

MINUTES
DSBA ESTATES AND TRUSTS SECTION
September 6, 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, September 6, 2005 commencing at 3:30 p.m.

In attendance were: F. Peter Conaty, Jr., Anne L. Stallman, Thomas Pulsifer, Monifa Williams, Charles Durante, Gregory J. Weinig, Will Lunger, Kathy DeLacy, Richard J.A. Popper, Michael R. Stein, Thomas P. Sweeney, Donald Sparks, Bruce W. Tigani, Janice R. Tigani, Trisha Hall, Michael M. Gordon, Peter S. Gordon, G. Michael Richwine (by invitation), Kimberly Gill Hankins, Denise D. Nordheimer, Mary B. Hickok, Richard W. Nenno, Neal Howard, George W. Kern, V, Sheridan Black, Jo Donohue.

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

1. Minutes. The minutes of the June 14, 2005 meeting were unanimously approved.

2. Legislation and Rule Committees.

a. Trust Act 2005 – Report of Committee. Richard Nenno reported that after the final section meeting of the 2004-2005 year the proposed legislation (S. Bill 150) was passed by the legislature and signed into law by the governor on June 30, 2005. Mr. Nenno clarified that the statute was effective as of August 1, 2005.

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

c. Section 529 Plans – Report of Committee. No report.

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

e. Delaware Elective Share Statute – Report of Committee. Gregory Weinig reported that draft legislation had been circulated among the Committee members for comment.

f. Estate Administration Committee – Report of Committee. No report.

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

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

i. Last Remains Statute – Report of Committee - No Report. Peter Gordon commented that similar legislation had been introduced in Pennsylvania and it was supported by the Funeral Directors Association.

j. Uniform Disclaimers of Property Interests Act Committee – Report of Committee. Thomas Sweeney reported that materials had been circulated among the committee members and that the committee would be reporting to Michael Houghton in October.

3. Old Business.

a. Standing Committee on Unauthorized Practice of Law. Peter Conaty reported that the Office of Disciplinary Counsel and the Attorney General had reviewed the information provided by the committee and that both offices would be pursuing possible solutions against a certain public accountant in Delaware.

b. “Trusts for Pets” Gregory Weinig reported that one member of the General Assembly is interested in legislation concerning “trusts for pets”. Mr. Weinig mentioned that volunteers were needed to assist in drafting the statutory language. Thomas Pulsifer commented that this trust could be considered a purpose trust and could be added to the Trust Act 2006 draft legislation.

4. New Business.

a. Recent Developments. Peter Gordon commented on a new statute (S. Bill 170) that provides after the death of a person the next of kin may take possession of the decedent’s automobile(s) and enter the residence to obtain clothing for burial. The statute also increased the spousal allowance from \$2,000 to \$7,500 (§2308). This legislation was not drafted by this section and Mr. Gordon inquired whether there was someone in Dover who monitors updates to Title 12 before they are passed and notifies this section. A copy of the statute is attached to these minutes.

b. Other New Business.

1. Trust Act 2006 Committee. Richard Nenno requested that the Trust Act Committee be reconstituted this year as the Trust Act 2006 Committee. Richard Nenno indicated that he would contact prior year Committee members (and those who expressed an interest in joining) to determine whether they wish to serve on the Trust Act 2006 Committee. Several members indicated their desire to serve on the Committee.

2. Estates and Trusts Fundamentals Seminar. Peter Conaty indicated that he had received a request by one of the speakers that this seminar be held in late November and not early December. Peter Gordon commented that the Delaware Tax Institute is scheduled for November 30. Mr. Conaty will submit dates for consideration at the next meeting and requested that any speaker who presented last year who was not interested in presenting this year to contact him so that alternate speakers can be identified.

3. Lapsed Distribution Committee. Peter Conaty reported that Delaware common law provides that when there is a lapsed distribution in a testamentary residuary clause such lapsed distribution may pass by intestacy rather than augmenting the shares of the remaining residuary beneficiaries. Mr. Conaty proposed that a committee be formed to determine if the law should be changed. Gregory Weinig, Richard Popper, Michael Stein, Sheridan Black and Mr. Conaty volunteered for this committee. It was also suggested that the Trust Act 2006 Committee may also wish to consider this issue as it relates to trusts.

