

MINUTES
DSBA ESTATES AND TRUSTS SECTION
DECEMBER 7, 2004

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, 17th Floor, 1201 North Market Street, Wilmington, Delaware, 19801, on Tuesday, December 7, 2004 commencing at 3:37 p.m.

In attendance were: Todd A. Flubacher, Gregory J. Weinig, David J. Garrett, F. Peter Conaty, Jr., G. Michael Richwine (by invitation), Dorothy K. Scarlett, Mary B. Hickok, Neal J. Howard, Mary M. Culley, Amy C. Hudson, Helen L. Winslow, Richard J.A. Popper, Jeffrey C. Wolken, and John M. Stull.

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

1. Minutes. The minutes of the November 2, 2004 meeting were unanimously approved.

Legislation and Rule Committees.

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

Section 529 Plans – Report of Committee. No report.

LLC/LP Statutes – Report of Committee. No report.

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

Trust Act 2005 – Report of Committee. No report.

Total Return Trust Statute – Report of Committee. No report.

Delaware Elective Share Statute – Report of Committee. No report.

Estate Administration Committee – Report of Committee. No report.

DSBA Technology Committee – Report of Committee. Todd Flubacher reported on behalf of Anthony Testa that the DSBA ListServes for both this

Section and the Tax Section are up and running. Mr. Flubacher distributed two handouts, “DSBA ListServ Guidelines” and “Sections of Taxation and of Estates and Trusts Report on Section ListServ and Web Page Capabilities,” which Section members are encouraged to review before using the new service. Mr. Flubacher also advised that future Section meeting notices and agendas may be distributed via this service.

Advanced Health Care Directive Statute – Report of Committee. No report.

By-Laws – Report of Committee. No report.

Last Remains Statute – Report of Committee. No report. Todd Flubacher observed that although the form provided in the statute was likely intended to revoke only those provisions of a person’s will, durable power of attorney, advance health care directive, and the like that pertain to the disposal of the person’s remains, the form can be read as revoking one’s will in its entirety.

Old Business.

a. Delaware Estate Tax. Draft legislation, clarifying the non-applicability of the return filing requirement, the inchoate lien and the affidavit filing requirement when the state credit does not exist, had been distributed with this month’s agenda. The draft legislation will be put to a vote for Section approval at next month’s meeting.

b. Sales of Real Property by Guardians of Minors. Following last month’s discussion concerning the appraisal requirement for petitions to sell real property by guardians of minors, Gregory Weinig observed that this month’s issue of *In Re* published a notice from the Chancellor requiring certain language for the preliminary order accompanying the petition, and clarifying that the Court of Chancery selects and appoints the appraiser. A question was raised concerning whether the current statute requires one or two appraisals. Mr. Weinig will look into this and follow up at next month’s meeting.

New Business.

Recent Developments. None reported.

Other New Business. Todd Flubacher reported that during a conversation with Anne Stallman, they discovered that 12 *Del. C.* § 3302 was not amended properly during its last amendment. Section 2 of the relevant Senate Bill had redesignated old subsections (d) through (f) of the statute as new subsections (e) through (g), and had added a new subsection (d). Unfortunately, the statute already had an existing subsection (g). As a result, the statute as currently codified contains the new subsection (d), retains the

old subsections (e) through (g), and does not include old subsection (d), which was not intended to be deleted.

Mr. Flubacher observed the need for better quality control during all aspects of the legislative process. The most basic way to achieve this at the drafting stage is to implement the blacklining guideline that has been discussed at previous Section meetings.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Gregory J. Weinig, Secretary