

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 27

(Delegate Cardin)

Judiciary

Judicial Proceedings

Estates and Trusts - Compensation of Guardians of Property and Trustees

This bill repeals specific rates (and sources of payment) established in statute for trustee commissions in instances where (1) the trustee compensation amount and source of payment is not established by the trust or any valid agreement and (2) the trustee is not a financial institution or Maryland attorney that is authorized to charge certain increased compensation rates. The bill instead establishes that, in such instances, a trustee is entitled to compensation that is reasonable under the circumstances, distributed evenly from trust income and principal, and establishes various factors for a court to consider in determining whether a trustee's compensation is reasonable. The bill preserves the application of the existing specific rates (and sources of payment) to the compensation of a guardian of the property of a minor or a disabled person.

Fiscal Summary

State Effect: General fund (income tax) revenues may be affected to the extent the bill shifts trust income or principal to trustees' personal or business income through increased trustee compensation. The extent of any impact cannot be reliably estimated and appears likely to be limited. Expenditures are not materially affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Specific Commission Rates Replaced with “Reasonable Compensation”

The bill repeals existing provisions governing commissions paid to trustees if the trust, or the provisions of any valid agreement, does not establish the amount and source of payment of commissions. The repealed provisions establish commissions, at specific rates, on (1) the trust's income; (2) the value of the *corpus* (or principal) held in trust at the end of each year; (3) sales of real or leasehold property; and (4) the value of the *corpus* distributed upon final distribution of a trust estate or portion of a trust estate. Under the repealed provisions, a court may increase or diminish commissions for sufficient cause or allow special commissions or compensation for services of an unusual nature.

In place of the repealed provisions, the bill establishes that (1) a trustee is entitled to compensation that is reasonable under the circumstances if the terms of a trust do not specify a trustee's compensation and (2) the trustee must also be allowed reasonable compensation for other services rendered in connection with the administration of the trust.

If the terms of a trust specify a trustee's compensation, the bill establishes circumstances in which a court may authorize more or less compensation: (1) if the duties of the trustee are substantially different from those contemplated when the trust was first created; or (2) if the compensation specified by the terms of the trust would be unreasonably low or high.

Financial Institutions and Maryland Attorneys Serving as Trustee

Existing provisions that allow a financial institution whose activities are subject to State or federal supervision, or a member of the Maryland Bar, to charge reasonable compensation in accordance with a schedule of increased rates instead of the income commission and annual *corpus* commission rates established for other trustees are largely unchanged by the bill; however, the bill does remove references to those rates being “increased” rates in comparison to the commissions/compensation of other trustees. Under the bill, those provisions allowing for reasonable compensation (rephrased by the bill as “compensation that is reasonable under the circumstances”) in accordance with a schedule of rates cover the entirety of the trustee's compensation as a result of the bill's repeal of provisions establishing specific commission rates for property sales and final distribution of trust *corpus*.

Determining Reasonable Compensation

In determining whether a trustee's compensation is reasonable, the bill establishes that a court must consider:

- the value and character of the trust property;
- the risk and responsibility of administering the trust property;
- the time spent on and the quality and character of the services provided by the trustee;
- the character and cost of services provided by others;
- the trustee's skill and experience;
- the results obtained by the trustee;
- the terms of the trust; and
- any other factor the court considers relevant.

Allocation of Compensation among Trust Principal and Income

With the bill repealing provisions that establish trustee commission rates that are based on, and drawn from, the trust's income and the trust *corpus* (or principal), the bill establishes provisions that instead require one-half of the regular compensation of a trustee, and of any person providing investment advisory or custodial services to the trustee, to be distributed from trust income and the remaining one-half to be distributed from trust principal.

Specific Commission Rates for a Guardian of the Property Preserved

The bill preserves the application of the specific commission rates (applicable to both trustees and a guardian of the property of a minor or a disabled person under current law) to a guardian of the property.

Current Law:

Specific Commission Rates

Unless otherwise specified in the terms of a trust or the provisions of any valid agreement, trustees are entitled to the following commissions:

- *Income Commissions (Paid from Trust Income)* – accounting from July 1, 1981, (1) 6% on income from real estate, ground rents, and mortgages collected in each year and (2) 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;

- *Annual Corpus Commissions (Paid from Trust Corpus)* – accounting from July 1, 1981, (1) 0.4% on the first \$250,000 of the fair value of the trust *corpus* at the end of each year; (2) 0.25% on the next \$250,000; (3) 0.15% on the next \$500,000; and (4) 0.1% on any excess;
- *Commission for Sale of Real or Leasehold Property (Paid from the Proceeds of the Sale)* – the rate allowed by rule of court or statute to trustees appointed to make sales under circuit court decrees or orders; and
- *Commission for Final Distribution of a Trust Estate (or Portion Thereof)* – 0.5% of the fair value of the distributed *corpus*, subject to revision or determination by a circuit court under special circumstances.

A court with jurisdiction over the administration of the trust may increase or diminish commissions for sufficient cause or may allow special commissions or compensation for services of an unusual nature.

Increased Rates for Financial Institutions and Maryland Attorneys Serving as Trustee

A financial institution whose activities are subject to State or federal supervision, or a member of the Maryland Bar, may charge reasonable compensation in accordance with a schedule of increased rates instead of the rates for income commissions and annual *corpus* commissions established in statute, provided that notice of the increased rates is given to the qualified beneficiaries of the trust.

Allocation of Commissions/Compensation among Trust Principal and Income

Statute establishes that, aside from income and annual *corpus* commissions paid at the rates established in statute (which are paid from income and *corpus*, respectively), the trustee must allocate compensation of the trustee, and compensation of any person providing investment advisory or custodial services to the trustee, among principal and income as the trustee determines is fair and reasonable to all beneficiaries.

Specific Commission Rates Also Applicable to a Guardian of the Property

A guardian of the property can be appointed by a court to manage the property of a minor or a disabled person under certain circumstances. A guardian of the property is entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust except in unusual circumstances (in which the court may increase or decrease compensation) or if the disabled person is a recipient of long-term care services and supports under Medicaid (in which case a \$50 maximum limit on monthly compensation applies unless a court finds unusual circumstances exist).

State Revenues: General fund (income tax) revenues may be affected to the extent the bill shifts trust income or principal to trustees' personal or business income through increased compensation of trustees. The extent of any impact cannot be reliably estimated and appears likely to be limited. The bill is expected to have a material impact only in circumstances in which (1) the terms of a trust do not set trustee compensation amounts; (2) the trustee is not a financial institution or Maryland attorney; and (3) there is a material difference between the amount of tax paid when the increased compensation is taxed as part of the trustee's personal or business income in comparison to the amount of tax that would be paid if an equivalent amount was taxed as part of the trust's income.

Small Business Effect: Small businesses that serve as trustees may meaningfully benefit from the bill through increased compensation.

Additional Comments: The Department of Legislative Services notes that the bill's modifications to statute to preserve the application of the existing, specific commission rates for a guardian of the property appear to inadvertently limit – under § 13-218(a)(1) of the Estates and Trusts Article – the ability of a guardian of the property to be reimbursed for actual and necessary expenses. Since this appears to be inadvertent, it is not reflected in the Bill Summary.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 19 (Senator West) - Judicial Proceedings.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

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