

SENATE BILL 19

N2

(PRE-FILED)

5lr1287
CF HB 27

By: **Senator West**

Requested: October 19, 2024

Introduced and read first time: January 8, 2025

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 2, 2025

CHAPTER _____

1 AN ACT concerning

2 **Estates and Trusts – Compensation of Guardians of Property and Trustees**

3 FOR the purpose of clarifying the commissions that a guardian of the property may charge;
4 authorizing a trustee of a trust to charge compensation that is reasonable under the
5 circumstances; authorizing certain trustees to charge compensation that is
6 reasonable under the circumstances and calculated in accordance with a certain
7 schedule of rates; and generally relating to the compensation of guardians of
8 property and trustees of trusts.

9 BY repealing and reenacting, with amendments,
10 Article – Estates and Trusts
11 Section 13–218, 14.5–708, 15–511(3), 15–523, 15–524(a), and 15–526(b)(5)
12 Annotated Code of Maryland
13 (2022 Replacement Volume and 2024 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
15 That the Laws of Maryland read as follows:

16 **Article – Estates and Trusts**

17 13–218.

18 (a) (1) Except in unusual circumstances and as provided in subsection [(b)]
19 (C) of this section, the guardian is entitled to [the same] compensation and reimbursement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



for actual and necessary expenses as [the trustee of a trust] **PROVIDED IN SUBSECTION (B) OF THIS SECTION.**

(2) No petition or hearing is required to entitle the guardian to compensation and expenses.

(3) On the petition of any interested person and on a finding by the court that unusual circumstances exist, the court may increase or decrease compensation.

(B) (1) (I) ACCOUNTING FROM JULY 1, 1981, REGARDLESS OF WHETHER THE GUARDIANSHIP ESTATE WAS IN EXISTENCE AT THE TIME, INCOME COMMISSIONS ARE:

1. 6% ON ALL INCOME FROM REAL ESTATE, GROUND RENTS, AND MORTGAGES COLLECTED IN EACH YEAR; AND

2. A. 6.5% ON THE FIRST \$10,000 OF ALL OTHER INCOME COLLECTED IN EACH YEAR;

B. 5% ON THE NEXT \$10,000;

C. 4% ON THE NEXT \$10,000; AND

D. 3% ON ANY REMAINDER.

(II) INCOME COMMISSIONS SHALL BE PAID FROM AND CHARGEABLE AGAINST INCOME.

(III) INCOME COLLECTED INCLUDES A PORTION OF INCOME PAYABLE TO A TRUSTEE BUT WITHHELD BY THE PAYOR IN COMPLIANCE WITH REVENUE LAW.

(2) (I) ACCOUNTING FROM JULY 1, 1981, REGARDLESS OF WHETHER THE GUARDIANSHIP ESTATE WAS IN EXISTENCE AT THE TIME, COMMISSIONS ARE PAYABLE AT THE END OF EACH YEAR ON THE FAIR VALUE OF THE CORPUS OR PRINCIPAL HELD IN THE GUARDIANSHIP ESTATE AT THE END OF EACH YEAR AS FOLLOWS:

1. 0.4% ON THE FIRST \$250,000;

2. 0.25% ON THE NEXT \$250,000;

3. 0.15% ON THE NEXT \$500,000; AND

1 4. **0.1% ON ANY EXCESS.**

2 **(II) CORPUS COMMISSIONS UNDER THIS PARAGRAPH SHALL BE**
3 **PAID OUT OF AND CHARGEABLE AGAINST THE CORPUS.**

4 **(III) IF A GUARDIANSHIP ESTATE TERMINATES, WITH RESPECT**
5 **TO ALL OR PART OF THE CORPUS HELD IN THE GUARDIANSHIP ESTATE IN THE**
6 **COURSE OF A YEAR, THE COMMISSION FOR THAT YEAR SHALL BE REDUCED OR**
7 **PRORATED ACCORDING TO THE PART OF THE YEAR ELAPSED AND THE AMOUNT OF**
8 **CORPUS AS TO WHICH THE GUARDIANSHIP ESTATE TERMINATES, AND BE**
9 **CHARGEABLE, FOR THAT PART OF THE YEAR, AND WITH RESPECT TO THIS PART OF**
10 **THE CORPUS, AT THE TERMINATION OF THE GUARDIANSHIP ESTATE, ON THE THEN**
11 **VALUE OF THE CORPUS.**

