

# Deed of Variation

Your inherited wealth is at risk!



Distributing assets absolutely to beneficiaries exposes those assets to risk.

- ! Assets not protected by a Trust face attack from:
- ! Divorce or Separation Settlements
- ! Creditors or Bankruptcy Claims
- ! Long Term Care Fees
- ! Further Inheritance Tax bills (Generational IHT) see Technical Sheet No.6

**In Detail** Varying the way the assets are distributed by the Will with a Deed of Variation, can ensure that your new found wealth is protected.

## What is a Deed of Variation?

A Deed of Variation can also be referred to as an Instrument of Variation, a Family Arrangement, a Deed of Surrender, or a Deed of Assignment. In a nutshell, a Deed of Variation changes a Will after death and enables the beneficiaries of a deceased's estate to alter the distribution of that estate, or relinquish a bequest from an estate, by changing the deceased's Will.

## When can a Deed of Variation be used?

A Deed of Variation can be drafted up to two years after the date of death.

## Why Use a Deed of Variation?

There are many reasons why it may be desirable to amend the will of a deceased, or indeed an Intestacy.

The main reason for using a Deed of Variation, is to ensure that the assets passed to a beneficiary, are protected from threats such as:-

## Divorce Settlements;

If your children / chosen beneficiaries are subject to divorce proceedings then half of what you intended them to receive is at risk to divorce settlements.

## Long Term Care fees;

If the inheritance has been passed to your chosen beneficiaries absolutely, then these assets could later be assessed for their own care costs.

## Creditors and Bankruptcy;

Similarly, if any of your beneficiaries are subject to creditor claims or bankruptcy, then the inherited estate is fully at risk.

## Generational IHT.

Assets inherited from a Will directly, or "absolutely" as it is known will add to the beneficiaries' estate and impact on their own Inheritance Tax.

## Marriage After Death;

On first death all the assets are then solely owned by the surviving spouse/partner. What if the surviving spouse/partner marries? The inherited estate could be lost to the new spouse, disinheriting your children.

### **Why vary your inheritance to a Trust.**

By not receiving your inheritance “absolutely” and varying the assets into a Trust, will ensure that the assets are protected for generations to come and protecting them against risks such as :

- **Divorce settlements**
- **Long Term Care Fees.**
- **Marriage After death**
- **Creditors & Bankruptcy**
- **Further Taxation.**

Assets held within a Trust will ensure your inheritance is protected whilst still allowing you full access to the assets to use as you wish.

### **How else can a Deed of Variation help?**

A Deed of Variation can also ensure that the estate passes on in the most Inheritance Tax efficient way. For example, if the assets are passed to an individual who may have an Inheritance tax problem themselves, they could elect to have the assets passed to their children or grandchildren instead, thereby reducing their estate.

If this is the case the individual who has foregone the legacy is not deemed to have made the gift but instead it is the deceased who is deemed to have made the transfer.

Finally, it can be used as a method of absorbing a capital gain made on an asset between date of death and date of sale. By transferring ownership of the asset from one beneficiary to several, more capital exemptions can be used and any gain made on sale absorbed by the exemptions meaning that there is no capital gains tax to pay.

### **How does a Deed of Variation work?**

Each adult beneficiary under a Will (or an intestate estate) only has the authority to vary his own share of the estate, but it can apply to any property comprised in a deceased’s estate as long as the person wishing to vary has an interest in that property.

When children under the age of majority are due to inherit, the matter is more complicated as they cannot themselves consent to changes. An application must be made to the courts for consent to be obtained on their behalf. The rights of children cannot be varied except by Court Order.

Do all the beneficiaries of the Will need to agree to the Variation?

No. As long as the beneficiary varies only their own share.

### **Can a Deed of Variation be relied on?**

Most people would like to deal with the issue of Inheritance Tax Planning and not return to the issue, confident that they have found the most efficient way to deal with their estate. Unfortunately, although extremely useful, a Deed of Variation should not be relied upon as part of an individual’s estate planning.

It may be that the effectiveness is reduced by the Government in the future. However at present they do offer the beneficiaries of a Will or Intestacy, an effective way of changing a will after death.

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**for the generations to**  
**come.**

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