

Deeds of Variation

Unfortunately, not all Wills are either kept up to date, are fit for purpose, or accurately reflect that which the deceased or their heirs actually want. Fortunately, Chancery Law, the area of English Law that covers these matters, allows itself to be changed even after the event via a mechanism called Deeds of Variation (sometimes also known as Deeds of Family Arrangement) which, under certain strict conditions, allow the beneficiaries to rearrange or vary their entitlement within 2 years of date of death.

Stranger still, even if someone has died intestate (that is died without a Will), the Intestacy provisions still allow for changes to be made. In either case, the concession even extends to changing the way the deceased owned their home, from say being Joint Tenants to being Tenants in Common (see our fact sheet on Property Ownership) as well as rearranging their financial affairs so as to reduce any Capital Gains Tax (CGT) or Inheritance Tax (IHT) burden.

Why use a Deed of Variation?

Deeds of Variation are used for a variety of reasons:

- To correct perceived inequalities
E.g. when a parent or grandparent leaves a legacy to named child or grandchild and then does not update their Will when another is born.
- To make provision that the deceased might have wished to make but hadn't changed their Will to cover
E.g. where they had been cared for in their final months or years by dedicated carers or at a hospice.
- To resolve family disputes without having to go to Court
E.g. where a claim is brought by someone who expected to inherit but has not.
- To give an entitlement to those who would benefit the most
E.g. varied by older children who don't need to inherit their parents' money and instead would rather that it went to their children who are starting out in life and in more need of the money to buy their first house or start their own business.
- To reduce tax
As long as it's within the tax rules, then the beneficiaries are pretty much free to do as they please. A good example is that it may be more tax-efficient to vary the Will by leaving assets that qualify for IHT relief to another beneficiary or a Trust (see our fact sheet on Inheritance Tax), rather than to the surviving spouse or civil partner whose entitlement is already exempt from IHT.

Deeds of Variation are a legally recognised way to vary estates in a way that the deceased might have legitimately chosen to do themselves had they known how to do it or had taken the right proactive advice. They are not elaborate or aggressive tax planning schemes and HMRC generally view Deeds of Variation as being "*practical steps*" taken as part of wider tax planning and tax efficiency.

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