

MINUTES
DSBA ESTATES AND TRUSTS SECTION
FEBRUARY 7, 2006

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, February 7, 2006 commencing at 3:30 p.m.

In attendance were: F. Peter Conaty, Jr., Gregory J. Weinig, Hon. Diane Clarke Streett, Mary B. Hickok, Richard W. Nenno, Dorothy K. Scarlett, Miguel D. Pena, G. Michael Richwine (by invitation), Richard J.A. Popper, David J. Garrett, Thomas P. Sweeney, Michael R. Stein, Denise D. Nordheimer, Michael A. Friedberg, Francis Babiarz, Kelley Pulkrabek (by invitation), Todd A. Flubacher, John Cogar (by invitation), Cynthia Shreaves, William H. Lunger, Scott Swenson, Beverly J. Wik, Kim Gill Hankins, and Trisha Hall.

Peter Conaty, Chair, called the meeting to order.

1. Minutes. The minutes of the January 3, 2006 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. Chancery Court Rules 117 and 132 – Report of Committee. No report.
 - d. Delaware Elective Share Statute – Report of Committee. No report.
 - e. Estate Administration Committee – Report of Committee. No report.
 - f. DSBA Technology Committee – Report of Committee. No report.
 - g. By-Laws – Report of Committee. No report.
 - h. Last Remains Statute – Report of Committee. No report.
 - i. Uniform Disclaimers of Property Interests Act Committee – Report of Committee. Thomas Sweeney reported that the Committee continues to work on

formulating a new disclaimer act to replace Delaware's current one. The principal aim of the proposed new act is to fit the concepts of the Uniform Disclaimers of Property Act into a framework that is appropriate in Delaware, as there are a number of issues that are not addressed by the Uniform Act.

j. Trust Act 2006 – Report of Committee. Richard Nenzo reported that the Committee has met twice since the last Section meeting. He and Richard Popper distributed the following five handouts (attached in PDF format) as they discussed the Committee's work:

i. Mr. Popper discussed several miscellaneous amendments regarding a default distribution for trust assets in the event of a failure of the governing instrument's dispositive provisions (proposed 12 *Del. C.* § 3592); interest on pecuniary gifts from a trust (proposed 12 *Del. C.* § 3593); an anti-lapse/class gift provision for trusts (proposed 12 *Del. C.* § 3594); a provision stating that a gift from trust is not presumed to be in satisfaction of a debt from the trustor to the donee unless the gift's terms specifically so state (proposed 12 *Del. C.* § 3595); the order of abatement of gifts in trust (proposed 12 *Del. C.* § 3596); and minor changes to 12 *Del. C.* § 2312(c) (regarding interest on pecuniary gifts in a will) to conform it to proposed 12 *Del. C.* § 3593.

ii. Mr. Popper also discussed the source of certain language in proposed 12 *Del. C.* § 3594, which would treat a person as a beneficiary under a class gift even if the person did not survive the trustor or did not survive at the termination of a trust interest, and regardless of "whether death occurred before or after execution of the trust." This language parallels that found in Delaware's existing anti-lapse statute regarding class gifts in wills (12 *Del. C.* § 2313(a)(2)).

iii. Mr. Nenzo summarized proposed amendments to 12 *Del. C.* § 3322 as essentially stating that a trustee who delegates to an agent is merely responsible for such delegation and for ongoing supervision of the agent.

iv. Mr. Nenzo advised that proposed changes to 12 *Del. C.* § 3588 will clarify that whether there is consideration for a beneficiary's consent, release or ratification will not affect the validity thereof.

v. Mr. Nenzo explained that proposed changes to 12 *Del. C.* § 3528 will ensure that a trustee's authority to invade principal in trust will not disqualify property that would otherwise satisfy QTIP rules.

Mr. Nenzo further advised other proposed statutes that would authorize special purpose trusts, and possibly a separate statute regarding one particular kind of special purpose trust, that of a "trust for pets," are also in the works.

Mr. Nenzo stated that the Committee will next meet on March 1, 2006.

k. Unauthorized Practice of Law – Report of Committee. It was advised that (i) a Petition, regarding the activities of the public accountant that have been

discussed in previous meetings, has been filed with the Board on Unauthorized Practice of Law, and that the Board will hold a hearing after which it will present its findings and recommendations to the Delaware Supreme Court; and (ii) confidential yet active investigations on issues surrounding the unauthorized practice of law are being pursued by the Delaware Department of Justice.

1. Lapsed Distribution Committee – Report of Committee. Peter Conaty advised that he is assembling materials on this topic and will distribute them to the other Committee members shortly.

3. Old Business. None reported.

4. New Business.

a. Recent Developments. Richard Nenno reported two recent IRS developments: (i) as problems are quickly becoming apparent with its recent Rev. Proc. 2005-24 regarding charitable remainder trusts as affected by elective share rights, IRS (via Notice 2006-15) is deferring the ruling's enforcement and is looking for a different approach to the issue; and (ii) PLR 200603040 discusses grantor trusts.

b. Other New Business. None reported.

There being no further business, the meeting was adjourned at 3:51 p.m.

Respectfully submitted,

Gregory J. Weinig, Vice Chair/Acting Secretary