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Understanding a Declaration of Trust

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Understanding a Declaration of Trust

Introduction

Where land is owned by two or more people, they each have a simultaneous interest in the land and are known as "co-owners".

There are two ways in which co-owners may hold property:

- As joint tenants - Under a joint tenancy, each tenant has an **indivisible share** in the property and all of the tenants are equally entitled to the whole property.

- As tenants in common - If co-owners hold the property as tenants in common, they each have a **distinct beneficial share** in the property. It is advisable for the co-owners to indicate expressly the proportions in which they hold the property, rather than leaving this to be implied from the circumstances and the financial contributions made by each co-owner. A **Declaration of Trust** can be used to demonstrate how the property is held by the different co-owners.

What is a Declaration of Trust?

A Declaration of Trust is a binding document which sets out the names of each co-owner and the proportion of the property they own, as well as any obligations and rights affiliated to their ownership of the property.

A Declaration of Trust can also deal with the following issues (including but not limited to):

- Initial contribution to the purchase price;
- Contribution to mortgage repayments;
- Legal costs, expenses and disbursements;
- Contribution to Stamp Duty Land Tax;
- Other costs related to the purchase – eg. removal fees;
- Repayment of sale proceeds to each co-owner in the event of a surplus
- Contribution to any deficit after a sale;
- Responsibility for maintenance charges and works and outgoings including gas, electricity and water;
- Cost of improvements to the property;
- Share of rental income; and
- Arrangements for the sale of the property.

A Declaration of Trust in Practice

It is important that you have a very clear idea as to how you would like ownership of the property to operate. Uncertainty could lead to unexpected results. Therefore, it is very important that you discuss the working of the trust before you commit yourself to ensure fair results.

Declaration of Trust: A Worked Example

The following worked example shows how uncertainty can facilitate very different outcomes.

An unmarried couple, Jenny and Mark, buy a property at £100,000. Jenny contributes £30,000. Mark contributes £10,000. The remaining £60,000 is provided by way of mortgage finance. Jenny and Mark will contribute equally to the mortgage repayments.

If they buy as tenants in common, five different formulae apply. Each will be considered in turn on the basis that the property is sold for £200,000 with the full £60,000 mortgage outstanding.

Scenario 1

Jenny and Mark will each be entitled to their original stakes and then the balance will be split 50:50.

Workings:
The mortgage must always be deducted first, which leaves £140,000. Jenny will then be entitled to her original stake of £30,000 and Mark to his of £10,000. The remaining £100,000 will be divided between them.

Jenny: £30,000 + £50,000 → £80,000
Mark: £10,000 + £50,000 → £60,000

Scenario 2

The remaining sale proceeds are split 60:40 between Jenny and Mark, which reflects their initial contributions:

Jenny: £30,000 stake + £30,000 (50% of mortgage) → £60,000 (60% of £100,000)
Mark: £10,000 stake + £30,000 (50% of mortgage) → £40,000 (40% of £100,000)

Workings:
The mortgage must always be deducted first, which leaves £140,000. This is then divided so that Jenny gets 60% and Mark gets 40%.

Jenny: £140,000 x 60% → £84,000
Mark: £140,000 x 40% → £56,000

Scenario 3

Jenny retains 75% of the sale proceeds and Mark retains 25% of the sale proceeds, which reflects their initial cash contributions:

Jenny: £30,000 (75% of £40,000)
Mark: £10,000 (25% of £40,000)

Workings:
The mortgage must always be deducted first, which leaves £140,000. This is then divided so that Jenny gets 75% and Mark gets 25%.

Jenny: £140,000 x 75% → £105,000
Mark: £140,000 x 25% → £35,000

Scenario 4

The calculation is made on the basis of the original cash contribution.

Workings:
The property was purchased for £100,000, with £40,000 being provided by Jenny and Mark. Of that cash contribution, Jenny contributed 75% and Mark contributed 25% (£30,000 and £10,000 respectively). With a sale at £200,000, the value of the 40% cash contribution is £80,000. This is divided so that Jenny gets 75% valued at £60,000. Mark will receive 25% valued at £20,000. Thereafter, £120,000 remains, out of which the £60,000 mortgage must be paid. The final £60,000 is then divided equally.

Jenny: £60,000 (75% of cash portion) + £30,000 → £90,000
Mark: £20,000 (25% of cash portion) + £30,000 → £50,000

Scenario 5

The mortgage is repaid and the surplus is split 50:50.

Workings:
The mortgage must always be deducted first, which leaves £140,000. This is then divided equally between Jenny and Mark.

Jenny: £140,000 x 50% → £70,000
Mark: £140,000 x 50% → £70,000

Next Steps

If you have any questions or concerns about any of the issues explored in these Guidance Notes, or think that you might benefit from a Declaration of Trust, you are more than welcome to contact the solicitor dealing with your file. They will be very happy to assist you and will be able to answer any queries you might have.

Contact

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