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'Astronomical' probate fees threaten cash-poor heirs

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Rising house prices mean millions of families, mostly living in south-east England, would face probate fees running into thousands of pounds if government plans published last week go ahead.

More than 40,000 bereaved families a year could soon have to pay at least £1,000, and as much as £20,000, to obtain probate in England and Wales, under proposals expected to raise £250m for the court system each year.

Where wealth is largely tied up in property, the reforms — which predominantly affect estates worth more than £300,000 — solicitors have warned it could be difficult for successors to stump up higher probate fees.

“It’s not difficult to imagine an estate worth £2.1m where the family home is worth £2m . . .

under these proposals, the executors would have to find £20,000 in cash on death,” said Charles Hutton, a partner at Charles Russell Speechlys, a law firm.

Grant of probate, which executors need to deal with an estate, currently costs £155 — or £215 if a solicitor is not used — where net assets, before any inheritance tax is paid, exceed £5,000.

The Ministry of Justice has proposed that no fees are levied on estates of less than £50,000, meaning most estates would be exempt. Larger estates would incur charges on a sliding scale, however, starting at £300 and rising to £20,000 where assets breach £2m (see table).

Although the government only expects this top rate to affect 1,000 or so of the 270,000 probate applications made each year, the new charges would run into four figures for estates with modest homes in and around the capital.

An estate comprised solely of a median value property in the south-east of England — £365,000, according to the latest Office for National Statistics figures — would incur a probate fee of £1,000.

In London, where the average home costs £536,000 — up one-third over the past three years — the fee would be £4,000.

Proposed fee structure

Value of estate (pre-IHT)	Proportion of all estates	Proposed fee
Up to £50,000	57%	£0
£50,000 — £300,000	27%	£300
£300,000 — £500,000	10%	£1,000
£500,000 — £1m	5%	£4,000
£1m — £1.6m	1%	£8,000
£1.6m — £2m	0.2%	£12,000
Above £2m	0.4%	£20,000

Source: Ministry of Justice

Mr Hutton said that while banks were likely to release cash held by the deceased to pay probate fees, as they currently do to settle inheritance tax before probate is granted, the proposed fees “could cause financial difficulties” where estates have very little or no cash.

“It’s very difficult to get bridging loans to cover [IHT] now as virtually all the high street banks have stopped offering them,” he said. “Executors or heirs commonly borrow against their own

assets.”

Mr Hutton warned that the probate fees would typically have to be paid on the death of both spouses in a married couple. “This would be up to £40,000 for estates valued at the higher end of the new fee scale, which is astronomical.”

“I do think the proposals are very punitive for Middle England,” said Dora Clarke, a probate partner at law firm Withers.

She said “outrageously high” probate fees could at least be avoided on the death of the first spouse if couples make sure their assets — especially valuable ones — are held in their joint names.

“Many people would regard a progressive fee structure as a fairer way to charge for the service,” said Jonathan Smithers, president of the Law Society, which represents solicitors. “But the fees proposed for high value estates do not bear any relation to the work or value involved.”

In a letter to the chairman of the justice select committee, Shailesh Vara, parliamentary undersecretary of state at the Ministry of Justice, said the revenue-raising proposals would make “a critical contribution” to cutting the £1.1bn net cost of running the court system each year.

“Court fees are never popular but they are necessary if we are, as a nation, to live within our means.”

The Ministry of Justice is consulting on the proposed reforms to probate fees until April 1.

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