

**MINUTES
DSBA ESTATES AND TRUSTS SECTION
MARCH 1, 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, March 1, 2005 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Gregory J. Weinig, Beverly J. Wik, David J. Garrett, Richard W. Nenno, Mary B. Hickok, Dorothy B. Scarlett, Richard C. Kiger, F. Peter Conaty, Jr., Neal J. Howard, William H. Lunger, Richard J.A. Popper, Bruce W. Tigani, Francis S. Babiarz, Michael A. Friedberg, and Trisha W. Hall.

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

1. Minutes. The minutes of the February 1, 2005 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. LLC/LP Statutes – Report of Committee. Richard Nenno advised that the legislation discussed at the last two Section meetings, which would designate charging orders as the exclusive remedy for creditors of holders of interests in limited partnerships and limited liability companies, exists in two parallel forms, one for each entity type. The legislation concerning limited liability companies will be voted on at the next Taxation Section meeting.

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

e. Trust Act 2005 – Report of Committee. Draft legislation, and helpful background information concerning the draft legislation, had been distributed with this month's agenda. Richard Nenno provided additional background regarding Section 12 of the proposed legislation. No changes to the proposed legislation were suggested. A motion was made to schedule the draft legislation for a vote at next month's meeting, which motion passed unanimously.

This multi-faceted legislation addresses a number of different topics, and Todd Flubacher thanked Richard Nenno and the other Committee members for their comprehensive efforts.

f. Delaware Elective Share Statute – Report of Committee. Gregory Weinig reiterated that the Committee will meet later in March.

g. Estate Administration Committee – Report of Committee. Richard Kiger reported that an estate settlement guide will soon be available on the New Castle County Register of Wills' website, and will also be used in Kent and Sussex Counties. Estate administration forms will also be updated and standardized for statewide use. The issues these projects are targeting include editing Schedule A of the Inventory form to clarify that it has nothing to do with joint property, and that only solely-held real estate will be included on Schedule A; and addressing issues that arise frequently in estate administration, such as what deductions are allowable on an Accounting.

h. DSBA Technology Committee – Report of Committee. Todd Flubacher reported on behalf of Anthony Testa that Mr. Testa is looking into the possibility of posting meeting agendas and draft and final minutes on the Section website for members to access only if desired. Thus, only the meeting notice and any draft legislation scheduled for a vote would be distributed by e-mail to the members each month.

i. Advanced Health Care Directive Statute – Report of Committee. Peter Conaty reported that the Attorney General's office uses a form of directive that fully complies with the statutory language. Evidently, no state agencies use the statutory form, which does not conform to the statutory language. Mr. Conaty observed that past discussions of this topic at Section meetings revealed that practitioners use their own forms that similarly conform to the statutory language, which was again confirmed by many Section members. Because agencies and practitioners use forms that track the statutory language and do not use the incongruent statutory form, the Committee recommended that it is not necessary to draft legislation to bring the statutory form into compliance with the statutory language. The Committee further recommended that it be disbanded. A motion was made to approve the Committee's recommendations, which passed unanimously. This item therefore will not appear on future agendas.

j. By-Laws – Report of Committee. No report.

k. Last Remains Statute – Report of Committee. No report.

3. Old Business. None reported.

4. New Business.

a. Recent Developments. None reported.

b. Other New Business. Richard Nenno kindly made available to the Section members present a special edition of *Estate Planning*, containing an article he recently co-authored entitled "Delaware Asset Protection Trusts: Avoiding Fraudulent Transfers and Attorney Liability." The article was published in the January 2005 issue.

Mr. Nenno also advised that William Lunger and Peter Conaty are co-authoring an article about practical considerations for drafting asset protection trusts, which will soon be published in *Estates, Trusts & Gifts Journal*.

There being no further business, the meeting was adjourned at 4:05 p.m.

Respectfully submitted,

Gregory J. Weinig, Secretary

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