12 **(3) (I) FOR SELLING REAL OR LEASEHOLD PROPERTY, A**
13 **COMMISSION ON THE PROCEEDS OF THE SALE IS PAYABLE AT THE RATE ALLOWED**
14 **BY RULE OF COURT OR STATUTE TO GUARDIANS APPOINTED TO MAKE SALES UNDER**
15 **DECREES OR ORDERS OF THE COURT FOR THE COUNTY WHERE THE REAL OR**
16 **LEASEHOLD PROPERTY IS SITUATED, OR IF THE PROPERTY IS LOCATED OUTSIDE OF**
17 **THIS STATE, FOR SELLING SIMILAR PROPERTY IN THE COUNTY WHERE THE**
18 **GUARDIANSHIP ESTATE IS BEING ADMINISTERED.**

19 **(II) THE COMMISSION DESCRIBED IN SUBPARAGRAPH (I) OF**
20 **THIS PARAGRAPH IS PAYABLE FROM THE PROCEEDS OF THE SALE WHEN**
21 **COLLECTED.**

22 **(4) (I) ON THE FINAL DISTRIBUTION OF A GUARDIANSHIP ESTATE**
23 **OR PORTION OF A GUARDIANSHIP ESTATE, AN ALLOWANCE IS PAYABLE**
24 **COMMENSURATE WITH THE LABOR AND RESPONSIBILITY INVOLVED IN MAKING THE**
25 **DISTRIBUTION, INCLUDING THE MAKING OF A DIVISION, THE ASCERTAINMENT OF**
26 **THE PARTIES ENTITLED TO THE DISTRIBUTION, THE ASCERTAINMENT AND**
27 **PAYMENT OF TAXES, AND ANY NECESSARY TRANSFER OF ASSETS.**

28 **(II) THE ALLOWANCE DESCRIBED IN SUBPARAGRAPH (I) OF**
29 **THIS PARAGRAPH IS SUBJECT TO REVISION OR DETERMINATION BY A COURT**
30 **HAVING JURISDICTION.**

31 **(III) IN THE ABSENCE OF SPECIAL CIRCUMSTANCES, THE**
32 **ALLOWANCE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE**
33 **EQUAL TO 0.5% OF THE FAIR VALUE OF THE CORPUS THAT IS DISTRIBUTED.**

34 **(5) A GUARDIAN MAY PETITION THE COURT FOR THE COUNTY WHERE**
35 **THE GUARDIANSHIP ESTATE IS LOCATED AND OBTAIN APPROVAL FOR AN INCREASE**

1 IN FEES AFTER GIVING NOTICE OF THE ACTION TO THE INTERESTED PARTIES OF THE
2 GUARDIANSHIP ESTATE.

3 (6) THE LEGAL AND COURT COSTS INCURRED BY THE GUARDIAN IN
4 ACCORDANCE WITH A COURT REVIEW UNDER PARAGRAPH (5) OF THIS SUBSECTION
5 SHALL BE CHARGED AGAINST FEES OF THE GUARDIAN AND MAY NOT BE ASSUMED
6 BY THE GUARDIANSHIP ESTATE OR THE INTERESTED PARTIES.

7 [(b)] (C) If the guardian is appointed as the guardian of a disabled person who
8 is a recipient of long-term care services and supports under the Maryland Medical
9 Assistance Program and whose income is subject to § 15-122.3 of the Health – General
10 Article, the guardian is not entitled to receive more than \$50 per month in compensation
11 unless the court makes a finding that unusual circumstances exist.

12 14.5-708.

13 [(a) (1) (i) A testamentary trustee and trustee of any other trust whose
14 duties comprise the collection and distribution of income from property held under a trust
15 agreement or the preservation and distribution of the property are entitled to commissions
16 provided for in this section for services in administering the trusts.

