

**MINUTES**  
**DSBA ESTATES AND TRUSTS SECTION**  
**APRIL 5, 2005**

In accordance with notice duly given, a meeting of the Estates and Trusts Section of the Delaware State Bar Association was held at the offices of Morris Nichols Arsht & Tunnell, 17<sup>th</sup> Floor, 1201 North Market Street, Wilmington, Delaware, 19801, on Tuesday, April 5, 2005 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Gregory J. Weinig, Francis S. Babiarz, Joanna Reiver, Patricia Hall, Cindy Shreaves (by invitation), Richard J.A. Popper, Paul N. Boswell, Peter S. Gordon, Michael M. Gordon, Michael R. Stein, Thomas P. Sweeney, Anne Stallman (by invitation), F. Peter Conaty, Jr., William H. Lunger, G. Michael Richwine (by invitation), Mary M. Culley, Neal J. Howard, Richard W. Nenno, Mary B. Hickok, Amy C. Hudson, Trisha W. Hall, Sheriden Black, and Beverly J. Wik.

Todd A. Flubacher, Chair, called the meeting to order.

1. Minutes. The minutes of the March 1, 2005 meeting were unanimously approved.

2. Legislation and Rule Committees.

a. Uniform Principal and Income Act – Report of Committee. No report.

b. Section 529 Plans – Report of Committee. No report.

c. LLC/LP Statutes – Report of Committee. Peter Gordon reported that the “charging order” legislation regarding limited partnerships and limited liability companies was to be voted upon at the next meeting of the Taxation Section. As weather-related difficulties forced changes to that section’s meeting schedule, however, it was not clear on what date that meeting would occur.

d. Chancery Court Rules 117 and 132 – Report of Committee. No report.

e. Trust Act 2005 – Report of Committee. Draft legislation was distributed with the notice of this month’s meeting for a vote by the Section. The Committee had made a few revisions to the version distributed before the March meeting, and one minor typographical error in the version presented for the vote was corrected.

Mr. Grover Brown will have a meeting with the members of the Chancery Court later this month to discuss the legislation.

Todd Flubacher again thanked this Committee for its excellent work on the legislation. Thomas Sweeney also expressed thanks, in particular to Richard Nenno, who led the efforts. Mr. Nenno noted extensive contributions by Richard Bacon and thanked all of the committee members.

Upon motion duly made, the Section unanimously approved the proposed legislation.

f. Delaware Elective Share Statute – Report of Committee. Gregory Weinig reported that Master Glasscock met with the Committee in March. The Master communicated that the issues he and the other members of the Court have been concerned about in elective share cases relate to the joint property topic that the Committee has been targeting. The Committee has therefore completed the process of identifying what topics will be addressed in proposed legislation and will proceed with drafting. The two issues to be addressed are the aforementioned joint property topic (by instituting an automatic presumption of equal ownership) and changes to the amount of the elective share by tying it to the length of the marriage.

g. Estate Administration Committee – Report of Committee. Todd Flubacher reported on behalf of Richard Kiger that the three Registers of Wills have met regarding standardizing forms for statewide use, and that some forms are being prepared. Other proposed changes under discussion include accelerating the 30-day waiting period for small estate affidavits to become effective as to the transfer of motor vehicles and the retrieval of clothing from a decedent's residence for funereal purposes; and raising the surviving spouse's allowance under 12 *Del. C.* § 2308 from \$2,000 to \$7,500.

h. DSBA Technology Committee – Report of Committee. No report.

i. By-Laws – Report of Committee. No report.

j. Last Remains Statute – Report of Committee. No report.

3. Old Business. None reported.

4. New Business.

a. Recent Developments. Richard Nenno reported the issuance of two Tax Court decisions, *Estate of Bongard*, 124 TC No. 8 (Mar. 15, 2005) and *Estate of Bigelow*, T.C. Memo 2005-65 (Mar. 30, 2005), both regarding family limited partnerships. Mr. Nenno also reported that Rev. Proc. 2005-24 recently held that in states where an interest in a charitable remainder trust is counted toward the "augmented estate" in the spousal or elective share context, spousal waivers must be obtained in order for the charitable remainder to qualify. Rev. Proc. 2005-24 will be effective June 28, 2005, and raises many questions, such as when a waiver must be obtained to be effective under it.

The United States Supreme Court's decision in *Rousey v. Jacoway*, 125 S. Ct. 1561 (Apr. 4, 2005) was also discussed. The decision addressed a split in the United States Courts of Appeals in holding that an individual's interest in an IRA is exempt from that individual's bankruptcy estate. It was noted that the holding may not be as broad as it might appear, due to the relatively small value of the IRA in this case and the existence of a Federal statute that may limit that exemption to IRA's that are necessary for an individual's support. It was further noted that the effect of the decision may vary greatly depending on state law with respect to IRAs.

b. Other New Business. Richard Nenno advised that the article by William Lunger and Peter Conaty discussed at last month's meeting, concerning practical considerations for drafting asset protection trusts, was indeed published in the March, 2005 issue of *Estates, Trusts & Gifts Journal*.

c. Uniform Disclaimer of Property Interests Act. This topic was placed on the agenda at the request of the Delaware members of the Uniform Laws Committee. Draft legislation was distributed in advance of this Section meeting. A Committee was formed to review the Uniform Act, and possibly to discuss it with the Delaware members of the Uniform Laws Committee. Thomas Sweeney, Beverly Wik, and Peter Conaty joined the Committee.

There being no further business, the meeting was adjourned at 4:35 p.m.

Respectfully submitted,

Gregory J. Weinig, Secretary