

Changing a will after death? A deed of family arrangement can make it possible!



There are times when the terms of a deceased's will are not suitable and the beneficiaries involved seek to have the will varied. There are various situations where this may be the case, such as changing circumstances over a long period of time from when the will was first drafted, or an estrangement between family members is healed (or vice versa).

This is where a deed of family arrangement can be utilised, however it is an option that requires all interested parties to agree on the outcome.

This can however result in settlement outside of litigation, which can otherwise tie up an estate for months or even years.

Deeds of family arrangement can be used in a number of circumstances, such as:

- where there are doubts about the meaning of a will
- where beneficiaries wish to rearrange the distribution of the estate between them
- to compromise a claim against the estate where there is a challenge to the will
- to create an estate proceeds trust under taxation legislation.

Where the will is varied through a deed of arrangement which meets certain requirements, generally the parties may disregard the resulting capital gains or losses. Care needs to be taken however as there can be some variation on the rules from state to state, such as stamp duty.

Note also that a deed of family arrangement that would act to reduce the benefits accruing to a minor or a disabled person may require court approval.

Care needs to be taken with any deed of arrangement, and the advice of a professional is highly recommended.