

MINUTES
DSBA ESTATES AND TRUSTS SECTION
January 13, 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 Young Conaway Stargatt & Taylor LLP, 1000 West Street, 17th Floor, Wilmington, Delaware on Tuesday, January 13, 2004, commencing at 3:30 p.m.

In attendance were: F. Peter Conaty, Jr., Francis S. Babiarz, David J. Garrett, Joanne Marie H. Walters, Janice R. Tigani, Bruce W. Tigani, Kathleen DeLacy, John M. Stull, Michael A. Friedberg, Kimberly Gill Hankins, Richard J.A. Popper, Michael R. Stein, Richard C. Kiger, Norris P. Wright, Richard G. Bacon, John A. Ciccarone, Edmond M. Ianni, Mary B. Hickok, Richard W. Nenno, Todd A. Flubacher, William H. Lunger, Anthony J. Testa, Jr. (by teleconference), David J. Ferry, Jr., Miguel D. Pena and Dorothy K. Scarlett.

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

1. Minutes. The minutes of the December 2, 2003 meeting were unanimously approved after correcting a typographical error in Paragraph 2.b.(i) in which the minutes were changed to reflect the deletion of "estate tax deduction" and the insertion of "income tax deduction" in its place.

2. Legislation and Rules Committees.

a. Uniform Principal and Income Act – Report of Committee. Norris P. Wright reported that the Committee is considering adding an additional Committee member as the Committee will now be addressing potential changes to the Act as a result of the final Regulations being issued under Section 643 of the Internal Revenue Code.

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

c. Real Property Sales By Estates – Report of Committee. No report.

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 – Report of Committee. Mr. Nenno reported that the Committee would be meeting the following day and anticipated that the Committee may circulate a discussion draft of proposed changes prior to the Section's February, 2004 meeting.

g. Delaware Elective Share Statute - Report of Committee. Mr. Ferry reported that the Committee recently met and that the Committee is of the opinion that there are certain threshold issues regarding the elective share statute which should be submitted to the Section as a whole. Mr. Ferry further reported that the Committee had not received any feedback from members of the Section regarding any proposed changes or comments to the current elective share statute. Mr. Ferry identified five (5) issues concerning the Delaware elective share statute that the Committee has considered: (i) Whether an elective share statute is necessary; (ii) Whether any substantive changes need to be made to the elective share statute at this time; (iii) Whether the percentage of an estate that a surviving spouse is entitled to should be correlated to the number of years of marriage; (iv) Whether there should be an automatic presumption that each spouse contributed equally to assets titled joint with right of survivorship or as tenants by the entirety; and (v) Whether the contributory estate under the elective share statute should be modified to include or exclude other assets. Mr. Ferry further reported that the consensus of the Committee to the issues raised in Subparagraph (i), (ii), (iii) and (iv) was in the affirmative (with the exception of Edward Lynch as to Subparagraph (ii)) and that they have not yet reached a conclusion regarding Subparagraph(v). Mr. Ferry has requested that all Section members submit any comments to the Committee at their earliest convenience so that the Committee can make their recommended changes to the statute. There was also a discussion regarding whether the statute should continue to require the preparation of a Form 706, U.S. Estate Tax Return, based upon the fact that with the increased exemption amounts, many estates are no longer required to prepare such returns.

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

i. Estate Administration Committee. Mr. Kiger reported that the Committee had met in December, 2003 and that minutes of such meeting are available to anyone who may request them from Mr. Kiger. Mr. Kiger further reported that the Committee would be meeting again in several weeks.

j. DSBA Technology Committee – Report of Committee. None.

k. UTMA Statute – Report of Committee. No report.

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

3. Old Business. Mr. Lunger reported that despite the inclement weather the Fundamentals Seminar was successful and thanked all of the Section members who participated.

4. New Business.

a. Recent Developments.

1. Mr. Nenno requested that in light of the Final Regulations being issued under Section 643 of the Internal Revenue Code, he would like to reconvene the Total Return Trust Committee to review the statute in light of the Final Regulations. John Herdeg will continue to Chair the Committee.

2. There was a discussion regarding several speakers at the Hecklering Institute expressing their dissatisfaction with the Delaware Supreme Court's decision in the Chavin matter.

3. Mr. Wright commended Mr. Nenno on an excellent job on presenting at the Hecklering Institute and further noted that the materials submitted by Mr. Nenno were superb.

4. Mr. Popper requested that each Section member use the main door into the conference room located closest to the reception area.

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

Respectfully submitted,

F. Peter Conaty, Jr., Secretary