

Your Legal Questions

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Q I've heard that a Will can be changed after a person has died - surely this can't be true!

A It may come as a surprise to you but yes this can be true. Let me explain.

A person who benefits under a Will is called a beneficiary. Where a beneficiary is an adult and mentally capable he/she can redirect their inheritance as they may wish. This means that they can decide who to pass the gift to irrespective of the wishes of the deceased. For example a Mother may have fallen out with her adult son and decided to leave everything to her adult daughter. The daughter would then be free to decide whether to keep the entire gift or alternatively she could redirect some or all of it to her brother or indeed any other beneficiary of her choosing.

If a beneficiary is thinking about redirecting their inheritance I would recommend that they seek legal advice to ensure that this is done in the most tax efficient manner. This usually involves the preparation of a Deed of Variation which sets out quite clearly the changes to the gift. Provided that the Deed is made within two years from the date of death it is possible to make various tax elections which would have the effect of treating the redirected gift as if it had come directly from the deceased and not via the beneficiary. This could be beneficial both from an Inheritance Tax and a Capital Gains Tax point of view.

There are a number of reasons why a beneficiary may wish to redirect assets and enter into a Deed of Variation - these may range from fulfilling a moral obligation, to affect a compromise where there is a dispute or to achieve tax saving solutions.

The beneficiary can only redirect what they alone are entitled to receive and cannot interfere with gifts to others.

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