

Declarations of trust

Introduction

A declaration of trust is a legal document which confirms the ownership of a property.

The principle of a declaration of trust is that ownership can be split into two types, legal and beneficial. Those who hold the legal ownership have the power to make decisions and are named at the Land Registry. Those who hold the beneficial ownership usually have the enjoyment of the property and own the equity of the property and are therefore entitled to the sale proceeds if the property is sold.

Whether the legal and beneficial ownership are held by the same, or different people, will depend on the reasons for which the declaration of trust is required. Declarations of trust are useful in various circumstances, and this information sheet outlines and highlights related points to consider.

Buying a property with another person

Co-owners might consider a declaration of trust if they are contributing to a purchase in unequal amounts. Contributions can be protected in a variety of ways, and what will be most appropriate will depend on the circumstances. Often, co-owners record their initial contributions in percentage terms and then, when the property is sold, co-owners each take their percentage of the sale proceeds. Alternatively, if one co-owner is paying the deposit for the property, this sum can be protected with the rest of the property split in relevant proportions on sale.

Declarations of trust should also specify what should happen in the event that one or more of the co-owners wishes to sell their share of the property. This will, as a minimum, require that notice is given to the

other co-owner(s). Co-owners often choose to give each other a right of first refusal to purchase the other co-owner's share.

Declarations of trust frequently confirm each co-owner's responsibility for outgoings. Outgoings range from normal day to day bills and expenses, to repair costs and mortgage repayments (including both interest and capital).

Co-owners are able, to a limited extent, to state what should happen to their share in the event of death. However, such provisions are dealt with far more effectively within a will and further details are below.

Declarations of trust might also specify what should happen in the event of a dispute. Often, the declaration will simply state that co-owners are to seek the services of an arbitrator instead of going directly to court, which might save each party significant sums in legal fees.

Declarations of trust in relation to property already owned

Co-owners frequently use a declaration of trust to reassign the beneficial ownership of a property between them. Additionally, an owner of property might prepare a declaration of trust to gift a property (or part thereof) to another person, without having to deal with the Land Registry. These actions will have tax consequences and should be considered carefully.

Tax issues

Some of the tax considerations associated with the preparation of declarations of trust are as follows:

Income tax: right to property income generally (but not always) mirrors ownership under a declaration of trust. Spouses/civil

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partners might therefore vary the ownership of a buy-to-let property between them to achieve an income tax saving (for example, if one spouse/civil partner pays income tax at a lower rate than the other).

Capital Gains Tax (CGT): unless completed on the date of purchase, amending the ownership of a property by declaration of trust is a disposal for CGT purposes. If the property has increased in value between the date of purchase and the date of the declaration of trust, CGT may be payable. CGT is not payable on one's home, but those considering gifting part of their home by way of declaration of trust should take legal advice.

Inheritance tax (IHT): property forms part of an owner's estate and will suffer IHT on death, subject to the normal rules and exemptions. An owner might consider using a declaration of trust to gift the beneficial ownership of a property away so that, if they survive for seven years from the date of the gift, the property will be outside of the owner's estate for IHT purposes.

Stamp Duty Land Tax (SDLT): if money, or some other form of consideration, is changing hands as a result of the declaration of trust, a SDLT liability will arise if the sum is in excess of £40,000. Also, if a declaration of trust purports to transfer responsibility for a mortgage, SDLT might arise on completion of the document.

Does it replace a will?

Property forms part of the estate of those who hold the beneficial interest. Beneficial owners should ensure that their will is up to date so that their right to the property passes on death in the way they wish.

Co-habitation

If a declaration of trust is required in relation to a new property in which partners will live together, a co-habitation agreement should be considered as an alternative. This goes into far greater detail in relation to living arrangements and future obligations. A solicitor from the family team at Thomson Snell & Passmore can provide advice in relation to co-habitation agreements, if required.

Conclusion

The circumstances within which declarations of trust are useful are vast. They provide clarity to co-owners in respect of future obligations and entitlements and offer security and certainty in the event of later dispute. They also offer tax planning opportunities.

Property is often a person's most valuable asset and a declaration of trust should not therefore be entered into lightly or without proper legal advice.

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

NOTE: The law is stated as at June 2021.

If you require further information, please contact Amy Lane on 01892 701366 or by email at amy.lane@ts-p.co.uk or Jessica Pointing on 01892 701326 or jessica.pointing@ts-p.co.uk.

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