and Ken Murchison (LSU).

A more detailed description of the program will follow in next fall’s newsletter. In addition, as the Annual Meeting nears, we expect to have a more detailed program description, along with links to drafts of the papers, on the AALS website for each section.

In addition to the Annual Meeting program, our Section will again be sponsoring a field trip which will be held on Thursday morning, January 6, 2011. Consistent with the focus of the program, the field trip will include a visit to 555 Mission, the first San Francisco office tower to meet LEED Gold standards. Carol Brown, our Section Chair-Elect, has an article on page 4 of this newsletter with the preliminary details for the field trip.

I hope that we will see many of you next January in San Francisco. In the meantime, best wishes to all for a safe and productive summer!

Would you like to contribute an article to the Newsletter? Contact the Secretary for information on how to get your piece included in the next edition of the Newsletter.

A Report on the First Meeting of ALPS

John A. Lovett, Section Treasurer

Loyola University New Orleans College of Law

On March 5 and 6, 2010, the Association for Law, Property and Society (ALPS) held its first annual meeting at Georgetown Law Center in Washington, D.C. Established by Professor Robin Malloy of Syracuse University Law School, one of the founding members of our own Real Estate Transactions section, ALPS' mission is to provide a forum for interdisciplinary scholarship concerning all aspects of property law and policy, including, real, personal, intellectual, intangible, cultural, and other forms of property. Along with 150 other legal academics from all over the world, I had the good fortune of being able to attend the first meeting.

Although the subjects of the presentations ranged far and wide, AALS Real Estate Section members will be happy to know that our section was well represented at the first ALPS meeting and that there were numerous papers presented on real estate related topics. Just a few highlights will give you a flavor of the meeting.

- Raymond Brescia of Albany Law School presented an interesting paper, "Tainted Loans: The Value of Mass Torts Approach in Subprime Mortgage Litigation."
 - Tom Burns of the University of Aberdeen in Scotland gave us a view of lending reform from across the pond with his paper, "Regulatory Initiatives in the UK: An Evaluation of the Turner Review and its Implication for Securitization and the Shadow Banking System."
 - Fiona Burns of the University of Sydney took us south of the equator with "Mortgages and Older Australians: The Vanishing Doctrine of Contractual Capacity."
 - Vincent Di Lorenzo of St. Johns University presented "Evolving Ethical Standards in Property Law: A Study of Regulatory Perspectives toward Home Mortgage Lending Transactions."
 - Guanghua Yu of the University of Hong Kong presented "The Role of Mortgages, The Case for Formal Law."
 - Susan Pascoe of Middlesex University literally brought our attention back down to earth with her paper, "Socialized Title to Land and the Demise of Traditional Adverse Possession: Comparative Evaluations of Title to Land in England the USA."
- As these highlights suggest, one of the great strengths of ALPS, even at this early stage, is the remarkable international breadth of its membership. In addition to the many U.S. based scholars in attendance, large numbers of participants hailed from abroad, including all parts of the United Kingdom, Australia, South Africa, Canada, Israel, Spain, Hong Kong, and the Netherlands.
- Although many papers took a new look at traditional subjects (eminent domain and takings law for instance), many papers sought to apply interdisciplinary approaches to traditional property subjects or dared to apply property theory to untraditional subjects.
- Daphna Lewinsohn-Zamir of Hebrew University of Jerusalem reported on an intriguing empirical study she designed in her paper "Restoration vs. Consolation: The Advantages of In-Kind Redress."
 - Rashmi Dyal-Chand of Northeastern University Law School invited us to think about the property aspects of music innovation in her paper "Hip-Hop Music as an Emergent form of Property."
 - Marc Roark of the University of La Verne took us far back into the real estate past with his paper "Disease, War and Waste: A Consideration of External Factors on the Trade Fixtures Doctrine Between 1350 and 1803."
 - Real Estate Section stalwarts James Smith of the University of Georgia, Carol Brown of the University of North Carolina, and Gregory Stein of the University of Tennessee also presented papers on mortgage fraud, auditing mortgage lending practices, and Chinese real estate law respectively.

