

Declaration of Trust

A Declaration of Trust (Trust Deed) is a statement, which indicates whether a property is to be held in equal or unequal shares. The declaration should set out the contributions that each person has made to the purchase of the property, who owns what and what happens in the event of someone wishing to move on. It will state in light of the contributions made and anticipated contributions (such as payment of a mortgage or additional work) and the percentage each party owns. In addition it will set out details of how the property expenses will be paid, responsibility for insurance, repairs, mortgage, maintenance, provide a mechanism for:

- the sale of the property;
- in the event of a breakdown in the relationship; or
- on the death of one party.

The partners are bound by the terms of the declaration, providing security and certainty. Agreements can be as simple or as complex as required. As circumstances change the deed can be updated.

Who would require one?

- To people buying a property together, whether as their home or as an investment.
- Where you contribute to a property but do not own the property; this might be where you pay towards the mortgage (directly or indirectly) or pay for an extension on the property.

Scenario:

If you are an unmarried couple buying together for the first time the declaration should be part of the conveyancing process. The conveyancer you appoint will ask you if you are going to own the property as:

- "joint tenants".
- "tenants-in-common" with equal shares in the property.
- "tenants-in-common" with shares set out in the agreement.

The Difference is:

Joint Tenants - means automatic transfer of the property to the survivor.

Tenants in Common - means you can own different shares in the property e.g. 50:50, 60:40, 10:90 and you can leave your share to someone other than your purchasing partner by will (preferably).

A common error when completing the relevant forms is to tick the box "joint tenants" when one partner has paid the deposit or will pay a larger part of the mortgage. If the partners break-up, the property will be split 50:50 and not in accordance with the contributions actually made.

It is also advisable to organise a "Living Together Agreement" - otherwise known as "Cohabitation Agreement". If you have already bought your property and wish you had set up a Declaration of Trust it can be drawn up at any time provided your co-owner agrees.

When you fix what interest you have in a property then make sure you leave a will!

For further information or to discuss the above in more detail, please contact the department on **01376 321311**.