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COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
OFFICE OF THE COMMISSIONER OF ACCOUNTS
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Joseph A. Barsanti
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FIDUCIARY COMPENSATION SCHEDULE EXECUTORS AND ADMINISTRATORS

Virginia Code § 64.2-1208 allows a “reasonable compensation” to a fiduciary for services rendered in the administration of an estate. 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. Income – 5% of income receipts (not including capital gains) realized during each accounting period.

2. Principal – A fee based upon the inventory value, including amended inventories, of the decedent’s probate assets in accordance with the following schedule:

First \$400,000.00	5%
Next \$300,000.00	4%
Next \$300,000.00	3%
Balance over \$1,000,000.00	2%
Balance over \$10,000,000.00	By agreement with the Commissioner (prior consultation is required)

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

4. Special Rules

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

b. If the will 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 will is silent as to the fiduciary’s compensation, the guidelines set out herein apply.

d. Where all parties affected by the amount of compensation are (i) competent to contract (ii) understand the issues involved (i.e., can give “informed consent”) and (iii) agree in writing as to the amount of the compensation to be paid, then the Commissioner will honor the agreement.

e. The value of real estate will be included as property in the decedent's probate estate for compensation purposes only if the Executor is given the power to sell real estate and (i) is instructed to sell real estate in the will, or (ii) is requested to sell real estate by all affected beneficiaries or devisees, or (iii) is required to sell real estate to pay taxes and other charges against the estate, or (iv) the Commissioner determines that such sale is clearly in the best interest of the devisees or beneficiaries as a whole.

f. 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.

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

h. As a general rule, an Executor or Administrator is not allowed compensation based on the value of non-probate assets. The Commissioner may allow such compensation in circumstances where it is necessary for the Executor or Administrator to assume some responsibility for the asset. The Executor or Administrator is advised to make separate compensation arrangements with the beneficial owners of non-probate assets.

i. The fiduciary does not have to wait to take compensation until the estate is closed; however, the time of taking should bear some relationship to the expected life of the estate, the work already done, and the work remaining to be done.

j. 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.

k. If there are successor fiduciaries, the compensation shall be pro-rated between them, provided that the Commissioner may determine the amount to be allowed based on all factors concerning the estate. More than one full compensation fee may be allowed, if the Commissioner determines this to be appropriate.

l. 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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