

**MINUTES
DSBA ESTATES AND TRUSTS SECTION
MAY 3, 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, May 3, 2005 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Gregory J. Weinig, David J. Garrett, Francis S. Babiarz, Joseph E. Bell, Jr. (by invitation), Dorothy K. Scarlett, Richard W. Nenno, Richard J.A. Popper, Richard C. Kiger, Thomas P. Sweeney, Michael R. Stein, Amy C. Hudson, Mary M. Culley, Kim Gill Hankins, Michael M. Gordon, Peter S. Gordon, Neal J. Howard, F. Peter Conaty, Jr., Richard G. Bacon, Joanna Reiver, Beverly J. Wik, Michael A. Friedberg, and Edward R. McNamara (by telephone).

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

1. Minutes. The minutes of the April 5, 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. Peter Gordon reported that the “charging order” legislation regarding limited partnerships and limited liability companies was approved by the Taxation Section. It will apparently next go to the DSBA Executive Committee and will then be introduced in bill form to the General Assembly.
 - d. Chancery Court Rules 117 and 132 – Report of Committee. No report.
 - e. Trust Act 2005 – Report of Committee. Peter Gordon reported that after meeting with Richard Bacon and Richard Nenno, Grover Brown met with the members of the Court of Chancery regarding this proposed legislation. Mr. Gordon conveyed Mr. Brown’s feedback from the meeting, stating that the Court had no specific negative comments on the proposed legislation and did not raise any objection to the Section presenting it to the Executive Committee. Richard Nenno asked that Mr. Gordon communicate the Section’s thanks to former Chancellor Brown for his extensive efforts.

Separately, two minor changes have been made to the proposed legislation, relating to a recent revenue procedure regarding spousal rights in charitable

remainder trusts and to the legislation's effective dates. Upon motion duly made, the Section unanimously approved the revised proposed legislation.

f. Delaware Elective Share Statute – Report of Committee. Gregory Weinig reported that he will be drafting legislation for consideration by the Committee in the near future.

g. Estate Administration Committee – Report of Committee. Richard Kiger reported on three items of proposed legislation. First, proposed legislation to raise the surviving spouse's allowance under 12 *Del. C.* § 2308 from \$2,000 to \$7,500 is moving through the General Assembly. Second, proposed legislation regarding changes to the small estate affidavit will likely be split into pieces, and will address, among other topics, the acceleration of the time period in which the affidavit may be used to transfer motor vehicles and the retrieval of clothing from a decedent's residence for funereal purposes. Third, proposed legislation regarding changing the title of the Register of Wills to the "Registrar of Wills" likely will not go forward.

h. DSBA Technology Committee – Report of Committee. No report.

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

j. Last Remains Statute – Report of Committee. Richard Bacon reported that the Committee is working on legislation to amend this statute.

k. Uniform Disclaimers of Property Interests Act Committee – Report of Committee. Thomas Sweeney reported that by the September 2005 meeting of the Section, the Committee will present its thoughts on the Uniform Act to the Section. Portions of the Uniform Act have been divided among the Committee members to compare to Delaware's existing disclaimer statutes.

3. Old Business. None reported.

4. New Business.

a. Recent Developments. Richard Nenno recommended review of the new bankruptcy law, as it implicates the bankruptcy treatment of qualified plans, IRAs, Section 529 plans, asset protection trusts, and other assets. Richard Bacon echoed these sentiments, noting in particular the possible effects of the new legislation on IRAs.

Mr. Nenno also reported that a recent decision of a United States District Court in Florida held that an estate was entitled to a refund despite filing the suit for refund more than three years after filing the return and paying the tax. The refund suit was based on the later-discovered facts that, not only was no tax due, but also no return was required in the first place. Because no return had been required, the court held that the refund suit was not untimely.

b. Other New Business. Todd Flubacher reported that the Section has a balance of approximately \$2,100. A proposal was made to have the Section's June meeting be a lunch meeting, as has been done for the past several years. Because the Wilmington Tax Group is having its own lunch meeting on Tuesday, June 7, however, it was agreed that the Section lunch meeting will be held on **Tuesday, June 14, 2005 at 12:00 p.m.**

Mr. Flubacher also reported that new DSBA President Helen Winslow has asked the Section chairs to submit ideas for cross-sectional CLE programs, to encourage greater camaraderie among the Sections.

Finally, Mr. Flubacher reported that the Nominating Committee is still deliberating as to the proposed slate of candidates for Chair, Vice Chair, and Secretary of the Section. The final slate will appear in the agenda for the June meeting and will be voted upon at that meeting.

There being no further business, the meeting was adjourned at 4:25 p.m.

Respectfully submitted,

Gregory J. Weinig, Secretary