

Planning Ahead



Lisa C. Alexander, Esq.
Jakle & Alexander, LLP

Reasonable Trustee's Fees

In Estate Planning, naming the right Trustee is critical. Less thought is given to the Trustee's compensation. Serving as Trustee is a lot of work and can be close to a full time job in the beginning stages of a Trust settlement. The Trustee deserves to be fairly compensated.

When the Trustee is a relative, usually the thinking is the Trustee will forego taking a fee. The Trustee will generously work for free, maximizing the inheritance to the beneficiaries. And while it often starts out that way, after several months and countless hours of work, the Trustee may begin to ask how much they might be paid for their services?

There is no requirement that the Trustee take a fee. If the Trustee is also a beneficiary, it may not make sense to take a fee since it is taxable income and is paid from Trust assets the beneficiary would otherwise inherit tax free.

But if the Trustee is going to take a fee, how much is the Trustee entitled to be paid? By law if the Trust does not state otherwise, the Trustee may take a "reasonable" fee, not otherwise defined. Most Trusts have a compensation provision that says simply the Trustee may take a "reasonable" fee, again without any definition of what is reasonable. Banks acting as Trustee have fee schedules, based on a percentage of the value of the Trust assets. Professional Trustees also have fee schedules, usually based on an hourly rate. A non-professional Trustee, such as a family member, may justify a fee similar to either a bank Trustee percentage or professional Trustee hourly rate. But unless the fee is specified in the Trust, the Trustee is vulnerable to a beneficiary's objections that the Trustee's fee is too high.

A better approach may be to spell out in the Trust how much the Trustee should be paid. If a bank or professional Trustee is named in the Trust, the fee provision must allow the Trustee to charge its usual fee. For a non-professional Trustee, a set hourly rate, a specified percentage or dollar amount, or even a fee cap can all be workable. A well thought out Trustee's fee provision will ensure a Trustee is fairly compensated without objection while at the same time preserving the inheritance of the intended beneficiaries.

Lisa C. Alexander is an attorney at Jakle & Alexander, LLP. She can be reached by calling 310-656-4310 or by emailing her at alexander@jaklelaw.com.