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## FIDUCIARY COMPENSATION SCHEDULE CONSERVATOR FOR INCAPACITATED ADULT

Virginia Code § 64.2-1208 allows a “reasonable compensation” to a fiduciary for services rendered in the administration of a conservatorship. There is no specific definition of “reasonable compensation”, but the Commissioner, in the absence of unusual circumstances, will allow a fee based upon the following:

1. Total Assets at Beginning of Accounting Period – A fiduciary may take compensation on an annual basis, based on the fair market value of the estate assets (i.e., principal and undistributed income) at the beginning of the accounting period. The percentages below should be applied annually to the beginning fair market value of the account; for the initial account, the beginning fair market value is the principal amount shown on the inventory:

First	\$500,000.00	1%	(.01)
Next	\$500,000.00	¾ of 1%	(.0075)
Balance over	\$1,000,000.00	½ of 1%	(.005)
Balance over	\$10,000,000.00	By agreement with the Commissioner (prior consultation is required)	

2. Income – An additional fee of 5% should be allowed on non-investment income received during the account period (for example, periodic retirement payments). No compensation is to be calculated on investment income received during the year.

3. Fiduciary compensation may be forfeited if a proper account is not timely filed. § 64.2-1217.

4. Special Rules

a. If the court order clearly sets out compensation in a specific dollar amount or a specific percentage that the fiduciary is to receive, the court order controls, and the fiduciary is entitled to the amount set out.

b. If the court order states that the fiduciary shall receive for services the compensation set out in a referenced published fee schedule in effect at the time such services are rendered, fees as set out in the fee schedule shall be presumed to be reasonable, as that term is used in § 64.2-1208. An

objecting party has the burden of persuading the Commissioner that fiduciary compensation taken according to such a fee schedule is not reasonable. The Commissioner has the ultimate responsibility to determine the reasonableness of fiduciary compensation.

c. If the court order is silent as to the fiduciary's compensation, the guidelines set out herein apply.

d. Compensation should be pro-rated when the required accounting is for a period of less than one full year (*see* § 64.2-1305). In situations where the ward or incapacitated person dies within a short time after the qualification, the Commissioner may consider additional compensation, understanding that much of the fiduciary's work occurs at the beginning of the estate.

e. If the fiduciary employs an attorney or accountant to perform duties that should be performed by the fiduciary, the fees of those persons should be deducted from the compensation due the fiduciary. Note that this does not apply to reasonable fees paid to attorneys or accountants for tax work or litigation or other legal services reasonably necessary for the orderly administration of the estate. The reasonable expense of such services will be allowed in addition to the fiduciary fee.

f. If the fiduciary employs an investment advisor, the advisor's fees, if reasonable, generally should not be deducted from the fiduciary's compensation.

g. If there are co-fiduciaries, generally, one fee will be divided equally among them. The co-fiduciaries may agree among themselves on a different division. If there is a dispute concerning the division of the fee, the Commissioner may hold a hearing to resolve the dispute.

h. If there are successor fiduciaries, the annual compensation shall be pro-rated.

i. The Commissioner may increase or decrease the otherwise allowable compensation in exceptional circumstances. Factors to be considered in determining the compensation include the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, the responsibilities assumed, the risks incurred and the results obtained.

5. If the fiduciary has any questions about the allowable compensation after examining these guidelines, the fiduciary should consult with the Commissioner before taking any fee.

6. Nothing in these guidelines is intended to alter any statute concerning fiduciary compensation.

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