

**Probate Fees  
A Revocable Living Trust—A Better Option  
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As if the reasons for having a Revocable living Trust (RLT) were not enough, Assembly Bill 1759, which established new and increased fees for Probate filings in California, has made it even more imperative for people to use the RLT to transfer assets to their beneficiaries upon death.

**The new fee structure**

AB 1759 became effective in Alameda County on August 18, 2003. The reasons for this astronomical fee increase are beyond the scope of this article. Any person who files for Probate from that day onward will pay a filing fee determined by the value of the estate as follows:

<b>Value of Estate</b>	<b>Former Filing Fee</b>	<b>New Filing Fee</b>
Less than \$250K	\$231.50	\$251.50
\$250K-less than \$500K	\$231.50	\$323.00
\$500K-less than \$750K	\$231.50	\$378.00
\$750K-less than \$1 M	\$231.50	\$598.00
\$1M – less than \$1.5M	\$231.50	\$1,148.00
\$1.5M - less than \$2M	\$231.50	\$2,248.00
\$2M –less than \$2.5M	\$231.50	\$2,798.00
\$2.5M–less than \$3.5M	\$231.50	\$3,898.00
\$3.5M or more	\$231.50	\$3,898.00 + 0.2% of amount over \$3.5M

These astronomical filing fees which have to be paid up front from the estate at the time of filing the petition by the Administrator or Executor of the Estate, do not factor in the Attorney’s statutory and extra-ordinary fees (if any), and the Administrator’s fees, statutory and extra-ordinary.

**Additional Costs**

A quick analysis of the new filing fee structure shows that for the average San Francisco Bay Area estate, which could be estimated at between \$750K

– less than \$1M, the filing fee is \$598.00 plus other costs such as publication, appraisal fees, etc. Therefore, it will cost the estate close to \$1,000.00, just to start the process. Due to the real estate boom in the Bay Area in the recent past, a sizable number of estates fall into this range. However, for estates over the \$1m range, it really gets expensive to lodge the Will with the court. Their filing fee alone is well over \$1,000.00.

### **Attorney and Administrator fees**

Probate Code, section 10810, sets the fees for the administrator and the attorney for services through the probate process. The statutorily set fees are based on the value of the estate and are mandatory unless the attorney negotiates to accept less. These fees come out of the estate prior to any of the beneficiaries receiving their distribution. In extreme cases, if the decedent had creditors prior to his death, such creditors will also receive the repayment of their debt before distribution to the beneficiaries.

Rule 7.703 (a) of California Rules of Court, Title 7, provides that “An award of extra-ordinary compensation to the personal representative or to the attorney for the personal representative is within the discretion of the court.” However, it is common practice for attorneys to negotiate hourly billing rates with the client for extra-ordinary services, or on contingency pursuant to Probate Code, Section 10811 (c), in the hope that the court will approve such.

Examples of extra-ordinary services by the personal representative include:

- Selling, leasing, exchanging, financing, or foreclosing real or personal property;
- Carrying on decedent’s business if necessary to preserve the estate or under court order;
- Preparing tax return;
- Handling audits or litigation connected with tax liabilities of the decedent or of the estate.

Examples of extra-ordinary services by an attorney include among others, the more recurring tasks that are frequently encountered in probate such as:

- Legal services in connection with the sale of real property;
- Litigation undertaken to benefit the estate or to protect its interest;
- Extra-ordinary efforts to locate estate assets.

Due to the necessary nature of these tasks, they will more often than not, be performed in most probate cases. Thus, if the court approves the fee, the estate comes out of pocket for more, in addition to the statutory fee.