17 (ii) The amount and source of payment of commissions are subject to
18 the provisions of any valid agreement.

19 (iii) A court having jurisdiction over the administration of the trust
20 may increase or diminish commissions for sufficient cause or may allow special
21 commissions or compensation for services of an unusual nature.

22 (2) A schedule of increased rates of income commissions and corpus
23 commissions may be charged by a trustee whose activities are subject to State or federal
24 supervision or that is a member of the Maryland Bar and who has:

25 (i) Filed a schedule of the increased rates of commissions with an
26 appropriate agency; and

27 (ii) Given notice of the scheduled rates or revisions to the qualified
28 beneficiaries of the affected trust.

29 (3) The notice required under paragraph (2) of this subsection shall be
30 delivered to the qualified beneficiaries personally or sent to the qualified beneficiaries at
31 their last known address by certified mail, postage prepaid, return receipt requested.

32 (b) (1) Accounting from July 1, 1981, regardless of whether the trust was in
33 existence at that time, income commissions are:

1 (i) 6% on all income from real estate, ground rents, and mortgages
2 collected in each year; and

3 (ii) 1. 6.5% on the first \$10,000 of all other income collected in
4 each year;

5 2. 5% on the next \$10,000;

6 3. 4% on the next \$10,000; and

7 4. 3% on any remainder.

8 (2) (i) Income commissions shall be paid from and chargeable against
9 income.

10 (ii) Income collected includes a portion of income payable to a trustee
11 but withheld by the payor in compliance with revenue law.

12 (c) (1) Accounting from July 1, 1981, regardless of whether the trust was in
13 existence at that time, commissions are payable at the end of each year on the fair value of
14 the corpus or principal held in trust at the end of each year as follows:

15 (i) 0.4% on the first \$250,000;

16 (ii) 0.25% on the next \$250,000;

17 (iii) 0.15% on the next \$500,000; and

18 (iv) 0.1% on any excess.

19 (2) Corpus commissions under this subsection shall be paid out of and
20 chargeable against the corpus.

21 (3) If a trust terminates, with respect to all or part of the corpus held in
22 trust in the course of a year, the commission for that year shall be reduced or prorated
23 according to the part of the year elapsed and the amount of corpus as to which the trust
24 terminates, and be chargeable, for that part of the year, and with respect to this part of the
25 corpus, at the termination of the trust, on the then value of the corpus.

26 (d) (1) For selling real or leasehold property, a commission on the proceeds of
27 the sale is payable at the rate allowed by rule of court or statute to trustees appointed to
28 make sales under decrees or orders of the circuit court for the county where the real or
29 leasehold property is situated, or if the property is located outside Maryland, for selling
30 similar property in the county where the trust is being administered.

31 (2) The commission described in paragraph (1) of this subsection is payable
32 from the proceeds of the sale when collected.

(e) (1) On the final distribution of a trust estate or a portion of a trust estate, an allowance is payable commensurate with the labor and responsibility involved in making the distribution, including the making of a division, the ascertainment of the parties entitled to the distribution, the ascertainment and payment of taxes, and any necessary transfer of assets.

(2) The allowance described in paragraph (1) of this subsection is subject to revision or determination by a circuit court having jurisdiction.

(3) In the absence of special circumstances, the allowance described in paragraph (1) of this subsection shall be equal to 0.5% of the fair value of the corpus that is distributed.]

(A) (1) IF THE TERMS OF A TRUST DO NOT SPECIFY A TRUSTEE'S COMPENSATION, THE TRUSTEE IS ENTITLED TO COMPENSATION THAT IS REASONABLE UNDER THE CIRCUMSTANCES.

(2) IF THE TERMS OF A TRUST SPECIFY A TRUSTEE'S COMPENSATION, THE TRUSTEE IS ENTITLED TO BE COMPENSATED AS SPECIFIED IN THE TERMS, BUT THE COURT MAY AUTHORIZE MORE OR LESS COMPENSATION IF:

(I) THE DUTIES OF THE TRUSTEE ARE SUBSTANTIALLY DIFFERENT FROM THOSE CONTEMPLATED WHEN THE TRUST WAS FIRST CREATED; OR

(II) THE COMPENSATION SPECIFIED BY THE TERMS OF THE TRUST WOULD BE UNREASONABLY LOW OR HIGH.

