

Probate application fees: A new death tax?

A grant of probate or letters of administration ('grant of representation') is needed where an executor appointed in a deceased person's will, or an administrator if the deceased died without a will, requires authority to take control of a deceased person's assets (e.g. bank accounts or property) and then distribute the assets according to the deceased's wishes in their will or by the intestacy rules if there is no will.

Following on from the government's proposal back in February 2017 to increase the court application fee for a grant of representation to up to £20,000, which was dismissed before it took effect; there is now a new plan for a rise in probate fees which is due to be introduced from April 2019.

Currently, all applications for grants of representation cost £155 (if you make the application through a legal representative) or £215 (if the application is made personally) with additional copies of the grant of costing 50p each. No probate fee is payable if the estate is worth less than £5,000.

The proposed legislation will alter the pricing structure of the application fee, and the fee charged will be dependent on the value of the estate as at the deceased's date of death. The proposed fees are as follows:

<u>Value of the estate</u>	<u>Application fee</u>
Below £50,000	£0
Exceeds £50,000 but not £300,000	£250
Exceeds £300,000 but not £500,000	£750
Exceeds £500,000 but not £1m	£2,500
Exceeds £1m but not £1.6m	£4,000
Exceeds £1.6m but not £2m	£5,000
Exceeds £2m	£6,000

The reason for the increase in fees is to improve the efficiency and accessibility of the UK courts system which extends to its probate registries, although some have argued that it is a new tax in disguise, especially where the value exceeds £500,000.

The government's intention following the controversy over the original proposal, is that the fee should never be more than 0.5% of the value of the estate and raising the 'exempt estates' limit from £5,000 (which is the current limit) to £50,000 will significantly increase the number of estates which are not subject to the fee. This may be beneficial if the deceased was a non-UK resident but with assets up to £50,000 (a small shareholding or bank account for example) in the UK which require a grant of representation to be released. Those likely to be more heavily affected are individuals with estates valued at over £500,000.

The fee will need to be sent to the court before the grant of representation is issued to release the deceased's assets. This fee is usually provided by the executor or administrator, who is reimbursed once funds are released. Where an executor or administrator is not in a position to make payment of the fee the government have suggested that there will be several funding options.

This will also have an impact on anyone who owns property as tenants in common. Currently, individuals can hold a property in two ways: tenants in common or joint tenants. Tenants in common means the owners have ownership of separate shares in the property. Joint tenants is different in that the owners do not own 'shares' in the property as such, and from a legal stand point both owners have ownership over the entire property.

The disadvantage to tenants in common ownership, following the introduction of the new probate fees, is that the value of the owners share in the property will form part of their estate on death, and so be included in the calculation for the proposed application fee. For example, a property worth £2m owned as tenants in common in equal shares will attract a £4,000 grant of representation fee for the deceased's estate.

Whereas for joint tenants, when one owner dies the property automatically passes to the surviving owner, without the need for a grant of representation, so the value of the deceased's 'share' is not included with the rest of the estate for the purposes of assessing the fee payable. Holding the family home, in particular, as tenants in common has been a widely used estate planning tool for a number of years. If this change is introduced it will be important to review the method of property ownership to see whether any changes would be appropriate.

The new fees are due to come into force in April 2019 and so if you require assistance with an application for a grant of representation before that time then please contact a member of the Rooks Rider Wealth Planning Team. Alternatively, we would also be happy to discuss any queries you may have regarding the new fee banding.

If you have any concerns or queries, please contact a member of the Rooks Rider Solicitors' Wealth Planning Team.



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