

3A:10-2.4

LEGISLATIVE HISTORY CHECKLIST

(Fiduciaries--Trustees to furnish annual statement of corpus commissions to each beneficiary)

WJSA 3A:10-2.4

LAWS OF 1980

CHAPTER 6

Bill No. S1098

Sponsor(s) Hamilton and Weiss

Date Introduced Feb. 25, 1980

Committee: Assembly

Senate

Amended during passage Yes ~~No~~

Date of Passage: Assembly Feb. 28, 1980

Senate Feb. 25, 1980

Date of approval Feb. 29, 1980

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

DO NOT WRITE IN THESE SPACES

Sponsor's statement:

Assembly No. 3335 recently passed both Houses, and provided for a modification of corpus commissions charged by trustees and guardians. As a protection for beneficiaries, this bill would require that annual notice be given of interim corpus commissions, similar to the procedure now required in New York.

EJ 2/1/73

1031

(over)

New York similar law as mentioned in sponsor's statement (attached):

N.Y. Surrogate's Court Procedure Act §2306, §2308 (Par. 4) and
§2309 (Par. 4)

SENATE, No. 1098

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 25, 1980

By Senators HAMILTON and WEISS

(Without Reference)

AN ACT concerning fiduciaries' compensation and supplementing chapter 10 of Title 3A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. A fiduciary acting as trustee under a will or acting as a
2 guardian, within 60 days after the end of each tax year of the
3 trust or guardianship, shall furnish to each beneficiary currently
4 receiving income, and to any other beneficiary interested in the
5 income and to any person interested in the principal of the trust
6 who shall make a demand therefor, a statement showing any
7 corpus commissions taken during the tax year and the basis upon
8 which those commissions were computed, including the inventory
9 value and value as of the date the commissions were computed.

1 2. This act shall take effect immediately.

STATEMENT

Assembly No. 3335 recently passed both Houses, and provided for a modification of corpus commissions charged by trustees and guardians. As a protection for beneficiaries, this bill would require that annual notice be given of interim corpus commissions, similar to the procedure now required in New York.

sum of ____ dollars for his services, and ____ dollars for his actual expenses, making a total sum of ____ dollars as hereby adjusted and taxed.

Dated: _____, 19__.

[Signature, with name printed underneath]
Judge of the Surrogate's Court

§ 2306. Annual statements to be furnished to beneficiaries

Any trustee who is not required to furnish annual statements under either 2308 or 2309 because he has not retained annual commissions shall nevertheless be required to furnish the annual statements referred to in those sections to any beneficiary receiving income or any person interested in the principal of the trust who shall request such statements.

HISTORY:

Add L 1966, ch 953, eff Sept 1, 1967.

EARLIER STATUTES:

SCA § 254.

REVISERS' NOTES:

Surr Ct Act § 254 with minor changes in phraseology. No change in substance is intended. See Report No. 7.11B, Legis Doc (1964) No. 19, pp. 684-690.

RESEARCH REFERENCES AND PRACTICE AIDS:

61 NY Jur, Trusts § 210.

26 Carmody-Wait 2d, Duties, Powers and Liabilities of Fiduciaries § 157.14

28 Carmody-Wait 2d, Commissions §§ 168:30, 168:42.

§ 2307. Commissions of fiduciaries other than trustees

1. On the settlement of the account of any fiduciary other than a trustee the court must allow to him the reasonable and necessary expenses actually paid by him and if he be an attorney of this state and shall have rendered legal services in connection with his official duties, such compensation for his legal services as appear to the court to be just and reasonable and in addition thereto it must allow to the fiduciary for his services as fiduciary, and if there be more than one, apportion among them according to the services rendered by them respectively the following commissions:

- (a) For receiving and paying out all sums of money not exceeding \$25,000 at the rate of 4 per cent.
- (b) For receiving and paying out any additional sums not exceeding \$125,000 at the rate of 3½ per cent.
- (c) For receiving and paying out any additional sums not exceeding \$150,000 at the rate of 3 per cent.
- (d) For receiving and paying out all sums above \$300,000 at the rate of 2 per cent.

2. The value of any property, to be determined in such manner as directed by the court and the increment thereof, received, distributed or delivered, shall be considered as money in computing commissions. But this shall not apply in case of a specific legacy or devise. Whenever any portion of the dividends, interest or rent payable to a fiduciary other than a trustee is

allow to the trustee for his services as trustee the following commissions from principal:

(a) For receiving principal

(1) all sums of money constituting principal not exceeding \$2,000 at the rate of 3 per cent;

(2) all additional sums of principal not exceeding \$10,000 at the rate of 1½ per cent;

(3) all sums of principal above \$12,000 at the rate of 1¼ per cent; and

(b) For paying out principal at the rate of 1 per cent.

2. In addition to the commission allowed by subdivision one a trustee shall be entitled to annual commissions at the following rates:

(a) \$7.00 per \$1,000 or major fraction thereof on the first \$300,000 of principal;

(b) \$3.75 per \$1,000 or major fraction thereof on the next \$500,000 of principal; and

(c) \$2.50 per \$1,000 or major fraction thereof on all additional principal.

