



# 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 wants 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 following checklist from HMRC may be of help: [HMRC Instrument of Variation checklist](#)

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.

Any variation will affect either; Capital Gains Tax (CGT) only, Inheritance Tax (IHT) only, or IHT and CGT. A variation will have no impact for income tax.

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 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. This is allowed under s142 of the Inheritance Tax Act 1984.



### Reasons for a deed of variation

There are various reasons why the beneficiaries may want to change the distribution of an estate and these could include:

- 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 HMRC within six months of execution.

### Creating a trust

If a trust is established within the deed of variation, the original beneficiary of the gift who executed the variation will become the settlor of the trust for income tax, but not IHT, purposes. It is the duty of the trustees named in the deed of variation to manage the trust assets.



*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.
- 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.



**CGT planning**

Generally, for CGT purposes, there would be an exemption on death and an uplift in the base cost of an asset to the market value as at the date of death. However for a deed to be effective from the date of death, an election must be included under s26(6) of the Capital Gains Act 1992.

The effect of a deed of variation with a CGT election is to pass on the asset to the new beneficiary using the base cost at the date of death 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 (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.

**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%.

It may be appropriate to execute a deed of variation to reduce the original beneficiary's 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 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.

**Care home costs**

If a will is varied with the intention of avoiding care home costs, it may be considered as deprivation of assets. Therefore the local authority may ignore the variation when making its assessment and treat the assets as being the property of the original beneficiary, even though they may no longer have access to it.

**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 December 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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