ADVISING FAMILIES ACROSS GENERATIONS

SLADE PRIVATE CLIENT

# Declarations of Trust

## Helping you ensure your assets are protected

## Declarations of Trust

*In a situation where there are multiple (usually two, but possibly more) co-owners of property, it is possible (and often advisable) to draw up a document in order to set out the respective financial interests in that property. One party may have put down a larger deposit, or may have paid for an extension, or there may be unequal contributions to the mortgage repayments.*

*Such a document is known as a* **Declaration of Trust** *(sometimes a Deed of Trust).*

### The Law

Whenever there is joint ownership of property, a trust is deemed to exist. In the absence of any documentation or agreement to the contrary, that joint ownership will be assumed to be in equal shares. So, the property would be held by owner A and owner B, on trust for themselves in equal shares.

If there is a desire to set out an agreement that the property be held in unequal shares, this must be in writing. Those unequal shares can only arise in a limited and specific set of circumstances:-

1. *Unequal contributions to the purchase price*
2. *Unequal contributions to the mortgage repayments*
3. *Unequal contributions to improvements to the fabric of the property that increase its value (extensions, loft conversions, conservatories)*

Contributions to decorating the property are considered to be maintenance rather than improvements. Contributions to other outgoings (insurance, council tax, utilities etc.) do not and cannot give rise to an increased interest in the value of the property.

**GET IN TOUCH**


**Didcot** - 01235 511211
**Abingdon** - 01235 521920
**Wallingford** - 01491 839346
**enquiries@slade-legal.co.uk**


### The Document

The Declaration of Trust will set out the "background" to the property – its address, the names of the parties (the owners and any other financial contributors), when the property was bought, in whose name it is registered, details of any mortgage affecting the property and who contributed what to the original purchase price.

After this introduction, the Declaration of Trust then sets out who holds what shares/interests in the property. These might be percentages (60/40, 75/25 etc.), or might be a fixed sum for one party (such as the repayment of their £50,000 deposit) and then an equal or unequal division of the remaining equity. It is entirely a matter of what is agreed between the various parties, although whatever is agreed should ideally reflect the practical realities of who has contributed (or will be contributing) what.

## When they are 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 (say) 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.


### Income Tax planning

If a married couple own a property that is let out as an investment, then it is possible to use a Declaration of Trust to take advantage of different income tax positions to improve your overall income tax position. If owner 1 is a non-tax payer but owner 2 is a higher rate tax payer, then they can draw up a Declaration of Trust stating that the property is held as to 100% to owner 1 and 0% to owner 2, so that owner 2 does not need to declare any of the rental income on their income tax return and it can all be declared by owner 1 as their income and income tax paid accordingly (at what would be a lower rate).

### Blended Families

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

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