KJSmith FAMILY LAW

DECLARATION OF TRUST – WHAT IS IT?

A Declaration of Trust (also known as a Trust Deed) is a legally binding document setting out how a property is owned.

When a property is purchased as joint owners of a property, a trust is deemed to exist. In the absence of any documentation or agreement to the contrary, the joint ownership is assumed to be in "equal shares".

If there is a desire for the property to be held in "unequal shares" this must be set out in writing, usually by way of a Declaration of Trust. It can also be used for third-parties to protect a "financial contribution", to assist with tax planning, or used alongside a Will.

WHAT THE DECLARATION OF TRUST WILL CONTAIN:

The Declaration of Trust will set out the "background" to the property such as the address, names of the owners, any financial contributions, when the property was purchased, whether it was registered as joint tenants or tenants in common and mortgage details.

The document goes on to set out which owners hold what interest in the property. This might be set out in percentages or a fixed sum. For example, if two people own the property person A may hold 60% interest and person B will hold 40% interest, or person A may have an interest of a fixed sum of say £50,000 representing the deposit.

The document also sets out how any remaining equity should be divided in the event the property is sold.

It is entirely a matter of what is agreed between the parties, although whatever is agreed should ideally reflect the practical realities of who has or contributed (or will be contributing) what.

If the property is held as joint tenants then it will be necessary to sever the joint tenancy to tenants in common so that the split in ownership (as set out in the declaration of trust) takes effect. Severing the tenancy in this way is a separate matter to the declaration of trust and your lawyer will be able to advise you on this.

WHEN IS A DECLARATION OF TRUST SUITABLE?

There are several times in life when a Declaration of Trust may be suitable.

Co-habiting Couples
If different sums have been put in and either or both party wants to protect their financial "stake" in the property, a Declaration of Trust can be used to set out what interests each of them have.

Third-Party Contributors
It may be that someone is contributing a lump sum towards the purchase of a property that is not going to be registered in their name. For example, owner 1 and owner 2 are buying a home to be registered in their joint names, but a family member of owner 1 is lending a deposit to help them purchase the property. The Declaration of Trust can protect the third-party deposit/contribution and then the remaining equity can be agreed to be held by owners 1 and 2 in equal or unequal shares.

Tax Planning
If a married couple own a property that is let out as an investment and the couple pay different rates of tax then it is possible to use a Declaration of Trust to take advantage of their different income tax positions, including capital gains tax, to improve their overall tax position.

Blended Families
If you are a married, or cohabiting, couple and you each have children from previous relationships, then the chances are that you will want to protect your respective interests in the jointly owned property for all the children. You can do this through your Wills. However, you would also need to draw up a Declaration of Trust so that it is clear what interest you each have in the property.

We would also recommend that you think about making or updating your Will.

For more information please see our website [www.kjsmith.co.uk/our-services/declaration-of-trust.](http://www.kjsmith.co.uk/our-services/declaration-of-trust)
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