

MINUTES
DSBA ESTATES AND TRUSTS SECTION
SEPTEMBER 9, 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, September 9, 2003 commencing at 3:30 p.m.

In attendance were: Todd A. Flubacher, William H. Lunger, Patricia E. Hall, Mark Olson, David J. Ferry, Jr., Michael Richwine, Dorothy K. Scarlett, Miguel D. Pena, Ed Ianni, Kathleen Delacy, Neal Howard, Michael Stein, Thomas Sweeney, Richard Popper, Francis Babiarz, Kimberly Gill, Jennifer Noel, Beverly Wik, Bruce Tigani, Janine Tigani, and Thomas R. Pulsifer.

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

1. Minutes. The minutes of the June 3, 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. Mark Olson stated that there is no report and no meeting has been scheduled.
 - c. Real Property Sales by Estates – Report of Committee. No report.
 - d. LLC/LP Statutes – Report of Committee. Will Lunger stated that there is no report and no meeting has been scheduled.
 - e. Chancery Court Rules 117 and 132 – Report of Committee. Tom Sweeney stated that there is no report.
 - f. Trust Act 2003. A new Committee for Trust Act 2004 was appointed. The Committee will consist of the members of the Trust Act 2003 Committee. The Committee has already begun looking at the Delaware Qualified Dispositions in Trust Act to consider amendments which will address recent improvements made to the Alaska Act as well as an overall review of the Delaware Act.
 - g. Trust and Estates Task Force (H. R. 91) – Report of Members. Will Lunger reported that there was no increase to the small estate probate exemption in the last legislative session. There were no additional developments to report. This item will no longer appear on the agenda.

h. Delaware Elective Share Statute – Report of Committee. David Ferry sent a letter to John Ciccarone on June 9, 2003 which raises several questions to be put to the Section for consideration in connection with the Delaware Elective Share Statute. Copies of the letter were circulated among the Section at the meeting. Mr. Ferry reported that the Committee held a meeting in May to discuss changes to the statute. Mr. Ferry raised the question of whether amendments should be made to the statute or whether Delaware should even continue to have an elective share statute. Mr. Ferry noted that at least one other state, the State of Georgia, does not have such a statute. Mr. Ferry asked Section members to direct their comments to him for the next Section meeting so that the Committee can proceed with recommendations.

i. Voluntary Mediation – Report of Committee. Todd Flubacher reported that he has reviewed new Sections 346 and 347 of Title 10 which permit the Delaware Court of Chancery, upon the consent of the parties, to (1) mediate business disputes, and (2) adjudicate certain “technology disputes.” Mr. Flubacher noted that Section 346 which deals with technology disputes does not appear to cover mediation of trust-related issues. Mr. Flubacher also noted that he spoke with the drafters of the legislation, and based on that conversation it does not appear that trust-related issues will be included within the scope of “business disputes” which are addressed by Section 347. However, the end of section 347 provides that the Court of Chancery will define by rule those types of cases that are eligible for submission as a business dispute for mediation, and that although trust-related issues were not originally intended to be included within that process, it might be possible for such issues to fall under Section 347. The Section decided to continue the Committee for the purpose of considering whether it might be useful to seek to have trust-related issues addressed under Section 347 and whether it may be necessary to liaison with the Court of Chancery when they develop the applicable rules.

3. Old Business. None.

4. Recent Developments.

a. Recent Developments.

1. The Section discussed preparation for the Estates and Trusts fundamentals course. Will Lunger stated that the prior speakers had agreed to again present their respective sections at the fundamentals course (although Peter Conaty will replace Norris Wright). Will Lunger proposed December 5, 2003 as the date for the fundamentals course.

2. Richard Herrman created a Technology Committee of the Delaware State Bar Association for the purpose of growing the use of technology in the bar and among the Sections of the bar. The first meeting will be held on October 8 at 4:00. Will Lunger volunteered to attend the meeting, however, Mr. Lunger will first speak with Anthony Testa to determine whether he has any interest in participating in this Committee.

3. Will Lunger suggested that the Section form an Estate Administration Committee to address issues that arise at the Register of Wills. The Section discussed problems which have arisen and the inconsistent application of rules pertaining to accountings and affidavits. A Committee was formed consisting of Beverly Wik, Michael Stein, Janice Tigani and Richard Kiger as the Chair.

4. Richard Popper discussed an issue relating to the Uniform Transfers to Minors Act ("UTMA") pertaining to the situation where life insurance is to be payable to a guardian under UTMA. Mr. Popper suggested that UTMA may need to be changed to clarify the term guardian. A Committee was formed consisting of Richard Popper and Mark Olsen.

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

Respectfully submitted,

Todd A. Flubacher, Secretary