



Possible changes to probate threshold and statutory legacy amount

Feedback to the Ministry of Justice

28 November 2024

Citizens Advice Bureau New Zealand | Ngā Pou Whakawhirinaki o Aotearoa (CABNZ) welcomes the opportunity to comment on possible changes to probate threshold and statutory legacy amount.

Feedback about the probate threshold

1. How often in your experience would an estate have only one or two assets over the probate threshold of \$15,000? What types of assets are these most likely to be?

CAB receives around 6,000 enquiries a year on issues relating to death, dying and administration of estates. Of these the vast majority are about wills and probate. We are not able to provide specific numbers in response to this question without detailed analysis of our data, but it is an issue that arises at times.

In instances where CAB clients have enquiries about estates with assets that tip over the probate threshold, it is most often investments in KiwiSaver, and sometimes a bank account or a life insurance policy payout, that are contributing to assets being over the threshold. Where assets are only several thousand dollars over the threshold, such as in KiwiSaver accounts, these funds are often then used up in legal fees relating to the administration of the estate. Funds in bank accounts that are over the threshold are sometimes from KiwiSaver investments that have been drawn down after retirement.

2. What do you think would be an appropriate new threshold and why?

An increase in the probate threshold is appropriate on several fronts.

It would ensure the threshold changes over time to adjust with inflation. Ideally any change that occurs as an outcome of this feedback process would also be about establishing a regular adjustment mechanism.



An increase in the level would also allow more people to proceed with the distribution of the estate without using up limited funds on legal costs. As noted above, KiwiSaver investments are currently pushing estates over the probate threshold. These can be modest amounts and may not be thought of by the parties involved as an investment or asset. For many, these funds are there to provide basic living cost for the person in retirement and/or to reduce the burden of the cost of dying on their loved ones.

We don't have a firm view about the appropriate level as we see the threshold relating to probate as just one factor in supporting the efficient, effective and person/whānau-centred administration of estates. Other things we would like to see being given consideration are:

- Categories of exempt assets.
- Plain language terminology and improved awareness and understanding of the law and processes related to estate administration.
- Simplified and streamlined processes for the application of probate.
- Support for the process.

However, based on our engagement with others working in this area, we support an increase to at least \$22,000 to \$25,000.

3. Are there any types of assets that you think could or should be treated differently? If so, why?

KiwiSaver – People have an expectation their KiwiSaver investment will be available for paying for death-related costs and being shared with their loved ones if they don't get to use it for their retirement. They don't expect it to be absorbed by legal costs in its distribution.

Funeral costs – We would like to see greater clarity around access to funds from the estate for reasonable funeral costs, burial and cremation, without the grant of probate or letters of administration creating barriers or delays. This would mean the executor could access and use funds from the estate (if available) to provide for funeral costs. This has the dual benefits of both supporting the dignity of the deceased person and relieving pressure on those who are grieving. Currently, funds can be released by a bank, but this is generally on invoice and by transferring money directly to the funeral director. This limits people's access to these funds for funerals and tangi that are not being managed by a funeral director. We also regularly see people getting in debt having to pay for funeral-related costs up front while funds are tied up in the estate.

4. What issues or risks do you see with an increase in the threshold?

The larger the limit for probate, the less legal scrutiny of the validity of the will and/or the appointment of executor(s) / administrators. For those who die intestate there are also added risks as the default inheritance rules may not reflect the deceased person's wishes or the views of those who were close to them. Those who may feel they have a claim may not have the confidence or resources to challenge the process through the courts.

Another issue that we see in our enquiries is that sometimes people choose to spend an amount on the funeral that consumes the funds in a smaller estate without consultation with those who would otherwise inherit from the estate. An increase in the probate threshold could exacerbate this, however this could be addressed by determining reasonable funeral costs that are exempt from probate requirements (as above).

There needs to be a balance between the costs of probate (finances, time, energy) and the size of the estate. It is also important to recognise that probate only addresses the validity of the will and appointment of executors, it does not guarantee that distribution of the estate is carried out appropriately.

5. Is there any other feedback you would like to provide?

With increases in cost of living, cost of legal fees and death services and the amount in KiwiSaver investments tipping small estates over the threshold, we believe it is a good idea to raise the probate threshold. However, as highlighted above, we consider the increase in the threshold to be one issue amongst many in terms of the difficulties and costs people face in relation to the administration of death.

For example, the significant number of people dying without a will creates social and financial burden. We would like to see systems in place to support every person to have access to will-making services – including free services for those who need them. This could be facilitated through processes such as using KiwiSaver sign-up as a mechanism for ensuring people have a will and/or providing prompts for people to make a will at significant life stages.

Feedback about the statutory legacy amount

6. How often do you see partners inheriting under intestacy rather than through a relationship property division?

We frequently see clients dealing with issues arising because a family member or partner has died intestate. In relation to this question, we generally are responding to people's questions about what their options are. This includes explaining intestacy



laws as well as the option of a relationship property division. These issues are most common where there is a surviving partner and adult children/stepchildren. Circumstances are more strained when there is a breakdown in the relationships and differences of opinion about how the estate should be distributed.

7. Do you think the current statutory legacy amount is appropriate?

We don't have sufficient insight to comment on the amount but recognise that an increase may be appropriate to at least adjust for inflation.

8. If it is increased, what would be the appropriate amount?

See above.

9. What are the key issues or risks with increasing the statutory legacy amount?

One of the issues we see in our client enquiries is in relation to a person dying intestate in a blended family. Where a distribution to a 'new' partner happens under intestacy laws (personal belongings, statutory legacy amount and one third of the rest), adult children can feel a sense of injustice, which may also be further exacerbated if the stepparent later dies (with or without a will) and those stepchildren are not considered in the distribution of the estate. The 'stepparent' may not have provided anything for the adult stepchildren, ie, because there is a relationship breakdown or circumstances have moved on, but the adult children may see the estate as including belongings and assets they attribute to their earlier deceased parent.

10. Is there any other feedback you would like to provide?

Issues around proof of the existence or dissolution of a de facto relationship can be complex when a partner dies intestate.

Contact Person:

Sacha Green
National Advisor – Legal & Strategic

Phone: 04 471 2735

Email: sacha.green@cab.org.nz