

MINUTES
DSBA ESTATES AND TRUSTS SECTION
February 5, 2008

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 Connolly, Bove, Lodge & Hutz, LLP, 1007 N. Orange Street, Nemours Building, 9th Floor, Wilmington, Delaware, on Tuesday, February 5, 2008, commencing at 3:30 p.m.

In attendance were: Francis S. Babiarz, F. Peter Conaty, Jr., Kathleen DeLacy, Julie M. Donoghue (via telephone), Michael A. Friedberg, Peter S. Gordon, Mary B. Hickok, George W. Kern, V, William H. Lunger, Daniel P. McCollom, Richard W. Nenno, Miguel D. Pena, Colleen E. Pulkrubek, G. Michael Richwine, Dorothy K. Scarlett, Donald W. Sparks, III, Anne L. Stallman, Michael R. Stein, Diane Clarke Streett, Thomas P. Sweeney, Scott E. Swenson, Vincent C. Thomas, Bruce W. Tigani, Gregory J. Weinig, Jeffrey C. Wolken and Norris P. Wright.

Also in attendance was Alex Mili, as a guest of Diane Clark Streett.

Anne L. Stallman, Chair, called the meeting to order.

1. Approval of Guest. Upon motion duly made and seconded, the attendance at the meeting of Alex Mili, guest of Diane Clark Streett, was approved.
2. Approval of Minutes. Upon motion duly made and seconded, the minutes of the January 8, 2008 meeting were unanimously approved.
3. Committee Reports
 - a. Uniform Principal and Income Act – Report of Committee. Mr. Wright reported that the Committee will have a written submission for the Section at the March meeting.
 - b. Chancery Court Rules 117 and 132 – Report of Committee. No report.
 - c. Estate Administration Committee – Report of Committee. No report.
 - d. DSBA Technology Committee – Report of Committee. No report.
 - e. Last Remains Statute – Report of Committee. No report.
 - f. Trust Act 2008 – Report of Committee. Mr. Nenno distributed 3 items of proposed legislation for the Section to consider. Mr. Nenno indicated that he hoped that the Section would approve the proposed legislation at the March meeting for submission to the DSBA Executive Committee.

The first item of proposed legislation amends 30 Del.C. § 1633 by adding a new subsection (7) thereto, providing that trusts created for noncharitable purposes (as defined in 12 Del.C. § 3556, see below) shall be exempt from Delaware income tax.

The second item of proposed legislation amends Title 12 and Title 25 of the Delaware Code as follows:

- (1) Amending 12 Del.C. § 3303(b) to include a definition of a “noncharitable purpose”.
- (2) Restating 12 Del.C. § 3536 to clarify the section in light of recent numerous amendments to the section.
- (3) Amending 12 Del.C. § 3541(c) to include a definition of a “noncharitable purpose”.
- (4) Amending 12 Del.C. § 3555 so that this section pertains exclusively to trusts created for the care of animals living at the time of a settlor’s death.
- (5) Adding a new § 3556 to Title 12, regarding trusts created for noncharitable purposes other than the care of animals living at the time of a settlor’s death.
- (6) Making technical changes to 12 Del.C. § 3570(11)(b)(7).
- (7) Amending 12 Del.C. § 3570(11)b9 to permit the trustor of a trust created under the Qualified Dispositions in Trust Act to be reimbursed from the trust for taxes payable by the trustor on the income of the trust on a mandatory or discretionary basis.
- (8) Adding a new § 3315 to Title 12, clarifying that when a fiduciary has discretion with respect to the exercise of a power, the exercise of such power by the fiduciary shall be deemed to be proper unless the court determines that the fiduciary abused its discretion.
- (9) Adding a new subsection (d) to § 3585 of Title 12, setting forth a five (5) year limitations period for certain claims against a trustee by beneficiaries of the trust.
- (10) Amending 25 Del.C. § 503(a) to confirm that a trust created for a “noncharitable purpose” may be perpetual.
- (11) Applying the provisions of 12 Del.C. § 3306 to 12 Del.C. § 3303.
- (12) Adding a new subsection (f) to § 3313 of Title 12 to include the term “protector” as part of the term “advisor”.
- (13) Amending 12 Del.C. § 2322(a)(3) to clarify the definition of a “slayer”.

(14) Adding a new subsection (g) to § 3301 of Title 12, incorporating provisions of existing 12 Del.C. § 3321.

(15) Repealing 12 Del.C. § 3321.

(16) Adding a new § 3549A of Title 12, limiting a trustee's duty to provide information to beneficiaries under the age of twenty-five (25) years.

(17) Setting forth effective dates for the above changes.

The third item of proposed legislation contains a proposed new § 3314 of Title 12, intended to pursuant the inadvertent exercise of a general power of appointment by a trustee. Further questions regarding this item of proposed legislation should be directed to Mr. Gordon.

Mr. Nenno requested that Mr. Stein review the proposed legislation to confirm that it conforms with legislative submission guidelines, and Mr. Stein agreed to do so.

- g. Unauthorized Practice of Law – Report of Committee. No report.
- h. Family Law/Estates and Trust Joint Committee – Report of Committee. No report.
- i. Power of Attorney/Health Care Directive Committee – Report of Committee. No report.
- j. Uniform Estate Tax Apportionment Committee – Report of Committee. No report.

3. Old Business. None.

4. New Business.

a. Committee formation for Uniform Transfers to Minors Act. Ms. Stallman requested that any Section members interested in serving on the Uniform Transfers to Minors Act Committee should contact her.

b. Patent of Use of GRATs. Ms. Stallman informed the Section that Todd A. Flubacher, Chair of the DSBA Section on Taxation, had received correspondence from the Tax Section of the Texas Bar Association indicating that the group was planning to take action to attack the existing patent on the use of grantor retained annuity trusts (or “GRATs”) as estate planning devices.

c. Combined Campaign for Justice Breakfast. Ms. Stallman informed the Section that the Combined Campaign for Justice (“CCJ”) would be holding a breakfast in the Community Services building on February 20, 2008, from 8:30 a.m. to 9:30 a.m. to thank its

donors. As the Section was a donor to the CCJ last year, the Section's members are invited to attend the breakfast.

d. Model Principles of Records Management. Ms. Stallman informed the Section that the DSBA has adopted the Model Principles of Records Management, and that the President of the DSBA has asked if the Section would consider also adopting said model principles. After brief discussion, the Section decided not to adopt such principles.

e. History of Bar Association. Ms. Stallman informed the Section that Mike McTaggart is preparing a history of the DSBA. Mr. McTaggart has asked the Section to prepare a brief 5-page supplement summarizing important developments in estate and trust law in Delaware from 1995 to the present. Ms. Stallman requested that any Section member interested in participating in this project should contact her.

5. Adjournment. There being no further business, the meeting adjourned at approximately 4:30 p.m.

Respectfully submitted,

Miguel D. Pena, Secretary