

New Jersey Law on Executor's Compensation:

Under New Jersey Statutes, "where provision is made in a will for specific compensation to a Fiduciary, the compensation shall be deemed full payment for services in lieu of commissions provided by this chapter." *See*, N.J.S.A. 3B:18-3. New Jersey Statute Annotated 3B:18-8 defines "Fiduciary" as an Executor under a Will of Decedent. *See*, N.J.S.A. 3B:18-8. If no specific provision is set forth in the will, there are several ways a Fiduciary can be compensated by way of statutory commissions; for example, by way of a corpus commission (N.J.S.A. 3B:18-14), by way of an additional commission (N.J.S.A. 3B:18-9) and/or by way of income commission (N.J.S.A. 3B:18-13). Only Corpus Commission and Additional Commissions are discussed in this Memo as Income Commission applies to a Trustee Fiduciary. In all respects, to earn the Commission, the Executor must be seeking to effectuate the Decedent's wishes. *See, In Re Estate of Summerlyn*, 743 A.2d. 321 (N.J. Super. 2000).

(1) Corpus Commission(s)

An Executor may receive a commission based on the corpus of a Decedent's Estate. New Jersey Statute 3B:18-14 provides that a commission may be taken on all corpus received by the Fiduciary 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.

See, N.J.S.A. 3B:18-14, *see also, In Re Estate of Summerlyn*, 743 A.2d. 321 (N.J. Super., 2000)(amount of corpus commission is a matter controlled by statute). Such a commission may be reduced by the Court having jurisdiction over the estate only upon application by a beneficiary adversely affected 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. *See*, N.J.S.A. 3B:18-14.

The allowance of such commission shall be made with reference to the Fiduciary's actual pain, trouble and risk in settling the estate. *See, In Re Estate of Summerlyn*, 743 A.2d. 321 (N.J. Super. 2000), *citing, In Re Seabrook*, 316 A.2d. 698 (N.J. Super. 1974). That is, in allowing a Corpus Commission the Court must apply the legal approach dictated by N.J.S.A. 3B:18-14 (i.e., the pains, trouble, risks and actual services rendered by the Executor). *Id.* The decision regarding an Executor's commission is committed to the discretion of the Court. *Id.* Thus, an Executor may seek compensation pursuant to 3B:18-14.

Pursuant to 3B:18-16, the Court may, on an intermediate or the final settlement of the Fiduciary's account allow corpus commissions in addition to those hereinabove provided in a showing that unusual or extraordinary services have been rendered by the Fiduciary for which the Fiduciary should receive extra compensation. *See*, N.J.S.A. 3B:18-16. And, pursuant to 3B:18-21, "in the event of a dispute as to the value of corpus on the settlement of the account of a Fiduciary, the burden of proving that the value of any item of corpus differs from the presumptive value of the item shall be upon the Fiduciary or other party claiming the difference." *See*, N.J.S.A. 3B:18-21.

(2) Additional Commission(s)

In addition to Corpus Commission, the New Jersey Statutes provide for "Additional Compensation" when "the Court upon the settlement and allowance of a Fiduciary's account(s), in addition to the compensation as may otherwise be allowable, may allow reasonable compensation to the Fiduciary for services required by law to be rendered by the Fiduciary in connection with or arising out of any Property as defined in N.J.S.A. 3B:18-8, including, . . . , services rendered in connection with apportionment of any taxes specified in N.J.S.A. 3B:18-8 between Decedent's Estate and the recipient of the Property, . . . , and in collecting or attempting to collect the apportionment of the taxes applicable to the Property. *See*, N.J.S.A. 3B:18-9. The term "Property" means any property, real or personal . . . which does not come into hands of a Fiduciary as part of a Decedent's Estate, and, which by operation of law . . . has been received or is receivable by anyone other than the fiduciary, and which a taxing authority attempts to tax or does tax, as a Decedent's taxable estate, . . . for the purposes of Federal Estate Tax, New Jersey Estate Tax, other State or Foreign Estate taxes. *See*, 3B:18-8. The "Additional Compensation" of the Fiduciary shall be payable by the recipient of the Property if the recipient is within the jurisdiction of the Court . . . , shall be payable out of the Property, if the Property is within the jurisdiction of the Court . . . [and] if the Fiduciary does not succeed in collecting the additional Fiduciary's Compensation from the Recipient of the Property or out of the Property, the Court may order the Fiduciary's additional compensation to be paid out of the corpus of Decedent's estate which comes into the hands of the Fiduciary. *See*, N.J.S.A. 3B:18-11.

Pursuant to 54:34-2, there appears to be no New Jersey transfer inheritance tax on property transferred by Will from the Decedent to Decedent's children. *See*, N.J.S.A. 54:34-2. The "transfer inheritance tax" is a tax imposed by the State on the right to receive property from a Decedent. *See, In the Matter of the Application of the New Jersey Society of Certified Public Accountants*, 507 A.2d. 711 (N.J. 1986), *citing*, N.J.S.A. 54:34-1 to 54:34-13. Unlike the Federal Estate Tax that taxes the estate of a decedent, the Transfer Inheritance Tax is imposed on the beneficiary, based upon the value of the property received and the relationship of the beneficiary to the decedent. Id. As to resident decedents, the tax applies to transfers of real and tangible property in New Jersey and intangible property wherever it is situated; for nonresidents, the tax applies only to transfers of real or tangible property in New Jersey at the time of death. Id.