

Trusts and Estates Law Section Newsletter

A publication of the Trusts and Estates Law Section
of the New York State Bar Association

A Message from the Section Chair

Our Legislative Process

Some of the most significant work our Section accomplishes is the improvement of the laws governing New York Trusts and Estates practice. Identifying a problem, drafting a solution, presenting it and obtaining approval—in the form of a new piece of legislation—is a key part of what we do.



Carl T. Baker

But it ain't easy.

Drafting new legislation takes work, attention to detail and steady effort. Getting it enacted is a whole other story. It is a time-consuming, long-term process requiring patience and diligence. Let me explain by way of a real example.

Our Estate and Trust Administration Committee identified problems with the law regarding legacies

that are not timely paid. The right of a beneficiary to interest on a delayed legacy was unclear and the process to obtain interest uncertain. The Committee drafted proposed legislation and brought it to the Executive Committee (EC) of our Section. The EC discussed the proposal, recommended changes and sent it back to the committee for further work (Note: I am actually making this up. I do not recall in any detail the conversations at the EC regarding this particular legislative proposal since it first came up for discussion in 2008 and became affirmative legislation in 2011. However, this is the normal process whenever a committee presents proposed legislation. And “discussed” may be a bit mild for a descriptor.)

Eventually, the Committee’s refined proposal was presented, voted on and approved for affirmative legislation. The proposed legislation amends EPTL 11-1.5, EPTL 11-A-2.1, and SCPA 2102 to: (1) confirm that interest will be owed to a beneficiary if the legacy is not paid within 7 months of the fiduciary’s receipt

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of letters; (2) tie the interest rate to be charged to the current economy; and (3) clarify that the payment will be an income tax deduction to the Estate. In short, the proposed legislation creates reasonable protections for beneficiaries while clarifying the rules for all of us who deal with estate settlements. Now, how do we make it law?

The first step involves the larger Bar Association as a whole. For any Section of the NYSBA to pursue legislative changes, the House of Delegates (HOD) must approve the legislation. The process of obtaining approval is essentially administrative, requiring timely posting and noticing of the proposed legislation to the larger Bar so that any other Section or group that may be affected by it will have time to consider the legislation and be able to express their concerns. Upon proper notice to all, this legislation was added to the HOD agenda and approved.

At the same time NYSBA approval is being pursued, experience has taught us that the first thing our intrepid legislators will want to know is who could possibly be against a proposal and why. In the world of Trusts and Estates matters there are several, natural stakeholders who must be “on board” if our legislative proposals are to become law. The first, and perhaps most compatible, is the Trusts, Estates and Surrogate’s Courts Committee of the New York City Bar Association. Because of the size, experience and quality of that Association, and in particular that subcommittee, their support carries significant weight and their interests commonly align with ours. The combined input and expertise of both groups produces more thoughtful, quality legislation. And so, a “Memorandum in Support” was pursued and obtained from the City Bar.

Other groups that are often concerned with our affirmative proposals include the Surrogate’s Association, the New York Banker’s Association, and the Office of Court Administration. Depending on the proposal and who it impacts, our committees will work with any or all of these groups to respond to their concerns and to craft a bill they can support (or at least not oppose).

At this point, having crafted the legislation, having it finely tuned and approved by our EC, presenting it and getting it passed by the NYSBA House of Delegates, and lining up the support of necessary stakeholders (in the matter at hand, the OCA, the Bankers and the City Bar all support this legislation), an enormous number of volunteer hours (perhaps better known as lost billable hours) have been required and contributed by our members...but many more are yet needed.

Working with the NYSBA and their lobbyists, our Legislation and Governmental Relations Committee

obtains sponsors for the legislation in the Assembly and Senate, and bill numbers are assigned (in this case, A01185 and S4952). In the early Spring, representatives of our Section head to Albany for “lobby day” to meet with the bill’s sponsors in the Senate and Assembly, their staffs, and with representatives of the Governor’s office, since his signature will eventually be required, to promote our initiatives in general, address questions, and provide information with the hope of easing the passage of the proposal into law.

And that is where our control and efforts cease and the experience and contacts of the NYSBA lobbyists, to push and seek support for passage, take over, and we, and they, are at the mercy of the vagaries of our legislative processes. Each Spring, with the end of our legislature’s session, a flurry of sudden activity and bill passages occur—and we hope that our initiatives are included. The “Interest on Legacies” legislation was initially put forward but not approved in 2011, and in 2012, and now again in 2013. This fairly straightforward, non-controversial proposal, with the affirmative support of all key players, once again was not passed in the final rush of legislative enactments. Why not? No one seems to know. The workings of our legislature remain an enigma shrouded in a mystery. And so, this proposal will again be pursued in 2014, and the patience and diligence of our dedicated committee members will again be required and tested.

I offer this information to all of you for several purposes. First and foremost, out of respect for and to acknowledge the hard work and extraordinary efforts of our Committees and their members. Secondly, as a report on one aspect of our Section’s efforts and processes. And lastly, to emphasize what is required for a relatively modest legislative change and proposal.

That last point provides context for an initiative that is currently under way: the complete reformation of our statutory Trust Code. A special committee of our Section has been charged with reviewing the Sixth Report of the EPTL-SCPA Advisory Committee—a report that recommended New York enact the Uniform Trust Code, “but with substantial variations.”

This is a massive undertaking, addressing important and complex legislation, in which all of the above referenced stakeholders have strong and independent interests. We can only hope that when finally agreed to and readied for enactment, the legislative process will honor and respect the considered effort that will have been applied to this project.

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