ASSEMBLY, No. 3353

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED JUNE 28, 1999

Sponsored by:
Assemblyman MICHAEL PATRICK CARROLL
District 25 (Morris)
Assemblyman E. SCOTT GARRETT
District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Clarifies law with regard to commissions of executors of estates.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning executor's commissions and amending N.J.S.3B:18-14 and repealing N.J.S.3B:18-1 and N.J.S.3B:18-15.

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

1. N.J.S.3B:18-14 is amended to read as follows:

3B:18-14. Corpus commissions**[**; one fiduciary

On the settlement of the account of one fiduciary, 5% on all corpus received by the fiduciary where corpus receipts do not exceed $200,000.00, and where corpus receipts exceed $200,000.00, 5% on the first $200,000.00, 3 1/2 % on the excess over $200,000.00 up to $1,000,000.00, and 2% on the excess over $1,000,000.00 or such other percentage as the court may determine on the intermediate or final settlement of the fiduciary's accounts, according to actual services rendered.**]** Commissions on all corpus received by the fiduciary may be taken as follows:

5% on the first $200,000 of all corpus received by the fiduciary;

3.5% on the excess over $200,000 up to $1,000,000;

2% on the excess over $1,000,000; and

1% of all corpus for each additional fiduciary provided that no one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

Such commissions may be reduced by the court having jurisdiction over the estate only upon application by a beneficiary adversely effected upon an affirmative showing that the services rendered were materially deficient or that the actual pains, trouble and risk of the fiduciary in settling the estate were substantially less than generally required for estates of comparable size.

(cf: P.L.1983, c.394, s.1)

2. N.J.S.3B:18-1 and N.J.S.3B:18-15 are repealed.

3. This act shall take effect immediately.

STATEMENT

N.J.S.3B:18-14 sets forth the schedule which is used to calculate the commissions to which executors of estates are entitled. Recently the Internal Revenue Service has begun to take the position that it is not bound by N.J.S.A.3B:18-14 unless a court has approved such

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

commissions. However, current practice in New Jersey is to refrain, except in extraordinary circumstances, from incurring the additional costs and delay of submitting an executor's accounting for judicial approval. Therefore, a court determination of the executor's commission is rare. The IRS tactic of disallowing a deduction for the full executor's commission calculated in accordance with the statutory schedule leaves lawyers in New Jersey open to criticism for not being able to advise executors accurately of the amount of the executer's commission that will be deductible on the federal estate tax return. As a consequence, some estates owe additional tax and interest to the IRS. In order to allow practitioners to be able to administer estates with greater predictability and certainty, the Real Property, Probate and Trust Section of the Bar Association recommends that N.J.S.3B:18-14 be amended. The amendatory language is intended to clarify that a fee calculated pursuant to the provisions of N.J.S.3B:18-14 is the normally appropriate commission for a fiduciary and that a court determination is necessary only if a beneficiary objects to the statutory fee calculation. In addition to amending N.J.S.3B:18-14, the bill also repeals two sections of laws dealing with the executors' commissions which the Real Property, Probate and Trust Section views as unnecessary and redundant.