

SB19 FAV.pdf

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Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 23, 2025

The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 19: *Estates and Trusts – Compensation of Guardians of Property and Trustees*

Dear Chairman Smith and Members of the Committee,

Under current Maryland Code Est. & Trusts §14.5-708, a trustee or a guardian is entitled to commission based on the amount of income collected in each year and on the fair value of the principal held in the trust at the end of each year.

The rate of commission for income is as follows: 6% on all income from real estate, ground rents, and mortgages collected in each year; and 6.5% on the first \$10,000 of all other income collected in each year; 5% on the next \$10,000, 4% on the next \$10,000; and 3% on any remainder.

The rate of commission for principal is: 0.4% on the first \$250,000; 0.25% on the next \$250,000; 0.15% on the next \$500,000; and 0.1% on any excess.

Under current law, a trustee which is a financial institution or who is a member of the Maryland Bar may file a schedule of rates to govern the trust. This schedule is subject to circuit court review if a qualified beneficiary files a petition to review the reasonableness of the rates in the schedule.

However, currently trustees who are not financial institutions or members of the Maryland Bar are limited to the commission formula set forth in the statute based on the income and principal of the trust each year. This can result in an individual trustee receiving commissions that inadequately reflect the work the individual trustee did during the year.

Senate Bill 19 resolves this issue. First, for guardians, it retains the commission formula based on the income and principal administered by the guardian but accords to the guardian the right to petition for an increase in fees, providing that notice of such a petition must be given to interested parties of the guardianship estate. Second, for trustees, it removes the commission calculation based on income and principal of the trust and replaces it with a standard of “reasonable under the circumstances”, as determined by a court with jurisdiction over the trust. Insofar as an individual trustee is concerned, the individual trustee will be able to receive

“reasonable” commissions that reflect the work the individual trustee did on behalf of the trust each year. Insofar as trustees which are financial institutions or who are members of the Maryland Bar are concerned, Senate Bill 19 retains their right to file a schedule of rates and give notice to all qualified beneficiaries, who will have the right to come into court and oppose the proposed fee schedule. In either event, one half of the compensation paid to a trustee will be allocated to the income of the trust, and the other half of the compensation will be allocated to the principal of the trust.

I appreciate the Committee’s consideration of Senate Bill 19 and will be happy to answer any questions the Committee may have.

MSBA Estates Trusts Law Section Testimony SB19 Fa

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To: Members of Senate Judicial Proceedings Committee
From: MSBA Estate & Trust Law Section
Date: January 23, 2025
Subject: SB19 – Estates and Trusts – Compensation of Guardians of Property and Trustees
Position: Support

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 19 – Estates and Trusts – Compensation of Guardians of Property and Trustees**. Senate Bill 19 seeks to (i) amend MD Code Ann. Est. & Trusts §14.5-708 by removing the trustee commission calculation based on percentages of income and principal of the trust, and replacing such calculation with a widely used reasonableness standard, and (ii) amend MD Code Ann. Est. & Trusts §13-218 to allow the compensation structure for guardians of property to remain unchanged.

I. Description of Current Law.

A. Trustee Compensation. MD Code Ann. Est. & Trusts §14.5-708 provides that unless the trust instrument provides otherwise or a court increases or decreases commissions for sufficient cause or services of an unusual nature, a trustee is entitled to commission based on the amount of income collected in each year and on the fair value of the principal held in the trust at the end of each year. The rate of commission for income is as follows:

- 6% on all income from real estate, ground rents, and mortgages collected in each year; and 6.5% on the first \$10,000 of all other income collected in each year; 5% on the next \$10,000, 4% on the next \$10,000; and 3% on any remainder.

The rate of commission for principal is as follows:

- 0.4% on the first \$250,000; 0.25% on the next \$250,000; 0.15% on the next \$500,000; and 0.1% on any excess.

However, a trustee who is a financial institution or a member of the Maryland Bar may file an increased schedule of rates with the State, which is subject to circuit court review upon petition of a qualified beneficiary. There is no proposed change for these trustees.

For example, in a situation where a trustee is not permitted to file an increased schedule of rates and the trust assets consist of a home and furnishings worth \$750,000 and cash and money market funds of \$250,000 earning 5% per year, with no final distribution made in year one, the compensation to such trustee for year one would be \$3,100. Although there currently exists a mechanism to enable compensation of a trustee outside of the formula to be more in-line with the actual skill, effort and time expended, utilizing such mechanism involves a court proceeding, is time consuming, costly, and infrequently undertaken.

B. Guardianship Compensation. Est. & Trusts §13-218 provides that except in unusual circumstances, a guardian of property is entitled to the same compensation as the trustee of a trust as provided in Est. & Trusts §14.5-708. The provisions of §14.5-708(i) expressly state that guardians are not entitled to file a schedule of increased rates, therefore, the commission for guardians of property is determined by the above-described compensation calculation based on percentages of income and principal.

