

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 468

(Senator West)

Judicial Proceedings

Judiciary

---

**Estates and Trusts - Personal Representatives - Payment of Commissions and  
Attorney's Fees Without Court Approval**

---

This bill clarifies that the *personal representative* may pay commissions to personal representatives, and attorney's fees, without court approval under specified circumstances. However, the bill requires, under specified circumstances, that each payment is for services rendered by the attorney or personal representative prior to the date of written consent to the payment by creditors with open claims and all interested persons, unless the consent form is filed simultaneously with the final administration account or final report under a modified administration.

---

**Fiscal Summary**

**State Effect:** The bill does not directly affect State finances.

**Local Effect:** The bill is not anticipated to materially affect local government finances.

**Small Business Effect:** Potential meaningful.

---

**Analysis**

**Bill Summary/Current Law:** Under current law, a personal representative or special administrator is entitled to reasonable compensation for services. If a will provides a stated compensation for the personal representative, additional compensation must be allowed if the provision is insufficient in the judgment of the court. The personal representative may renounce at any time all or part of the right to compensation. An attorney is entitled to reasonable compensation for legal services rendered to an estate and/or personal

representative. Upon the filing of a petition in reasonable detail by the personal representative or the attorney, the court may allow a counsel fee to an attorney employed by the personal representative for legal services. The compensation must be fair and reasonable in the light of all the circumstances to be considered in fixing the fee of an attorney. The court must also take into consideration what would be a fair and reasonable total charge (including the personal representative's compensation) for the cost of administering the estate and not allow aggregate compensation over that amount.

The personal representative must give specified written notice to creditors who have filed claims that are still open and all interested persons, of a claim, petition, or other request that could result in the payment of a debt, commission, fee, or other compensation to or for the benefit of the personal representative or the attorney for the estate.

Payment of commissions to personal representatives and attorney's fees may be made without court approval under two sets of circumstances:

- under the first scenario payment of commissions or attorney's fees may be made without court approval if (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 personal representative commissions and attorney's fees does not exceed the statutory limitation on personal representative commissions; and (3) the signed written consent form states the amounts of the payments and is filed with the register of wills; or
- under the second scenario, payment of attorney's fees may be made without court approval if (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 agreement; (3) a copy of the 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.

The bill clarifies that the *personal representative* may pay commissions and attorney's fees without court approval under those circumstances and adds to the first scenario that unless the consent form is filed simultaneously with the final administration account or final report under a modified administration, each payment consented to must be for services rendered by the attorney or personal representative prior to the date of consent.

Under current law, unless the will provides a larger amount, a personal representative's commission may not exceed 9% if the property subject to administration is not over \$20,000. If the property is over \$20,000, the personal representative's commission may not exceed \$1,800 plus 3.6% of the excess over \$20,000.

A personal representative must periodically file written accounts of his or her management and distribution of property with a certification that notice of the filing has been mailed or delivered to all interested persons.

**Small Business Effect:** The bill's clarification that personal representatives have discretion to pay commissions and attorney's fees without court approval may have a meaningful impact on solo practitioner attorneys and small law firms to the extent that it helps to ensure payment for their services in estate administration matters.

---

### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Register of Wills; Maryland State Bar Association; Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2022  
fnu2/sdk Third Reader - March 15, 2022

---

Analysis by: Amber R. Gundlach

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510