

Comparing Costs of Post-Death Administration: Fully Funded Trust Versus Probate Estate

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I periodically have clients come to me for estate planning services after they have attended a living trust seminar sponsored by a different lawyer or law firm. The attendees are often told by the seminar sponsor that probate is "very expensive," and the way to avoid all of the associated expenses is to set up a fully funded living trust. A fully funded living trust will achieve probate avoidance, but that does not mean that there are no tasks to be performed after the death of the trust-maker. These tasks must be performed by the post-death trustee, often with the assistance of a trust and estate attorney.

Too often, living trust seminar attendees are misguidedly made to think that if probate is avoided, there is no need for an attorney to help with post-death administration tasks. That is unfortunate, and usually not true. Indeed, as I point out herein, there are many post-death trust administration tasks that must be fulfilled by the post-death trustee, typically with the help of an attorney.

While I do not believe that the sponsors of living trust seminars are lying to seminar attendees, it is apparent that attendees are too often not told the whole story about costs associated with post-death trust administration. The objective of the seminar sponsor is to "sell" prospects revocable living trust services, and so the sole focus is on the benefits associated with revocable living trusts, not the work that must be performed after the trust-maker dies. Consequently, there is no incentive for the trust "salesperson" to address the costs associated with post-death trust administration.

Comparing Costs of Living Trusts and Wills

This paper seeks to clarify the cost differences between the establishment and post-death administration of a fully funded trust, as compared to the

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establishment of a will and post-death administration of a probate estate. To that end, I will outline:

1. The costs associated with establishing a fully funded revocable living trust-based estate plan.
2. The costs associated with establishing a will-based estate plan.
3. The usual post-death administration procedures and applicable costs for a fully funded trust that avoids probate.
4. The usual post-death administration procedures and applicable costs for a probate estate.

An examination of these factors will help clarify the cost differences between establishing and settling a fully funded trust as compared to establishing and settling a probate estate.²

Procedures for Setting Up a Revocable Living Trust, and Associated Costs

Setting up a fully funded revocable living trust involves more time and expertise as compared to preparing a simple will. Consequently, an attorney's fee for setting up a fully funded living trust is higher than the fee for setting up a will. Figure 1 provides a "snapshot" of this author's flat-rate fee schedule for preparing revocable living trusts and attendant documents³:

Funding the Trust. After a client has executed a trust, pour-over will, powers of attorney, living will, and Bill of Sale or General Assignment, the "funding" process begins. Funding links a trust-maker's assets to his or her trust. It is the process whereby the trust-maker transfers ownership of assets to the revocable living trust. The primary purpose of funding the trust is to avoid probate. Assets that are in the name of a trust at the time of the trust-maker's death avoid probate. Assets held in an individual's own name at the time of death are controlled by a will or an applicable state's intestacy statute and must go through probate.⁴

² This article is limited to the narrow comparison of costs associated with estate planning and post-death administration. There are numerous benefits derived from using a revocable living trust that have nothing to do with costs of post-death administration. Indeed, this author often recommends the use of a revocable living trust for certain clients.

³ Attendant documents for trust plans include: Pour-Over Will, Power of Attorney for Property, Power of Attorney for Health Care, Living Will, Bill of Sale for transferring personal property to the trust, and Deed in Trust for transferring real estate to the trust.

⁴ There are exceptions to the general rule that assets held in an individual's name at the time of the individual's death must go through probate. One example is life insurance proceeds. If the owner/insured properly executed a beneficiary designation form, wherein an individual person was named as beneficiary, the life insurance company will pay out the proceeds to the beneficiary upon receiving verification of the owner's/insured's death. Probate is not required in such cases.

Figure 1: Author's Flat-Fee Schedule for Preparing Revocable Living Trusts and Attendant Documents*

Trust Plan	Fee
Revocable Living Trust for Individual – Outright Gifts to All Beneficiaries	\$1,600
Revocable Living Trust for Individual – Contingent Trusts for Beneficiaries	\$1,800
Revocable Living Separate-Trusts (2) for Married Couple – Outright Gifts to All Beneficiaries	\$2,600
Revocable Living Separate-Trusts (2) for Married Couple – Contingent Trusts for Beneficiaries	\$2,800
Revocable Living Separate-Trusts for Married Couple – Contingent Trusts and By-pass Trust Tax Planning	\$3,000

* The author's complete estate planning fee schedule can be found at www.sylvesterlawfirm.com.

This author charges clients an hourly rate of \$200 to fund their revocable living trusts. On average, per-client funding requires 4 to 6 hours worth of work. Some clients are fairly sophisticated, and decide they want to do the funding themselves. In the latter circumstance, this author simply prepares a new deed for the client's real estate, and provides the client with sample letters that can be used to help him or her fund the trust. Funding is not difficult, and certainly does not require a law degree or license,⁵ but it is important that it be done properly. To that end, clients often feel that it is worth paying the money to have the attorney do the funding, at least the funding of the assets that the client has at the time he or she executes the trust. The client can then see how the attorney titled the client's accounts, and may be able to handle the funding of future assets himself or herself.

As a general rule, but a rule with many exceptions, a trust-maker can often count on paying about \$1,000 - \$2,000 for trust funding services, and that fee is in addition to the applicable fees in the fee chart above. That said, a single client without unusual estate planning needs can typically count on paying between \$2,700 and \$3,200 for trust-based estate planning services. Married couples can count on paying between \$3,800 and \$4,300 for such services. It must be understood, however, that what is a "going rate" for revocable living trust-based estate planning services can differ drastically from

⁵ In some states, including Illinois, a deed cannot be prepared for another person unless the person creating the deed is a licensed attorney. Of course, a person can always create a deed for himself/herself, but this author advises against that practice.

