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# The Uniform Probate Code—It Still Works in Idaho

Terry L. Crapo\*

## I. INTRODUCTION

In the spring of 1976 the author published a study of the Idaho Uniform Probate Code,<sup>1</sup> which analyzed whether the Uniform Probate Code (UPC) in practice had achieved the expectations of its proponents.<sup>2</sup> The study included a survey of Idaho attorneys, interviews with selected bank trust officers, and an examination of statewide probate filings for the years 1973, 1974, and 1975. Its purpose was to determine whether the UPC had actually reduced the cost of probate, eliminated unnecessary procedures, and shortened the time required for estate administration. Despite some initial problems in implementing the new probate code, Idaho attorneys and trust officers perceived that the UPC had generally been successful in both streamlining estate administration procedures and reducing estate administration costs.<sup>3</sup>

The 1976 study did not attempt independent verification of the perception of Idaho lawyers and bank trust officers that probate costs had been reduced, and only a limited review was given to the experiences of professional personal representatives under the UPC. This Article is a supplement to the 1976 study and seeks to update Idaho's experience under the UPC by verifying the reduction in estate administration costs since its adoption. This verification will be accomplished by comparing pre-UPC charges and recommended rate schedules with the fees charged by attorneys and personal representatives since the adoption of the UPC.

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1. IDAHO CODE § 15 (Supp. 1978).

2. Crapo, *The Uniform Probate Code—Does It Really Work?*, 1976 B.Y.U. L. REV. 395.

3. Sixty percent of the attorneys responding to the survey felt that the UPC procedures had generally reduced the time required to administer an estate, and almost 58% felt that attorneys' fees for probate work had been reduced because of UPC procedures. *Id.* at 398, 404.

This Article also includes an examination of the UPC experiences of the trust departments of Idaho's four major banks.<sup>4</sup> The data presented demonstrates that after six years of practical application in Idaho, the UPC enjoys the general approval of professional personal representatives and in most estates continues to hold probate costs significantly below pre-UPC levels.

## II. FEES OF ATTORNEYS AND PERSONAL REPRESENTATIVES

The UPC uses two methods to reduce the cost of estate administration: (1) streamlining of estate administration procedures and (2) elimination of the percentage fee as the primary means of compensation. The 1976 study revealed that all four major Idaho banks and 86% of the responding attorneys were using a method other than the percentage fee as a means of determining their professional fees.<sup>5</sup> Of the lawyers responding to the survey, almost 58% also felt that attorneys' fees had been reduced as a result of the UPC, with the estimated reduction in fees averaging 33.5% below pre-UPC levels.<sup>6</sup> Similarly, trust officers perceived that fees of personal representatives had also been reduced under the UPC.<sup>7</sup>

The perceptions of the attorneys and trust officers were substantiated by Robert W. Kinsey,<sup>8</sup> who compared the claims for fees of attorneys and personal representatives in all Idaho inheritance tax returns filed in 1971 and 1973, the years before and after the adoption of the UPC. Kinsey found a significant reduction in both types of fees after adoption of the UPC.<sup>9</sup>

The Kinsey comparison cannot be continued because the files of the Idaho State Tax Commission are no longer available for public examination. The only alternative source of informa-

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4. Bank of Idaho, First Security Bank of Idaho, Idaho Bank & Trust Company, and Idaho First National Bank.

5. Crapo, *supra* note 2, at 403, 405.

6. *Id.* at 404.

7. *Id.* at 405-06.

8. Kinsey, *A Contrast of Trends in Administrative Costs in Decedents' Estates in a Uniform Probate Code State (Idaho) and a Non-Uniform Probate Code State (North Dakota)*, 50 N.D.L. REV. 523 (1974).

9. Kinsey's study showed that the average attorney's fee decreased 50% between 1971 and 1973 and the median fee decreased 26% during the same two years. *See id.* at 526-27. The present study would indicate that the decrease in the median fee is probably a better measure of the cost reduction produced by the UPC. Kinsey also found that the average commission paid to all types of personal representatives declined by 13% between 1971 and 1973 and the median commission declined by 7% in the same period. *See id.* at 527. Not all Idaho bank trust departments had changed their method of determining administration fees by 1973.

tion on estate administration fees is found in the accountings filed in probate cases. A review of the probate files in five of Idaho's largest counties<sup>10</sup> (representing almost 46% of the total state population) was made for the years 1974 through 1977. From each estate in which an accounting had been filed, the researcher extracted the size of the estate, the amount of attorneys' fees paid, and the amount of the fee of the personal representative, if any. Not every probate file contained an accounting, since many informal or surviving spouse proceedings do not require estate administration. Neither did every accounting include a fee for a personal representative, presumably because many personal representatives are family members who do not charge a fee. A review of all probate files for the four years mentioned produced 844 estates that included accountings and that disclosed the amount of the attorneys' fees charged. Of these estates, only 280 included a claim for personal representative fees.

