

## 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.<sup>2</sup>

### **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 documents<sup>3</sup>:

**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.<sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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](http://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,<sup>5</sup> 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

<sup>5</sup> 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.

region to region, city firm versus suburban firm, boutique firm versus general practice firm, etc. If an individual has paid much more than the foregoing range of fees, he or she should not quickly conclude that they were charged too much. Indeed, in some regions of the country, it is not unusual to see average revocable living trust-based estate planning services costing \$4,500 to \$5,000.

### Procedures for Setting Up a Will, and Associated Costs

Setting up a will typically involves less time compared to preparing a fully funded revocable living trust. Consequently, an attorney's fees for setting up a simple will are usually less than applicable fees for setting up a funded revocable living trust. Figure 2 is a "snapshot" of this author's flat-rate fee schedule for preparing wills and attendant documents.<sup>6</sup>

<b>Will Plan</b>	<b>Fee</b>
Will for Individual – Outright Gifts	\$600
Will for Individual – Contingent Trusts	\$800
Wills for Married Couple – Outright Gifts	\$850
Wills for Married Couple – Contingent Trusts	\$1,450
Wills for Married Couple – Contingent Trusts and By-pass Trust Tax Planning	\$1,700

In comparing the trust plan fee-chart and the will plan fee-chart, it can be seen that setting up a revocable living trust plan, and the associated funding of the trust, is more expensive than setting up a will plan. That does not end the cost comparison, however. The post-death tasks that must be performed by the post-death trustee or executor, and the approximate time and costs for completing those tasks, are an important part of the comparison. In the following section, I provide a checklist of tasks that must be performed after a trust-maker dies with a fully funded trust, and the tasks that must be performed after a will-maker dies with a will. I also assign to each task an approximate amount of time it takes to complete the task. I then multiply the approximate time by a \$275 hourly fee.

<sup>6</sup> Attendant documents for will plans include: Power of Attorney for Property, Power of Attorney for Health Care, and Living Will.

## Post-Death Administration Procedures

I frequently have a surviving spouse or an adult son or daughter visit me after the death of the spouse or parent. Often, the decedent was not represented by me during his or her lifetime, so I am seeing the decedent's trust or will for the first time. In the situation where the decedent set up a trust prior to his or her death, the first thing I need to do is review the trust so that I completely understand the trust-maker's intent. Second, I need to review all of the trust-maker's assets to see how the assets are titled. That is, I need to see if probate assets, such as bank accounts and investment accounts, were properly titled in the name of the trust during the trust-maker's lifetime. In the case of tangible personal property, I need to see if such property was properly transferred to the trust-maker's trust by way of Bill of Sale or General Assignment.<sup>7</sup>

When I learn that the trust-maker died owning probate assets in his or her own name (i.e., not in the name of the trust-maker's trust), one of two procedures are used to have the probate asset "pour over" into the trust and be distributed according to the terms of the trust. If the probate asset has a value lower than the threshold amount required by the state's "small estate affidavit" statute, opening a probate estate will not be required. The attorney will simply prepare a small estate affidavit, which typically takes one to two hours, depending on the particular circumstances. If, however, the value of the probate asset is greater than what is allowed by the state's applicable "small estate affidavit" statute, then a probate estate must be opened in the applicable probate court, and all the steps for probate court procedure discussed below must be followed in addition to the steps required for post-death administration of a trust.<sup>8</sup>

Even when the trust was completely funded, the survivors are regularly surprised by the number of post-death administration procedures that must be performed by the post-death trustee, and more often than not, the trustee is wise to use the counsel of an attorney experienced in post-death administration of trusts and estates. I am often told by these surviving spouses and adult sons and daughters that they were made to think that a revocable living trust would avoid the "hassles" and costs that are only present when someone dies without a trust. Again, that is wrong and unfortunate.

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<sup>7</sup> Tangible personal property should be transferred to a trust-maker's trust. How that is properly done varies between states. For example, in Illinois, practitioners use a Bill of Sale. In Wisconsin, practitioners use a General Assignment.

<sup>8</sup> Illinois allows probate assets not exceeding \$100,000 to pass to an heir by way of a small estate affidavit. See 755 ILCS 5/25-1. Wisconsin, on the other hand, allows probate assets not exceeding \$50,000 to pass to an heir by way of small estate affidavit. See Wisconsin Statutes Chapter 867, Section 867.01. Again, states' rules vary, and the difference in the various rules must be taken into account when comparing the costs of post-death trust administration versus probate administration.

Although it seems that every post-death administration of a will or trust has its own unique "wrinkle," Figure 3 tabulates the usual post-death estate administration tasks that must be completed, typically with the help of an estate attorney.

