Trustee Compensation

Hello all!

Estate planning attorneys, I need some input on trustee compensation for individual, non-professional trustee who is related to the Grantor.

My client is very adamant that she does not want to allow hourly compensation or ‘reasonable’ compensation. She’s also adamant that she wants the trustee to be compensated to some extent.

Initial Trustee and successor trustees are all relatives, but none are spouse or children. She’s considering a percentage of the whole estate as compensation, but it’s not unforeseeable that the trust could continue for many years due to the distribution scheme she has chosen. So my question is, what if the initial trustee acts for a period of time, and then a successor steps in? How do you then determine go gets paid why amount, and when does that get paid if there’s not a clear point in time when the trust will for sure terminate?

What options would you give the client for trustee compensation in this scenario?

Thanks in advance!

Depending on the size of the Trust, a local bank with a Trust Dept. in this area would likely charge between 1% and 1.5% of assets under management per year.

Peter T. Clark, Massachusetts

And provide a return of .000002%. Really generous foks!!

Joseph Melino, California

In CA only an institution is allowed to be paid by a percentage. Check your state laws and practice.

Roger M. Rosen, California

Is a "Trust" an "institution?" When you calculate the ROI stated by most Banks, you are damned lucky to get anywhere near .00002%.

Or do you know of banks that are more generous?

Joseph C. Melino

You need to talk to the client about this. In my mind, there are three basic types of trusts;

1) Gather assets, pay the bills and pull the plug on the trust and distribute reasonably quickly after death. This type of trust is typically run by some interested party; someone who is beneficiary under the trust; and they've got an incentive to expeditiously wrap this up; their compensation is usually (at least in Florida) based on percentage; a couple or three percent or so. That's fine. Same type of trust, however, where you've got "professional" TTEE can still rack up significant bills; I was involved in will/trust contest where local bank was involved, about $600,000 in assets, bank racked up over $30,000 in TTEE fees plus another $18,000 in PR fees; they made a play for about another $15,000 in PR fees but I was able to get them to back down. This was over about a 2 1/2, maybe 3-year period.

2) A trust that is going to be run for a period of time where relative is trustee and it is for one beneficiary; usually some sort of SNT trust; looking after a sibling, a child, whatever; typically TTEE is another sibling, a parent, an aunt, an uncle, or whatever. There, the TTEE usually doesn't take any compensation; these are usually fairly modest trusts. Most banks aren't going to be interested in this, or if they are they will positively rape the trust on fees.

3) And this is the most problematical type; modest (meaning less than a few million) trust, multiple beneficiaries, which will be run for a period of time, and non-beneficiary TTEE or a TTEE who is a minor beneficiary. The problem with this is, TTEE says, "why the heck am I doing all of this work?" They've got to do annual accountings, distribute income, typically, pay other bills (If some sort of residence is in the trust) file tax returns, and for what? And for how long? If they get tired of it, who the heck are you going to hire? a professional? What's it worth to a pro to administer this sort of thing for years and years?

Example: I got trust now; it's worth somewhere between $400,000 and $600,000 (tough to tell because it's mostly illiquid real estate). We've got 8 named beneficiaries, children of decedent or decedent's spouse; and another 8 'class" beneficiaries, grandchildren. Two co-trustees, both children of decedent, both of whom are beneficiaries; beneficiaries interest range from 7 to 14%, with the 8 named grandchildren splitting 10% amongst them. Trust provides all 'net' income is to be split between beneficiaries amongst their respective shares. The two named TTEE's haven't done an accounting since the trust became irrevocable in 2014; and the trust is to run under rule against perpetuities, i.e., until the death of last life in being; given that there's 8 named bene's and another 8 grandkids, that could be 40, 50, years. For a trust that is worth $600,000 on a good day? If we liquidate the assets and dump it in a Jumbo CD (or several, spread it around several banks) then what's our annual income? 2.5%? on $600,000 (if that; I suspect it's more like $400,000) that's what, $15,000 per year? Out of which we need to file annual accountings, tax return, pay the TTEE; and start cutting checks; remember, the 8 grandchildren split 10% interest so they each got a 1.25% interest in the income? If we net $10,000 per year the grandkids are going to be getting annual checks of $125? Even the 14% beneficiaries are going to be getting checks of $1400 per year.

For the next 40, 50 years? It just doesn't make any sense. And that's assuming I can liquidate the assets at a decent price and make reasonable rate of return on prudent investment. Point is, cost of running this thing is likely to eat up most, if not all, of the income; and this is assuming I can dump the real estate (gotta pay property taxes on it; gotta get insurance on it in case someone gets hurt).

What I'm getting at is this; unless you're talking like, several million dollars that will generate sufficient income to pay TTEE and other expenses, these "run it for period of years" trusts simply are not economically feasible; they're a lot of work; and unless someone is either compensated at market rate OR they're doing it as labor of love, you're going to run into problems with having someone being willing to be TTEE for an extended period.

Ronald Jones, Florida

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One more point: about the 'willingness' of the person to be TTEE: they almost inevitably refuse or quickly resign, if they're not a beneficiary under the trust. Even if grantor approached them during their lifetime and asked and they consented, once the grantor dies, and they realize how much god-awful work is involved they say forget about it. At which point you're stuck; you need a TTEE and you are likely to wind up paying market rates.

Ronald Jones

Ditto here for DC/MD/VA metro area. Depending on size of the Trust, a local bank with a Trust Dept in the DC/MD/VA metro area would likely charge 1% to 1.5% of assets under management per year. Good luck to you on this.

Bob Beatson, Maryland

Tagging on Roger's post, I have used a percentage as compensation for close trustees. I always specify a corporate trustee as backup and of course, they will charge a percentage of assets under management as previously noted. I would add that this percentage applies only to relatives or family members acting as trustee and other trustees are to be compensated in another manner (I always say in accord with reasonable compensation in effect at the time).

Ed Burcham, Kentucky

Thank you everyone for your input. It is always helpful to have other like-minded individuals to kick these things around with before putting them on paper.

Samantha McCarthy, Rhode Island