



The end of the story?

by Vicki Bennett - partner



A Will is often thought to be 'the end of the story' in determining how an estate should be distributed following death, but that need not always be the case.

It is common for the last Will of a loved one to be outdated, inefficient for inheritance tax (IHT) purposes or for beneficiaries' circumstances to have changed since the Will was made. Furthermore, a family member might pass away without leaving a Will and the intestacy provisions are unlikely to accord with what the beneficiaries collectively want to happen.

In such situations, beneficiaries who are happy to alter their inheritance can enter into a Deed of Variation to change the effects of the Will or intestacy and redistribute the estate in accordance with what they would like to happen.

One of the reasons for doing so is often to achieve a better IHT position for the estate than would be the case if the Will or intestacy were to stand. As long as certain formalities are met and appropriate tax elections are made within two years of the date of death, the redistribution of the estate is instead read back for both IHT and capital gains tax purposes as if it were the deceased who had made the gifts on death. This avoids

the recipient of an inheritance having to make a gift to which the normal seven year rule would apply for IHT purposes.

As a result, Deeds of Variation are commonly used to skip a generation where parents do not need the money (already being financially secure) and wish to pass the funds direct to their children or even grandchildren without any IHT implications for the parents.

A potentially attractive variation on this theme is to redirect the inheritance to a family trust. This trust can benefit the beneficiary who redirects their inheritance as well as their wider family.

A word of caution is that many take the view that Wills do not need to be kept up to date in the belief that a Deed of Variation can always be used to solve a problem after death. It should, however, be borne in mind that there are certain situations, particularly involving minors, where a Deed of Variation cannot be used. In addition, it is quite possible that the beneficial IHT treatment of Deeds of Variation will be removed at some point. Therefore, whilst sometimes very useful, they should not be relied upon as a general panacea and Wills should continue to be regularly updated.