It is important to note that the same amount of fees paid to the attorney will also be paid to the administrator. For example, for a \$500,000.00 estate, the statutory fee for the administrator will be approximately \$13,000.00 and \$13,000.00 for the attorney, for a total of \$26,000.00, plus extra-ordinary fees (if any). Don't forget the new filing fee and all these will occur before the beneficiary has received any distribution from the estate. The statutorily mandated fees which are determined based on the value of the estate are shown below:

<b>Percentage</b>	<b>Fee</b>	<b>Cumulative Fee</b>
4% of the first \$ 100,000	\$ 4,000	\$ 4,000
3% of the next 100,000	3,000	7,000
2% of the next 800,000	16,000	23,000
1% of the next 9,000,000	90,000	113,000
1/2 of 1% of the next 15,000,000	75,000	188,000

Based on the above formula, the fees for different sized estates will be calculated as follows:

<b>Size of estate</b>	<b>Statutory fee</b>
\$ 100,000	\$ 4,000
\$ 200,000	\$ 7,000
\$ 300,000	\$ 9,000
\$ 400,000	\$ 11,000
\$ 500,000	\$ 13,000
\$ 600,000	\$ 15,000
\$ 700,000	\$ 17,000
\$ 800,000	\$ 19,000
\$ 900,000	\$ 21,000
\$ 1,000,000	\$ 23,000

\$ 1,250,000	\$ 25,500
\$ 1,500,000	\$ 28,000
\$ 1,750,000	\$ 30,500
\$ 2,000,000	\$ 33,000
\$ 3,000,000	\$ 43,000
\$ 4,000,000	\$ 53,000
\$ 5,000,000	\$ 63,000
\$ 6,000,000	\$ 73,000
\$ 7,000,000	\$ 83,000
\$ 8,000,000	\$ 93,000
\$ 9,000,000	\$ 103,000
\$ 10,000,000	\$ 113,000

These fees and the new filing fees make an even more compelling case for using the Revocable Living Trust as the ideal testamentary vehicle. This article has not addressed in detail, the non-economic reasons for choosing an RLT instead of a will, such as:

- It enables the decedent's estate to avoid probate;
- It is easier to administer than probate;
- It is not a public document and is not required to be lodged with the courts on the death of the testator; and
- It takes less time to administer, unlike Probate, which usually ties up the estate's assets for 6 months to 2 years on average.

You can achieve a better estate tax planning result with a Revocable Living Trust (RLT) than you could with a Will.

### **Economic Comparison**

#### **Revocable Living Trust v. Probate**

It is easy to conclude that the RLT is a safer, easier, cheaper, and better alternative testamentary vehicle for asset transfer than a Will.

#### **What does it cost to draft a RLT?**

The cost of having an attorney draft a RLT depends on the size of the estate, and mainly whether it requires any tax planning intended to reduce or

eliminate estate taxes. On average, it could cost anywhere from \$1,500.00, for the most basic well drafted RLT, to a few thousand dollars for the more complex and larger estates.

However, be careful to select a knowledgeable Estate Planning Attorney with experience in this practice area to draft the documents. There are trust mills and document preparers that "hawk" RLTs to unsuspecting clients for as little as \$300.00. The risk the client takes by "buying" the RLT from an unqualified trust mill or document preparer is that beneficiaries may find out, to their surprise at the death of the settlor, that the so called Trust document is not valid, not funded, and cannot be administered upon death. So, by trying to save slightly more than \$1,000.00, they end up paying at least ten times more to probate the estate because of the invalid trust.

#### **Administration of the RLT on death of Settlor**

The cost of privately administering a RLT upon death of the settlor is cheaper than Probate fees. There are no mandatory statutory fees. Thus, the attorney's fee is entirely negotiable. While the more experienced attorney will set his or her fee based on the size of the estate, a majority of attorneys will negotiate a flat fee, (often as little as a few thousand dollars) especially for estates without conflicts between beneficiaries. Also, most successor trustees who administer the trust on death of settlor do not receive compensation, because they are usually family members who have been provided for in the trust. However, if the trustee is a private fiduciary or corporate trustee, they will usually accept fees.

#### **Conclusion**

##### **Revocable Living Trusts—The best way to protect your estate**

As people's estates appreciate (mainly due to property values), and society becomes more educated on the need for planning for the unknown, more and more people will discover that an RLT the most suitable means of transferring property to their heirs without the hassle of a court supervised probate process.

Feel free to contact us for a consultation at [info@ukohalaw.com](mailto:info@ukohalaw.com)