raffingers
chartered certified accountants

Declaration of Trust Factsheet

What is a declaration of trust?

A declaration of trust is an important document in which 'trustees' are appointed to hold property for 'beneficiaries'. It appoints people as trustees who are 'trusted' to act in an appropriate manner and always in the interests of the beneficiaries and is governed by The Trustee Act 2000.

What does a declaration of trust do?

A declaration of trust confirms the true ownership of a property in the proportions contributed by each party regardless of the title entries at the land registry. It can allow an owner not protected by being a registered owner of a property at the land registry to actually be an owner and be protected as such. The declaration of trust can be noted at the land registry, alerting future purchasers that the registered owner is not alone in owning the property.

When is the true ownership of property not registered?

Miss A is purchasing her first home with the benefit of a mortgage. Her parents are putting up some (or even all where there is no mortgage) of the purchase price on the basis that they will share any 'profit' made on the property. The registered owner on the title deeds of the property will be Miss A but her parents can register their beneficial interest on a trust deed. Completing a declaration of trust - beneficial interest protects the parents interests without the parents having to be named on the mortgage deed themselves. It states the percentage contribution made by the beneficiaries and the percentage of proceeds of sale due to them.

Mr B and Mrs C are both contributing to buying a home together but Mrs C is still an owner of a different property with an existing mortgage. She cannot be party to another mortgage because of that. A declaration of trust - beneficial interest states the true position and protect Mrs C's interest as an actual owner of the property with Mr B as the legal owner and the sole mortgagee. A declaration of trust of beneficial interest states the percentage contribution made by the Mrs C, and the percentage of proceeds of sale due to Mrs C.

Mr D and Mrs E are buying a property together, but are providing different contributions to the purchase price. They wish their contributions to be reflected in a legal document. Mr E is to own 60% and Mrs E is own 40%. Upon sale they will get a respective share of the net proceeds. A declaration of trust for tenants in common records each person's contribution and therefore the proportions of the property they own.

Steps to take when making a declaration of trust Be absolutely certain of the decision that you are making to share the ownership of a property. The trust deed **CHANGES** the legal ownership. It can (and should) be protected at the land registry and can be enforced in court. The purchase of a property is a long term commitment, longer than some marriages and a trust deed reflecting the true ownership must be just that: the true ownership.

Work out very carefully the proportions in which you will own the property, and don't forget to include the costs of the purchase in your calculations. If only one party is paying for the stamp duty, that should be taken into consideration when you work out the percentages. The proportions that you set out in the trust deed are the proportions that will be used to distribute the sale proceeds when the property is sold (or possibly the amounts that each party has to pay for the property to be sold if the property loses value).

Once you have completed your declaration of trust, give your conveyancer the original completed but undated deed before completion of the property purchase and ask your conveyancer to arrange to have the deed dated on the date of completion and registered against the title at the land registry when he or she registers your purchase. If it is not registered, future purchasers will not be aware that someone else may have an interest in the property.

For further information, please contact:
Lee Manning, Partner
lee@raffingers.co.uk
020 8551 7200

raffingers
chartered certified accountants