

MINUTES
DSBA ESTATES AND TRUSTS SECTION
March 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, 18th Floor, 1201 North Market Street, Wilmington, Delaware, 19801, on Tuesday, March 7, 2006 commencing at 3:30 p.m.

In attendance were: F. Peter Conaty, Jr., Anne L. Stallman, Bruce W. Tigani, Denise D. Nordheimer, Mary B. Hickok, Richard W. Nenno, David Garrett, Todd A. Flubacher, Dorothy Scarlett, Michael Friedberg, Richard J.A. Popper, Diane Clarke Streett, Kalimah White, Miguel D. Pena, Trisha W. Hall, Sheriden Black, Beverly Wik, Richard Kiger, Michael Stein, Thomas Sweeney, Colleen E. Pulkrabek (by invitation), Jeff Getty, Edward McNamara (by telephone) and Anthony J. Testa, Jr.

F. Peter Conaty, Jr., Chair, called the meeting to order.

1. Minutes. The minutes of the February 7, 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. Richard Kiger reported that the draft forms (uniform for all counties) were sent to the Chancellor for approval. The instructions for the inventory have been rewritten to be user friendly. If any problems or typos are found in the new forms, please contact Richard Kiger.
 - 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. Beverly Wik reported that the Committee had worked extensively on the statute and will be having an additional meeting later in the week. The draft version of the statute will be circulated shortly by email to section members. Tom Sweeney commented that the Committee carefully reviewed and revised the Uniform Act so as to conform to Delaware practice.

A motion was made which was duly seconded and unanimously approved setting a special Section meeting for Thursday, March 23, 2006 at 3:30 p.m. at the offices of Morris, Nichols, Arsht and Tunnell to discuss the proposed statute and the lapsed distribution statute which is discussed in further detail in paragraph l. below.

j. Trust Act 2006 – Report of Committee. Members of the Committee presented the following draft legislation:

i. Richard Popper distributed draft legislation and discussed the 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); 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. Tom Pulsifer distributed and discussed draft legislation on a trustee's delegation of investment and management functions (proposed 12 *Del. C.* § 3322); clarification that a trustee's statutory power to make distributions in trust rather than outright cannot be exercised so that such trust contributions would not qualify as a gift of present interests (proposed 12 *Del. C.* § 3528(a)); clarification of which law governs a trust when the trust administration is moved to Delaware (proposed 12 *Del. C.* § 3332); and clarification that a consent, release and ratification is enforceable whether or not supported by consideration (proposed 12 *Del. C.* § 3588).

iii. Richard Nenno distributed and discussed draft legislation amending the title of Subchapter IV, Chapter 35, Title 12; amending 12 *Del. C.* § 3551; allowing trusts for pets and purpose trusts (proposed 12 *Del. C.* § 3555); amending 10 *Del. C.* § 6603(a) to clarify that the Court of Chancery has jurisdiction over structured settlements held in trust; clarifying that the power to adjust statute applies to all trusts administered under Delaware law (proposed 12 *Del. C.* § 6113(g)); amending the asset protection trust statute to allow the transferor to release such transferor's interest in a charitable remainder trust in favor of a charity will not cause the trust to be anything other than an irrevocable trust (proposed 12 *Del. C.* § 3570(4)(b)); and amending 12 *Del. C.* § 3536 to allow the beneficiary of a charitable remainder trust to release such beneficiary's interest to a charity.

iv. Denise Nordheimer discussed the possibility of creating a statutory power of attorney that would be drafted with the assistance and cooperation of local banking and financial institutions. The goal would be to reach a consensus whereby the statute would have a penalty/enforceability component. Ms. Nordheimer indicated that this cooperative effort would be done in conjunction with the Delaware Bankers Association. If anyone has questions or comments, please contact Ms. Nordheimer.

k. Unauthorized Practice of Law – Report of Committee. No report.

l. Lapsed Distribution – Report of Committee. Peter Conaty reported that the Committee met and had prepared draft legislation that would be sent out by email to the section members. Current law provides that if a residuary gift under a will lapses such lapsed gift will pass by intestacy. The modern approach is for the gift to augment the other residuary gifts. This statute would be applicable in those Estates where the current anti-lapse statute does not apply.

3. Old Business.

None

4. New Business.

None

There being no further business, the meeting was adjourned at 4:20 p.m.

Respectfully submitted,

Anne L. Stallman, Secretary