Table 1 represents a comparison by year of all estates that included accountings, showing the average estate size, the average attorney's fee charged, and the attorney's fee as a percent of the average estate size. In addition, the Table shows the Kinsey data for the years 1971 and 1973. For comparative purposes, the Table also shows the attorneys' fees that would have been charged on the average estate each year under the recommended fee schedule published by the Idaho Bar prior to the enactment of the UPC in 1972.<sup>11</sup>

Table 2 represents a comparison by year of those estates in which a fee was charged by the personal representative. This Table compares the average estate size for each year, compares the average amount of attorneys' fees and personal representatives' fees charged, and shows the average fee as a percentage of

10. The provisional population estimates for 1977 are: Ada County—145,700; Bannock County—61,500; Bonneville County—61,000; Canyon County—75,400; Twin Falls County—48,000. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, SERIES P-26 No. 77-12, CURRENT POPULATION REPORTS 3 (1978).

11. The last fee schedule published in the Idaho State Bar Deskbook (before the practice was discontinued) contained the following recommendation for setting attorneys' fees in matters of decedents' estates:

To be based on all the separate property, all community property up to \$10,000.00, and one-half the remaining community property:

First	\$1,000.00	7%
Next	4,000.00	5%
Next	5,000.00	4%
Over	10,000.00	3%

TABLE 1—*Idaho Attorneys' Fees By Year—Compared as a Percentage of the Average Gross Estate and Compared with Recommended Bar Fee Schedule*

Year	Estates Examined	Average Estate Size	Average Attorney Fee	Average Attorney Fee as Percentage of Average Estate	Bar Schedule Fee Based on Average Estate	Bar Schedule Fee as Percentage of Average Estate
1974	257	\$ 67,944	\$ 1,514	2.2%	\$ 2,208	3.2%
1975	219	60,130	1,676	2.8%	1,974	3.3%
1976	231	67,726	1,575	2.3%	2,202	3.3%
1977	137	66,236	1,518	2.3%	2,157	3.3%
4-Year Period	844	65,580	1,573	2.4%	2,137	3.3%
Kinsey Data						
1971	1,449	39,748	1,441	3.6%	1,362	3.4%
Kinsey Data						
1973	892	62,723	1,130	1.8%	2,052	3.3%

TABLE 2—Fees of Idaho Personal Representatives by Year—Compared as a Percentage of the Average Gross Estate, Compared with Attorneys' Fees in Estates that Charged P.R. Fees, and Compared with the Statutory Fee Schedule

Year	Estates Examined	Average Estate Size	Average Attorney Fee	Average Attorney Fee as Percentage of Average Estate	Average P.R. Fee	Average P.R. Fee as Percentage of Average Estate	Statutory P.R. Fee on Average Estate	Statutory P.R. Fee as Percentage of Average Estate
1974	99	\$82,292	\$1,880	2.3%	\$1,694	2.1%	\$2,579	3.1%
1975	71	76,372	2,328	3.0%	1,728	2.3%	2,401	3.1%
1976	63	79,325	2,102	2.6%	2,207	2.8%	2,490	3.1%
1977	47	85,955	2,212	2.6%	1,914	2.2%	2,689	3.1%
4-Year Period	280	80,738	2,099	2.6%	1,855	2.3%	2,532	3.1%
Kinsey Data 1971*	437	—	—	—	1,850	4.7%	1,302	3.3%
Kinsey Data 1973*	198	—	—	—	1,616	2.6%	1,992	3.2%

\*The Kinsey data do not include an average size for only those estates that had a personal representative fee assessed. The percentages shown on this table were derived using the average size of all estates. The Idaho data indicate that the average size of estates where a personal representative fee was assessed is significantly higher than the average size of all estates.

the average estate. For comparative purposes, the Table also shows the personal representatives' fees that would have been charged under the old statutory fee schedule used by trust officers prior to the enactment of the UPC.<sup>12</sup> Table 2 also illustrates similar data on estate size and attorneys' fees as developed by Kinsey for the years 1971 and 1973.

