

What is a deed of variation?

A deed of variation is a document which changes the destination of gifts left by someone who has died. The gifts may have been left in a will or under the intestacy rules (which apply when someone dies without leaving a will).

Who can make a deed of variation?

Anyone who inherits under a will or under the intestacy rules can redirect what they receive using a deed of variation. Only people over 18 can join in making a deed of variation. (If necessary the Court can join in making a deed of variation on behalf of someone who is under 18). A deed of variation must be made within 2 years of the death.

Why make a deed of variation?

Deeds of variation are useful in a number of situations:

- For inheritance tax and capital gains tax planning
- To settle disputes by changing the division of the estate
- To counteract the effects of the intestacy rules
- To redirect a share of jointly owned property which would otherwise pass automatically to the surviving joint owner.

For inheritance tax and capital gains tax planning

It is possible for the changes made in a deed of variation to be treated for inheritance tax purposes and capital gains tax purposes as if the changes had been included in the will of the person who has died.

For example: Fred has just died. His will leaves everything he owns to his wife Freda. She has plenty of money of her own and wants to make gifts totalling £20,000 to their children. If she simply gives the children £20,000 she will have to survive for 7 years before the gift will be ignored for inheritance tax purposes. If she made a deed of variation to vary Fred's will so that it included a gift of £20,000 to the children, Fred would be treated as making the gift for inheritance tax purposes. It would not matter how long Freda survived.

If Freda had inherited £20,000 worth of shares which she wanted to pass to the children a deed of variation could avoid capital gains tax. If Freda gave £20,000 worth of shares from Fred's estate to the children she would be liable for capital gains tax if the shares had increased in value since

Fred's death. If the gift was made using a deed of variation the gift would be treated as made by Fred and the children would inherit the shares at their value at the date of Fred's death. The children would then be liable for capital gains tax on any increase in that value between Fred's death and the date on which the children sell or dispose of the shares. To get this inheritance tax and capital gains tax treatment the deed of variation must contain wording required by the tax legislation.

To settle disputes by changing the division of the estate

If there has been a dispute over the distribution of an estate which has been resolved a deed of variation can be used to carry out the distribution in the way agreed by the parties.

For example: Freda has now died and her will leaves everything to her two sons. Charles receives 10% of the estate and Simon receives 90%. Charles believes this to be very unfair. Simon and Charles eventually agree that the estate should be divided between them equally. They can carry this out by making a deed of variation.

To counteract the effects of the intestacy rules

When someone dies without leaving a will the intestacy rules apply. These state who will inherit what. They can often operate impractically or unfairly. Where someone dies without leaving a will and they are survived by their husband or wife or civil partner and children, the surviving spouse or civil partner is only entitled to £125,000 of the estate out right. If the family home was in the sole name of the deceased this may be worth more than £125,000. In this case the surviving spouse or civil partner would not inherit the whole house. However, if all the children are over 18 they can agree with the surviving spouse or civil partner that the house will pass to the surviving spouse or civil partner or even that the whole estate will go to the surviving spouse or civil partner. This can be put into effect by a deed of variation.

To redirect a share of jointly owned property which would otherwise pass automatically to the surviving joint owner.

Where bank accounts are held jointly the contents of the account pass to the surviving joint owner on the death of the first. This is irrespective of the terms of any will the first owner left. This rule also applies to land owned jointly as joint tenants. (Land can also be owned jointly as tenants in common. In this case when one joint owner dies their share of the land passes under their will or the intestacy rules.)

The surviving joint owner might not want the whole of the land or the account and could pass the deceased's half share to the beneficiaries of his will or the intestacy rules by way of a deed of variation. This can sometimes be helpful as part of a tax planning exercise. If the joint owners were husband and wife and the surviving wife is wealthier than the husband she could increase his estate by adding a half share of the joint property to it and at the same time vary the will or intestacy so that the half share of the joint property passes to the children. By dealing with both parts of this transaction through a deed of variation she does not have to survive the gift to the children by 7 years.

Tips

It is possible to make a deed of variation whether or not all the assets in the estate have already been distributed.

Traps

As already mentioned it is necessary to make the deed of variation within 2 years of the death of the person whose will is being varied. In addition if tax advantages are to be obtained the deed of variation must contain specific wording to claim the special tax treatment.

It is only possible to make one deed of variation for an asset in the estate. For example Fred dies leaving an estate which includes a house some cash at the bank and some shares. His will leaves everything to Freda.

Freda thinks she does not need anything from the estate and as it is below the inheritance tax nil rate band she decides to vary Fred's will to leave everything to the children. If she does this and later decides she wants to give part of Fred's estate to the grandchildren she cannot as the assets in Fred's estate have been subject to one variation already.

Contrast this with the situation where Freda decides she will give the house to the children. The deed of variation relates only to the house. If Freda (within 2 years of Fred's death) decides to give some money from the estate to the grandchildren she can make a second deed of variation because it relates to the cash which is a different asset from the house.

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