

## Deeds of Variation

### What is a Deed of Variation and why is it made?

A Deed of Variation is a device that is available to a beneficiary of a deceased's estate who wants to alter what they are entitled to receive.

A beneficiary may want to redirect the assets to which they would otherwise be entitled to:

- Provide for others who are in greater need, perhaps their children or grandchildren.
- Save tax by:
  - giving additional assets to a beneficiary who is exempt from Inheritance Tax (IHT) such as a surviving spouse or charity.
  - redirecting assets qualifying for relief from IHT from an exempt beneficiary to a non-exempt beneficiary so that the relief is not wasted. For example, if a deceased's estate includes assets that qualify for agricultural property relief (APR) and the surviving spouse inherits these assets, then APR is wasted because the spouse is exempt from IHT.
  - using the deceased's NRB (the portion of their estate that passes free from IHT) by creating a trust or making an absolute gift of the value of the NRB to a non-exempt beneficiary.

### Advantages of a Deed of Variation

A Deed of Variation has several advantages:

- It allows the original beneficiary to control who the inheritance passes to.
- It does not have to be done immediately. In fact it can still be done even if estate assets have already been transferred to the original beneficiary.
- Making a simple gift to someone can create IHT and Capital Gains Tax (CGT) implications. A Deed of Variation has retrospective effect, allowing charges to IHT and CGT that may otherwise arise, to be avoided. This only applies, however, if the Deed of Variation is entered in to within two years of the deceased's death. It is

important, therefore, for a Deed of Variation to be considered and signed before the 2 year period expires.

### Misunderstanding the meaning of a variation

The nature and scope of a variation is often misunderstood. It is not:

- A rewriting of the deceased's Will, where there is one.
- A redrafting of the intestacy rules, where there is no Will.
- A device to correct a defective Will.

Misconceptions about a variation might arise because it appears to change the rules applying to the devolution of assets when an individual dies. A variation does not and cannot operate to alter these rules. A variation is a redirection of assets by the original beneficiary to another, the original beneficiary must have an interest in the assets but virtue of the rules in order to enter in to a variation.

### Disclaimer as alternative to Deed of Variation

An individual who does not want to benefit from an estate can refuse his interest in it completely, that is, he can disclaim it. This can only be done if the individual has not already accepted their entitlement. If a beneficiary disclaims their inheritance, they have no control over who will receive this in their place. The Will or intestacy rules, as the case may be, will determine who benefits following a disclaimer. Unless there is a Will that allows this, a beneficiary cannot disclaim part of their inheritance. They must disclaim all of their entitlement.