

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 814
SENATE BILL 152

AN ACT TO PROVIDE A COMPENSATION SCHEDULE FOR TRUSTEES AND FIDUCIARIES WHEN THE CREATING INSTRUMENT DOES NOT SET OUT THE COMPENSATION, AND TO MAKE TECHNICAL AMENDMENTS TO CHAPTER 32.

The General Assembly of North Carolina enacts:

Section 1. Chapter 32 of the General Statutes is hereby amended by adding a new Article thereof to read as follows:

"ARTICLE 5.

"COMPENSATION.

"§ 32-50. Compensation. — (a) Express trust in writing. Unless otherwise provided in the instrument creating the trust relationship, a trustee under an express trust in writing, either inter vivos or testamentary, shall receive compensation for serving as a trustee as follows:

- (1) Income compensation. An annual charge on gross income of:
 - a. five percent (5%) on the first five thousand dollars (\$5,000) of income;
 - b. four percent (4%) on the next seven thousand five hundred dollars (\$7,500) of income;
 - c. three percent (3%) on the next twelve thousand five hundred dollars (\$12,500) of income;
 - d. two and one-half percent (2 1/2%) on the next twenty-five thousand dollars (\$25,000) of income;
 - e. two percent (2%) on all income over fifty thousand dollars (\$50,000).
- (2) Compensation on principal consisting of personal property. An annual charge on the current value of that portion of the principal consisting of personal property, of:
 - a. four-tenths (4/10) of one percent (1%) on the first twenty-five thousand dollars (\$25,000) of principal;
 - b. three-tenths (3/10) of one percent (1%) on the next twenty-five thousand dollars (\$25,000) of principal;
 - c. two-tenths (2/10) of one percent (1%) on the next fifty thousand dollars (\$50,000) of principal;
 - d. one-tenth (1/10) of one percent (1%) on the next one hundred thousand dollars (\$100,000) of principal;
 - e. one-twentieth (1/20) of one percent (1%) on all principal over two hundred thousand dollars (\$200,000).
- (3) Maximum compensation. In addition to the minimum compensation set out in (1) and (2) above, the clerk of superior court at the written request of the trustee may in his discretion allow additional compensation in those cases where the trustee has rendered services beyond the routine services expected by a trustee but in no event shall the total annual aggregate compensation exceed five percent (5%) upon the gross income and the expenditures made in accordance with law, and five-tenths of one percent (0.5%) upon the

current value of principal, both real and personal property, held as assets of the trust. In determining the amount of such additional compensation, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the management activities of the trustee.

For purposes of determining the annual compensation on principal, the current value of the principal shall be determined as of the date of the first annual accounting and each year thereafter on the anniversary of that date by an appraisal of the trustee and certified to the clerk of superior court.

When computing the current value of real property for purposes of subdivision (3) of this subsection (a) the value of a usual dwelling house occupied by a beneficiary and lands reasonably necessary to the use and enjoyment thereof shall not be included.

This section is not applicable to trustees under bond issues, trustees of corporate trusts, employee benefit trusts, deeds of trusts of real property used for purposes of securing loans, or trusts for similar purposes.

(b) Effect of provisions in the instrument. Nothing in the provisions of this section shall be interpreted to prevent a corporate trustee from applying its regularly adopted schedule of compensation in effect and applicable at the time of performance of such services where the settlor or testator in the instrument creating the trust has so stipulated. In those instances where the compensation provision in the instrument creating the trust relationship provides that the compensation shall not exceed the maximum allowed by law this shall be construed as an expression of intention that the compensation shall not exceed the maximum compensation as provided in G.S. 32-50(a)(3), above.

(c) Other fiduciary relationships. Unless otherwise provided, fiduciaries other than trustees under express trusts shall be entitled to compensation fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal and real property when received, and upon the expenditures made in accordance with law. In determining the amount of such compensation, both upon the property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of such property. The clerk of superior court may allow compensation from time to time during the course of the management but the total amount allowed shall be determined on final settlement and shall not exceed the limit fixed in this subsection.

(d) Opening charge. Unless otherwise provided in the instrument, a successor trustee or a trustee of a testamentary trust who did not serve as a personal representative for the estate, may make a written request to the clerk of superior court for an allowance of an opening charge for his services as a trustee. The clerk of superior court may in his discretion allow such opening charge not to exceed one percent (1%) of the value of the principal, both real and personal, received. In determining the amount of such charge, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the opening of the trust or other fiduciary relationship.

(e) Closing charge. Unless otherwise provided in the instrument, a trustee of an express trust or other fiduciary may make a written request to the clerk of superior court for the allowance of a closing charge. If the clerk of superior court makes a written finding of fact that there are unusual circumstances supporting such a request he may in his discretion allow a closing charge not to exceed one percent (1%) of the principal, both real and personal. In determining the amount of such charge, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the closing of the trust or other fiduciary relationship.

