

MINUTES
DSBA ESTATES AND TRUSTS SECTION
SEPTEMBER 7, 2004

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 Arshat & Tunnell, 17th Floor, 1201 North Market Street, Wilmington, Delaware, 19801, on Tuesday, September 7, 2004 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Gregory J. Weinig, Richard W. Nenno, William H. Lunger, David A. Diamond (by invitation), Anne L. Stallman (by invitation), Dorothy K. Scarlett, Janice R. Tigani, Bruce W. Tigani, Peter S. Gordon, Michael M. Gordon, David N. Williams, Neal J. Howard, Thomas R. Pulsifer, Michael R. Stein, Beverly J. Wik and W. Donald Sparks, II.

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

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

Legislation and Rule Committees.

Uniform Principal and Income Act – Report of Committee. No report.

Section 529 Plans – Report of Committee. Peter Gordon reported that the Committee has approved proposed statutory amendments, but that some additional conforming provisions are needed before the draft can be submitted to the Section.

Real Property Sales by Estates – Report of Committee. William Lunger reported that the legislation drafted by this Committee was passed by the legislature and signed into law. This item will be removed from future agendas.

LLC/LP Statutes – Report of Committee. Peter Gordon reported that legislation has been drafted to address an issue that arose in connection with legislation that passed in 2004 concerning creditors' rights with respect to charging orders and judgments over interests in limited liability companies and limited partnerships. Donald Sparks reported that the draft legislation will be considered shortly by the Alternative Entities Subcommittee of the Corporation Law Section. Others who wish to join this Committee are encouraged to contact Peter Gordon.

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

report.

Trust Act 2004 (now 2005) – Report of Committee. Peter Gordon reported that one of the two pieces of legislation drafted by this Committee did not reach the legislature. William Lunger reported that the second piece of legislation was passed by the legislature and signed into law. The Committee will continue to work on the passage of the legislation that did not reach the legislature in 2004.

Total Return Trust Statute – Report of Committee. William Lunger reported that the legislation drafted by this Committee was passed by the legislature and signed into law. However, a minor typographical error arose when the legislation was put into bill form. A paragraph may need to be deleted from the legislation as put into bill form, but it is not yet certain whether that can be done without further legislative action. William Lunger brought this issue to Daniel Wolcott's attention in a letter and Mr. Lunger is still awaiting a response from Mr. Wolcott as to the resolution of this issue. This item will be kept on the agenda until this issue is resolved.

Delaware Elective Share Statute – Report of Committee. Gregory Weinig reported that the Committee will ask the Court whether it has any other issues that should be addressed along with those the Committee is currently targeting.

Estate Administration Committee – Report of Committee. No report.

DSBA Technology Committee – Report of Committee. No report.

UTMA Statute – Report of Committee. William Lunger reported that the legislation drafted by this Committee was passed by the legislature and signed into law. This item will be removed from future agendas.

Advanced Health Care Directive Statute – Report of Committee. No report.

By-Laws – Report of Committee. William Lunger reported that the process of reviewing Section By-Laws for conformance with DSBA By-Laws is ongoing.

Old Business.

Section Dues. Due to recent surpluses attributable to electronic mailings, it was proposed that the Section dues be lowered. Todd Flubacher will check on the membership figures, costs, and related concerns with DSBA to determine whether this is feasible.

b. Treas. Reg. §1.643-3/NIMCRUT. No report.

New Business.

Recent Developments. None reported.

Other New Business.

Format/Guidelines for New Legislation. Todd Flubacher proposed that the Section consider instituting a modified process for drafting and presenting legislation to the Section, including, for example, new legislation being presented in both clean and blacklined versions to more clearly reflect changes and new legislation being accompanied by a written Legislative Proposal which states the issue to be addressed, the costs and benefits and the classes of constituents to be affected. It was agreed that such guidelines should be adopted as aspirational goals and should be considered on a case-by-case basis. Peter Gordon stated that he would use these new guidelines as an initial trial with the legislation to be presented by the Section 529 Plan Committee.

Unauthorized Practice of Law. Todd Flubacher reported that a local accounting practice has entered appearances in the Register of Wills' office on behalf of personal representatives. A representative of the Office of Disciplinary Counsel has expressed the desire to speak with the Section about this issue. A broader discussion followed regarding whether the Section or the Bar in general should take steps to define what actions constitute the practice of law.

Fundamentals Seminar. The seminar will be held on December 15, 2004. Todd Flubacher inquired whether anyone is interested in filling the place of one of the instructors who has presented the Case Study in the past. Discussion occurred regarding whether a session on Delaware advantages should be added to the seminar or instead, whether coverage of more basic topics should be expanded, given the target audience.

There being no further business, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Gregory J. Weinig, Secretary