

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 836

Short Title: Simplify Fiduciary Compensation.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary III.

April 11, 1989

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE COMPUTATION OF FIDUCIARY COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-50 reads as rewritten:

"§ 32-50. Compensation.

(a) Express Trust in Writing. — Unless otherwise provided in the instrument creating the trust relationship, relationship, and except as provided in subsection (b) of this section, 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:~~

- 1 a. ~~Four-tenths (4/10) of one percent (1%) on the first twenty-five~~
2 ~~thousand dollars (\$25,000) of principal;~~
3 b. ~~Three-tenths (3/10) of one percent (1%) on the next twenty-~~
4 ~~five thousand dollars (\$25,000) of principal;~~
5 e. ~~Two-tenths (2/10) of one percent (1%) on the next fifty~~
6 ~~thousand dollars (\$50,000) of principal;~~
7 d. ~~One-tenth (1/10) of one percent (1%) on the next one hundred~~
8 ~~thousand dollars (\$100,000) of principal;~~
9 e. ~~One-twentieth (1/20) of one percent (1%) on all principal over~~
10 ~~two hundred thousand dollars (\$200,000).~~
- 11 (3) ~~Maximum Compensation. — In addition to the minimum compensation~~
12 ~~set out in (1) and (2) above, the clerk of superior court at the written~~
13 ~~request of the trustee may in his discretion allow additional~~
14 ~~compensation in those cases where the trustee has rendered services~~
15 ~~beyond the routine services expected by a trustee but in no event shall~~
16 ~~the total annual aggregate compensation exceed five percent (5%)~~
17 ~~upon the gross income and the expenditures made in accordance with~~
18 ~~law, and five-tenths (5/10) of one percent (1%) upon the current value~~
19 ~~of principal, both real and personal property, held as assets of the trust.~~
20 ~~In determining the amount of such additional compensation, if any, the~~
21 ~~clerk of superior court shall consider the time, responsibility, and skill~~
22 ~~involved in the management activities of the trustee.~~
- 23 (1) Ordinary Compensation.
- 24 a. Income Compensation. - An annual charge on gross income of:
25 1. Five percent (5%) on the first fifty thousand dollars
26 (\$50,000) of income; and
27 2. Three percent (3%) on all income over fifty thousand
28 dollars (\$50,000).
- 29 The annual income compensation may be charged in quarterly
30 increments. In the event that the trustee chooses to charge its
31 compensation in quarterly increments, the trustee shall calculate
32 the quarterly income compensation on the basis of the actual
33 income received during the quarter.
- 34 b. Principal Compensation. - An annual charge on the current
35 value of all the principal assets of the trust, including all real
36 property, of:
37 1. Seven-tenths of one percent (7/10%) on the first three
38 hundred thousand dollars (\$300,000) of principal;
39 2. Five-tenths of one percent (5/10%) on the next seven
40 hundred thousand dollars (\$700,000) of principal; and
41 3. Three-tenths of one percent (3/10%) on all principal over
42 one million dollars (\$1,000,000).

43 For purposes of determining the annual compensation on principal, the current value
44 of the principal shall be determined as of the date of the first annual accounting and

1 each year thereafter on the anniversary of that date by an appraisal of the trustee and
2 certified to the clerk of superior court. The annual principal compensation may be
3 charged in quarterly increments. In the event that the trustee chooses to charge its
4 compensation in quarterly increments, the trustee shall calculate the principal
5 compensation on the basis of the current value of the principal as of the last day of the
6 quarter, multiplying the principal compensation so calculated by twenty-five percent
7 (25%) to prorate it to one quarter.

8 (2) Extraordinary Additional Compensation. In addition to the
9 compensation set out in subdivision (1) above, the clerk of superior
10 court, at the written request of the trustee, may exercise discretion to
11 allow additional compensation in those cases where such additional
12 compensation is reasonable, based upon the difficulty of the services
13 rendered, the skill requisite to perform the services properly, the nature
14 of the assets of the trust, the responsibilities and potential liabilities
15 assumed by the trustee in performing the services, and the resources
16 required to perform the services. Such additional compensation may
17 include compensation for the services of agents or employees of the
18 trustee and may also include reimbursement of out-of-pocket costs.

