

JAN 24 2013

A BILL FOR AN ACT

RELATING TO THE COMPENSATION OF TRUSTEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to clarify current
2 state law relating to trustee compensation. Certain ambiguities
3 in the law have caused disputes between beneficiaries and
4 trustees, which have resulted in litigation.

5 The purpose of this Act is to:

- 6 (1) Clarify trustee compensation;
- 7 (2) Provide a compensation system that is fair to
8 beneficiaries and trustees;
- 9 (3) Reduce issues that require court intervention; and
- 10 (4) Minimize the legal fees and costs connected with court
11 intervention.

12 SECTION 2. Section 607-18, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§607-18 Fees and expenses of trustees.** (a) Unless the
15 trust instrument otherwise provides, or the settlor and trustee
16 otherwise agree, or after the settlor's death, all the
17 beneficiaries and the trustee otherwise agree, the trustee shall
18 be entitled to the compensation set forth in this section and



1 the compensation shall be deemed to be reasonable. For good
2 cause shown, the court may also approve any other fee
3 arrangement that it deems reasonable.

4 (b) Banks and trust companies shall be entitled to
5 compensation as set forth in their published fee schedules as
6 those schedules may be amended from time to time.

7 (c) Except as provided in subsection (a), individuals
8 serving as trustees shall be entitled to the following
9 compensation:

10 (1) Annual Compensation:

11 (A) Upon all moneys and other property received in
12 the nature of revenue or income of the estate,
13 such as rents, interest, dividends, and general
14 profits, trustees [~~except trustees of a~~
15 ~~charitable trust,~~] shall be allowed as
16 [~~commissions~~] compensation five per cent payable
17 out of the income received during each year,
18 [~~seven per cent for the first \$5,000 and five per~~
19 ~~cent for all over \$5,000 the commissions] the~~
20 compensation to be payable as and when the income
21 is received [~~, but not more often than once a~~
22 year.];

1 ~~[-(b)-]~~ (B) Upon the principal of the estate, trustees
2 shall be allowed ~~[as commissions one per cent on~~
3 ~~the value at the inception of the trust payable~~
4 ~~at the inception out of the principal, one per~~
5 ~~cent on the value of all or any part of the~~
6 ~~estate upon final distribution payable at the~~
7 ~~termination out of the principal, and two and~~
8 ~~one half per cent upon all cash principal~~
9 ~~received after the inception of the trust and~~
10 ~~neither being nor representing principal upon~~
11 ~~which the two and one half per cent has~~
12 ~~previously at any time been charged, payable at~~
13 ~~the receipt out of the principal, and two and~~
14 ~~one half per cent upon the final payment of any~~
15 ~~cash principal prior to the termination of the~~
16 ~~trust, payable at the final payment out of the~~
17 ~~principal, and in addition thereto five tenths of~~
18 ~~one per cent on the value at the expiration of~~
19 ~~each year during the continuance of the trust~~
20 ~~payable annually out of the principal, provided~~
21 ~~that such five tenths of one per cent on the~~
22 ~~principal shall not apply to charitable trusts,~~



1 ~~nor to the extent the trustee has employed others~~
2 ~~to perform bookkeeping and clerical services at~~
3 ~~the expense of the estate as permitted by the~~
4 ~~trust document or as provided in section 554A-3.]~~
5 the following compensation based upon the gross
6 fair market value of the principal assets as of
7 the first business day of the trust's fiscal
8 year:

- 9 (i) 0.50 per cent of the first \$5,000,000;
- 10 (ii) 0.30 per cent of the next \$3,000,000;
- 11 (iii) 0.20 per cent of the next \$2,000,000; or
- 12 (iv) 0.10 per cent of assets in excess of
13 \$10,000,000.

14 The annual principal fee shall be earned and
15 payable no more often than quarterly;

16 (C) Notwithstanding the foregoing, a trustee shall be
17 entitled to a minimum annual fee of \$3,000; and

18 (D) All fees calculated under subparagraphs (B) and
19 (C) shall be adjusted for inflation in accordance
20 with changes in the Consumer Price Index (CPI)
21 using the year 2013 as the base. The "CPI" means
22 the Consumer Price Index (Annual Average) for All

1 Urban Consumers (CPI-U); for the Honolulu area -
2 All Items, (1982 - 84 = 100) reported by the
3 Bureau of Labor Statistics, United States
4 Department of Labor or its successor or, if the
5 index is discontinued, an equivalent index
6 reported by a federal authority. If no such
7 index is reported, the term means the substitute
8 index chosen by a court of competent
9 jurisdiction;

10 (2) Inception Fee:

11 1.0 per cent inception fee based upon the gross fair
12 market value of the trust assets at the date of the
13 trustee's acceptance payable to:

14 (A) The first trustee who is not the settlor of the
15 trust; and

16 (B) The first trustee of a trust created under a
17 revocable living trust after the settlor's death
18 or other administrative trust;

19 provided that the trustee shall not also be the
20 trustee of the revocable living trust or
21 administrative trust that is the source of funding the
22 newly-created trust;



1 (3) Termination Fee:
2 1.0 per cent termination fee based upon the gross fair
3 market value of the trust assets as of the termination
4 date of the trust pursuant to the terms of the trust,
5 which fee may be paid at any time after the
6 termination date up to and including the date the
7 trust assets are finally distributed; and

8 (4) Special Service Fees:
9 [~~(e)~~] Such further [allowances] compensation may be
10 made as the court deems just and reasonable for
11 services performed in connection with assuming the
12 trusteeship, sales or leases of real estate, contested
13 or litigated claims against the estate, the adjustment
14 and payment of extensive or complicated estate or
15 inheritance taxes, the preparation of estate and
16 income tax returns, the carrying on of the decedent's
17 business pursuant to an order of court or under the
18 provisions of any will, litigation in regard to the
19 property of the estate, and such other special
20 services as may be necessary for the trustee to
21 perform, prosecute, or defend. [~~All contracts between~~
22 ~~a trustee and a beneficiary other than the creator of~~

1 ~~the trust, for higher compensation than is allowed in~~
2 ~~this section shall be void.]~~ If all of the
3 beneficiaries agree to the trustee's special service
4 fees, then court approval shall not be required.

5 (d) For purposes of any agreement between the trustee and
6 the beneficiaries regarding the trustee's compensation, the
7 agreement shall be binding upon incapacitated, minor, unborn,
8 and unascertained beneficiaries if the applicable provisions of
9 section 560:1-403(2)(B) and (C) are satisfied.

10 (e) The following terms, or comparable language in the
11 provisions of a trust, unless otherwise limited or modified,
12 authorize compensation to the trustee under this section:
13 "reasonable compensation", "compensation in accordance with
14 applicable law", "compensation", "reasonable compensation
15 commensurate with the services performed", and "statutory
16 compensation".

17 ~~[(d)]~~ (f) This section shall apply [as well] to future
18 ~~[accounting]~~ accountings in existing trust estates as well as to
19 new trust estates. This section shall not apply to charitable
20 trusts."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2013.

7

INTRODUCED BY: *Open Hill*



S.B. NO. 1249

Report Title:

Compensation of Trustees;

Description:

Clarifies and updates trustee compensation by setting out several categories of fees to which trustees are entitled.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

