

Why make a Declaration of Trust?

Signing a Declaration of Trust is a way to record how the ownership is split and potentially avoid conflict in the future.

If you jointly own a property did you know on a sale the presumption in law is that the proceeds get split equally?

That may work for many co-owners but what if one party has an expectation to receive a greater share because they contributed more to the purchase price? Without anything in writing to record these intentions it could cause problems in the future if the co-ownership comes to an end perhaps on a matrimonial split or for other reasons.

A Declaration of Trust could also be useful where a third party (for example a parent) contributes funds towards a property purchase. Typically the third party's name would not appear on the legal title to the property, but a Declaration of Trust can protect their financial stake by setting out a share of the net proceeds or fixed sum that they would receive if the property was sold.

However, where there is a mortgage involved it will be necessary to get their approval to a third party having an interest.

For spouses and civil partners who jointly own buy-to-let properties a Declaration of Trust can have a tax-saving advantage by declaring the spouse or civil partner on a lower income tax rate should receive all or a greater share of the income. For the same reason it could have benefits for saving capital gains tax too.

Any Declaration of Trust will typically involve the property being held by the co-owners as "tenants in common" and should always be made alongside a review of the owners' Wills. There can also be tax implications when making Declarations of Trust, especially for non-spouses or non-civil partners, so professional advice should be sought before signing one. ♦



For more information or advice please contact

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