

CHAPTER 35. Subchapter V.

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§ 3560. Trustees entitled to compensation in accordance with instrument.

(a) Trustees under wills, trustees under inter vivos deeds of trust, both revocable and irrevocable, and successors to such trustees, are entitled to reasonable compensation for their services in accordance with the instrument creating the trust. Subject to other provisions of this subsection, if a trust instrument fixes the reasonable compensation of a trustee, the trustee is entitled to compensation as so determined. Upon proper showing, the Court of Chancery may fix or allow greater or lesser compensation than could be allowed under the terms of such trust in any of the following circumstances:

(1) Where the duties of the trustee are substantially different from those contemplated when the trust was created;

(2) Where the compensation in accordance with the terms of the trust would be unreasonably low or high;

(3) In extraordinary circumstances calling for equitable relief.

(b) An order under this section allowing greater or lesser compensation applies to such actions taken in the administration of a trust as the order shall specify.

67 Del. Laws, c. 56, § 2.;

§ 3561. Reasonable compensation when trust instrument does not determine.

(a) As used in this section, the term “qualified trustee” means any person authorized by the law of this State or of the United States to act as a trustee whose activities are subject to supervision by the Bank Commissioner of the State, the Federal Deposit Insurance Corporation or the Comptroller of the Currency of the United States.

(b) Unless a trust instrument specifically provides that the trustee shall serve without compensation, when a trust instrument does not fix the compensation of the trustee, reasonable compensation shall be allowed. Subject to the provisions of § 3562 of this title, such compensation shall be determined as follows:

(1) For qualified trustees:

a. Each qualified trustee shall file with the Register in Chancery for every county in this State, a copy of a schedule or formula by which its allowance as compensation shall be computed. Such schedule or formula may be based upon or reflect the following factors:

1. The time spent or likely to be spent in administering a trust of the type contemplated;
2. The risks and responsibilities involved;
3. The novelty and difficulty of the tasks required of the trustee;
4. The skill and experience of the trustee;
5. Comparable charges for similar services;
6. The character of the trust assets;
7. The time constraints imposed upon the trustee in administering the trust;

b. Each qualified trustee shall provide a copy of its current trustee fee schedule or formula as filed upon any filing pursuant to paragraph (b)(1)a. of this section to the settlor of any revocable trust and to each current income beneficiary of every other trust from which it will seek to be allowed compensation to be calculated in accordance with such schedule or formula;

c. Each qualified trustee shall be allowed as reasonable compensation for services with respect to each trust from which it is entitled to compensation under this section, an amount determined by application of the schedule or formula so filed to trusts of that size and type.

(2) For other trustees, the Court of Chancery shall from time to time promulgate a rule fixing the method by which trustees other than qualified trustees may be allowed compensation for their services.

(3) There shall be no presumption that a fee schedule filed under paragraph (b)(1) of this section is any more or less reasonable than the schedule promulgated under paragraph (b)(2) of this section.

67 Del. Laws, c. 56, § 2.;

§ 3562. Judicial review of trustees' allowances.

(a) The provisions of § 3561(b)(1)c. of this title notwithstanding, the settlor or any current income beneficiary of a trust, or any other person having an equitable interest in a trust from which a fee for trustee compensation is taken or is proposed to be taken pursuant to § 3561(b) of this title, who objects to a schedule or formula filed thereunder as being unreasonable, or who objects to the fee fixed by such schedule or formula as being unreasonable in the particular circumstances, may petition the Court of Chancery for judicial review of the reasonableness of the schedule or formula, or of its application, as the case may be.

(b) Upon the filing of any such petition, the Court of Chancery may appoint a disinterested third person to act as master to hear and determine the matters raised by such petition and any answer thereto. Proceedings before such master shall be in conformance with the Rules of the Court of Chancery. The final report of the master shall be in the form of findings of fact, conclusions of law and recommended decree, and shall be filed with the Register in Chancery. Findings of fact made by the master, if supported by substantial evidence, shall be conclusive. The Court of Chancery shall thereafter enter its decree determining the matter in issue. Costs of the proceeding, including the reasonable fee of the master, shall be assessed against the trust in question if the petition is denied in its entirety and shall be assessed against the trustee in its individual capacity if it is granted in whole. In other instances, costs shall be apportioned equitably.

67 Del. Laws, c. 56, § 2.;

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