4. Tax Savings Statute. Peter Gordon suggested that the Trust Act 2006 Committee consider a tax savings statute (also known as a disabling statute) which imposes statutory limitations on Trustee's powers in the event such powers would cause an adverse tax result.

There being no further business, the meeting was adjourned at 3:55 p.m.

Respectfully submitted,

Anne L. Stallman, Secretary

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JUL 12 2005 75 189SPONSOR: Sen. Vaughn & Rep. Ewing;
Sen. Peterson, Blevins; Reps. Ennis, Schwartzkopf

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 170

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO DECEDENT'S ESTATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §2306, Title 12, Delaware Code, by adding a new subsection "(c)", to read as follows:

2 "(c) The next of kin of a decedent shall have the right upon the death of the decedent, (1) to take possession of
3 the decedent's motor vehicle(s) and (2) to enter any premises for the sole and exclusive purpose of removing therefrom clothing
4 belonging to the decedent to be used for the burial or viewing of the decedent. If no next of kin is available, a funeral director may
5 have access to enter the premises for the aforementioned purpose of securing clothes only. The Register of Wills shall provide a
6 form limited to facilitating action taken pursuant to this subsection. Such a form must be obtained prior to any person acting
7 pursuant to this subsection."

8 Section 2. Amend §2308, Title 12 of the Delaware Code, by deleting the phrase "\$2,000", as found at each location
9 therein, and by substituting in lieu thereof, the phrase "\$7,500" at each location.

10 Section 3. Amend §3538(a), Title 12, Delaware Code, by deleting the subsection and by substituting in lieu thereof the
11 following:

12 "(a) When a will that has been probated before the Register of Wills for any of the counties of the State contains
13 a bequest or devise in trust to pay the income arising from any part of the estate of the testator to or for the benefit of a person other
14 than the person named as trustee, the Register of Wills before whom the probate is made shall, within 10 days after the closing of
15 the estate, deliver to the Register in Chancery for that county a certificate setting forth the name and last address of the testator, the
16 date of the probate of the testator's will, the name and address of the trustee appointed thereby and the provisions of the will relating
17 to said trust or trusts. This section shall apply only in those instances (1) where the documents closing the estate show a balance in
18 the hands of the personal representative that can be distributed to the trust in order to fund it and (2) that terms exist, as stated in the
19 will, for the creation of the trust. In those instances where it is clear that no notice of the trust need be given to the Register in
20 Chancery, the Register of Wills shall note on its files that no notice of the trust was given to it and state why."

SYNOPSIS

This Bill permits the next of kin to have immediate access to two items of the decedent's personal property, the motor vehicle(s) and clothing needed for a burial. The reason for the change as to the clothing is that many times there is no other means of gaining access to a premises in order to select clothing for the burial without opening an estate that otherwise would not have to be opened. The reason for access to the motor vehicle is that many times there is no other asset of value in the decedent's estate that would require action without opening an estate. If this is the case and the family lives outside Delaware, they must choose between opening an estate that otherwise would not be opened or returning thirty days after the decedent's death to arrange for change of title to the vehicle using a small estate affidavit. A funeral director is also able to gain access for clothing only if no next of kin is available. The Bill also increases the spousal allowance from \$2,000 to \$7,500.

Finally, this Bill eliminates the need for the Register of Wills to notify the Register in Chancery when a will is received that creates a trust, but requires the Register of Wills to notify the Register in Chancery when an estate closes if the will created a trust and if there are assets remaining to fund the trust and the terms stated in the will for the creation of a trust still apply; for example, the trust beneficiaries have not at that time reached the age where the trust would cease to exist. The only changes to current law are (1) that the notice to the Register in Chancery is given at the close of the estate instead of at the beginning, and (2) notice is given only if there are assets with which to fund a trust and a need for the trust to come into existence as stated in the will itself.

Author: Senator Vaughn

AGENDA
DSBA ESTATES AND TRUSTS SECTION
October 4, 2005

The October 4, 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.
 - j. Trust Act 2006 - Report of Committee.
 - k. Unauthorized Practice of Law - Report of Committee.
 - l. Lapsed Distribution - Report of Committee.
3. Old Business.
 - a. Fundamentals Seminar.
4. New Business.
 - a. Recent Developments.
 - b. Other New Business.