II. Problems Addressed by SB19

Trustees who are not financial institutions or members of the Maryland Bar (“individual trustees”) are limited to commissions based on relatively low percentages of income and principal of the trust each year. For trusts with a relatively modest level of assets or hard to manage assets, the commissions paid to individual trustees based on the application of the current law are typically unreasonably low and inadequately reflect the value of the trustees’ work. Conversely, there are also situations where an individual trustee manages a multimillion-dollar trust owning only marketable securities and gets paid an annual commission that exceeds the value of the work provided.

Individual trustees are fiduciaries who are called on to handle a variety of tasks that may include identifying, valuing and liquidating real estate, bank and investments accounts, automobiles, boats, collectables, antiques, and other personal property. It is also typical for trustees to have to deal with creditors, bankers, accountants, attorneys, real estate brokers and multiple beneficiaries to carry out their fiduciary obligations to appropriately liquidate assets and provide information and financial accounts to the trust beneficiaries. The commissions determined by cumbersome and outdated formulas in the current law many times are woefully inadequate as compared to the value of the work that an individual trustee is called on to carry out.

III. How this Legislation Solves the Problem:

SB19 will solve the above stated problem by allowing individual trustees to be more fairly compensated for their work by (i) removing the existing trustee commission calculations based on percentages of income and principal of the trust, and (ii) replacing it with a reasonableness standard that has been adopted by most states and is based on Section 708 (Compensation of Trustee) of the Uniform Trust Code.

Specifically, SB19 amends Est. & Trusts §14.5-708 to provide that an individual trustee will be compensated pursuant to the terms of the trust instrument, however, if such instrument is silent on the matter, an individual trustee is entitled to compensation that is reasonable under

the circumstances. SB19 also provides factors to consider when determining the reasonableness of a trustee's compensation including:

- (i) The value and character of the trust property and risks and responsibilities of administering the property,
- (ii) The time spent and quality and character of the services provided,
- (iii) The character and cost of services provided by others,
- (iv) The trustee's skill and experience,
- (v) The results obtained, and
- (vi) The terms of the trust.

The proposed reasonableness standard and factors for determining reasonableness help ensure that trustee compensation is fair and appropriate considering the trustee's work involved.

With respect to guardianship compensation, because SB19 would remove the formula compensation provisions in Est. & Trusts §14.708 that determine the compensation of guardians of property by a cross reference in Est. & Trusts §13.218, and no change to guardianship compensation is currently sought, SB19 seeks to move those formula compensation provisions into Est. & Trusts §13.218 in a manner that will preserve the current compensation structure for guardians of property.

The Estate and Trust Law Section of the MSBA has shared SB19 with the Maryland Bankers Association, the Elder Law Section of the MSBA, and the leaders of a guardianship taskforce currently working on a comprehensive guardianship reform bill, and none have expressed opposition to this proposed legislation.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB19 and urges a favorable committee report.**

For Further Information, Please Contact:

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MLA Testimony SB 19.pdf

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Position: FWA



January 19, 2025
Senate Bill 19
Estates and Trusts – Compensation of Guardians of Property and Trustees
Hearing January 23, 2025
Judicial Proceedings Committee
Position: FAVORABLE, WITH AMENDMENTS

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 19 in response to a request from Senator West.

Maryland Legal Aid (MLA) is the largest non-profit law firm in the State of Maryland. We provide court-appointed representation to the alleged disabled person in guardianship proceedings in multiple counties around the state. Many of our clients in these proceedings also face petitions for the appointment of guardians of their property. Guardians of property are responsible for managing property and benefits when someone with a disability is not able to effectively manage their own finances and affairs.

Current Maryland law does provide for a guardian of property to be compensated, but merely allows for “the same compensation and reimbursement ... as the trustee of a trust.” This bill would clarify the structure and sources of reimbursement.

We support a clear method of reimbursement for guardians of property. In too many of our cases, the courts have struggled to find a prospective guardian of property, or have appointed the petitioners’ own attorneys as guardians for our clients which is not favored, because our client’s opposing party gets control of their money. We believe that, with amendments, this bill would protect the income of our clients, who are among the poorest of individuals who have guardians appointed in Maryland.

Right now, the compensation structure would allow a guardian to seek 6.5% of the first \$10,000 of all income collected each year from any source other than real property. Many of our clients only receive income from Social Security, either SSI or SSDI. The maximum monthly SSI benefits are \$967 for an individual. That would amount to \$11,604 per year, and as a result a guardian of property could seek over \$750 per year from some of the poorest people in the State, who are under a guardianship.

We would suggest amending the bill to exempt up to \$1,000 per month of Social Security benefits – both SSI and SSDI – from the income calculations in this bill. This would protect the people under guardianship with the least resources, while still allowing property guardians to be fairly compensated for managing more complicated estates producing more annual income.

With that proposed amendment, MLA urges a favorable report on HB27. Please contact me if you need additional information.

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