

MINUTES
DSBA ESTATES AND TRUSTS SECTION
NOVEMBER 4, 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, November 4, 2003 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Francis S. Babiarz, Richard C. Kiger, Mary M. Cully, Amy C. Hudson, Richard J. A. Popper, Mary B. Hickok, Kathleen DeLacy, Miguel D. Pena, F. Peter Conaty, Jr., Hunt Worth, Kimberly M. Gill, William H. Lunger, Edward R. McNamara, Anthony Testa, Jennifer R. Noel, Gregory J. Weinig, Richard G. Bacon, Patricia E. Hall and George W. Kern.

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

1. Minutes. The minutes of the October 7, 2003 meeting were unanimously approved.

2. Legislation and Rule Committees.

a. Uniform Principal and Income Act – Report of Committee. Richard G. Bacon reported that the Committee plans to draft legislation this year.

b. Section 529 Plans – Report of Committee. No report. William H. Lunger reported that he spoke with Peter S. Gordon prior to the meeting and Mr. Gordon plans to report to the Section at the next regular Section Meeting.

c. Real Property Sales by Estates – Report of Committee. No report. F. Peter Conaty, Jr. stated that the Committee will have a report at the next regular Section meeting.

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. Richard G. Bacon reported that the Committee has held several meetings and will have a proposal for new legislation by early 2004. The Committee has scheduled its next meeting for November 5, 2003. Mr. Bacon solicited feedback for that meeting.

g. Delaware Elective Share Statute – Report of Committee. No report.

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

i. Estate Administration Committee. Richard C. Kiger reported that he will send a letter to the three counties' Register of Wills in the near future. A discussion ensued concerning a Court Rule which requires the Register of Wills to provide the Register in Chancery with notice of the creation of a testamentary trust within 10 days after the estate is opened. This has caused administrative problems for the Register in Chancery which prefers to receive notice when the estate is closed. Mr. Kiger stated that this Committee will draft a proposed Rule change to address this issue.

j. DSBA Technology Committee – Report of Committee. Anthony Testa reported that the DSBA Technology Committee held its first meeting on October 8, 2003 and was attended by representatives from most all of the DSBA Sections. Mr. Testa reported that the Supreme Court is considering requiring all Delaware attorneys to register on a listserv to receive email communications, and that the DSBA may soon offer a menu of listservs for each Section as well as sub-listservs for subcommittees.

k. UTMA Statute – Report of Committee. Richard J. A. Popper reported that the Committee has met and drafted proposed legislation which Mr. Popper distributed at the Section meeting. Mr. Popper proposed that the draft legislation be circulated with the agenda and notice of the next regular Section meeting and that a vote be scheduled for that meeting. Mr. Popper also discussed the fact that Representative Smith has proposed new legislation that would amend the UTMA statute to allow UTMA accounts to last until the minor reaches age 25. A discussion ensued concerning potential transfer tax issues. The UTMA Statute Committee will monitor this proposed legislation.

l. Advanced Health Care Directive Statute – Report of Committee. No report. Todd A. Flubacher stated that he would send F. Peter Conaty, Jr., the Chair of this Committee, proposed language for amending the optional form contained in Section 2505 of Title 16 to address the requirements of the Health Insurance Portability and Accountability Act of 1996.

3. Old Business. None.

4. Recent Developments.

a. Recent Developments. None.

b. Other New Business.

(1) Election of Officers. Todd A. Flubacher was unanimously elected to serve as Vice Chairman of the Section and F. Peter Conaty, Jr. was unanimously elected to serve as Secretary of the Section.

(2) Asset Protection Trust Survey. William H. Lunger and Mary B. Hickok reminded the Section to please contact Dick Nenno with information for the asset protection trust survey.

(3) Clearance Letters from Division of Revenue. William H. Lunger stated that John A. Herdeg contacted him prior to the meeting and asked Mr. Lunger to discuss an issue relating to the fact that the Delaware Division of Revenue will not issue a clearance letter for a Delaware estate until a final account for the estate has been approved, even if the federal tax clearance letter has been received by the estate. Responsibility for addressing this issue was added to Estate Administration Committee headed by Richard C. Kiger.

There being no further business, the meeting was adjourned at 4:10 p.m.

Respectfully submitted,

Todd A. Flubacher, Vice Chairman