

# HEWITSONS

## DEEDS OF VARIATION



### 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).

Provided the deed of variation is made within two years of the death and contains appropriate wording, it is as if the person who died had left the benefit to the new beneficiary for Inheritance Tax purposes.

### Who can make a deed of variation?

Anyone aged 18 or over who inherits under a Will or under the intestacy rules can redirect what they receive using a deed of variation. If necessary the Court can join in making a deed of variation on behalf of someone who is under 18.

### Why make a deed of variation?

Deeds of variation can be 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 effect 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

By including certain wording in the deed of variation the changes will be treated for Inheritance Tax purposes as if they had been included in the Will of the person who has died and for Capital Gains Tax purposes as if there was no disposal by the person making the change.

### Example:

John has just died. His Will leaves his entire estate to his son, Richard. Richard is wealthy in his own right and prefers to pass the inheritance to his two children, Sarah and Jane. If Richard were simply to gift the inheritance he received to Sarah and Jane, he would have to survive the gift for seven years for it to be taken out of his estate for Inheritance Tax purposes. If, however, Richard redirects the inheritance to Sarah and Jane within two years of his father's death by means of a deed of variation then, for Inheritance Tax purposes, it is as if John's Will had left his estate directly to Sarah and Jane.

The Inheritance Tax position on John's death does not alter. However, Richard is not then treated as making a lifetime gift which has to be survived for seven years to fall out of his estate for Inheritance Tax purposes. The inheritance is never treated as part of his estate.



If Richard had inherited £200,000 worth of shares which he wanted to pass to his children, a deed of variation could avoid Capital Gains Tax. If Richard gave £200,000 worth of shares from John's estate to his own children he could be liable for Capital Gains Tax if the shares had increased in value since John's death. If, however, the gift was made using a deed of variation the gift would be treated as made by John. Sarah and Jane would inherit the shares at their value at the date of John's death. Sarah and Jane would then be liable for Capital Gains Tax on any increase in the value between John's death and the date on which they dispose of the shares, subject to available exemptions.

### **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.

#### **Example:**

Freda has 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 unfair. Simon and Charles eventually agree that the estate should be divided between them equally. They can achieve this in a tax efficient way by making a deed of variation.

### **To counteract the effect 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 and children, the surviving spouse is entitled to £250,000 of the estate outright and to half of the balance in the estate (with the other half passing to the children). The surviving spouse also receives all personal possessions owned by the deceased spouse.

If the family home is in the sole name of the deceased it may be worth more than the entitlement of the surviving spouse. In such circumstances the surviving spouse will not inherit the whole house. However, if all the children are over 18 they can agree with the surviving spouse that the house should pass to the surviving spouse or even that the whole estate should go to the surviving spouse. This can be put into effect in a tax efficient way 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, irrespective of the terms of any Will left by the first to die. This rule also applies to land owned jointly as 'beneficial joint tenants'. (It does not apply to land 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 others in a tax efficient way using a deed of variation.

### **Points to bear in mind**

It is possible to make a deed of variation even if all the assets in the estate have already been distributed.

It is only possible to make one deed of variation for an asset in the estate. For example, John dies leaving an estate which includes a house, some cash at the bank and some shares. His Will leaves everything to his son, Richard. Richard thinks he does not need anything from the estate and he decides to vary John's Will to leave everything to his children. If he does this and later decides he wants to give part of John's estate to his grandchildren he cannot, as the assets in John's estate have been subject to one variation already.

Contrast this with the situation where Richard decides he will give the house to his children. The deed of variation relates only to the house. If Richard (within two years of John's death) decides to give some money from the estate to his grandchildren he 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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