

DEEDS OF TRUST

Although many people make a Will, they do not always update it to consider of a change in circumstances or new tax rules. As a result, the distribution of many people's estates may not be as the beneficiaries would wish, nor carried out in the most tax efficient way.

What can be done to rectify this?

It is possible to rectify this situation within 2 years of the date of a person's death.

A beneficiary of a Will or an estate dealt with under the intestacy rules may choose to alter the distribution of their respective share of the estate. This can only be achieved if a formal document, known as a "Deed of Variation" is drawn up. The effect of this document is to retrospectively alter the relevant part of the Will's provisions (or the intestacy rules).

When might a Deed of Variation be used?

Common uses include:

- **Outdated Wills:** circumstances might have changed significantly since the Will was drawn up. For example, a parent may make a Will leaving their estate to their 2 named daughters. By the time the parent dies, they also have 2 sons. With the Will as it stands, the sons would not benefit. If the daughters agreed, a Deed of Variation could re-distribute the estate amongst all 4 children.
- **Intestacy:** if a person dies without a Will, the distribution of their estate is governed by the intestacy rules. For example, if a single, childless person died, their estate would normally pass to their surviving parents. This may add to the parents' inheritance tax liability. A Deed of Variation allows the parents to redirect the distribution on to their other children
- **Tax planning:** generation skipping is a common use of such deeds. For example, where a person inherits from their elderly parent, this may cause an additional tax burden on their own estate. A Deed of Variation allows the inheritance to pass down the family tree. It is also possible to take advantage of tax exemptions by redirecting money to charities.
- **Resolving disputes over a Will:** A Deed of Variation can be used to reflect a compromise that has been reached and to ensure that no additional tax liabilities arise as a result of the agreement.

What are the tax consequences for the beneficiary giving up their entitlement?

There will be no tax liability for the original beneficiary if the deed:

- is in the correct form;
- is entered into within two years of the death; and
- includes appropriate elections for tax purposes.

For inheritance tax and CGT purposes the gift to the new beneficiary is regarded as having been made by the deceased but this does not apply as far as other taxes, such as income tax, are concerned.

If Deeds of Variation are possible, do I still need to change my Will?

In short – yes. Whilst it is currently possible for beneficiaries to vary a Will, the law could change to take away the option to use them. A Deed of Variation should not be considered as a “substitute” for ensuring a Will is up to date.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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