In light of the enthusiastic response to this year's meeting, ALPS has already announced that its Second Annual Meeting will take place next year, March 4–5, 2011, once again at Georgetown Law Center in Washington, D.C.

Real Estate Transaction section members will want to mark their calendars and start working on their papers now. It looks like ALPS will be a major venue for property and real estate scholarship for years to come.

Reflections

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they put into preparing their presentations and turning their presentations into articles. Those articles will soon be published by the *Indiana Law Review*.

Also in New Orleans we enjoyed another enlightening field trip, thanks to the hard work of current Chair, Wilson Freyermuth. Wilson arranged for us to tour the River Garden project, which redevelops a former public housing project. At the site, we heard a representative of the developer and a housing rights advocate describe their refreshingly cooperative working arrangement. The residents of River Garden are the beneficiaries of that arrangement.

The meeting would not have been a success, of course, without the assistance of many people. In addition to Wilson's role with the field trip, our current Chair-Elect Carol Brown deserves much

credit. She not only produced two Newsletters, she was also my partner (as last year's Chair of the Section on Property Law) in putting together the panel discussion. She was a constant source of insight and a model of cooperation.

In his farewell column in 2007, then-outgoing Chair Robin Malloy observed that our Section "is in a good position to move forward and build on the efforts [of all who preceded us.]" Given the talent of our executive committee members (Julie Forrester, Joyce Palomar, and David Reiss), the dedication of our officers (John Lovett, Debra Pogrund Stark, and Carol Brown), and the leadership of our Chair, Wilson Freyermuth, I am confident 2010 will be a banner year.

Thank you for the privilege of serving as Section Chair. It was a delightful experience.

Section Field Trip: Itinerants in Common

555 Mission Street—The Destination for the 2011 Section Field Trip

Carol Necole Brown, Section Chair-Elect
The University of North Carolina

The annual Section field trip is a special tradition, one which will be continued at the upcoming AALS Annual Meeting in San Francisco, California, January 4–8, 2011. I am excited to announce that the site of the 2011 Section field trip is **555 Mission Street**, one of San Francisco's newest, most environmentally friendly, landmark addresses. Located in San Francisco's financial district, 555 Mission Street was completed in 2008 and consists of 33 stories of stunning design. The United States Green Building Council awarded 555 Mission Street the distinguished LEED Gold rating making it the first LEED gold office tower in San Francisco. It was also voted Best New Office Building of 2008 by the *San Francisco Business Times*.

555 Mission Street's developer, Tishman Speyer, has graciously offered to host us during our visit to 555 Mission Street. As part of our field trip, we will tour the building, including some of the tenant office spaces. We will discuss the implications of green building with Tishman Speyer, its attorneys and other experts and we will also have the opportunity to review some of the leasing documents for the project. Additional plans are underway to make this a field trip you will not soon forget.

555 Mission Street is conveniently located near the AALS host hotel, the San Francisco Hilton Union Square; it is a 20 minute walk or a 10 minute cab ride (\$5–\$8). If you

prefer to explore San Francisco's old trolley system, you can catch the F line (\$2) which runs every 10–15 minutes and is about 2 ½ blocks from the hotel. The BART is also a viable transportation option and is also about 2 ½ blocks from the hotel.

Please save the dates of the AALS Annual Meeting on your calendar and make a note to reserve space for the Section field trip. As you know, the Section's field trips are unofficial events and so they do not appear in the official brochures and announcements disseminated by the AALS. I will send out an e-mail as soon as the exact date and time of the field trip are determined. I look forward to seeing everyone in San Francisco!

Is your school planning an upcoming program or symposium on Real Estate issues? Contact one of the Section officers and we will highlight your program in the next issue of the Section Newsletter.

Recent Scholarship by Section Members

Debra Pogrund Stark, Section Secretary

The John Marshall Law School

The list of Section member publications in this Newsletter covers the period of 2009 and January and February of 2010, excluding any publications already reported in prior Section Newsletters. The list compiled was based upon a computer search of law review and law related journals. If your published scholarship for this period was not in a prior Newsletter, and is missing from this list, please email me at 7stark@jmls.edu and I will include your published work in the next Newsletter.