The comparison of the average attorney's fee with the recommended fee schedule of the Idaho State Bar is significant because many Idaho lawyers based their fees on the fee schedule prior to the adoption of the UPC. The reliance on the fee schedule by Idaho lawyers is demonstrated by the average attorney's fee charged in 1971. That figure, \$1441,<sup>13</sup> is significantly close to the figure of \$1362 derived by application of the recommended bar fee schedule to the average estate. The comparison of the average fee charged by personal representatives with the statutory fee authorized for estates of similar size is significant because all four of the major Idaho banks indicated that their pre-UPC fees were based on the statutory fee schedule, with additional fees occasionally charged for extraordinary services.

The data in Tables 1 and 2 demonstrate that since the adoption of the UPC, both attorneys' fees and personal representatives' fees have declined appreciably and have remained at levels substantially below the actual fees charged prior to the adoption of the UPC, below the recommended bar fee schedule for attorneys, and below the pre-UPC statutory fee schedule for personal representatives. The average attorney's fee, as a percentage of the estate, for 1974-1977 was 33% below the average fee charged in 1971 and 27% below the recommended bar fee schedule. The average fee charged by personal representatives during 1974-1977, as a percentage of the estate, was 51% below the average fee charged in 1971 and 26% below the statutory fee schedule. These data substantiate the earlier perceptions of Idaho attorneys that fee reductions of approximately one-third had resulted from adoption of the UPC<sup>14</sup> and further support the claims of UPC supporters that the Code can be effective in reducing the overall costs of estate administration.

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12. Prior to the adoption of the UPC, the Idaho Code provided for the mandatory allowance of the following fees to executors and administrators: 5% of the first \$1,000 of estate value; 4% of the next \$9,000 of value; and 3% of the balance of the value of the estate. IDAHO CODE § 15-1107 (1947) (repealed 1971).

13. Kinsey, *supra* note 8, at 526.

14. Crapo, *supra* note 2, at 404.

Although average attorneys' and personal representatives' fees are substantially less than pre-UPC levels and less than pre-UPC fee schedules, Idaho attorneys and trust officers have commented that the greatest reductions in fees have occurred in medium and large estates. In fact, the conversion from a percentage fee to a fee based on services rendered has in some instances resulted in small estates with complex problems paying a fee several times larger than a fee computed under pre-UPC fee schedules. Table 3 is a comparison of all 844 estates by size of the estate. It illustrates for each category the average estate size, the average attorney's fee, and the attorney's fee as a percentage of the average estate. For comparative purposes, the Table also lists the attorney's fee that would have been charged under the recommended fee schedule of the Idaho Bar used prior to 1972. Table 4 contains similar information with respect to the 280 estates that included a fee for personal representatives, and Table 5 is a graph showing the attorneys' fees and personal representatives' fees charged as a percentage of the average estate.

The information presented in Tables 3, 4, and 5 is significant for several reasons. Firstly, it strongly corroborates the finding that the UPC has caused most Idaho attorneys and personal representatives to shift from the percentage fee to a fee based on actual services rendered. This is demonstrated by showing that generally the larger the estate, the smaller the fee as a percentage of the estate. The greatest dollar savings resulting from the change in the method of fee determination has accrued to estates above \$30,000. This finding would tend to show that certain basic administration costs are incurred in all estates, but that the cost of services required does not increase proportionately with the size of the estate. Secondly, there are significant savings in fees charged for every category above \$20,000.

Thirdly, administration costs under the UPC show an increase only in estates of \$10,000 or less. This finding may result from many small estates being charged a simple "flat fee," instead of a percentage fee or hourly rate fee, regardless of the size of the estate. Moreover, any complexity in a small estate will drive the fee up sharply as a percentage of the estate. Several attorneys and trust officers have commented that small estates have not been charged a fair fee in the past, and the increased fees merely represent the charging of a proper fee for services rendered.

