The importance of a Declaration of Trust

What is a Declaration of Trust?

A Declaration of Trust is a legal document that sets out how the property is owned and how the proceeds will be divided in the future.

When purchasing property jointly, it is common for one party to contribute more towards the deposit or upfront costs. A Declaration of Trust helps protect each person's financial interests and provides clarity if the property is sold or the relationship ends.

Without one, there is no formal record of contributions. Even where ownership is as tenants in common, disputes can arise over entitlement, and recovering funds may be difficult—potentially leading to costly legal proceedings.

A Declaration of Trust allows you to clearly specify:

- **The original contributions**, including deposits, stamp duty, and other costs.
- **The intended shares of beneficial ownership.**
- **How the proceeds of the sale will be divided**, including repayment of the mortgage, sale costs, and deposit contributions.
- **How losses are paid** if the property is sold for less than expected or if the mortgage cannot be fully repaid.

Benefits of a Declaration of Trust

- **Clarity from the outset** – each party's financial position and intentions are clearly recorded.
- **Protection of contributions** – helps ensure that initial investments, such as deposits, are recognised and returned appropriately.
- **Reduced risk of disputes** – minimises the likelihood of disagreements if circumstances change.
- **Flexibility** – can be tailored to reflect your specific arrangement, rather than relying on standard ownership assumptions.
- **Greater certainty for the future** – provides a clear framework for how the property will be dealt with on sale

Illustrative example

Two individuals purchase a property together and hold it in equal shares. However, one contributes a significantly larger proportion of the deposit. If no Declaration of Trust is in place, the legal ownership may not reflect the financial reality, and the party who contributed more could be at risk of not recovering their full investment.

By contrast, a Declaration of Trust provides clarity from the outset, ensuring that each party's financial position is properly protected and reducing the likelihood of future disagreement.

Putting a Declaration of Trust in place is a straightforward way to protect your interests, avoid disputes, and provide certainty for the future. We strongly recommend having one prepared whenever contributions to a property are unequal or when clarity is needed on ownership shares.

How we can help

If you are purchasing a property jointly and would like tailored advice, our private client team can assist in preparing a Declaration of Trust that accurately reflects your intentions and protects your interests.

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Get in touch with our team

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