Congratulations to our Section members who have produced the scholarship listed below! We hope you will find their topics interesting and will be inspired to read some of their work.

Steven Bender, Knocked Down Again: An East L.A. Story on the Geogrpahy of Colorado Color and Colors, 12 HARV. LATINO L. REV. 109 (2009).

Barbara L. Bezdek, Alinsky's Prescription: Democracy Alongside Law, 42 J. MARSHALL L. REV. 723 (2009).

Robert Brauneis, The Transformation of Originality in the Progressive-Era Debate Over Copyright in News, 27 CARDOZO ARTS AND ENT. L.J. 321(2009).

Alfred L. Brophy, The Signaling Value of Law Reviews: An Exploration of Citations and Prestige, 36 FLA. ST. U. L. REV. 229 (2009).

Alfred L. Brophy, Property and Progress: Antebellum Landscape Art and Property Law, 40 MCGEORGE L. REV. 603 (2009).

Alfred L. Brophy, Thomas Ruffin and the Perils of Public Homage: Thomas Ruffin of Moral Philosophy and Monuments, 87 N.C. L. REV. 799 (2009).

Mark Cordes, Making Sense of High School Speech After Morse v. Frederick, 17 WM. AND MARY BILL OF RTS. J. 657 (2009).

Steven J. Eagle, Supreme Court Economic Review Symposium on Post-Kelo Reform: Kelo, Directed Growth, and Municipal Industrial Policy, 17 SUP. CT. ECON. REV. 63 (2009).

Steven J. Eagle and Lauren A. Perotti, Coping with Kelo, 26 GPSOLO 22 (2009).

Kurt Eggert, The Great Collapse: How Securitization Caused the Subprime Meltdown, 41 CONN. L. REV. 1257 (2009).

John W. Fisher, II, The Scope of Title Examinations in West Virginia Revisited, 111 W. VA. L. REV. 641 (2009).

Bridget M. Fuselier, The Trouble With Putting All of Your Eggs in One Basket: Using a Property Rights Model to Resolve Disputes Over Cryopreserved Pre-Embryos, 14 TEX. J. C.L. & C.R. 143 (2009).

Thomas Earl Geu, Limited Liability Companies At 20: A Single Theory of Limited Liability Companies: An Evolutionary Analysis, 42 SUFFOLK U. L. REV. 507 (2009).

Thomas Earl Geu & James B. Dean, The New Uniform Limited Cooperative Association Act: A Capital Idea for Principled Self-Help Value Added Firms, Community-Based Economic Development, and Low-Profit Joint Ventures, 44 REAL PROP. TR. AND EST. L.J. 55 (2009)

Douglas Grant, Dean's Column: Water Law at the Boyd Law School, 17 NEVADA LAWYER 38 (2009).

Michael S. Knoll, Samuel Zell, the Chicago Tribune, and the Emergence of the S ESOP: Understanding the Tax Advantages and Disadvantages of S ESOPs, 70 OHIO ST. L. J. 519 (2009).

Gerald Korngold, Proposed Regulatory Solution: Legal and Policy Choices in the Aftermath of the Subprime and Mortgage Financing Crisis, 60 S.C. L. REV. 727 (2009).

Michael J. Madison, At The Boundaries of Access: Information Governance, 25 J. MARSHALL J. COMPUTER AND INFO. L. 673 (2009).

Michael J. Madison, Brett M. Frischmann and Katherine J. Strandburg, Collaborative Innovation, the Economics of Innovation, and Constructed Commons: The University as Constructed Cultural Commons, 30 WASH. U. J.L. & POL'Y 365 (2009).

Michael J. Madison, Open Approaches to Innovation: Notes on a Geography of Knowledge, 77 FORDHAM L. REV. 2039 (2009).

Michael J. Madison, Response: Of Coase and Comics, or, the Comedy of Copyright, 95 VA. L. REV. IN BRIEF 27 (2009).

Alexander M. Meiklejohn, Redressing Harm Caused by Misleading Franchise Disclosure: A Role for the Uniform Commercial Code, 3 ENTREPREN. BUS L.J. 435 (2009).

