

## Deed of Variation – Hindsight Wisdom

### Overview

The ex-Labour leader, Ed Miliband's, family used, quite legally, a Deed of Variation or 'Deed of Family Arrangement' that allows wills to be altered after death. But can ordinary families benefit from using a Deed of Variation (DoV)?

### First of all, just what is a Deed of Variation?

A DoV is a deed by which you can vary or redirect your inheritance to someone else. So long as it is executed within 2 years of the death, the inheritance is 'written back' into the will of the deceased such that the benefits will pass to the new beneficiaries in the most tax efficient way as the following example illustrates:-

### Case Study

Victoria has recently died in her 90s and left her estate totalling £600,000 to her son George. There is no Inheritance Tax (IHT) payable on the estate as her late husband's unused nil rate band of £325,000 is joined with hers to give a total nil rate band of £650,000. However, George has prospered and has considerable wealth of his own. As such, he does not actually need the inheritance, especially as it will be increasing his own wealth and so as to attract 40% or £240,000 IHT charges on his death.

### So what can he do?

He could simply gift the assets away, but if he dies within 7 years the value of those assets will be brought back into the IHT calculation for his estate. He could settle the whole inheritance into a Trust but this would result in an immediate IHT charge. He could, believe it or not, simply disinherit himself and refuse to accept the inheritance – but this would mean that he has no power over where the assets would go.

So the best option for George may be to enter into a DoV and effectively rewrite Victoria's will.

By doing this he can ensure that the inheritance passes to, say, his children, keeping the assets outside of his estate and potentially saving £240,000 of IHT charges on his death, even if he dies within 7 years. This can be done by the assets passing to his children outright or by the creation of a Discretionary trust of which George can be a trustee and exercise control over the assets.

But a DoV is not just used for tax reasons, its existence certainly predates the current IHT regime and allows the basic freedom to leave our estate to who we wish.

### Other uses of a Deed of Variation

Many people use a DoV to correct perceived or accidental inequalities.

Perhaps a grandparent has named a grandchild in their will but has not reviewed it following the birth of subsequent grandchildren. A DoV would allow those subsequent grandchildren to be added to the will.

Perhaps a bequest to the hospice which has been so much support during the final years could be added to the will as a mark of appreciation.

If a family member was expected to inherit something under a will but has not been named, a DoV can be used to correct this omission and to make provision for them in a palatable way which avoids unnecessary family strife and unhappiness.

### In conclusion

A Deed of Variation is non-contentious and legitimate, and, whilst it can be seen as a tax mitigation tool, it can only be used within the confines of the current tax regime where there is no scope for interpretation or ambiguity. DoVs are legally recognised as a way to reflect the wishes of the beneficiaries and to allow them to reroute their entitlement in a way that the deceased could have legitimately have chosen to do – the tax advantages are attractive but by no means are they the be-all and end-all.

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