



Information Sheet: What is a Deed of Variation?

What would happen if you fail to make adequate provision for your loved ones?

What would happen if, on your death, your estate had a large Inheritance Tax bill to pay?

What would happen if, on your death, your estate passed to beneficiaries that no longer had a need for their inheritance?

What would happen if your surviving spouse or civil partner required long-term care following your death?

These are some of the scenarios where a Deed of Variation may prove to be an invaluable tool for your beneficiaries. As a legal device it enables your Will to be rewritten in the two years after your death but only if all the beneficiaries affected by the proposed changes agree. This means that your estate can be re-organised and then distributed to the 'right' people.

Let us examine these scenarios:

INTESTACY

Bob aged 47 dies. He was married to Susan and they have two grown up children and Bob also had a son from a previous marriage. Bob did not expect to die so young and, although it had crossed his mind, he never got round to writing his will.

When Bob died, he owned the house in his sole name and this was worth £450,000. All of Bob's other assets were jointly owned with Susan and will therefore automatically pass to Susan on Bob's death. Under the intestacy rules, Susan is only entitled to the first £250,000 of Bob estate absolutely and the income from one-half of the balance (which in this case would be from £100,000). On her death, the capital from this one-half passes to Bob's three children. The other £100,000 passes to Bob's three children absolutely.

Susan is upset by this set of circumstances, as she really wanted to stay in the family home and does not want to have to share the house with her children or feel any pressure to sell her home.



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As the children are all over 18 years and everyone gets on well, it is agreed that Susan should remain in the house, and they are encouraged to use a Deed of Variation to solve the problem.

INHERITANCE TAX SAVINGS

Peter is aged 67. He never married but was survived by 2 children. Under his Will he leaves his estate worth £340,000 to them equally. Peter's estate exceeds the Inheritance Tax threshold of £325,000 (2009/10) and there is a potential tax liability of £6,000.

During Peter's life, he often ran marathons and raised money for a well-known cancer charity. Peter's children are disappointed that they have to pay £6,000 in Inheritance Tax and would really like this money to be better used by donating this amount to charity in his memory. They are encouraged to make a Deed of Variation to redirect the amount of Peter's estate that exceeds the Inheritance Tax threshold, thus preventing the payment of £6,000 in Inheritance Tax and enabling the full £15,000 to pass to the charity.

ALLOWING YOUR BENEFICIARIES TO CHOOSE

Victoria dies aged 84, leaving all of her estate worth £300,000 to her sister Cecile aged 81. Cecile who is a widow and who is also suffering from ill-health inherited a large sum from her husband when he died three years ago and her own assets are worth £500,000. Cecile is worried that if she inherits her sister's estate that there will be a substantial tax bill to be paid on her own death. Cecile would prefer for her son Richard to have this money. She intends to make a gift to him of the £300,000 when she receives her inheritance. Cecile is reminded that if she makes this gift and then dies within the next seven years that the value of the gift would be added back to her estate for the purposes of calculating the payment of Inheritance Tax. This is something that she is keen to avoid. Cecile is encouraged to make a Deed of Variation to redirect her entitlement in Victoria's estate to Richard with the effect that the monies are deemed to have come from the Will of Victoria and not as a direct gift from Cecile. The seven year gift rule is therefore not applicable and a potentially substantial tax saving is achieved.



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PROTECTING YOUR ASSETS

Jack and Phyllis were a married couple. They had one daughter Sarah. During their lifetimes they made Wills leaving their respective estates to each other and then to Sarah on the second death. Jack died 11 months ago and, before he died, they had both contemplated leaving their home to Sarah but, unfortunately, they were unable to put things in place. Phyllis is concerned about what she reads daily in the newspapers and is afraid that she will ultimately need to pay for long-term care. Phyllis was encouraged to make a Deed of Variation effectively diverting her late husband's share of their home to Sarah.

IMPORTANT THINGS TO CONSIDER

Deeds of Variation although useful should not be relied on as part of an individual's estate planning

Deeds of Variation and their use could be removed by Parliament at any time

Deeds of Variation need to be entered into within 2 years of the date of death

The parties must be over the age of 18 and must all be able to consent to the Deed

Deeds of Variation are useful in the mitigation of Inheritance Tax and Capital Gains Tax that arise on death.

HOW CAN WE HELP YOU

We can advise you on the appropriateness of entering into a Deed of Variation

We can advise you on how a Deed of Variation can maximise Tax Savings

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.