

Deeds of Variation

Receiving an inheritance is often seen as a financial bonus, but there are times when you might feel it would be better for other people to receive it. This could be because another person needs it more, or because there would be tax advantages in making another arrangement.

Making a Deed of Variation allows you to alter the entitlement you receive, redirecting some or all your inheritance to someone else.

What is a Deed of Variation?

A Deed of Variation is a legal document in which one or more beneficiaries of a deceased person's estate choose to give up or change the amount of an inheritance they have received. The Deed will then specify who will receive the value they have given up.

A Deed of Variation can be used to alter an inheritance received through a Will or through the Intestacy Rules when there is no valid Will.

You might also hear Deeds of Variation referred to as Deeds of Family Arrangement.

Who can make a Deed of Variation?

Only a beneficiary of the estate can make a Deed of Variation. In other words, the Deed can only be used by someone receiving an inheritance as a way to give up that inheritance. It cannot be used by someone to increase their inheritance, or to take anything away from someone else who is a beneficiary of the estate.

What are the benefits to making a Deed of Variation?

Deeds of Variation are essentially tax-saving devices and much of the legislation concerning them involves how reliefs from taxes – such as inheritance tax (IHT) and capital gains tax (CGT) – are applied.

However, there are other ways in which a Deed of Variation, and the control they allow you, can be useful.

Tax advantages for you

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

For IHT this means:

- **It will not count as your lifetime transfer.** The transfer is not considered to be one made by you in your lifetime. This can have several IHT implications. Some lifetime transfers are immediately chargeable for IHT, others can be chargeable if you die within 7 years of having made the transfer.
- **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. Perhaps you have inherited money or property, but it is surplus to your needs. If so, you might be convinced that all you will do with these assets is to hold them until you pass them on to your heirs when you die. Rather than these assets simply adding value to your estate (and therefore increasing the potential IHT you might pay on your death) you can use a Deed of Variation to pass the assets on to your heirs or whoever you wish. Effectively, this 'skips out' your estate.

Example 1

Ezekiel dies and leaves £100,000 in his Will to Roberta. A few months later, Roberta realises she doesn't need the money and decides to give it to Sofia instead. Two years later, Roberta dies. If Roberta had 'given' the money to Sofia using a Deed of Variation, it would mean that the £100,000 is treated as having been transferred from Ezekiel to Sofia for IHT purposes. The £100,000 would not be part of Roberta's estate. Alternatively, had Roberta just given the money to Sofia without a Deed of Variation, the £100,000 *would* be included in the IHT calculations on Roberta's estate – because her transfer to Sofia happened within 7 years of her death.

Where a Deed of Variation increases the IHT payable by the deceased's estate, the deceased's Personal Representatives (i.e. the Executors or Administrators) must also sign the Deed. A copy of the Deed must also be sent to HMRC within 6 months of date upon which the Deed was made.

Continuing Example 1, if Roberta had transferred the £100,000 to Sofia through a Deed of Variation, there is the possibility that Ezekiel's estate would have to pay more IHT as a result. If, say, Roberta was Ezekiel's spouse, the £100,000 gift would be exempt from IHT. A gift to Sofia would have no such exemption, so the 'altered gift' of £100,000 from Ezekiel to Sofia would be considered for IHT. If this means more IHT is payable, Ezekiel's Executors would have to agree to, and sign, Roberta's Deed of Variation.

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.

Example 2

Anne dies, leaving her house to Michelle. The house is valued at £250,000 for probate purposes. A year later, Michelle decides to pass the house on to her son, Steven. The house is now valued at £300,000. If Michelle transfers the house to Steven herself, she will be making a disposal for CGT purposes, and there will be a chargeable gain of £50,000. However, if Michelle uses a Deed of Variation to transfer the house to Steven, the house will be treated as though it had been transferred from Anne. Michelle will not have made any CGT disposals.

Tax advantages for the deceased's estate

If a deceased's arrangements are not very tax-efficient, it is possible to use a Deed of Variation to save tax for their estate. This may be especially useful where the deceased did not make any valid Will, and their estate will pass according to the Intestacy Rules.

Ways to save tax for the estate may include:

- Redirecting assets to beneficiaries who are exempt from paying IHT, such as a charity or a spouse.
- Redirecting assets which would qualify for relief from IHT, such as business or agricultural property, to make sure that available tax reliefs are not wasted.
- Taking advantage of unused Nil Rate Bands.

This is a complicated area of law. If you need guidance in using a Deed of Variation for these purposes, [please contact us](#) and we can advise you on your particular circumstances.

To provide for someone else

Where the deceased made a Will a long time ago, there is always the possibility that it did not reflect recent events, or changes in their intentions, at the time of their death. Similarly, if the deceased did not have a valid Will in place, the Intestacy Rules will determine who receives their estate – and this may not be the same person (or people) that the deceased would have chosen.

If you know that the deceased would have wanted to provide for someone, but – for whatever reason – you have received an inheritance from the estate and they have not, a Deed of Variation is a good way of resolving this.

Alternatively, you may feel that someone else would benefit more from some or all of the inheritance you have received.

Another possibility is using a Deed of Variation to avoid potential disputes from arising over an inheritance; a compromise to prevent lengthy and costly legal actions.

Whatever the reasons a Deed of Variation, using one will allow you to take advantages of the tax benefits described above – rather than simply making a gift to the other person yourself.

Getting something in return for a variation

It is important to be aware that you will lose the tax benefits of a Deed of Variation if you receive anything in return for giving up some or all your inheritance. For example, if you inherited a house and passed it to someone else under a Deed of Variation in return for money, or money's worth, you would not receive the tax advantages of using the Deed. For tax purposes, it would be treated as though you were making a normal house sale.

How long do I have to make a Deed of Variation?

You have up to **two years** in which to make a Deed of Variation. This time limit begins running from the date of the deceased person's death.

Therefore, if you are considering making a Deed of Variation, it is essential that you seek legal advice as soon as possible after the death of the person whose estate dispositions you wish to change.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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