The Telegraph

'New death tax' will make cashflow problems worse for the bereaved

Helen Flemming's mother died suddenly while abroad

By Olivia Rudgard

A sharp rise in probate fees will heap an extra logistical – as well as financial – burden on executors and families, solicitors have warned.

Currently executors pay a flat fee of £215 for probate regardless of the size of the estate. Under new rules, which the Government is consulting on, a sliding scale of fees will be introduced, capped at £20,000 for estates worth more than £2m.

But as with other costs and taxes relating to death, this fee needs to be settled before the executor – usually a spouse or child – can actually get their hands on money held within the estate.

This can seem counter-intuitive and comes as a surprise to many executors and family members, solicitors say. It can create a cashflow crisis, especially when the value of the estate consists mainly of non-cash assets such as property.

- 'I'm leaving all my wealth to charity - and nothing to my estranged family'
- HMRC demands inheritance tax before the funds are available: what can we do?

Gary Rycroft, a solicitor and member of the Law Society's Wills committee, said: "A significant increase in probate fees will result in more potential cashflow issues for families.

"It could well turn out to be like another form of inheritance tax, payable before probate is granted, and making difficulties for those estates where there is not a lot of cash.

"I am dealing with an estate now where the only asset of any value is a flat worth £700,000. It is difficult to get around the issue of paying inheritance tax in order to obtain probate. Similar circumstances are likely to arise around probate fees."

Funeral costs are another often large expense that frequently has to be paid for by a deceased person's family before probate is granted. Research from the British Seniors Insurance Agency found that these now average £4,136.

For Helen Flemming, 34, the hardest thing about the loss of her mother, who died suddenly while abroad, was not knowing what sort of funeral she would have wanted.

As a result Ms Flemming had to choose as best she could a funeral that she hoped her late mother would have chosen for herself. But another shock for Ms Flemming was that the probate rules meant there was no money available from the estate to pay for it.

She said: "Mum had never dealt with the issue of a funeral in her will. I will probably put it in mine.

"It's a hard conversation but it's one that's quite important because losing someone close to you is one of the hardest things you'll go through in your life."

Ms Flemming, a commercial finance manager from Berkshire, who is one of five children, ended up paying for the funeral out of her savings.

She can recoup this cost from the estate before it is divided according to her late mother's will. "Because of the way we've been brought up, we were prepared to deal with a situation like this, so we were lucky that this wasn't going to be made worse because it was dragging us into debt," she said.

"I'm putting a new will in place and I will make sure there are savings that the children can access immediately. "I'll set up accounts so some money is always available. When someone dies you don't get access to money immediately – you need to have funds they can access on day one."

Solving the problem of 'ready cash' after death

Having enough accessible cash in the bank to pay for expenses such as a funeral can help family in a crisis.

Rebecca Fisher, an estate planning solicitor at Russell Cooke , said the stress and hassle of going through probate could be worse than any expense and it was important to make sure your family knew how your finances worked.

“It’s the stress, the worry, the problems that go with it,” she said. “For individuals, having a list of assets, knowing who your investment manager is, where your bank accounts are – that’s really important.”

Shared accounts

Shared bank accounts can’t be accessed by children while they are minors, but having the money set aside for a rainy day is a good long-term measure. For older people, a small amount of money in a shared account, with an adult child also named, can also be a good idea.

“A joint account, with some money which would pass into the other account holder’s name, would help in this situation,” said Andrew Kidd, a partner at Clintons, the law firm.

The shared account-holder would simply have to produce a death certificate to be able to access the funds.

However, joint accounts can be a risky way to avoid probate fees, and it’s not a good idea to put a lot of money in them.

“You’re opening up a whole load of unintended consequences,” said Mr Kidd. “If the child gets divorced, their partner is going to claim half of that money. Or what if they go bankrupt, or take the money and go Awol? It’s not worth the risk.”

Trusts

A trust is a good way to make sure assets go straight to a beneficiary without going through probate, and are not split or lost in a divorce or financial upheaval such as bankruptcy.

But they can be costly and labour-intensive. Anything in a trust worth more than £325,000 could incur an inheritance tax liability of 20pc, and if it generates an income it has to be reported to HMRC and taxed each year.

This means anything that isn’t cash, including investments and property, is likely to be liable for tax.

Lawyers agree that it is not worth setting up a trust purely to make assets available immediately upon your death. “It’s like taking a sledgehammer to crack a nut. It’s primarily for asset protection purposes,” said Mr Kidd.

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Life insurance

Depending on your age and health, life insurance can be a good way to make sure that assets can be accessed by your dependants on death, but the policy needs to be put in trust so they can receive the assets directly, before probate.

You don’t necessarily need a lawyer to organise this, said Ms Fisher.

“Lots of life insurance policies have trust deeds. If it’s written in trust for a child, they just produce the death certificate and the trustees should pay out,” she said. “You can use the life insurance policy to clear inheritance tax and pay off mortgages.”

However, policies can be prohibitively expensive for people who are elderly or in poor health. Smokers are also charged more.

In the past, holders of “whole of life” cover have been hit by escalating premiums and plummeting values. Holders should also be careful if they make changes to existing policies as, in the past, policies that were in trust have been taken out of it without the policyholder’s knowledge.

“Over-50s’ plans”, which do not take into account age or ill health, can be beneficial for some, but in many cases holders end up paying in more than they get out, particularly if they live for longer than expected.

A funeral plan can also help pay for a funeral in advance to avoid any family member having to pay upfront. Read the small print, though – these policies often guarantee to pay the funeral director’s costs but not extras such as the minister, gravediggers or burial plot.

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