

What is a declaration of trust?



A declaration of trust is a legal document which can be used to formally agree how an asset is owned. A declaration of trust is most frequently (although not exclusively) used in connection with a property and can set out how the proceeds should be divided if the property is later sold.

A declaration of trust is particularly important when two or more persons (perhaps an unmarried couple) purchase a property together, but they are providing different capital amounts of money towards the purchase. The trust deed will confirm the shares which those persons hold in the property.

The trust deed can explain who is entitled to occupy the property. It can also set out any express terms concerning the maintenance of the property, or other expenses relating to the property. It can also deal with the possibility of future borrowing against the property.

When do I need a declaration of trust?

This is not an exhaustive list, but here are some of the most common scenarios:

1. The property is held in the sole name of one person, but another party has invested money into the property: the declaration of trust would record each person's contribution in the property so that such contribution would be represented and protected for that person.
2. An elderly parent may wish to transfer their property to their children to alleviate themselves of the burden of looking after the property. A declaration of trust can protect their ongoing right to live in the property. (Note that this has tax implications and should be considered carefully).
3. The property is held in the joint names of the owners, with unequal contributions being made. The declaration of trust would keep a record of this, and if the relationship breaks down, the agreement should be honoured.
4. The property is held in the joint names of the owners, but one of the owners' parents has provided financial support, for example with the deposit payment. The declaration of trust would ensure that the sum provided would be returned to the parents upon the sale of the property/separation of the owners.

5. A friend or business owner is assisting another with the purchase of a property as an investment.

The advantages of the Declaration of Trust

The main benefit of completing a declaration of trust is to avoid any future disagreement upon the sale of the property. Entering into an agreement at the outset can avoid the amount of time, cost and level of stress that going to Court can create if there is no express declaration.

Such agreements would also be honoured if the owner became incapable or died (although please note that in such circumstances, a Will should be made to protect the beneficiaries)

When should a Declaration of Trust be completed?

Ideally a declaration of trust should be completed at the same time as the purchase of the property, to protect the parties' respective interests prior to any disagreements arising.

However a declaration of trust can be entered into at a later stage provided all co-owners of the property agree to it.

Associated matters

A co-owned property can either be owned as Joint Tenants or Tenants in Common. It is important that the property is owned in the correct way so as to complement rather than override the terms of the trust deed. It is also usually advisable to place a restriction on the title to the property. We can provide advice on this aspect at the same time as drafting the trust deed.

At the same time as completing a declaration of trust to protect the respective shares in the property, it is imperative that co-owners make/update their Wills so as to cater for what should happen to those shares upon death.



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