19 ~~When computing the current value of real property for purposes of subdivision (3)~~
20 ~~of this subsection (a) the value of a usual dwelling house occupied by a~~
21 ~~beneficiary and lands reasonably necessary to the use and enjoyment thereof shall not~~
22 ~~be included.—This section is not applicable to trustees under bond issues, trustees of~~
23 ~~corporate trusts, employee benefit trusts, deeds of trusts of real property used for~~
24 ~~purposes of securing loans, or trusts for similar purposes.~~

25 (b) Effect of Provisions in the Instrument. – Nothing in the provisions of this
26 section shall be interpreted to prevent a corporate trustee from applying its regularly
27 adopted schedule of compensation in effect and applicable at the time of performance of
28 such services where the settlor or testator in the instrument creating the trust has so
29 stipulated. ~~stipulated,~~ has made no reference to the compensation of the trustee, or has
30 not otherwise limited the compensation of the trustee. In those instances where there is
31 no corporate trustee or where the compensation provision in the instrument creating the
32 trust relationship provides that the compensation shall not exceed the maximum allowed
33 by ~~law~~ law, or the amount allowed by law, this shall be construed as an expression of
34 intention that the compensation shall not exceed the maximum compensation as
35 provided in ~~G.S. 32-50(a)(3), above.~~ subsection (a) of this section.

36 (c) Other Fiduciary Relationships. – Unless otherwise provided, fiduciaries other
37 than trustees under express trusts shall be entitled to compensation fixed in the
38 discretion of the clerk of superior court not to exceed five percent (5%) upon the
39 amounts of receipts, including the value of all personal and real property when received,
40 and upon the expenditures made in accordance with law. In determining the amount of
41 such compensation, both upon the property received and upon expenditures made, the
42 clerk of superior court shall consider the time, responsibility, trouble and skill involved
43 in the management of such property. The clerk of superior court may allow
44 compensation from time to time during the course of the management but the total

1 amount allowed shall be determined on final settlement and shall not exceed the limit
2 fixed in this subsection.

3 (d) Opening Charge. – Unless otherwise provided in the instrument, a successor
4 trustee or a trustee of a testamentary trust who did not serve as a personal representative
5 for the estate, ~~may make a written request to the clerk of superior court for an allowance of~~
6 may impose an opening charge for his services as a trustee. ~~The clerk of superior court~~
7 ~~may in his discretion allow such opening charge shall not to exceed one percent (1%) of~~
8 the value of the principal, both real and personal, received. ~~In determining the amount of~~
9 ~~such charge, if any, the clerk of superior court shall consider the time, responsibility, and skill~~
10 ~~involved in the opening of the trust or other fiduciary relationship. Any such charge shall be~~
11 in addition to the compensation allowed under subsection (a) of this section.

12 (e) Closing Charge. – Unless otherwise provided in the instrument, a trustee of
13 an express trust or other fiduciary ~~may make a written request to the clerk of superior court~~
14 ~~for the allowance of~~ may impose a closing charge. ~~If the clerk of superior court makes a~~
15 ~~written finding of fact that there are unusual circumstances supporting such a request he may in~~
16 ~~his discretion allow a closing charge. The charge shall not to exceed one percent (1%) of~~
17 the principal, both real and personal. ~~In determining the amount of such charge, if any, the~~
18 ~~clerk of superior court shall consider the time, responsibility, and skill involved in the closing~~
19 ~~of the trust or other fiduciary relationship. Any such charge shall be in addition to the~~
20 compensation allowed under subsection (a) of this section.

21 (f) Oral Trust Agreements. – Unless otherwise provided in the oral trust
22 agreement, a trustee under a valid oral trust agreement shall receive compensation in
23 accordance with subsection (a).

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

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

33 (i) Charges for Management; Appeals. – Nothing in this section shall be
34 construed:

- 35 (1) To prevent the clerk of superior court from allowing reasonable sums
36 for necessary charges and disbursements incurred in the management
37 of the principal; or
38 (2) To abridge the right of any interested party to appeal an order of the
39 clerk.

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

43 (k) Income Tax Withholding. – For the purpose of computing the compensation
44 whenever any portion of the dividends, interest, rents or other amounts payable to a

1 fiduciary or trustee is required by any law of the United States or other governmental
2 unit to be withheld for income tax purposes by the person, corporation, organization or
3 governmental unit paying the same, the amount so withheld shall be deemed to be
4 income.”

5 Sec. 2. G.S. 32-52 reads as rewritten:

6 **"§ 32-52. Applicability.**

7 ~~The provisions of this Article shall apply to all trusts and fiduciary relationships~~
8 ~~created on or after January 1, 1978, and to all express trusts in writing existing on~~
9 ~~January 1, 1978 if the instrument does not contain any provision relating to~~
10 ~~compensation.~~

11 The provisions of this Article shall apply to all trusts and fiduciary relationships
12 created on or after January 1, 1990, and to all express trusts in writing existing on
13 January 1, 1990, except that as to those express trusts in writing existing on January 1,
14 1990, in which the instrument makes no reference to the compensation of the trustee or
15 has not otherwise limited the compensation of the trustee, the compensation of the
16 trustee shall not exceed that provided in G.S. 32-50(a)(1) and (2)."

17 Sec. 3. This act is effective upon ratification.