

DECLARATION OF TRUST

A guide to the key facts

It's easy to get swept up in the excitement of a property purchase – especially if you're a first-time buyer. But buying property together is a huge financial commitment. A deposit, conveyancing fees, mortgage payments; it all adds up to a substantial amount of money. Doesn't it therefore make sense to protect your investment and assets from the outset?

One way to limit any risk to your initial investment is by signing a Declaration of Trust – a legally binding document which removes uncertainty and eliminates the chance of disagreements in the future.

Firstly, what is a Declaration of Trust?

In short, a Declaration of Trust (sometimes called a Deed of Trust) is a legal document that records the financial arrangements between co-owners of a property and anyone else with a financial interest in that property.

A Declaration of Trust is something you're likely to come across when buying a property with someone else or with support of another person. It protects your financial interests by allowing you to specify how the property would be dealt with if you and your partner separate, including what percentage of the proceeds each of you would be entitled to if the property were sold.

As the agreement is made at the time of purchase, the rationale is that by committing to any financial arrangements from the outset, you avoid potential disputes further down the line.

Buying property with financial help

A Declaration of Trust can also be used when only one party's name will be on the title at the Land Registry, but another party or parties will have an interest in the property.

For example, if the property is in your name but your partner will be contributing to the mortgage.

Or where a parent or other relative is providing money for a deposit or contributing to mortgage payments and it's agreed that they will retain a stake in the property as a result.

What is included in a Declaration of Trust?

This will depend on your individual circumstances, but is likely to include:

- The amount each person contributed to the deposit
- What percentage of the property each person will own
- Each individual's contribution towards the mortgage

A Declaration of Trust can also outline how you approach a scenario of one owner buying the other person out, as well as setting out if and when the property should be sold. In some cases, it can also include a clause that says that neither of you can go to court to force a sale.

So what does this look like in practice? For example, if you contributed 90% of a joint deposit, you might want a Declaration of Trust that says if you were to split, you would both get your deposits back. Any equity in the property will then be divided equally between you.

Or if your parents lent you £75,000 to buy a house, a Declaration of Trust would state that in the event of you separating and the property being sold, that money must be repaid before any sale proceeds could be taken.

What happens if there is no Declaration of Trust?

Without a Declaration of Trust, each of you is legally entitled to 50% of the equity in the property – regardless of how much each of you have contributed to the initial deposit and mortgage payments.

What will happen to the Declaration of Trust if one of us dies?

This depends on how you jointly own your property.

If you're creating a Declaration of Trust, it's likely that you're buying your home as tenants in common. As tenants in common, you have the right to pass on your share of the property to whoever you choose in your Will; it doesn't automatically go to the other owner when you die. However you must clearly state the beneficiary – or beneficiaries – of your share in a valid Will.

If you don't leave a valid Will, who inherits your share of the property and any other assets will be determined by the standard rules of intestacy. The danger of this is that your wishes may not necessarily be carried out as you would've intended.

For further information about Declarations of Trust, or to speak to a conveyancing solicitor about putting in place a declaration, call our Bristol office on 0117 972 1261 or our Shepton Mallet office on 01749 345 756.