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Wills and Probate Declarations of Trust

A Declaration of Trust is a document that sets out the proportions in which a property is owned.

What do they do?

In some cases, although the legal title to the property may be in the name of one person, it may be that there is an agreement that when this is sold other people will benefit. Even if the legal title is in the joint names of the people you want to share the proceeds of the property, if this is unequal you will need to set out how this is to be shared.

Why are they necessary?

Although you may have agreed between you how the proceeds are to be shared it is often important to record this. This can be relevant where people living together separate for example. It is also helpful if either party dies or becomes bankrupt.

Fixed shares or floating shares

In most situations it is going to be better to have fixed shares so that when the property is sold each party has a percentage of the sale proceeds e.g. 50% each.

It may be that the arrangement is more in the nature of a loan, in which case all that is expected is a repayment of the initial sum contributed.

Alternatively, it may be unclear how much each is going to contribute to the purchase e.g., if the mortgage payments will gradually lead to someone acquiring an interest - in which case an account will have to be kept of how much has been paid by each person. This floating share requires the parties to keep good records and is a slightly more cumbersome arrangement.

Frequent questions and answers

Do you want to make a provision if one person allows someone to live with them in the property?

You may specify that this is allowed but specify that they would only be a licensee and therefore not entitled to any rights to live there.

What happens if one person fails to pay his or her share of the mortgage?

If one person pays the other's share, you can specify that this is a loan (and the terms of it).

What if one wishes to sell and the other refuses?

You can require the property to be sold after giving one month's notice.

How are any improvements to the property to be treated?

Unless any are specifically intended then it is unlikely to be necessary to deal with these specifically but if for example one person is putting down the deposit and the other spending money on a new kitchen then this may be relevant.

What about if one moves out – should the other be required to sell their shares (for a reasonable price) to the other?

This arrangement can be included if it is felt appropriate

Who will be responsible for paying the outgoings (eg insurance, repairs, maintenance, bills including Council Tax)?

It is possible to record how the outgoings are to be paid (ie by one person or in equal shares).

What will happen when I die?

You should review your Will to include provision regarding your share of the property. It is also common practice to state in the Declaration that the share of the property belonging to the deceased will pass in accordance with their Will or intestacy.