



Deed of Variation – Change a Will or Intestacy after Death

After someone dies, it is possible for the beneficiaries of their estate to make changes to the distribution of the estate, instead of directly following the terms of the Will or the rules of intestacy.

What is a Deed of Variation?

A Deed of Variation allows beneficiaries to make changes to their entitlement following someone's death. You cannot rewrite someone's Will after they have died, but the law does let you change what you are entitled to from the estate. This is to allow flexibility in case circumstances have changed since the Will was written. You can also use a Deed of Variation when someone has died without leaving a Will. We cover this in more detail below.

Any changes made in the Deed of Variation will be treated as if the deceased had written them into the original Will.

There are certain conditions which must be met in order for the Deed of Variation to be valid.

Why would I need to change a Will or Intestacy after death?

Some of the main reasons you might want to change a Will include:

- You do not need all of your inheritance and want it to benefit someone else.
- The Will does not include children or grandchildren who were born after it was written.
- Provide for someone not covered by the rules, such as unmarried partners
- Distribute the estate more evenly between beneficiaries
- There is a more tax-efficient way to distribute the estate, for example by distributing the entire estate to the spouse therefore using the spouse exemption to reduce inheritance tax ("IHT").

What if there is no Will?

If someone dies intestate, the rules of intestacy apply to their estate. The rules are quite rigid about who can inherit and how much they receive, and do not necessarily reflect the complexity of most family circumstances.

You can use a Deed of Variation to change how the estate has been divided up under the rules of intestacy, just as you would with a Will.



Who enters into the Deed of Variation and how?

The Deed of Variation must be in writing and witnessed. Where a Deed of Variation increases the Inheritance Tax payable by the deceased's estate, the Executors must also sign the Deed.

The Deed of Variation can only be made by adult beneficiaries in relation to their own share of the estate. This Deed of Variation details exactly how you want your part of the estate to be distributed. If other people's shares of the estate will be affected, they need to agree the changes as well.

Importantly, there must be no payment made as a condition for entering into the Deed of Variation. For example, take a valuable estate divided equally between a wife and her children. The wife's share will be free of IHT because of the spouse exemption, but the children's share will be reduced by IHT. The children and wife might want to avoid the IHT on the children's share by the children varying their share to leave it to the wife. That is fine. However, it is not acceptable for the children to only agree to the variation upon the condition that the wife gives them back the larger half share after the variation. Such a transaction may ultimately happen, but it must be done completely voluntarily by the wife – on no account should the children be able to compel her to do this.

Are there any time limits?

Any changes that are to be treated for IHT purposes as if they had been made by the deceased must contain an election for this and be made within two years of the person's death. Where any payment of IHT changes, a copy of the Deed must also be sent to HMRC.

What changes can I make?

You are only allowed to make changes to your own share of the inheritance. You might want to redirect specific assets to different people, give away your whole entitlement or set up a trust. The person you give your entitlement to does not have to be named in the Will already.

Are there any changes I cannot make?

A Deed of Variation cannot be used to:

- Change other people's inheritance without their consent.
- Give yourself a larger share of the estate (unless it is being gifted by another beneficiary who agrees to it).
- Change executors or guardians named in the Will.
- Make administrative changes or introduce new clauses.

What are the tax consequences?

Deeds of Variation can be an effective way of reducing IHT and Capital Gains Tax ("CGT"). You can adjust the distribution of someone's estate to make it more tax-efficient.

The main tax benefit to using a Deed of Variation is that, for IHT and CGT purposes, the assets transferred under the Deed of Variation are treated as though they had been transferred by the deceased person on the date of their death.

For IHT this means:

- The value of property you have diverted is not treated as a gift by you. This is helpful because any large gift potentially uses up your personal nil rate band if you do not survive seven years from making it. A smaller nil rate band translates to more IHT exposure for your estate.
- You can pass on the property or money without it ever adding to the value of your estate. The inheritance will miss out your estate entirely. This can be tax efficient to pass inheritance straight to children.
- You can make the best use of available reliefs and exemptions, for example the spouse exemption or the charity exemption.

The situation is similar for CGT purposes. If you use a Deed of Variation to transfer an asset, it will be treated as a disposal by the deceased's estate rather than a disposal which you have made.

Can a Deed of Variation be revoked?

Once you make a deed of variation, you cannot revoke it. Therefore, if you are looking to make a Deed of Variation, you must ensure it is correct to avoid costly future consequences.



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