Such annual commissions shall be computed either on the value of the principal of the trust at the end of the period for which the commissions are payable or, at the option of the trustee, on the value of the principal of the trust at the beginning of such period, provided that the option elected by the trustee for the first period for which such commissions are payable or, in the case of a trust which had a trustee acting prior to June 1, 1965, the option elected for the first period ending on or after June 1, 1965 shall be used during the continuance of the trust and shall be binding on any successor or substitute trustee or trustees. The computation shall be made on the basis of a 12 month period but the amount so computed payable to a trustee shall be proportionately reduced or increased for any payments made in partial distribution of the trust or receipt of any additional property into the trust within such period and shall be proportionately reduced in the first or final period for which such commissions are payable to the trustee if the period is less than 12 months. For the purpose of computing the annual commissions the value of any principal asset when received by the trust shall be the presumptive value of the asset at the beginning and end of the period for which such commissions are payable. In computing the value of the principal of the trust the trustee may use the presumptive value in respect of any principal asset or may use the actual value of the asset. On the settlement of the account of the trustee any person interested may dispute the amount of any commission claimed or retained. The burden of proving that the actual value of any principal asset differs from its presumptive value is upon the trustee or other person claiming the difference.

3. Unless the will otherwise explicitly provides, the annual commissions allowed by subdivision two of this section shall be payable one-half from the income of the trust and one-half from the principal of the trust.

4. The commissions allowed by subdivision 2 may be retained by a trustee provided he furnishes annually as of a date not more than 30 days prior to the end of the trust year selected by the trustee, to each beneficiary

currently receiving income, and to any other beneficiary interested in the income and to any person interested in the principal of the trust who shall make a demand therefor, a statement showing the principal assets on hand on that date, and at least annually or more frequently if the trustee so elects, a statement showing all his receipts of income and principal during the period with respect to which the statement is rendered including the amount of any commissions retained and the basis upon which the commissions were computed. A trustee shall not be deemed to have waived any commissions by reason of his failure to retain them at the time when he becomes entitled thereto; provided however that commissions from income for any given trust year shall be allowed and retained only from income derived from the trust during that year and shall not be supplied from income on hand in respect of any other trust year. If a beneficiary receiving income does not desire to be furnished with any such statement his advice to the trustee to that effect in writing shall thereafter excuse the trustee from furnishing such statement to the beneficiary unless and until the beneficiary requests such annual statements from the trustee.

5. (a) During the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust after the termination of a life use or uses the trustee shall be entitled to and may retain commissions from income in an amount annually equal to 7 per cent of the first \$2,000 of income collected in each year and 5 per cent of the balance of income collected in each year.

(b) In the case of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses the trustee shall not be entitled to any commission from principal.

(c) In the case of such a trust which continues after the termination of a life use or uses the trustee for the period of the measuring life or lives shall be entitled to commissions from income and principal at the rates and according to the terms otherwise provided in this section, except that he shall not be entitled to any commissions for paying out any amount of principal.

6. (a) If the gross value of the principal of the trust accounted for amounts to \$200,000 or more and there is more than 1 trustee each trustee is entitled to the full compensation for receiving and paying out principal allowed herein to a sole trustee unless there are more than 3, in which case the compensation to which 3 would be entitled must be apportioned among the trustees according to the services rendered by them respectively, unless the trustees shall have agreed in writing among themselves to a different apportionment which, however, shall not provide for more than one full commission for any one of them. If the gross value of the principal of the trust accounted for is:

(i) less than \$100,000 and there is more than 1 trustee the full compensation for receiving and paying out principal allowed herein to a sole trustee must be apportioned among them according to the services rendered by them respectively, or

(ii) \$100,000 or more but less than \$200,000 each trustee is entitled to the full compensation for receiving and paying out principal allowed pursuant to

commissions the value of any principal asset when received by the trust shall be the presumptive value of the asset at the beginning and end of the period for which such commissions are payable. In computing the value of the principal of the trust the trustee may use the presumptive value in respect of any principal asset or may use the actual value of the asset. On the settlement of the account of the trustee any person interested may dispute the amount of any commission claimed or retained. The burden of proving that the actual value of any principal asset differs from its presumptive value is upon the trustee or other person claiming the difference.

3. Unless the will otherwise explicitly provides the annual commissions allowed by subdivision 2 shall be payable one-half from the income of the trust and one-half from the principal of the trust. However, in the case of a charitable remainder annuity trust or a charitable remainder unitrust, as defined in section six hundred sixty-four of the Internal Revenue Code of nineteen hundred fifty-four, as amended, such annual commissions shall be payable from the corpus of any such trust after allowance for the annuity or unitrust amounts and shall not be payable out of such annuity or unitrust amounts.

4. The commissions allowed by subdivision 2 may be retained by a trustee provided he furnishes annually as of a date no more than 30 days prior to the end of the trust year selected by the trustee, to each beneficiary currently receiving income, and to any other beneficiary interested in the income and to any person interested in the principal of the trust who shall make a demand therefor, a statement showing the principal assets on hand on that date, and at least annually or more frequently if the trustee so elects, a statement showing all his receipts of income and principal during the period with respect to which the statement is rendered including the amount of any commissions retained and the basis upon which the commissions were computed. A trustee shall not be deemed to have waived any commissions by reason of his failure to retain them at the time when he becomes entitled thereto; provided however that commissions payable from income for any given trust year shall be allowed and retained only from income derived from the trust during that year and shall not be supplied from income on hand in respect of any other trust year. If a beneficiary receiving income does not desire to be furnished with any such statements his advice to the trustee to that effect in writing shall thereafter excuse the trustee from furnishing such statement to the beneficiary unless and until the beneficiary requests such annual statements from the trustee.

5. (a) During the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust after the termination of a life use or uses the trustee shall be entitled to and may retain commissions from income in an amount annually equal to 7 per cent of the first \$2,000 of income collected in each year and in an amount annually equal to 5 per cent of the balance of income collected in each year.

(b) In the case of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses the trustee shall not be entitled to any commission from principal.