

Declarations of Ownership

A Declaration of Ownership (also known as a “Declaration of Trust”) is a legal document commonly used to set out the interests of individual parties where an asset is held in joint names with others. When a couple, for example, purchase their home, they may decide to put in place a Declaration of Ownership to set out their property interests. They could, for instance, decide that the property should be held equally or specify unequal proportions.

There are a number of benefits to putting in place a Declaration of Ownership. It not only clarifies the way in which the property is to be owned but also confirms the responsibilities of each of the co-owners, thereby avoiding complications from arising in the future. For example:

- **Mortgage and other outgoings** – who will be responsible for paying the mortgage and other household bills? Should the costs be divided equally between each of the owners or in the same proportions as they intend to hold their property interests? If one party is to take on sole responsibility, will they be reimbursed out of the sale proceeds or not?
- **Repairs and maintenance** – who will be responsible for the repair and general maintenance of the property? Should the costs be divided equally between each of the owners or in the same proportions as they intend to hold their property interests? If one party is to take on sole responsibility, will they be reimbursed out of the sale proceeds or not?
- **Power of sale or option to buy** – should the co-owners’ power of sale be restricted in anyway? If the relationship breaks down for example, should a sale be forced to take place within a specified time frame or should one co-owner be given the option to buy out the other co-owner’s share?

As this is a legally binding document, which protects the co-owners’ interests in the property, it can be extremely useful if a disagreement arises between the co-owning parties. A well prepared Declaration of Ownership will help avoid dispute if all factors such as those referred to above have been agreed from the outset.

There are also potential tax implications to consider as a result of purchasing a property. Here is a summary of some of the relevant taxes:

- **Stamp duty** – this has become a more complicated area of tax with the inclusion of the ‘additional’ 3% rate for second homes. Careful consideration is needed if one or all of the owners are purchasing a second property.
- **Capital gains tax** – if one or all of the owners do not intend to occupy the property, a potential charge to capital gains tax may arise upon a future sale. There are options available to help mitigate capital gains tax, which we can advise further on.
- **Inheritance tax** – in the event of one or all of the owners dying, inheritance tax may be payable from the deceased co-owner’s estate. Every owner should consider the inheritance tax position of their estate and the consequences if inheritance tax is due. We can assist with inheritance tax planning and if possible mitigate inheritance tax.



We also recommend all co-owners have a Will in place when making a Declaration of Ownership to ensure their respective shares in the property pass as they intend in the event of death. If an existing Will is in place already, we recommend reviewing this. Please refer to our “Why do I need a Will” factsheet for more information.

If you would like to discuss the creation of a Declaration of Ownership in more detail, please contact us. It is important to note we can only act for one owner when preparing a Declaration of Ownership. It would be advisable for the other co-owners to seek independent legal advice.

Depending on your specific requirements, we are able to offer you the following options:

- **Preparation only** – this includes preparation of the Declaration of Ownership document only. Our fee for a straightforward Declaration of Ownership, setting out each of the co-owners’ interests in the property and taking into account any initial contributions made towards the purchase price, will be from £300 plus VAT. If, however, you wish to include more specific provisions to clarify matters such as the payment of the mortgage, repairs and power of sale, we will quote you accordingly based on the level of complexity of the document to be prepared. This option does not include a meeting or any other related tax or cohabitation advice.
- **30 minute consultation and preparation** – this includes a meeting where we will discuss your instructions and outline the options available. We will also summarise any tax or cohabitation issues for you to consider. Our fee for the meeting (limited to half an hour) will be £150 plus VAT and our fee for preparation of the Declaration of Ownership will be as set out above.
- **One hour consultation and preparation** – a longer meeting will provide you with more comprehensive advice specific to your personal circumstances including tax and other related legal issues. Our fee for the meeting will be from £300 plus VAT and if you would like us to prepare a report confirming our advice following the meeting, then our fee for the report will be an additional £250 to £750 plus VAT depending on the complexity of your circumstances. Our fee for preparation of the Declaration of Ownership will be as set out above.

All our fees will be confirmed when taking instructions.



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