

**MINUTES**  
**DSBA ESTATES AND TRUSTS SECTION**  
**JUNE 14, 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, 17th Floor, 1201 North Market Street, Wilmington, Delaware, 19801, on Tuesday, June 14, 2005, commencing at 12:00 p.m.

In attendance were: Todd Alan Flubacher, Gregory J. Weinig, Hon. Diane Clarke Streett, David J. Garrett, Richard C. Kiger, David J. Ferry, Jr., Harold Shaffer, Johannes R. Krahmer, F. Peter Conaty, Jr., G. Michael Richwine (by invitation), Miguel D. Pena, Bruce W. Tigani, Janice R. Tigani, Michael R. Stein, Thomas P. Sweeney, Norris P. Wright, Michael M. Gordon, Peter S. Gordon, Richard J.A. Poper, John M. Stull, Anthony J. Testa, Jr., Kalimah Z. White, Dorothy K. Scarlett, Richard W. Nenno, Mary B. Hickok, Anne L. Stallman (by invitation), Patricia E. Hall, Francis S. Barbiarz, John L. Olsen, and Beverly J. Wik.

Following a well-received lunch arranged by Todd A. Flubacher, Chair, Mr. Flubacher called the meeting to order.

1. Minutes. The minutes of the May 3, 2005 meeting were unanimously approved.
2. Legislation and Rules Committees.
  - a. Uniform Principal and Income Act – Report of Committee. Norris Wright reported that the committee may have draft legislation ready to present to the Section by the fall of 2005.
  - 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 has been enacted into law, and that sister legislation with respect to general partnerships and limited liability companies is pending in the General Assembly, with passage and enactment anticipated. Assuming that is the case, this item will be removed from future agendas.
  - d. Chancery Court Rules 117 and 132 – Report of Committee. No report.
  - f. Trust Act 2005 – Report of Committee. Todd Flubacher reported the recent history of this proposed legislation. Before the vote on its approval before the DSBA Executive Committee, minor changes not requiring Section approval were made. The legislation was then approved unanimously by the Executive Committee on June 1, and has been introduced in the Delaware State Senate as S.B. 150. If it passes, it will proceed to the Delaware House of Representatives. Mr. Flubacher thanked DSBA President Helen Winslow, who was present, for her invaluable assistance in getting this proposed legislation through the DSBA Executive

Committee and to the legislature. Mr. Flubacher and Ms. Winslow also thanked several others for their tireless efforts, including Richard Nenno, Richard Bacon, Grover Brown, Peter Gordon, Leonard Togman, Thomas Pulsifer, Lawrence Hamermesh, David McBride, and DSBA lobbyist Mary Davis.

f. Delaware Elective Share Statute - Report of Committee. David Ferry reported that the Committee is still working on draft legislation.

g. Estate Administration Committee - Report of Committee. No report.

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.

k. Uniform Disclaimers of Property Interests Act Committee - Report of Committee. Beverly Wik reported that the task of comparing the Uniform Act provisions to Delaware's existing disclaimer statutes has begun, and that it is hoped that a report will be ready for circulation at the September or October 2005 Section meeting. The decision whether to seek enactment of the Uniform Act will apparently be made by December 2005.

### 3. Old Business.

a. Standing Committee on Unauthorized Practice of Law. Peter Conaty reported that the committee has continued to focus upon the acts of a certain public accountant in Delaware, including that individual's full-page advertisement in the "yellow pages" under "Lawyers" and his periodic advertisements in *The News Journal*. Hon. Diane Clarke Streett advised that this individual's frequently erroneous filings in her office are rejected, and that he is permitted to file documents on behalf of an estate only as its personal representative and not as the "agent" for the personal representative or in any other capacity. As for possible remedies, there is apparently a large file on this individual at the Office of Disciplinary Counsel, but as the individual is not an attorney, that office has no jurisdiction over him. In addition to consulting the material in that office's file, other possible courses and solutions were also discussed and/or will be pursued.

### 4. New Business.

a. Recent Developments. Richard Nenno recommended that the members of the Section read the recent decision of the United States Tax Court in *Estate of Schutt*, 2005 T.C. Memo 126 (May 26, 2005), a case in which Thomas Sweeney had drafted the estate plan and was successful in requesting that the court uphold valuation discounts for Delaware Business Trusts. This victory was in marked contrast to the results in several other recent cases, particularly the *Turner/Thompson* decision issued by the United States Court of Appeals, Third Circuit. Todd Flubacher echoed these sentiments by reporting that in a recent ALI/ABA taped update that he viewed, the commentators praised the lawyering in *Schutt*.

The above led to a discussion concerning ALI/ABA updates in general, in which it was reported that one can attend via computer as well as satellite link.

b. Other New Business.

(1) Introduction of New Chief Deputy Register of Wills. Hon. Diane Clarke Streett, New Castle County Register of Wills, introduced Nina Bawa, who will be serving in the Chief Deputy Register of Wills position vacated by Denise Nordheimer.

(2) "Trusts for Pets". Gregory Weinig reported that at least one member of the General Assembly is interested in legislation concerning "trusts for pets," which exists in several other states. Mr. Weinig asked whether anyone was interested in forming a committee for this purpose. It being too late to draft legislation for this year's legislative session, it was decided to table the issue until the September 2005 Section meeting.

c. Election of 2005-2006 Officers. David Garrett, Nominating Committee Chair, announced the proposed slate of officers for 2005-2006 that was reported in the agenda for this meeting: F. Peter Conaty, Jr. for Chair, Gregory J. Weinig for Vice Chair, and Anne L. Stallman for Secretary. Upon motion duly made, the Section voted upon and unanimously approved the proposed slate of officers.

Mr. Garrett thanked outgoing Chair Todd Flubacher for his dedicated efforts this year, particularly with regard to the Trust Act 2005 legislation. The Section gave Mr. Flubacher a well-deserved round of applause.

Mr. Conaty, Chair, advised that the first September 2005 Section meeting will in all likelihood be held on its usual date, the first Tuesday of September (i.e., Tuesday, September 6, 2005 at 3:30 p.m.), with the location to be announced.

There being no further business, the meeting was adjourned at 1:15 p.m.

Respectfully submitted,

Gregory J. Weinig, Vice Chair

**AGENDA**  
**DSBA ESTATES AND TRUSTS SECTION**  
**September 6, 2005**

The September 6, 2005 meeting of the Section will be held at 3:30 p.m. at the offices of Morris, Nichols, Arsht & Tunnell, 17th Floor, 1201 North Market Street, Wilmington, Delaware, 19801.

1. Approval of Minutes.
2. Committees' Reports.
  - a. Uniform Principal and Income Act - Report of Committee.
  - b. Section 529 Plans - Report of Committee.
  - c. Chancery Court Rules 117 and 132 - Report of Committee.
  - d. Delaware Elective Share Statute - Report of Committee.
  - e. Estate Administration Committee - Report of Committee.
  - f. DSBA Technology Committee - Report of Committee.
  - g. By-Laws - Report of Committee.
  - h. Last Remains Statute - Report of Committee.
  - i. Uniform Disclaimers of Property Interests Act Committee.
3. Old Business.
4. New Business.
  - a. Recent Developments.
  - b. Other New Business.
    - (1) Fundamentals Seminar