

## Deeds of Variation to a Will

Many people are unaware that a person's benefit under a Will can be changed after the Testator's (the person who made the Will) death. Many disputes over Wills arise because people are left out of a Will, causing disappointment and hurt, or beneficiaries circumstances have changed between the Testator making the Will and the date of death. People believe that there is nothing they can do about a Will and that the terms of the Will are set in stone. A Deed of Variation can be used to right a perceived wrong and may help avoid the need to contest a Will through the courts. One cannot change someone else's benefit under a Will but one can change their own benefit.

If there's no will it is an "Intestacy" and the law decides who inherits. You can make changes to the inheritance in the same way as if there's a Will.

You can change a Will to:

- reduce the amount of [Inheritance](#) or [Capital Gains Tax](#) payable
- provide for someone who was left out of the will
- move the deceased's assets into a [trust](#)
- clear up any uncertainty over the Will

An example might be where the mother of a son and daughter falls out with her daughter and makes a Will excluding her from the Will. By the time of the mother's death many years later, she has mended her relationship with her daughter but not got around to changing her Will (or has lost the capacity to do so). The son who inherited the entire estate wants to "put things right". If he just gives some of it away to this sister, it is considered a gift by him (and is potentially liable to inheritance tax on gifts) but if he makes a Deed of Variation to the Will, for inheritance tax purposes, the gift comes directly from the mother's estate.

With the recent change in Government, there has been a media glut of speculation about the potential changes to the existing tax rules and how to protect assets, particularly with regard to inheritance tax and capital gains tax. By the time this article appears, the speculation will have ended, and everyone will be aware of exactly what has been decided and there will be even more advice from the experts about the best way forward. Everyone will have to deal with their own finances dependent upon their personal circumstances.

An often overlooked tax savings device is a Deed of Variation of a Will. Provided those making the variation comply with certain requirements, the variation can be treated for Inheritance Tax (IHT) and certain Capital Gains Tax (CGT) purposes as if it had been made by the Deceased.

Where someone receives an inheritance, it may make their own estate potentially liable to inheritance tax. If they do not need some or all of the inheritance and wish to gift some of their inheritance to someone else, a Deed of Variation is a tax efficient way of doing so.

For example, a Deceased may have left their estate equally to their son and daughter. The son has two adult children who hope to get on the property ladder and so the Beneficiary son

wants to gift his children £50,000 from his inheritance. By making a Deed of Variation to his benefit under the Will, he can keep some of the inheritance himself and the part he wishes to give away (£100,000), is effectively given by his late parent rather than himself, thereby avoiding the gifting rules and reducing the value of his own assets.

If the daughter wanted to gift, say, property or shares from her own share of the inheritance, for CGT purposes a Variation is not a disposal by the Beneficiary but by the Deceased and in computing future gains the new beneficiaries will be treated as if they acquired the assets from the Deceased at the date of death and at the probate value.

If a Deed of Variation is to be made, important rules include:

1. A Deed of Variation must be made within two years of the death.
2. Any Variation is legally binding and cannot be retracted.
3. The Variation must be signed by all the people who are giving up their benefit (if the interest of children or unborn beneficiaries are affected, the court may need to approve the variation)
4. The document must contain certain wording regarding Stamp Duty and the Inheritance Tax Act and Capital Gains Tax if it is to be effective for tax purposes.

It is always worth asking a solicitor to advise if you intend making a Deed of Variation.

ALISON FIELDEN & CO