

**MINUTES**  
**DSBA ESTATES AND TRUSTS SECTION**  
**JANUARY 4, 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, January 4, 2005 commencing at 3:35 p.m.

In attendance were: Todd A. Flubacher, Gregory J. Weinig, David J. Garrett, Richard W. Nenno, Daniel F. Lindley, Dorothy K. Scarlett, Anne Stallman (by invitation), Anthony J. Testa, Jr., Richard J.A. Popper, Bruce W. Tigani, Janice R. Tigani, Joseph M. Nicholson, Sheriden Black (by invitation), Amy C. Hudson, G. Michael Richwine (by invitation), and Miguel D. Pena.

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

1. Minutes. The minutes of the December 7, 2004 meeting were unanimously approved.

Vote on Delaware Estate Tax Legislation. Richard Popper advised that the version of the proposed legislation attached to the agenda for this meeting was an earlier draft which was subsequently amended. The current version was distributed at the meeting. The differences between the two versions consist of: (1) in Section 1, paragraph (a)(2), the new version adds the words “state death taxes paid for” between the phrases “the federal estate tax laws grant a credit for” and “estates of decedents dying on the date of death of such resident or nonresident decedent”; (2) in the last clause of Section 1, the new version corrects a typographical error by amending the phrase “federal state tax return” to read “federal estate tax return”; and (3) in Section 3, the new version inserts the word “on” between the words “date” and “which” in the phrase “with respect to a decedent who dies on a date which the federal estate tax laws do not grant a credit for state death taxes paid,” such that in the new version the phrase reads “with respect to a decedent who dies on a date on which the federal estate tax laws do not grant a credit for state death taxes paid.”

After discussing the differences between the two versions, a motion was made to approve the legislation circulated at the meeting. The motion was 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. Richard Nenno reported that there continues to be discussion between this Committee and the Alternative Entities Subcommittee of the Corporation Law Section concerning the draft legislation pertaining to charging orders and judgments over interests in limited liability companies and limited partnerships.

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

Trust Act 2005 – Report of Committee. Richard Nenno reported that the Committee continues to work on proposed legislation.

Total Return Trust Statute – Report of Committee. Richard Nenno reported that legislation is in progress to correct the error that arose when the bill that was enacted last year was transcribed from the Section’s proposed legislation.

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

Estate Administration Committee – Report of Committee. No report.

DSBA Technology Committee – Report of Committee. Anthony Testa reported that the DSBA ListServ for this Section is indeed up and running, and that Section members should be able to post and receive messages via the ListServ. Todd Flubacher commended Mr. Testa’s efforts and noted that the DSBA was using two documents that Mr. Testa drafted (“DSBA ListServ Guidelines” and “Sections of Taxation and of Estates and Trusts Report on Section ListServ and Web Page Capabilities,” both of which were distributed at the December meeting and with this month’s agenda) as the template for similar documents for use by other Sections.

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.

Old Business.

a. Sales of Real Property by Guardians of Minors. Gregory

Weinig reported that after last month's meeting, Richard Popper advised that a requirement for two appraisals of real estate proposed to be sold by guardians of minors existed in an earlier bill that was not enacted into law. The statute detailed in the December 2004 issue of *In Re*, along with the notice from the Chancellor requires only one appraisal.

b. 12 Del. C. § 3302. A question was raised concerning whether the correction to recent amendments of 12 *Del. C.* § 3302 discussed at the December meeting should be undertaken by the Trust Act 2005 Committee. That Committee will consider undertaking this task.

New Business.

Recent Developments. Richard Nenzo reported that in a ruling from the bench in the matter of R. Leigh Duemler v. Wilmington Trust Company, Vice Chancellor Strine recently upheld a statutory defense under 12 *Del. C.* § 3313(b).

Other New Business. None reported.

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

Respectfully submitted,

Gregory J. Weinig, Secretary