



# Deed of Variation

## Briefing Note

When someone dies their money, property and possessions will be distributed in accordance with their will, or the rules of intestacy. There may be circumstances when a beneficiary of a deceased's estate might want to redirect their inheritance to another person. If this is the case, the beneficiary must vary the will or rules of intestacy using a document called a "deed of variation".

A variation of a will or intestacy can be made by any beneficiary whose interest is affected by the variation, as long as they are of full age and capacity and absolutely entitled to the interest concerned.

There are strict conditions that must be met for a deed of variation to be considered. The attached checklist from HMRC may be of help: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373615/IOV2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/373615/IOV2.pdf)

All parties who hold a beneficial interest in the asset to be varied must agree to the variation. This means that it's not possible to execute a deed of variation if the beneficiary is under 18.

A statement must be made that 'the variation is to have effect for either; Capital Gains Tax (CGT) only, Inheritance tax (IHT) only, or IHT and CGT, as if the deceased had made it'.

A deed of variation can be prepared before or after obtaining the Grant of Representation but it must take place within two years of the date of death of the deceased. The deed of variation must be signed by all executors and the impacted beneficiaries.

Provided these conditions are met, the provisions of the deed of variation will be treated, for IHT purposes, as having been made by the deceased.



### Reasons for a deed of variation

There are several reasons why the beneficiaries may want to change the distribution of an estate. These include, but are not limited to,:

- Making the distribution equal between the beneficiaries
- Moving the deceased's assets into a trust
- Providing for someone who was not included in the will, such as a grandchild who was born after the will was made
- Providing for someone who the rules of intestacy do not apply to, such as a partner or step-child
- Clearing up any uncertainty in the will
- Reducing the amount of IHT or CGT payable

### Taxation

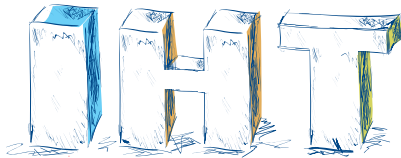
Any changes attributable to the deceased can be beneficial for CGT and IHT purposes, but they do not change the income tax position.

If the deed of variation increases the amount of IHT due, a copy of the deed of variation must be sent to HM Revenue & Customs within six months of execution.

If a trust is established within the deed of variation, the settlor of the trust created by the deed will be the original beneficiary of the gift. The gift can be capital, or income, or both. Any person who executes such a variation will automatically become the settlor of the trust for income tax and CGT purposes, but not IHT purposes.

There may be more than one settlor.

*Example:* George was the sole beneficiary of his mother's estate. He met with his legal adviser and arranged a deed of variation. He created a discretionary trust, including himself and the deceased's grandchildren as beneficiaries. The trustees invested into an investment bond and requested withdrawals. For income tax purposes, George is deemed to be the settlor of the trust created under the deed and is therefore assessable to income tax if a chargeable gain arises during his lifetime.



### IHT planning and Inter-generational planning opportunities

IHT may be payable if a single person's estate is worth more than £325,000 when they die. Anything inherited up to this amount is currently taxed at 0%, but anything above this threshold may be taxed at 40 per cent.

It may be appropriate to execute a deed of variation to reduce the IHT liability by skipping a generation.

For example, Tony's father had left him £200,000 in his will. Tony did not require the money and preferred to skip his generation and pass the money to his children instead. A deed of variation can be used to achieve this and any gift will be deemed to be from Tony's deceased father, and not from Tony thus not impacting on his lifetime gifting allowances.

A beneficiary may also wish to execute a deed of variation to nominate 10% of the deceased's estate to charity to reduce the amount of IHT that needs to be paid by the estate.

### CGT planning

Generally, for CGT purposes, there would be an exemption on death and an uplift in the base cost to the market value.

The effect of a deed of variation with a CGT election is to pass the base cost at the date of death to the new beneficiary, and so will not be treated as a disposal for CGT purposes by the person giving up their right to property.

It is only the original redirection (that is, the gift by the original beneficiary) that will be treated as having been made by the deceased. For future purposes, any subsequent CGT will be applied in accordance with the normal rules. This means, if the redirection is to a discretionary trust, future gains will be taxed on the trustees.

### Care home costs

If a will is varied with the intention of avoiding care home costs, the local authority may ignore the variation when making its assessment.

#### Summary:

- Deeds of variation can be an effective form of estate planning.
- It is always best to make a properly considered will and to seek to mitigate tax liability prior to death, where possible.
- However, it may be that a deed of variation could be a useful tool in seeking to resolve issues that arise after someone has died.

This document is based on Canada Life's understanding of applicable UK tax legislation and current HM Revenue & Custom's practice, as at July 2019 and could be subject to change in the future. It is provided for professional advisers only. Any recommendations are the adviser's sole responsibility.

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