(f) Oral trust agreements. Unless otherwise provided in the oral trust agreement, a trustee under a valid oral trust agreement shall receive compensation in accordance with subsection (a).

(g) Principal less than ten thousand dollars (\$10,000). Notwithstanding subsections (a), (b) and (c) above, when the gross value of the principal is ten thousand dollars (\$10,000) or less, the clerk of superior court is authorized and empowered to fix the compensation to be received by the trustee or fiduciary in an amount as the clerk in his discretion, deems just and adequate.

(h) Compensation considered costs of management. All compensation, whether allocated to income or principal shall be charged as part of the costs of management and, upon allowance, may be retained out of the assets against creditors and all other persons claiming an interest.

(i) Charges for management; appeals. Nothing in this section shall be construed:

(1) to prevent the clerk of superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the principal; or

(2) to abridge the right of any interested party to appeal an order of the clerk.

(j) Default or misconduct. No fiduciary or trustee who has been guilty of default or misconduct in the due execution of his office resulting in the revocation of his appointment shall be entitled to any compensation under the provisions of this Article.

(k) Income tax withholding. For the purpose of computing the compensation whenever any portion of the dividends, interest, rents or other amounts payable to a fiduciary or trustee is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount so withheld shall be deemed to be income.

"§ 32-51. Counsel fees allowable to attorneys serving as fiduciaries. — The clerk of superior court, in his discretion, is authorized and empowered to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed him as a fiduciary or trustee) where such attorney in behalf of the trust or fiduciary relationship renders professional services, as an attorney, which are beyond the ordinary routine of management and of a type which would reasonably justify the retention of legal counsel by any fiduciary or trustee not himself licensed to practice law.

"§ 32-52. Applicability. — The provisions of this Article shall apply to all trusts and fiduciary relationships created on or after January 1, 1978, and to all express trusts in writing existing on January 1, 1978 if the instrument does not contain any provision relating to compensation."

Sec. 2. G.S. 28A-23-3 as the same appears in the 1976 Replacement Volume 2A of the General Statutes is hereby amended in subsection (a) line 2 by deleting the words "testamentary trustees, collectors, or other fiduciaries" and inserting in lieu thereof the words "collectors or public administrators" and is further amended in subsection (a) lines 11 and 12 and in subsection (e) lines 1 and 2 by deleting the words "testamentary trustee, collector or other fiduciary" and inserting in lieu thereof the words "collector or public administrator"; and is further amended in subsection (f) line 3 by deleting the words "trustee, collector or other fiduciary" and inserting in lieu thereof the words "collector or public administrator".

Sec. 3. G.S. 28A-23-4 as the same appears in the 1976 Replacement Volume 2A of the General Statutes is hereby amended on line 3 by deleting the words "testamentary trustee, collector, or other fiduciary" and inserting in lieu thereof the words "collector or public administrator"; and is further amended on lines 4 and 8 by deleting the words "or fiduciary" and inserting in lieu thereof the words ", collector or public administrator"; and is further amended on line 5 by deleting the words "or trust".

Sec. 4. Article 11 of Chapter 28A is hereby amended by adding a new section to read as follows:

"§ 28A-11-5. Compensation. — A collector shall be compensated in accordance with Article 23 of this Chapter."

Sec. 5. Article 12 of Chapter 28A is hereby amended by adding a new section to read as follows:

"§ 28A-12-8. Compensation. — A public administrator shall be compensated in accordance with Article 23 of this Chapter."

Sec. 6. G.S. 47-115.1(k) as the same appears in the 1976 Replacement Volume 2A of the General Statutes is hereby amended on line 6 by deleting the words "G.S. 28-170" and inserting in lieu thereof the words "G.S. 32-50(c)".

Sec. 7. G.S. 33-43 as the same appears in the 1976 Replacement Volume 2A of the General Statutes is hereby amended at the end thereof by adding the following "under the provisions of G.S. 28A-23-3."

Sec. 8. G.S. 32-4 is hereby repealed.

Sec. 9. G.S. 25-8-403 is hereby amended by adding a new subsection (4) thereof to read as follows:

"(4) Neither this section nor this Article shall be construed to repeal the provisions of Article 2 of Chapter 32 entitled the Uniform Act for the Simplification of Fiduciary Security Transfers, and if there is in any respect an inconsistency between Article 2 of Chapter 32 and this Article the provisions of the former shall control."

Sec. 10. This act shall become effective January 1, 1978.

In the General Assembly read three times and ratified, this the 29th day of June, 1977.