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

3 "**§607-18 Compensation of trustees.** (a) Unless the trust
4 instrument otherwise provides, or the settlor and trustee
5 otherwise agree, or, after the settlor's death, all the
6 beneficiaries and the trustee otherwise agree, the trustee shall
7 be entitled to the compensation set forth in this section and
8 the compensation shall be deemed to be reasonable. For good
9 cause shown, the court may also approve any other fee
10 arrangement that it deems reasonable.

11 (b) Banks and trust companies serving as trustees shall be
12 entitled to reasonable compensation, which may be set forth in
13 their published fee schedules and may be amended from time to
14 time; provided that advance written notice of any amendment to
15 the fee schedule is provided to the settlor or, after the
16 settlor's death, to all beneficiaries[-] who are vested at the
17 time of the notice.



1 (c) Except as provided in subsection (a), individuals
2 serving as trustees shall be entitled to the following
3 compensation:

4 (1) Compensation Upon Inception of the Trust:

5 (A) One per cent based upon the gross fair market
6 value of the trust assets on the date of the
7 trustee's acceptance shall be payable to the
8 first trustee who is not the settlor of the
9 trust; and

10 (B) One per cent based upon the gross fair market
11 value of the trust assets of the trust created
12 under the revocable living or administrative
13 trust on the date of the trustee's acceptance
14 shall be payable to the first trustee of any
15 trust created under a revocable living trust
16 after the settlor's death or other administrative
17 trust; provided that the trustee shall not also
18 be the trustee of the revocable living trust or
19 administrative trust that is the source of
20 funding for the newly-created trust;



1 ~~[provided that if more than one individual serves as~~
2 ~~trustee, then the compensation shall be divided~~
3 ~~equally between the then acting trustees unless~~
4 ~~otherwise agreed by the trustees. If one or more~~
5 ~~individuals are serving as co trustees with a bank or~~
6 ~~trust company, then the individual trustees shall be~~
7 ~~entitled to fifty per cent of the compensation~~
8 ~~provided for under this paragraph described herein,~~
9 ~~which shall be divided among the then serving~~
10 ~~individual co trustees as they may agree. A bank or~~
11 ~~trust company serving as co trustee shall be entitled~~
12 ~~to the compensation described in subsection (b).]~~

13 (2) Annual Compensation:

14 (A) Upon all moneys and other property received in
15 the nature of revenue or income of the trust,
16 such as rents, interest, dividends, and general
17 profits, five per cent of the income received
18 during ~~[each]~~ the year shall be payable to the
19 trustee, ~~[as and when the income is received,]~~
20 and paid not more than once per quarter;



1 (B) Upon the principal trust, the trustee shall be
2 compensated no more than once per quarter, based
3 on the following:

4 (i) One-half of one per cent of the first
5 \$5,000,000;

6 (ii) One-third of one per cent of the next
7 \$3,000,000;

8 (iii) One-fifth of one per cent of the next
9 \$2,000,000; and

10 (iv) One-tenth of one per cent of assets in
11 excess of \$10,000,000,

12 based upon the gross fair market value of the
13 principal assets as of the first [business] day
14 of the trust's fiscal year; and

15 (C) Notwithstanding subparagraphs (A) and (B), a
16 trustee shall be entitled to a minimum total
17 annual compensation of \$3,000; [~~and~~

18 ~~(D) The threshold dollar amounts in subparagraph (B)~~
19 ~~and the dollar amounts in subparagraph (C) shall~~
20 ~~be increased by an amount equal to (i) the dollar~~
21 ~~amount from subparagraph (B) or (C), as~~



1 ~~applicable, multiplied by (ii) a cost of living~~
2 ~~adjustment with changes in the Consumer Price~~
3 ~~Index (CPI) using the year 2014 as the base. The~~
4 ~~"CPI" means the Consumer Price Index (Annual~~
5 ~~Average) for All Urban Consumers (CPI-U); for the~~
6 ~~Honolulu area All Items, reported by the Bureau~~
7 ~~of Labor Statistics, United States Department of~~
8 ~~Labor or its successor or, if the index is~~
9 ~~discontinued, an equivalent index reported by a~~
10 ~~federal authority. If no such index is reported,~~
11 ~~the term means the substitute index chosen by a~~
12 ~~court of competent jurisdiction. If any amount~~
13 ~~as adjusted is not a multiple of \$10,000, such~~
14 ~~amount shall be rounded down to the next lowest~~
15 ~~multiple of \$10,000;]~~ .

16 (3) Compensation Upon Termination of the Trust:

17 One per cent based upon the gross fair market value of
18 the trust assets as of the termination date of the
19 trust pursuant to the terms of the trust, shall be
20 payable to the trustee at any time after the



1 termination date, up to and including the date the
2 trust assets are finally distributed; and
3 (4) Compensation for Special [~~Service Fees~~] Services:
4 Further compensation may be made as the court deems
5 just and reasonable for services performed in
6 connection with assuming the trusteeship, sales or
7 leases of real estate, contested or litigated claims
8 against the estate, the adjustment and payment of
9 extensive or complicated estate or inheritance taxes,
10 the preparation of estate and income tax returns, the
11 carrying on of the decedent's business pursuant to an
12 order of court or under the provisions of any will,
13 litigation in regard to the property of the estate,
14 and such other special services as may be necessary
15 for the trustee to perform, prosecute, or defend;
16 provided that if all of the beneficiaries agree to the
17 trustee's compensation for special [~~service fees~~
18 services, then court approval shall not be
19 required[-];
20 provided that if more than one individual serves as trustee,
21 then the compensation due pursuant to paragraphs (1), (2), and



1 (3), as applicable, shall be divided equally between the then-
2 acting trustees, unless otherwise agreed by the trustees. If
3 one or more individuals are serving as trustees with a bank or
4 trust company, then the individual trustees shall be entitled to
5 fifty per cent of the compensation due pursuant to paragraphs
6 (1), (2), and (3), as applicable, which shall be divided among
7 the then-serving individual trustees as they may agree. The
8 bank or trust company serving with one or more individuals as
9 trustees shall be entitled to the compensation described in
10 subsection (b).

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

16 (e) The following terms, or comparable language in the
17 provisions of a trust, unless otherwise limited or modified,
18 authorize compensation to the trustee under this section:
19 "reasonable compensation", "compensation in accordance with
20 applicable law", "compensation", "reasonable compensation



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1 commensurate with the services performed", and "statutory
2 compensation".

3 (f) This section shall apply to future accounting [~~in~~]
4 periods of existing trusts as well as to new trusts. This
5 section shall not apply to charitable trusts."

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

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

12

INTRODUCED BY:

Karl Rhoad

JAN 21 2015



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Report Title:

Compensation of Trustees

Description:

Clarifies how trustees shall be compensated.

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