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To: Members of House Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: January 22, 2025

Subject: **HB27** – 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 House Bill 27 – Estates and Trusts – Compensation of Guardians of Property and Trustees**. House Bill 27 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 HB27

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:

HB27 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, HB27 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. HB27 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 HB27 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, HB27 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 HB27 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 HB27 and urges a favorable committee report.**

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