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What Will My Estate Plan Cost?

A legitimate question. The answer: "It depends." Gone are the days when a lawyer could charge a low price for drafting a will as a kind of loss leader, with the virtual assurance the legal work of administering the estate would allow collection of a tidy fixed percentage of its assets.

The sun began to set on those days with enactment of the first federal estate tax -- graduated up to 10% -- in 1916. But most folks didn't begin to take notice until 1941 when the maximum went all the way to 77%.

Skills and methods now generally employed in estate planning have been developed in the 60+ years since that big rate jump in 1941. The typical techniques focus on two purposes. One is to transfer property as the owner wishes. That seems simple; often it is not. The other is to preserve for the owner's beneficiaries as much of that property as possible under federal and state death tax laws.

Notwithstanding emerging new techniques, the old approach to fees -- the will as loss leader followed by a high fee for administration -- tended to continue in the fifties and sixties. The Siamese twins began to be separated when the population became more mobile, with people seldom spending their whole lives in the same town.

As a next step, the consumer movement zeroed in on the probate picture. A spate of books and articles detailed do-it-yourself methods for avoiding unwanted publicity and, especially, fees. At the very least, many clients went "quote-shopping." They picked a firm to draft a will when a will was needed. They picked a lawyer to help with administration later on when administration was needed. Sometimes they made both choices on the basis of the lowest "bid." All of these developments meant that an attorney couldn't expect to collect a fee for an administration merely because the attorney had drafted the will.

Along with all this, an attempt on the part of the legal profession to insure itself of fair payment by means of "minimum fee schedules" was abandoned after consumer groups and the government attacked these schedules as anti-trust law violations.

Acknowledging that something should be done about the situation, the National Conference of Commissioners on Uniform State Laws developed a Uniform Probate Code with the intent of reducing the amount of work, delay, publicity and red tape, and -- indirectly -- probate fees. Another approach -- the "fee for services" approach -- permits such factors as time spent, the lawyer's experience, the novelty of the problem -- and the results -- to be taken into account in arriving at the probate fee. In most states, by law, the lawyer can no longer collect a fixed percentage of an estate regardless of the ease or difficulty of administering it and, by law, can't "make up" in administration fees what wasn't charged for will drafting or estate planning.

"WHAT DOES A LAWYER DO IN ESTATE PLANNING, ANYWAY?"

The lawyer gathers facts by interviewing the client and by examining the client's pertinent documents. Collecting the facts about each client's specific situation may be easy or difficult, but it is nearly always time-consuming. And (perhaps because of newly-acquired information or new perceptions triggered by the interviews with the lawyer) the client often changes his or her testamentary plan after the process begins.

In order to achieve the client's goals as precisely as possible, the estate planning lawyer must spend a great deal of time keeping abreast of new developments. As a result, a smaller proportion of the estate planner's time is available for working directly with clients. On top of that, major statutory changes frequently make it necessary to relearn everything! Another big consumer of the estate-planning attorney's time is the meticulous attention required by every word of a document. Because no two clients' situations are identical, this is true even with the use of the latest and most sophisticated automated drafting methods.

So much for the way the estate planner spends his or her time. Today the estate planner labors under the specter of malpractice claims. A beneficiary who fails to receive what is desired may be able to sue many, many years after the document was drafted. Aside from its unpleasantness for the lawyer, the lawyer's firm, and the lawyer's family, this risk also influences the lawyer's insurance company, which on the one hand warns the lawyer to deliver a product which won't result in claims, and on the other raises his or her premiums.

Additional pressures? The same as everybody else's. Inflation. Rising expenses for rent and equipment and staff. Law partners who expect the estate planner to carry a reasonable share of the economic load. A good college for the kids.

Clients, naturally, want their lawyer to keep fees low, but they expect the lawyer to be competent and to keep abreast of current developments, as do business referral sources. And all interested parties want the lawyer to hurry and finish the work.

"YOU STILL HAVEN'T SAID HOW MUCH MY ESTATE PLAN WILL COST."

As a matter of fact, it probably won't cost as much as the car you drive regularly. However, figuring the exact price ahead of time won't be as easy as buying a car. You can't just start with the stripped-down model and add the options you like -- so much for air conditioning, so much for a CD player. For example, the time your lawyer spends on your estate plan depends in part on your personality (are you satisfied with a general explanation of concepts, or do you prefer a detailed exposition of each point?) and in part on the difficulty of the problem.

In almost every case, significant future tax savings will be many multiples of the cost of the estate plan. Savings of fifty to a hundred times the cost of the plan are not unusual. Finally, and to some the most important of all, is the satisfaction of knowing that your wishes will be carried out.

In return, the fee for your plan will be based largely on how much time it takes to complete it. Upon request, you will be given an estimated range within which your plan will fall if it proceeds along lines discernible in your first conference. While this is an estimate with a low and a high side, it is usually accurate as a range unless some unexpected developments occur while the work is in process. You will be told when this appears to be happening. If you want a flat fee quote, this can be arranged, but you realize (don't you?) that your lawyer will naturally tend toward protecting himself or herself in such a quote, and you may end up with a higher fee than would be the case with the acceptance of the range of fees as your estimated cost.

Ultimately, of course, the answer to your question about what your estate plan will cost is: What you agree to pay after the value of the plan has been explained to your satisfaction.

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