(3) IF THE TRUSTEE HAS RENDERED OTHER SERVICES IN CONNECTION WITH THE ADMINISTRATION OF THE TRUST, THE TRUSTEE SHALL ALSO BE ALLOWED REASONABLE COMPENSATION FOR THE OTHER SERVICES RENDERED IN ADDITION TO REASONABLE COMPENSATION AS TRUSTEE.

(B) IN DETERMINING WHETHER A TRUSTEE'S COMPENSATION IS REASONABLE, A COURT SHALL CONSIDER:

(1) THE VALUE AND CHARACTER OF THE TRUST PROPERTY;

(2) THE RISK AND RESPONSIBILITY OF ADMINISTERING THE TRUST PROPERTY;

(3) THE TIME SPENT ON AND THE QUALITY AND CHARACTER OF THE SERVICES PROVIDED BY THE TRUSTEE;

1 (4) **THE CHARACTER AND COST OF SERVICES PROVIDED BY OTHERS;**

2 (5) **THE TRUSTEE'S SKILL AND EXPERIENCE;**

3 (6) **THE RESULTS OBTAINED BY THE TRUSTEE;**

4 (7) **THE TERMS OF THE TRUST; AND**

5 (8) **ANY OTHER FACTOR THE COURT CONSIDERS RELEVANT.**

6 [(f)] (C) (1) In determining what is a single trust for the application of the
7 rates provided in this section, all property held undivided under the terms of the will or
8 other instrument creating the trust shall be considered as a single trust.

9 (2) After shares have been set apart or divided in accordance with
10 paragraph (1) of this subsection, to be held in separate trust, each separate trust set apart
11 shall be considered as a single trust.

12 [(g)] (D) (1) [Instead of the rates of income commissions and corpus
13 commissions provided in subsections (b) and (c) of this section, a] **A** trustee may charge
14 [reasonable] compensation **THAT IS REASONABLE UNDER THE CIRCUMSTANCES AND**
15 calculated in accordance with a schedule of rates previously filed by the trustee with the
16 appropriate agency as specified in paragraph (2) of this subsection, if the trustee is:

17 (i) A financial institution whose activities are subject to supervision
18 by this State or the federal government or that is an instrumentality of the United States;
19 or

20 (ii) A member of the Maryland Bar.

21 (2) A trustee shall file a schedule of rates under this subsection as follows:

22 (i) For a savings and loan association, with the State Director of the
23 Division of Savings and Loan Associations;

24 (ii) For all other trustees, including attorneys and State chartered
25 and national banks, with the Commissioner of Financial Regulation; and

26 (iii) For a trustee administering an estate under the jurisdiction of a
27 court, in addition to the filing described in item (i) or (ii) of this paragraph, with the trust
28 clerk of the court.

29 (3) In a trust involving multiple trustees in which more than one of the
30 trustees may be entitled to file a schedule of [increased] rates, the controlling schedule will

be the schedule filed by the trustee having custody of the assets and maintaining records of the trust.

(4) (i) On the filing by a trustee of a schedule of [increased] rates under this subsection, the trustee shall give notice to the qualified beneficiaries of each affected trust.

(ii) The notice required under this paragraph shall be delivered to the qualified beneficiaries personally or sent to the qualified beneficiaries at the last known address of the qualified beneficiaries by certified mail, postage prepaid, return receipt requested.

(iii) A qualified beneficiary of a trust that objects to the schedule of rates to be charged to that trust, after notifying the trustee of the objection, may petition the appropriate circuit court to review the reasonableness of the rates to be charged.

(iv) The notice required by this paragraph shall include a clear statement of the rights and procedures available to qualified beneficiaries under this subsection.

(v) If the court finds that the rates in the schedule are unreasonable for the current fiscal year of the particular trust, the commissions of the trustee for that trust for that fiscal year shall be limited to the rates charged that trust during the previous fiscal year.