Even though estates of \$10,000 or less represented only 13% of the sample studied, the larger fees charged for these estates



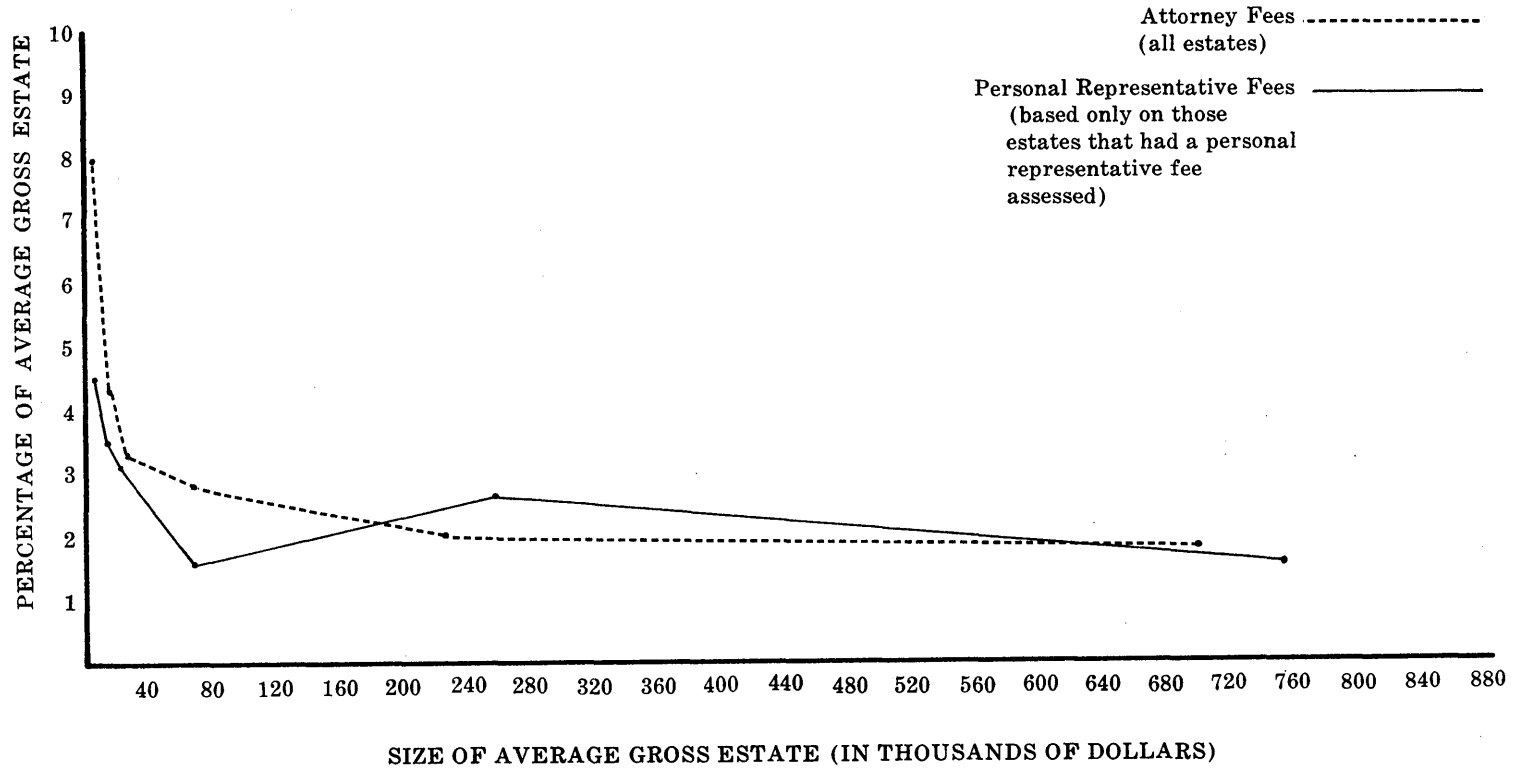
TABLE 3—*Idaho Attorneys' Fee for 1973-1977—Compared by Estate Size and Compared with Recommended Bar Fee Schedule*

Estate Size	Estates Examined	Average Estate Size	Average Attorney Fee	Average Attorney Fee as Percentage of Average Estate	Bar Schedule Fee Based on Average Estate	Bar Schedule Fee as Percentage of Average Estate
Under \$10,000	106	\$ 6,021	\$ 475	7.9%	\$ 311	5.2%
10,000-20,000	145	14,615	642	4.4%	608	4.2%
20,000-30,000	135	25,043	796	3.2%	921	3.7%
30,000-150,000	374	69,614	1,703	2.4%	2,258	3.2%
150,000-500,000	76	230,355	4,620	2.0%	7,081	3.1%
Over-500,000	8	708,555	11,995	1.7%	21,427	3.0%
All Estates Examined	844	65,580	1,582	2.4%	2,137	3.3%

