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Probate Costs Defined

When meeting with my estate planning clients, besides making references to the grim reaper, the scariest demon discussed is the probate demon. Trying to avoid the costs of probate push many people to initiate the estate planning process.

The probate process itself has been discussed in earlier columns, both in this one and in others, and there are many good reasons to try and avoid that process. The actual costs associated with that process, however, are usually skimmed over. Not this time.

Preliminarily, it must be noted that the term “probate” is often used in relation to winding up the affairs of a decedent, whether or not those affairs are, in fact, a part of the probate process. For example, if a decedent’s estate is obligated to file a Federal Estate Tax return, many costs will be incurred solely in the preparation of that return—costs that would be incurred regardless of whether a probate estate is actually opened.

Also, estate and inheritance taxes may have to be paid, and beneficiaries often consider those costs as well. In this column, only those costs associated with the probate process itself will be discussed.

There are three types of probate costs that will be incurred. One includes administration costs, such as probate fees, advertising costs, bond costs, and the like. Probate fees are the fees charged by the Register of Wills for administering the estate through probate. The typical probate fee runs from a minimum of \$50 for a probate estate of less than \$10,000 to as much as \$2500 for a \$5 million probate estate.

The second type of costs include the costs associated with identifying and marshalling the assets of the estate, and determining the value of those assets. Appraisal fees for real property and tangible personal property may be required. There may also be costs associated with transferring property into the estate or

to the beneficiaries of the estate once the estate is ready to be distributed.

The third type of costs involve the personal representative’s commission and associated attorney’s fees. The personal representative is the person responsible for managing the estate through the probate process, for paying any expenses of the estate and any required taxes, and for distributing the estate to the estate’s beneficiaries.

For this work, the personal representative is entitled to receive a commission from the estate not to exceed 10% of the first \$20,000 and 3.6% of the balance. For example, if the probate estate is valued at \$520,000, the commission would equal \$19,800 (10% of \$20,000, plus 3.6% of \$500,000). In many cases, especially when the personal representative is a beneficiary, the commission is waived and not paid at all.

Often, personal representatives employ attorneys to help them perform their duties. Unless there is significant litigation or other extraordinary effort performed on behalf of the estate, the personal representative must pay the attorneys fees from their commissions. In other words, the estate won’t have to pay twice for having the same service performed. The practical effect of this limitation is that attorney’s fees should rarely exceed the personal representative’s commissions.

Taking into consideration the process that is used, the time taken by everyone to help wind up an estate, and protections afforded the creditors and beneficiaries of an estate, the costs of probate are rather modest. Therefore, it is really the probate process, itself, that most people should try to avoid, not the costs associated with that process.