Juliet M. Moringiello, What Virtual Worlds Can Do For Property Law, 62 FLA L. REV. 159 (2010).

Juliet M. Moringiello, Survey of the Law of Cyberspace, 65 BUS LAW 227 (2009).

Juliet M. Moringiello, Electronic Contracting Cases 2008-2009, 65 BUS LAW 317 (2009).

John Copeland Nagle, Cell Phone Towers as Visual Pollution, 23 NOTRE DAME L.J. ETHICS & PUB. POL'Y 537 (2009).

John Copeland Nagle, The Idea of Pollution, 43 U.C. DAVIS L. REV. 1 (2009).

Charles H. Oates, The First Thirty Years, 21 REGENT U. L. REV. 229 (2009)

Chad M. Oldfather and Matthew M. Fernholz, Comparative Procedure on a Sunday Afternoon: Instant Replay in the NFL as a Process of Appellate Review, 43 IND. L. REV. 45 (2009).

Chad M. Oldfather, Universal De Novo Review, 77 GEO WASH. L. REV. 308 (2009).

Thomas E. Plank, Regulation and Reform of the Mortgage Market and the Nature of Mortgage Loans: Lessons from Fannie Mae and Freddie Mac, 60 S.C. L. REV. 779 (2009).

Vincent D. Rougeau, Catholic Social Teaching and Global Migration: Bridging the Paradox of Universal Human Rights and Territorial Self-Determination, 32 U. SEATTLE L. REV. 343 (2009).

Peter W. Salsich, National Affordable Housing Trust Fund Legislation: The Subprime Mortgage Crisis Also Hits Renters, 16 GEO. J. ON PROVERTY L. & POL'Y 11 (2009).

Kenneth Salzberg, Zombie Life Estates, Ghost Value Transfers, and Phantom Takings: Confusions of Title and Value in Property Law Legislation, 22 QUINNIPIAC PROB. L.J. 363 (2009).

John H. Scheid, De Minimus Curat Lex Secret to Success for 1st Year Law Students, 37 CAP. U. L. REV. 631 (2009).

David Schmudde, Responding to the Subprime Mess: The New Regulatory Landscape, 14 FORDHAM J. CORP. & FIN. L. 709 (2009).

James C. Smith, Keeping Current – Property, 23 PROBATE AND PROPERTY 45 (2009).

Debra Pogrund Stark and Jessica Choplin, A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities, 5 N.Y.U. J. L. & BUS. 617 (2009).

Debra Pogrund Stark, Christina L. Kunz, Richard K. Neumann, Jr. and Cynthia M. Adams, Incorporating Transactional Skills Training into First-Year Doctrinal Courses, 9 TRANSACTIONS 331 (2009).

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Allan W. Vestal & J. William Callison, Contractarianism and Its Discontents: Reflections on Unincorporated Business Organization Law Reform, 42 SUFFOLK U. L. REV. 493 (2009).

Robert M. Zinman & Novica Petrovski, The Home Mortgage and Chapter 13: An Essay on Unintended Consequences, 17 AM. BANKR. INST. L. REV. 133 (2009).

NEWSLETTER—AALS SECTION ON REAL ESTATE TRANSACTIONS

Section Officers

Chair	R. Wilson Freyermuth University of Missouri School of Law E-mail: freyermuthr@missouri.edu
Chair-Elect	Carol Necole Brown University of North Carolina School of Law E-mail: carol_brown@unc.edu
Secretary	Debra Pogrund Stark The John Marshall Law School E-mail: 7stark@jmls.edu
Treasurer	John A. Lovett Loyola University New Orleans College of Law E-mail: jlovett@loyno.edu

Executive Committee

(in addition to Section officers)

Immediate Past Chair	Lloyd T. Wilson, Jr. Indiana University School of Law - Indianapolis E-mail: ltwilson@iupui.edu
Julia P. Forrester	Southern Methodist University, Dedman School of Law E-mail: jforrest@smu.edu
Joyce Palomar	University of Oklahoma College of Law E-mail: jpalomar@ou.edu
David J. Reiss	Brooklyn Law School E-mail: david.reiss@brooklaw.edu