TABLE 4—Idaho Personal Representative Fees for 1973-1977—Compared by Estate Size and Compared with Statutory Fee Schedule

Estate Size	Estates Examined	Average Estate Size	Average Attorney Fee	Average Attorney Fee as Percentage of Average Estate	Average P.R. Fee	Average P.R. Fee as Percentage of Average Estate	Statutory P.R. Fee on Average Estate	Statutory P.R. Fee as Percentage of Average Estate
Under 10,000	30	\$ 5,964	\$ 494	8.3%	\$ 273	4.6%	\$ 249	4.2%
10,000-20,000	34	15,052	691	4.6%	531	3.5%	562	3.7%
20,000-30,000	47	24,678	849	3.4%	794	3.2%	850	3.4%
30,000-150,000	132	72,371	2,008	2.8%	1,189	1.6%	2,281	3.2%
150,000-500,000	33	248,000	5,906	2.4%	5,645	2.3%	7,550	3.0%
Over 500,000	4	754,774	12,633	1.7%	10,701	1.4%	22,753	3.0%
All Estates Examined	280	80,738	2,103	2.6%	1,606	2.3%	2,532	3.1%

TABLE 5—Average Attorneys' Fees and Average P.R. Fees as Percentage of Average Gross Estate



should be a matter of concern and further study for practitioners and draftsmen of the UPC alike. Although it must pay some basic fees for services rendered, the small estate is frequently the estate least able to pay a fee and most in need of simplified and inexpensive administration.

Three factors should be considered before concluding that the UPC has done a disservice to the small estate by facilitating the elimination of the percentage fee. Firstly, the simplified procedures for administering an estate under the UPC can be implemented at minimal cost. For example, title to property can be cleared by an informal appointment (accomplished with three simple documents) and a deed of distribution. The Idaho data may not so much indicate any problems with the UPC, as it may indicate that Idaho lawyers are not yet accustomed to using the informal approaches to administering the small estate. Secondly, the study only examined estates in which an accounting was filed showing attorneys' or personal representatives' fees. In many informal and surviving spouse proceedings<sup>15</sup> no accounting of any type is filed. Accordingly, the data for estates of \$10,000 or less may represent data for estates in which there were problems sufficient to necessitate an accounting and an unusual amount of administration, or estates that received more administration than was actually required. It is the author's experience that small or simple estates administered under informal or surviving spouse proceedings rarely include accountings and usually carry modest fees. If these estates had been included in the study, every category would have shown lower fees. Thirdly, trust officers report that even when small estates involve complex problems resulting in larger fees, clients are much more willing to pay a fee based on actual services rendered than one based solely on a percentage of the estate. Clients in every category of estate size appear to be favorably impressed with the UPC methods of determining fees.

A comparison of Tables 3 and 4 indicates that attorneys in Idaho have charged slightly higher fees, measured as a percentage of the estate, when the estate has been administered by a personal representative who has also charged a fee. For example, in

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15. The UPC as enacted in Idaho provides for a summary surviving spouse proceeding, IDAHO CODE § 15-3-1205 (Supp. 1978), which is a method of conferring title to property on a surviving spouse without the necessity of administration. Notice to creditors is not published and the property passes to the surviving spouse subject to the claims of creditors. The procedure is a simple method of clearing title to marital property and is very popular in many Idaho counties.

estates having a value of \$30,000 to \$150,000, if the estate was administered by a personal representative who charged a fee, the average attorney's fee was 2.8% of the entire estate, while if there was no charge for a personal representative's services, the average attorney's fee was 2.4% of the estate—a reduction of 14%. Estates in which a fee is charged for a personal representative will frequently be estates in which the personal representative is a professional, or at least not a member of the immediate family. The larger attorneys' fees in such cases may result from professional personal representatives' frequent involvement in complex and difficult estates, although one would anticipate the assistance of a professional personal representative to reduce the involvement of the attorney in administering such estates. This particular comparison may merely reflect the inclination of attorneys to charge higher fees when dealing with professional personal representatives, or with family members who are also receiving substantial fees for helping in estate administration.

