

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1264
Judiciary

(Delegate W. Fisher)

Estates and Trusts – Administration of Estates – Payment of Commissions and Attorney’s Fees

This bill requires, rather than authorizes, the payment of commissions to personal representatives and attorney’s fees, without the approval of the court, under specified circumstances, in the administration of estates.

Fiscal Summary

State Effect: The bill does not directly affect State revenues or expenditures.

Local Effect: The bill does not directly affect local revenues or expenditures.

Small Business Effect: Minimal.

Analysis

Current Law: Under Title 7, Subtitle 6 of the Estates and Trusts Article, a personal representative or special administrator is entitled to reasonable compensation for services. If a will provides a stated compensation for a personal representative, additional compensation must be allowed if the amount given is insufficient in the judgment of the court. Unless a will provides a larger measure of compensation, on petition filed in reasonable detail by the personal representative or special administrator, the court is authorized to allow the commissions it considers appropriate, in accordance with specified limits. If the property subject to administration is not more than \$20,000, then the commission may not exceed 9%. However, if the property subject to administration is more than \$20,000 then the commission may not exceed \$1,800 plus 3.6% of the amount over \$20,000.

Additionally, an attorney is entitled to reasonable compensation for legal services rendered by the attorney to the estate and/or the personal representative, and the court may allow such compensation on the filing of a petition in reasonable detail by the personal representative or the attorney. The compensation must be fair and reasonable in light of all the circumstances to be considered in fixing the fee of an attorney, and the court must take into consideration what would be a fair and reasonable total charge for the cost of administering the estate and not allow aggregate compensation in excess of that amount.

The payment of commissions to personal representatives and attorney's fees may be made without court approval under the circumstances listed below. (The bill modifies this provision, to *require*, instead of *authorize*, payment of commissions and attorney's fees, without court approval, under these circumstances.)

- (1) each creditor, who has filed a claim that is still open, and all interested persons consent in writing to the payment; (2) the combined sum of the payments of commissions and attorney's fees does not exceed the maximum amounts established for personal representative and special administrator commissions (referenced above); and (3) the signed written consent form states the amounts of the payments and is filed with the register of wills; or
- (1) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or the current personal representative of the decedent's estate; (2) the fee does not exceed the terms of the contingency fee agreement; (3) a copy of the contingency fee agreement is on file with the register of wills; and (4) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 467 (Senator West) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

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