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COMPUTING FIDUCIARY COMMISSIONS / COMPENSATION

The commissions of fiduciaries are governed by Title 3B, Chapter 18, Articles 1-4 of the New Jersey statutes, which generally provide for statutory amounts to be taken without court allowance, with such commission amounts to be adjusted upon application to the court.

EXECUTORS AND ADMINISTRATORS:

N.J.S.A. 3B:18-12 *et seq.* governs the calculation of commissions of executors and administrators. "Fiduciary" under this article means "personal representative" (which is defined in *N.J.S.A.* 3B:1-2 to include executors and administrators). Commissions for executors and administrators consist of income commissions and corpus commissions.

Pursuant to *N.J.S.A.* 3B:18-13, without court allowance, income commissions in the amount of 6% may be taken on "all income received by the fiduciary." The statute is silent as to whether the income commission may be taken annually, but legal commentary indicates that it may. Apfel, K., *Revocable Trusts*, 16A *N.J. Practice* §57.10.

Pursuant to *N.J.S.A.* 3B:18-14 commissions on all corpus received by the fiduciary may be taken as follows:

5% on the first $200,000;
3.5% on amounts between $200,000 and $1,000,000; and

2% on excess over $1,000,000.

In addition, a corpus commission of 1% may be taken for each additional fiduciary; however, no one fiduciary shall be entitled to any greater commission than that which would be allowed if only one fiduciary were involved.

Additional corpus commissions may be allowed for unusual or extraordinary services, upon an intermediate or final settlement of the account. *N.J.S.A.* 3B:18-16.

Corpus commissions may be taken annually, without court allowance, as follows: if there is one fiduciary, 1/5 of 1% of the value of the corpus may be taken; if there are two or more fiduciaries, an additional 1/5 of that commission amount may be taken for each fiduciary in excess of one. *N.J.S.A.* 3B:18-17. When annual corpus commissions are taken, they are subject to review upon intermediate and final accountings, and may be disallowed to the extent that the aggregate amount taken exceeds the commissions allowable pursuant to *N.J.S.A.* 3B:18-14 and -15.

Corpus commissions may also be reduced by the court upon application by a beneficiary who demonstrates that the fiduciary's services were "materially deficient, or that the efforts required of the fiduciary were substantially less than that generally required for estates of comparable size." *N.J.S.A.* 3B:18-14.

Pursuant to *N.J.S.A.* 3B:18-3, if a will provides for specific compensation of a fiduciary, that compensation is deemed full payment for services, in lieu of the above-referenced commissions, unless the fiduciary files a written renunciation of the specific compensation.

AGENTS UNDER A POWER OF ATTORNEY:

Within the power of attorney document or by other separate written agreement, the principal under a power of attorney may designate whether, by what method, and when an agent under the power of attorney may be compensated. *N.J.S.A.* 46:2B-8.12.

In the absence of such direction by the principal, the agent may apply to the court for an award of "reasonable" compensation. *Id.*

TRUSTEES AND GUARDIANS:

N.J.S.A. 3B:18-23 *et seq.* governs the calculation of commissions of trustees and guardians. "Fiduciary" under this article means "a trustee acting under a will, a nontestamentary trustee as defined in *N.J.S.A.* 3B:16-9, or a guardian." *N.J.S.A.* 3B:18-23. Commissions for trustees and guardians consist of income commissions and corpus commissions.

Pursuant to *N.J.S.A.* 3B:18-24, commissions in the amount of 6% may be taken on all income received by the fiduciary, without court allowance. The statute is silent as to whether the income commission may be taken annually, but legal commentary indicates that it may. Apfel, K., *Revocable Trusts*, 16A *N.J. Practice* §57.10.

Corpus commissions are governed by *N.J.S.A.* 3B:18-25, which directs that a fiduciary may take "annually, without court allowance," commissions on corpus (including accumulated income that has been invested by the fiduciary) at the following rates, subject to an annual minimum commission of $100.00:

> $5.00 per thousand dollars of corpus on the first $400,000; and
> $3.00 per thousand dollars of corpus in excess of $400000.

N.J.S.A. 18:25(a), (c). However, if the fiduciary is a banking institution, that fiduciary is entitled to "such commissions as may be reasonable." *Id.*

A person interested in the trust/guardianship may apply to the court for review of the reasonableness of the commissions; however, the fiduciary is entitled to at least the compensation provided for all fiduciaries pursuant to *N.J.S.A.* 3B:18-25(a) and (c). *N.J.S.A.* 3B:18-15(e).

If there is more than one fiduciary, *N.J.S.A.* 3B:18-25.1 provides that the amount of corpus commission equals the above-referenced annual commissions, "plus 1/5 of that commission for each fiduciary in excess of one"; however, no single fiduciary is entitled to "any greater commission than that which would be allowed if there were only one fiduciary involved." *Id.*

Annual corpus commissions are subject to review on intermediate or final accountings, and to the extent that the aggregate commissions so taken exceed the commissions allowable under the article, they may be disallowed. *N.J.S.A.* 3B:18-27.

Upon the termination of the trust or guardianship, or upon the distribution of assets from the trust/guardianship, additional commissions may be taken by the fiduciary on the corpus so distributed, as follows:

> If the corpus distribution occurs within 5 years of its receipt by the fiduciary, an amount equal to the annual corpus commission allowable but not actually taken, plus 2% of the corpus distributed;

> If the corpus distribution occurs between 5 and 10 years of its receipt by the fiduciary, an amount equal to the annual corpus commission allowable but not actually taken, plus 1 1/2% of the corpus distributed;
>
> If the corpus distribution occurs more than 10 years of its receipt by the fiduciary, an amount equal to the annual corpus commission allowable but not actually taken, plus 1% of the corpus distributed.

Id. If there is more than one fiduciary, the commission shall be the same as that for a single fiduciary, plus an additional 1/5 of the commission for each additional fiduciary. *Id.*

In addition, the court may allow additional corpus commissions on intermediate or final settlement of the fiduciary's account upon a demonstration that unusual or extraordinary services were rendered by the fiduciary. *N.J.S.A.* 3B:18-29.

CONSERVATORS

Pursuant to *N.J.S.A.* 3B:13A-36, a conservator is to be compensated in the same manner as a guardian.

Donald D. Vanarelli, Esq., with offices in Westfield NJ, is a Certified Elder Law Attorney (by NAELA, accredited by the ABA), an Accredited Professional Mediator and an Accredited VA Attorney. Mr. Vanarelli, was selected as a Superlawyer in 2007, 2008 and 2009 and is a founding member of the New Jersey Elder Mediation Center. For more information, contact the Law Office of Donald D. Vanarelli, 908-232-7400 or visit his web site at www.dvanarelli.com.