In summary, the comparison of fees charged by attorneys and personal representatives before and after the adoption of the UPC in Idaho strongly supports the earlier perceptions of Idaho lawyers that the UPC has been effective in reducing the cost of estate administration. The percentage fee approach has largely been replaced with the "fee for services rendered" approach, which has reduced the overall cost of probate. Fees charged by attorneys and personal representatives since the adoption of the UPC and measured as a percentage of the estate have been lower than pre-UPC percentages and lower than statutory or recommended fee schedules. Small estates that have filed accountings have incurred larger administration fees under the UPC than under the pre-UPC probate laws. Estates of \$30,000 or more, however, have shown substantial savings in administration fees since the adoption of the UPC.

### III. BANK TRUST DEPARTMENT EXPERIENCE WITH THE UPC<sup>16</sup>

Idaho banks have administered estates under provisions of the UPC for more than six years. The trust departments in Idaho's four largest banks<sup>17</sup> have reacted favorably to the UPC.

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16. The observations and comments of Idaho bank trust officers were collected from confidential questionnaires distributed to the banks during February through May 1978. To maintain confidentiality, information gathered from the questionnaires and comments that appear in the text will not be cited directly.

17. Note 4 *supra*.

The trust officers note a reduction in the cost of estate administration provided by bank trust departments, but emphasize that the major reductions have occurred in medium and large estates. The banks take advantage of the streamlined procedures available under the UPC and find them helpful, but frankly admit that the use of these new procedures has not greatly improved the public image of estate administrators.

*A. Reducing the Cost of Professional Estate Administration*

Prior to the adoption of the Idaho UPC, the four Idaho banks surveyed uniformly charged the percentage fees authorized by the Idaho Code,<sup>18</sup> plus an additional fee for extraordinary services, if required. Following the enactment of the UPC, each of the four banks began to levy fees according to the services actually rendered. The banks charge either an hourly rate or a specific job rate, adjusted for such factors as complexity, liability exposure, expertise required, and type of management involved. Out-of-pocket costs are usually imposed in addition to the fee for services. Two banks indicated the change had increased their workload because the trust department must now keep detailed records to support its fee computations. Presumably, this increase in workload is justified by the greater fairness of the fee based on services actually rendered. Several trust officers agreed that a fee based on services rendered was far easier to justify to clients than the percentage fee.

Each trust department observed an overall reduction in fees since enactment of the UPC; estimates of the amount of the reduction ranged from "slightly" to five to ten percent. The trust officers of all four banks made two important observations about the cost of estate administration under the UPC. They observed that the cost of administration had increased substantially because of the changes made in the tax law by the Tax Reform Act of 1976.<sup>19</sup> They particularly noted the increased work in keeping records of cost basis for the new carryover basis rules.<sup>20</sup> The trust officers believed the new basis rules had also created additional

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18. IDAHO CODE § 15-1107 (1947) (repealed 1971).

19. Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (codified in scattered sections of the I.R.C.).

20. I.R.C. § 1023. The Revenue Act of 1978, Pub. L. No. 95-600, § 515, 92 Stat. 2763, postponed the effective date of the carryover basis rules so that they now apply only to property acquired from a decedent dying after December 31, 1979. The banks have received a short reprieve in applying the rule, but must still be prepared to keep the necessary records to determine basis when the rule again becomes effective.

administrative burdens for trust officers in determining which assets to sell during administration and how to divide assets among estate beneficiaries at the time of estate distribution.<sup>21</sup> One trust officer commented that the additional administrative costs resulting from the Tax Reform Act of 1976 had actually offset many of the savings anticipated by the UPC and that the cost of professional estate administration would have increased in Idaho had it not been for the savings permitted by the UPC.

The trust officers' second important observation was that the savings in administration costs were greater for medium and large estates. The officers noted that smaller estates sometimes actually pay higher administrative fees under the UPC than they would have under the percentage method. Professional personal representatives incur certain basic costs in administering all estates. These fixed costs constitute a larger percentage of the small estate than of the large estate. The trust officers remarked that since many large estates are not difficult to administer, the percentage fee produced windfall profits in some instances. The UPC's fee for services rendered has dramatically cut the cost of administration for this type of estate. Finally, the officers noted that banks administer few estates that are both small and simple. When small estates seek professional administration it is frequently because the estate's problems are complex and require professional attention; the complexity causes more work, which results in a higher fee. Most banks do not seek administration of small estates because the cost is high relative to the value of the assets administered.