**Figure 3: Typical Post-Death Estate Administration Costs**

Duty	Will	Trust	Hours	Fee
Initial meeting with clients/family	X	X	1.5	\$412.50
Review testamentary documents	X	X	1.25	\$343.75
Review ownership status of all assets	X	X	2.5	\$687.50
Go to bank to inventory safe deposit box	X	X	2.0	\$550.00
Open probate estate	X		8.0	\$2,200.00
Verify status of property insurance	X	X	0.5	\$137.50
Marshall assets	X	X	4.0	\$1,100.00
Ascertain creditors / pay debts	X	X	3.5	\$962.50
Mail notices to creditors	X	X	1.5	\$412.50
Publish claim notice in newspaper (not required for trust)	X		0.5	\$137.50
File proof of mailing and publication	X		0.5	\$137.50
Apply for tax I.D. number	X	X	33	\$90.75
Open estate checking account	X	X	1.5	\$412.50
Notify IRS of fiduciary capacity	X	X	0.25	\$68.75
Transfer funds to estate account	X	X	1.5	\$412.50
Collect life insurance	X	X	2.5	\$687.50
Prepare inventory	X	X	4.0	\$1,100.00
File inventory	X		1.0	\$275.00

**Figure 3: Typical Post-Death Estate Administration Costs** *(continued)*

Duty	Will	Trus	Time	Fee
Prepare / file decedent's final form 1040	X	X	2.5	\$687.50
Decide on estate's fiscal year	X	X	0.25	\$68.75
Prepare / file income tax returns for estate	X	X	3.5	\$962.50
Prepare / file estate tax returns for estate	X	X	12.0	\$3,300.00
Request prompt audit of tax returns	X	X	0.25	\$68.75
Make distributions of assets	X	X	3.0	\$825.00
<b>Work towards closing the estate:</b>				
Estate tax closing letters	X	X	0.25	\$68.75
Prepare final report	X		0.33	\$90.75
Prepare final accounting	X	X	3.5	\$962.50
Pay expenses of administration	X	X	2.0	\$550.00
Record release of unsold real estate	X		1.0	\$275.00
Obtain receipts of distribution	X	X	0.75	\$206.25
Attend final court hearing	X		1.5	\$412.50
Obtain order of discharge	X		0.25	\$68.75

Based on Figure 3, it appears that it costs approximately \$3,560.00 less to settle a fully funded trust than to probate an estate. Now we need to determine the average cost differences between a trust plan and will plan. The average cost of all the trust plans indicated above, including an often applied \$1,200.00 fee for funding services, is \$3,560.00. The average cost of all the will plans indicated above is \$1,080.00. The difference between these two averages is \$2,480.00. Now we'll subtract \$2,480.00 from \$3,459.50, which is the rough cost difference between probate administration and non-probate administration. Using the latter equation, it appears to be roughly \$980 less expensive to set up and administer a fully funded revocable trust plan than it is to set up and administer a will plan.

What Figure 3 does not include is the fee each state charges for utilizing the services of the probate court. It is not included in the chart above because states vary on what they charge.<sup>9</sup> For example, in Wisconsin, the court's fee is based on two tenths of one percent (0.002%) of the probate estate. The fee is paid at the time the inventory is filed. In Illinois, however, there is one flat-rate fee of \$279.00 that is paid at the time the probate documents are filed. If a trust-maker dies with a fully funded trust, these probate court fees are avoided, leading to an additional average savings of \$279.00 (in IL) and \$1,500.00 for a \$750,000.00 probate estate (in Wisconsin). In Illinois, it would be roughly \$1,259 (\$980.00 + \$279.00) cheaper to establish and settle a fully funded trust, as compared to establishing a will plan and settling a probate estate. In Wisconsin, it would be roughly \$2,480 (\$980.00 + \$1,500.00) cheaper to establish and settle a fully funded trust, as compared to establishing a will plan and settling a probate estate.

### Conclusion

Based on the foregoing examination, it appears that in states where the probate court charges a relatively low flat-rate fee, roughly \$1,300 can be saved through a funded trust-based estate plan, as compared to a will-based estate plan. Roughly \$2,500 can be saved through a trust-based estate plan in states that charge a probate court fee that is based on the value of the probate assets.

It is important that practitioners be up-front with clients when discussing the difference in cost between a trust-based estate plan and a will-based estate plan. Just because a client has a fully funded trust-based estate plan, it does not mean that there will be no costs of administration following the trust-maker's death. It is incumbent on professional advisors to point out such expenses before the drafting process begins. Finally, practitioners need to point out to clients that the difference in cost is only one factor to take into consideration when deciding what type of estate plan is best for a particular client. The following Exhibit A summarizes the usual situations where it is more cost effective to establish a revocable living trust-based estate plan, and the usual situations where it is more cost effective to establish a will-based estate plan.

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<sup>9</sup> See [www.ncsonline.org](http://www.ncsonline.org) for a state-by-state comparison of probate filing fees.

**Exhibit A**

*Common situations where it is usually more cost effective to use a fully funded trust as opposed to a will:*

- Trust-maker is domiciled in a state where the Probate Court charges a fee based on the size of the estate.
- Trust-maker has real estate in multiple states.
- Trust-maker is domiciled in a state where probate procedure has not been streamlined (i.e., independent administration).
- Trust-maker is at high risk for disability during his or her lifetime.

*Common situations where it is usually more cost effective to use a will as opposed to a fully funded trust:*

- Will-maker is domiciled in a state where the Probate Court charges a relatively low flat-rate fee.
- Will-maker does not own probate assets, and beneficiary designation forms have been properly completed for all pay-on-death policies and accounts.
- Will-maker owns probate assets with a value equal to or less than the threshold amount required by the applicable state's small estate affidavit statute.