

MINUTES
DSBA ESTATES AND TRUSTS SECTION
DECEMBER 2, 2003

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 Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware on Tuesday, December 2, 2003 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Kimberly Gill Hankins, Francis S. Babiarz, Richard C. Kiger, Richard J. A. Popper, Mary B. Hickok, Kathleen DeLacy, Miguel D. Pena, F. Peter Conaty, Jr., William H. Lunger, Edward R. McNamara, Anthony J. Testa, Jr., George W. Kern, Edmond M. Ianni, Bruce W. Tigani, Janice R. Tigani, Jane T. Monahan, David J. Garrett, Beverly J. Wik and Peter S. Gordon.

William H. Lunger, Chair, called the meeting to order.

1. Minutes. The minutes of the November 4, 2003 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. Peter S. Gordon reported that the Committee had met and analyzed Section 529 plan statutes in a number of states and identified four areas where potential changes could be made to the Delaware statute: (i) estate tax deduction; (ii) increasing the total contribution limit; (iii) asset protection features; and (iv) allowing trusts to be permissible owners of Section 529 plan accounts. Upon consideration of these possible changes, the Committee suggested that the Section propose legislation to permit trusts to be able to own Section 529 plan accounts and allow trustees to contribute assets to Section 529 plans. Mr. Gordon mentioned that there are several other states which already permit trusts to own Section 529 plan accounts. Anthony Testa, a member of the Committee, suggested that it may be useful to broaden the statute even further to allow other forms of entities to contribute to Section 529 plan accounts such as limited liability companies, limited partnerships, corporations and statutory trusts. Mr. Testa mentioned that some other states currently permit this. Mr. Gordon stated that the Committee would consider a statutory amendment, including the possibility of allowing trusts as well as other forms of entities to own Section 529 plan accounts and that the Committee hopes to report on this issue and propose legislation at the regular February Section meeting. Mary B. Hickok stated that she is aware that some trusts are currently invested in Section 529 plan accounts and that she would try to determine which states allow this and will report back to Mr. Gordon with her findings.

c. Real Property Sales by Estates – Report of Committee. F. Peter Conaty, Jr. reported that the Committee had met and will plan to conduct a discussion at the next regular Section meeting regarding how practitioners proceed with the sale of real estate under various situations.

d. LLC/LP Statutes – Report of Committee. No report.

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

f. Trust Act 2004. No report.

g. Delaware Elective Share Statute – Report of Committee. William H. Lunger reported that he spoke with David Ferry and Mr. Ferry asked Mr. Lunger to notify the Section that he has not yet received any feedback regarding the Delaware Elective Share Statute. Mr. Lunger solicited feedback for this Committee.

h. Voluntary Mediation – Report of Committee. No report.

i. Estate Administration Committee. Richard C. Kiger circulated a memorandum at the meeting providing a status update of the Committee. A discussion ensued regarding a proposal to raise the small estate threshold from the current \$20,000 amount. Peter S. Gordon asked if any member of the Section has had a problem effecting the transfer of physical stock certificates for small estates. A discussion ensued regarding this issue and Mr. Kiger agreed to add this issue to the scope of the Committee.

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

k. UTMA Statute – Report of Committee. The Section unanimously approved the proposed legislation which was circulated with the notice for the meeting revising Sections 4501 and 4507 of Title 12 of the Delaware Code in the form in which it was presented. Richard J. A. Popper also stated that this Committee will continue to monitor the legislation which has been proposed by Representative Smith and noted that the Committee has concerns regarding potential gift tax problems and public policy concerns regarding circumventing student loan and scholarship aid requirements by secondary schools, which is a purpose of the statute mentioned in its synopsis.

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

3. Old Business. None

4. Recent Developments.

a. Recent Developments. None.

b. Other New Business.

(1) January Meeting. William H. Lunger inquired as to whether any Section members would have an objection to changing the date of the next regular Section meeting from January 6, 2004 to January 13, 2004. No objection was raised to this change and it was decided to hold the next regular Section meeting on Tuesday, January 13, 2004 commencing at 3:30 p.m. in the offices of Young Conaway Stargatt & Taylor, LLP.

(2) Old Estates. William H. Lunger reported that he received a call from the Office of Disciplinary Counsel informing him that the Office of Disciplinary Counsel plans to send inquiry letters to all attorneys of record for estates that have been opened beyond a certain period of time.

(3) Section Dues. William H. Lunger received an e-mail from Charles S. McDowell regarding whether the Estates and Trusts Section would have any objections to the waiving of Section dues for first year attorneys for the period of time between their bar admission date and the date on which annual membership dues are owed. There was no objections raised from the Section and Mr. Lunger stated that he would report to Mr. McDowell that the Section concurs with his proposal.

There being no further business, the meeting was adjourned at 4:15 p.m.

Respectfully submitted,

Todd A. Flubacher, Vice Chairman