The four trust departments were asked to select recent estates of various sizes and complexity and to compare the fees charged with the fees that would have been charged under the former statutory percentage fee schedule. The samples furnished by the banks demonstrate that banks have completely departed from a percentage fee basis and that in many instances significant savings have resulted from the adoption of the new fee system. Several illustrative cases follow:

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21. When carryover basis rules are implemented, assets with carryover basis will also carry built-in tax disadvantages to distributees. The personal representative can allocate or shift tax burdens by selecting assets for sale or distribution. For example, two parcels of land may have equal fair market values on the date of distribution, but one may have a low and the other a high carryover basis. The distributee receiving the low basis property will have a substantial tax disadvantage and may insist that the distribution be modified to compensate for the tax problem. This factor seriously complicates the duty of the personal representative of selecting assets to distribute or sell during administration.

<b>Case 1:</b>	Estate value	\$1,061,118
	UPC fee charged	16,648
	Pre-UPC statutory fee	31,944

*Comments:* Administrative complexity was low, but complexity in determining heirship raised time spent on the estate; otherwise the fee would have been in the \$7500.00 range.

<b>Case 2:</b>	Estate value	\$100,763
	UPC fee charged	1870
	Pre-UPC statutory fee	3133

*Comments:* Very little complexity.

<b>Case 3:</b>	Estate value	\$98,000
	UPC fee charged	3900
	Pre-UPC statutory fee	3090

*Comments:* Complex estate with many title problems.

<b>Case 4:</b>	Estate value	\$88,000
	UPC fee charged	2500
	Pre-UPC statutory fee	2750

*Comments:* Average in complexity.

One trust officer indicated that even when the complexity of an estate results in administrative costs higher than pre-UPC statutory rates, clients prefer the fee-for-services basis for determining administration charges. Bank clients are generally more satisfied with paying a fee that they know is based on services actually rendered to the estate.

While reduction of the cost of professional estate administration under the UPC is significant, the greatest benefit of eliminating the percentage fee may simply be the strength added to the probate system through replacement of an arbitrary fee system with an equitable one. Bank trust departments now charge for services actually rendered, and estates now pay for services actually received.

#### *B. Uses of Streamlined Administrative Procedures by Trust Officers*

Each of the four banks surveyed agreed that the administrative procedures available under the UPC had generally reduced the time required to administer an estate and that the alternative forms of administration helped the trust officer meet the individualized needs of different clients. One trust officer indicated



that although the overall time from date of death to date of substantial distribution of estate assets had been greatly reduced under the UPC because of the streamlined court proceedings, actual hours worked on estate administration had not been greatly reduced because of the increased administrative detail work required by bank auditors and the Internal Revenue Service. Conversely, another trust officer stated that the UPC had greatly simplified overall estate administration, but that the actual date of final closing and distribution had not been greatly accelerated in estates with federal estate tax liability because of the need to obtain a discharge of liability for the personal representative before final closing. Even when federal estate tax liability exists, most estate assets can nevertheless be distributed prior to the date of final closing, if a reserve adequate to protect the personal representative is maintained.

The information furnished by the Idaho bank trust departments demonstrates the development of several common patterns of UPC estate administration. The initial decision of whether to open an estate formally or informally is usually made on a case-by-case basis. It depends on the nature of the estate, the relationship of the potential heirs, and whether there is any significant possibility of dispute over either the appointment of the personal representative or the admission of the will to probate. A strong emphasis is placed on using informal estate openings whenever possible. One bank has a policy of opening all estates informally unless a dispute presently exists over the will or the appointment of the personal representative. Regardless of the form of estate opening, the banks are absolutely uniform in requiring a formal closing of the estate and a court order discharging the bank as personal representative. In fact, it would be unusual to find any professional personal representative that would not desire the protections afforded by a formal closing and discharge.

The trust departments rarely use "supervised administration."<sup>22</sup> It is used only in unusual situations where great dissension among family members exists or where assets are managed by or sold to members of the family. One bank indicated that if the disputes were so great as to require supervised administration, the bank would be inclined not to act as personal representative for the estate.

All of the banks make frequent use of the power granted by the UPC to sell estate assets without prior court approval.<sup>23</sup> The

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22. UNIFORM PROBATE CODE §§ 3-501 to 3-505.

23. *Id.* § 3-715.

trust officers found this provision a major administrative advantage of the UPC. One officer indicated that in his experience approximately ninety percent of all estate assets sold were disposed of without prior court approval. Another trust officer stated that court approval was generally sought only in cases involving major assets of uncertain value, disputes between family members as to the desirability of the sale, or sales to members of the decedent's family.<sup>24</sup> A trust officer commented: "The ability to move quickly in making a management decision and not having to face a delay of obtaining a court order can often be to the financial advantage of the estate."