(5) If a trustee does not file a schedule of rates with the appropriate agency under paragraph (2)(i) or (ii) of this subsection and does not notify qualified beneficiaries as provided in paragraph (4) of this subsection, the trustee is [limited to charging the rates set forth] **ENTITLED TO COMPENSATION AS PROVIDED** in [subsections (b) and (c)] **SUBSECTION (A)** of this section.

[(h)] (E) An individual trustee that is not authorized to file a schedule of [increased] rates under this section is [limited to charging the rates set forth] **ENTITLED TO COMPENSATION AS PROVIDED** in [subsections (b) and (c)] **SUBSECTION (A)** of this section unless the trustee petitions the circuit court for the county where the trustee is located and obtains approval [of an increase in fee] **TO FILE A SCHEDULE OF RATES** after giving notice of the action to the qualified beneficiaries of the affected trusts.

[(i)] The schedule of increased rates of income commissions and corpus commissions which trustees are authorized to charge as provided in subsection (g) of this section is not applicable to guardians.]

[(j)] (F) The legal and court costs incurred by the trustee in accordance with a court review under subsection [(g)(4)] **(D)(4)** or subsection **[(h)] (E)** of this section shall be charged against fees of the trustee and may not be assumed by the trust or the beneficiaries.

1 15-511.

2 A trustee shall allocate to principal:

3 (3) Amounts recovered from third parties to reimburse the trust because of
4 disbursements described in [§ 15-524(a)(9)] **§ 15-524(A)(7)** of this subtitle or for other
5 reasons to the extent not based on the loss of income;

6 15-523.

7 A trustee shall make the following disbursements from income to the extent that
8 they are not disbursements to which § 15-503(c)(2) or (3) of this subtitle apply:

9 [(1) Regular compensation of the trustee on income, if determined in
10 accordance with § 14.5-708(b) of this article;

11 (2) That portion of the regular compensation of the trustee, if the
12 compensation is determined in a manner other than in accordance with § 14.5-708(b) and
13 (c) of this article, and that portion of the compensation of any person providing investment
14 advisory or custodial services to the trustee, as the trustee determines is fair and
15 reasonable in accordance with § 15-502(b) of this subtitle;]

16 **(1) ONE-HALF OF THE REGULAR COMPENSATION OF THE TRUSTEE**
17 **AND ANY PERSON PROVIDING INVESTMENT ADVISORY OR CUSTODIAL SERVICES TO**
18 **THE TRUSTEE;**

19 [(3)] **(2)** One-half of all expenses for accountings, judicial proceedings, or
20 other matters that involve both the income and remainder interests;

21 [(4)] **(3)** All of the other ordinary expenses incurred in connection with
22 the administration, management, or preservation of trust property and the distribution of
23 income, including interest, ordinary repairs, regularly recurring taxes assessed against
24 principal, and expenses of a proceeding or other matter that concerns primarily the income
25 interest; and

26 [(5)] **(4)** Recurring premiums on insurance covering the loss of a principal
27 asset or the loss of income from or use of the asset.

28 15-524.

29 (a) A trustee shall make the following disbursements from principal:

30 [(1) Regular compensation of the trustee on principal, if determined in
31 accordance with § 14.5-708(c) of this article;

(2) That portion of the regular compensation of the trustee, if the compensation is determined in a manner other than in accordance with § 14.5–708(b) and (c) of this article, and that portion of the compensation of any person providing investment advisory or custodial services to the trustee, as the trustee determines is fair and reasonable in accordance with § 15–502(b) of this subtitle;

(3) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;]

(1) THE REMAINING ONE-HALF OF THE DISBURSEMENTS DESCRIBED UNDER § 15–523(1) AND (2) OF THIS SUBTITLE;

[(4)] (2) All of the trustee’s compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

[(5)] (3) Payments on the principal of a trust debt;

[(6)] (4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

[(7)] (5) Premiums paid on a policy of insurance not described in [§ 15–523(5)] **§ 15–523(4)** of this subtitle of which the trust is the owner and beneficiary;

[(8)] (6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

[(9)] (7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

15–526.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(5) Disbursements described in [§ 15–524(a)(9)] **§ 15–524(A)(7)** of this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.