

Soaring fees set deadline for executors and estate planning

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Controversial [court fees](#) which have been branded a stealth tax on bereaved families are expected to prompt a surge in probate applications before the hike hits. The new banded fee structure will see the cost of probate soar by thousands of pounds for higher value estates.

The current flat fee is £215 for a personal application for probate, or £155 when handled through a solicitor, but this is to be replaced by a tiered set of fees. While the fees have been reined in from the original proposal last year, which would have seen charges of up to £20,000, the biggest estates will still find themselves paying £6,000 in court fees.

The fees are payable to the court when the executors apply for formal authority to act in the administration of the estate, once they have identified and itemised all the assets owned by the person who has died. This follows submission of the [inheritance tax return](#) for the estate and payment of any inheritance tax that is due.

Until the application for a Grant of Probate or Letters of administration have been approved by the court, the executors are unable to bring in the assets of the estate. Banks will not release the funds held in bank accounts, the proceeds of shareholdings cannot be handed over and no houses or commercial property can be sold until probate has been obtained.

As no funds can be distributed until the Grant has been issued, except for payment of funeral costs and inheritance tax, there are concerns that families will struggle to pay the probate fees before they can access the money locked in the deceased's estate.

Estates that comprise high value property, but are short on liquid assets, may find themselves paying high court

fees without any expectation of cash to offset the cost. This could be the case where a husband or wife has died, and the survivor needs a grant of probate to transfer the property into their sole name.

Probate solicitor, [James McMullan](#) said:

“For executors who are already in the process of administering estates, especially larger ones where the increased fees will be more of a hit, it’s worth reviewing the position to see if they can get the estate ready to apply for probate sooner rather than later. It’s currently expected to be April when the switch is made to the tiered fee structure, but it could be earlier and there will be just 21 days from the announcement until the new fees kick in.”

Looking to the future, if you expect your estate is going to be affected then it’s worth getting some advice. There are only limited ways in which to tackle the amount of fee that will be due, but there are other ways in which you can ease the burden for your executors.”

Ways in which forward planning may help, according to James, include taking out a life insurance policy and putting it in trust. If made over in this way for the benefit of a family member, or other beneficiary, the pay-out will not be included within the estate and can be accessed on death without the Grant of Probate.

Leaving property to a surviving spouse by means of a trust rather than an absolute gift will reduce the value of the surviving spouse's estate for the purposes of the court fee calculation when he or she dies.

James added: *“The important thing when estate planning is to make sure you understand all the implications and check that what you’re planning will solve the problem and not create a new one, which is why you do need to*

get specialist advice if you're getting into more technical areas.

For example, the taxman is taking an increasingly forensic approach to checking out transfers of property made before death. Growing numbers are handing over property to family but continuing to live there, which is known as a 'gift with reservation of benefit' and gives rise to all sorts of complications and potential tax liabilities.

It's good practice to regularly review your estate and tax planning, as things are always changing, so this is a good time to do that temperature test."

New probate court fees from April 2019

Estates with a value of less than £50,000 will be exempt. Above that, the fees will be on a sliding scale from £250 to £6,000.

Estate value	Fee
Up to £50,000 or exempt	Nil
£50,000-£300,000	£250
£300,001-£500,000	£750
£500,001-£1m	£2,500
£1,000,001 - £1.6m	£4,000
£1,600,001 - £2m	£5,000
Over £2m	£6,000

If you've been affected by any of the issues raised in this article, contact [James McMullan](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