The trust officers were asked to identify provisions of the UPC that have been of particular value to them in administering estates and trusts. Several benefits were expressly mentioned.

1. Elimination of the need to obtain court orders in many instances.
2. Allowance of flexible investment decisions.
3. Elimination of court accountings for testamentary trusts.
4. Streamlined probate procedures, particularly court procedures.
5. Different options for distributing and closing estates.
6. Clarification as to the allocation of federal estate tax when the will is silent on the subject.
7. Clarification of allowances to heirs and beneficiaries.
8. Replacement of the percentage fee with a fee for services.

The trust officers were also asked to identify any difficulties experienced under the UPC. They disliked having to approve attorneys' fees, particularly where the statute embodies a "reasonableness" standard.<sup>25</sup> The trust officers found some instances in which the flexibility of the UPC proved a disadvantage to them. Clients and attorneys occasionally pressure the banks to use informal proceedings to close an estate, or to distribute the estate without publishing notice to creditors. Although these procedures are useful in many small estates, trust departments subject to audit feel uneasy using some of the simplified UPC procedures and prefer to obtain some form of formal protection in most instances. Sometimes it is difficult to explain the need for the

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24. UNIFORM PROBATE CODE § 3-704 makes it clear that a personal representative can seek and obtain court approval of any transaction if such approval is desirable under existing circumstances. However, the personal representative is under no obligation to obtain such approval.

25. UNIFORM PROBATE CODE § 3-721.

more expensive procedure to the client. The trust officers found fee determinations more difficult under the UPC because it is more difficult to compute a fee for services than a straight percentage fee. One bank was uncomfortable with the registration of trusts under the UPC and stated that its policy was not to register unless requested to do so by a grantor or beneficiary. Since no penalty is imposed for nonregistration,<sup>26</sup> the bank did not feel unduly hampered by the registration requirement.

The difficulties experienced by the banks did not result from any substantive defects in the UPC. Rather, they reflect problems inherent in a flexible probate system offering alternative forms of administration and greater discretion to estate administrators. The very existence of discretion and flexibility places some additional burdens on professional administrators because they are obligated to exercise that discretion and make choices that must be justified to clients. However, that inconvenience is far outweighed by the numerous advantages of the flexible probate system.

Despite their favorable attitude toward the UPC, bank trust departments did not conclude that the UPC had greatly improved the public image of either the probate attorney or the bank trust department. One banker commented: "As I visit with individuals throughout the state, they still seem to have the attitude that the attorneys and trust departments are waiting to take advantage of estates." Several trust officers observed that the public had the impression that the UPC would eliminate estate administration or greatly reduce its time and cost. When clients discover they still need estate administration, they express considerable disappointment. The Idaho bank trust officers thus confirm the perceptions of Idaho attorneys concerning public reaction to the UPC.<sup>27</sup> It will require far more than a modern probate code to convince the public that attorneys and trust officers have their clients' best interests at heart in estate administration and that the client receives a significant benefit from a properly administered estate.

After using the UPC for a number of years, the trust officers uniformly favored the Code's adoption. One trust officer summarized his experience with the UPC as follows: "We are pleased with the Code and think it has benefited us in our fiduciary capacity. It has better itemized our duties and responsibilities, as

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26. *Id.* § 7-104.

27. Crapo, *supra* note 2, at 416-17.

well as our potential liabilities. It has permitted us to be more efficient and effective, and to develop a better relationship with both the client and the attorney.”

#### IV. CONCLUSION

Idaho's continued experience with the UPC demonstrates that the decision to adopt the Code was a sound one. The streamlined probate procedures available under the UPC have reduced the cost of probate through a reduction of both attorneys' fees and the charges of personal representatives. Idaho bank trust officers have found the UPC to be an improvement over the prior probate system and a useful tool in administering decedents' estates. Code provisions permitting speed and flexibility in disposing of estate assets have proven particularly advantageous.

Idaho's experience demonstrates that the UPC works well in practice and has no basic substantive defects. Nevertheless, this experience also shows that society's pervasive distrust of the probate system has not been altered appreciably by the implementation of a modern probate code. The UPC should, therefore, be adopted on its own substantive merits rather than for any anticipated increase in public satisfaction with probate system.