

MINUTES
DSBA ESTATES AND TRUSTS SECTION
OCTOBER 7, 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, October 7, 2003 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, Francis S. Babiarz, Richard C. Kiger, David J. Garrett, Mary M. Cully, Amy C. Hudson, Richard J. A. Popper, Michael A. Friedberg, Michael R. Stein, Thomas P. Sweeney, Joseph E. Bell, Jr., Mary B. Hickock, Janice R. Tigani, Kathleen DeLacy, Miguel D. Pena, F. Peter Conaty, Jr., Joanne H. Walter, Richard W. Nenno, Neal J. Howard, Hunt Worth, Kimberly M. Gill, William H. Lunger, Lynn D. Wilson, Peter S. Gordon, Joanna Reiver and Bruce W. Tigani.

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

1. Minutes. The minutes of the September 9, 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 has met and will circulate a letter addressing recommendations for the Section to consider at the next regular Section Meeting.

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. Richard W. Nenno reported that the Committee has met and is currently drafting a proposal for new legislation. The Committee has scheduled their next meeting and will report to the Section once their proposals are finalized. The Committee is looking at possible amendments to the Qualified Dispositions in Trust Act as well.

g. Delaware Elective Share Statute – Report of Committee. No report. William H. Lunger asked to please forward all comments to David J. Ferry.

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

i. Estate Administration Committee – Report of Committee. Richard C. Kiger reported that he met with Beverly J. Wik to discuss the issues to be addressed by this Committee. Mr. Kiger circulated a draft letter to be sent to the three counties' Register of Wills, and he invited comments on the letter. Mr. Kiger outlined a plan for the Committee which would include the creation of subcommittees to address specific issues, and a time-table which would result in a report to the Section after Labor Day 2004. Mr. Kiger solicited feedback from the Section regarding issues for the Committee to consider. The primary issues for the Committee to address will involve uniformity among the three counties' Register of Wills and improvements on current rules and procedures. Joanne H. Walter joined the Committee.

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

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

3. Old Business. None

4. Recent Developments.

a. Recent Developments.

1. Richard W. Nenno asked the Section to provide him with data regarding the number of asset protection trusts created in Delaware for his presentation as a member of a panel at the Heckerling Institute which will include representatives of other states, including Alaska and Nevada.

2. Todd A. Flubacher raised an issue concerning recently enacted Section 3528 of Title 12 of the Delaware Code which may require an amendment to that Section. Mr. Flubacher will forward a description of this issue to Richard W. Nenno on behalf of the Trust Act 2004 Committee.

3. Peter S. Gordon mentioned that there is no clear law in Delaware pertaining to the notice requirements for filing trust petitions with the Chancery Court and that a new statute defining such notice requirements may be necessary or useful. Mr. Gordon will send a memo to Richard W. Nenno on behalf of the Trust Act 2004 Committee.

4. William H. Lunger reported that he attended the meeting of the chairs of the Sections of the Delaware State Bar Association. Based on discussions at the meeting, Mr. Lunger proposed that in the future, the Section will contact In Re Magazine, the magazine of the Delaware State Bar Association, with notice of any new legislation to be proposed by the Estates and Trusts Section. Mr. Lunger also noted that there will be an effort on behalf of all of the Sections to review their By-Laws and evaluate possible changes.

5. William H. Lunger reported that Holly June Stiefel will be resigning as Vice Chair of the Section. After reviewing the Section By-Laws as well as the Bar Association By-Laws, Mr. Lunger communicated with the Sections' nominating committee prior to the meeting. The resulting proposal is to nominate Todd A. Flubacher, the current Secretary, to the position of Vice Chair for the remaining 2003-2004 year, and to nominate F. Peter Conaty, Jr. as Secretary for the remaining 2003-2004 year. Mr. Lunger will provide notice of the vote in the agenda for the next Regular Section Meeting and will schedule a vote at that meeting.

6. F. Peter Conaty, Jr. raised an issue regarding inconsistencies between the Advance Health Care Directive Statute and the proposed form of Advanced Health Care Directive provided in the Statute. Mr. Conaty provided an example in which the Statute states that a witness of an Advanced Health Care Directive may not be a beneficiary under the principal's will or a trust, however, the proposed form only provides that the witness may not be a beneficiary under the principal's will. A Committee was created consisting of F. Peter Conaty, Jr., as Chair, and Mary M. Cully.

There being no further business, the meeting was adjourned at 4:06 p.m.

Respectfully submitted,

Todd A. Flubacher, Secretary