

# Trust Deeds - Client Guide

Trust Deeds | Cohabitation Agreements | Key issues

## Wills and things

It's also important for all joint owners to make a will, and to set out in the will what will happen if one of them dies.

Will the survivor be allowed to stay in the property, and if so for how long - till death, remarriage or when?

Otherwise, the deceased's beneficiaries (perhaps children from a previous relationship) might want the property sold immediately so they can get their inheritance.

There have been many tragic stories in the press of long-term partners being forced out of the home they have lived in for years following the death of their partner - you wouldn't want that possibility at the back of your mind to worry you?

## Life insurance

Also, you should have life insurance on each of your lives to ensure that the other party is not made homeless if one of you dies and there is a mortgage to pay.

## Children

If the owners have children who live at the house now or in the future, how does that affect the situation?

Does the house still have to be sold if one owner wants their share out, or will the remaining owner and children be allowed to stay there?

If so, until when - until the remaining owner remarries, or cohabits?

It can be difficult to deal with situations where one or both joint owners bring children from previous relationships, and also where the joint owners then go on to have children between them.

In such cases the law of cohabitation can be complex to apply and you will need legal advice if the relationship breaks down.

However, it is certainly a good idea to think about it at the outset, so that each party in the relationship has the peace of mind of knowing where they stand.



## Read our 'Joint Ownership - Client's Guide'

You should read our 'Joint Ownership' guide first. This explains why it is important to decide at the outset whether you will hold your home as 'Joint Owner' or as 'Owners in Shares'. You should ask us to prepare a 'Trust Deed' if you decide to hold the property as 'Owners in Shares'.

## When do we need to have a Trust Deed prepared?

Trust Deeds are essential where people who are not married or in a civil partnership buy a property together. This might be cohabiting couples (whether mixed or same-sex), friends buying a home together, parents buying a home with their children for them all to live in, and property investors buying property together.

A little time and money spent at the beginning on the preparation of a Trust Deed can help avoid a lot of expense and unpleasantness if one party later wants to sell the property to get their share out, or the relationship breaks down.

If one party is putting money into the purchase but their name isn't going to be on the Land Registry title then it is essential that their money is protected by a Trust Deed. In such cases, the Trust Deed will say that the person whose name appears on the register is holding the property on trust for you both, and a restriction will be entered to prevent them selling it without the other party's consent.

## No DIY please!

Do not try to cut corners by trying to prepare a Trust Deed, Cohabitation Agreement or Will yourself. The consequences of badly prepared documents can be catastrophic, and often results in very expensive litigation. It is better to have an expert prepare these for you. Draft documentation, or general advice, obtained from the internet is often wrong, or not appropriate to your situation. That's why it takes us years to qualify as lawyers and be authorised to give legal advice!

## Civil Partnerships or Married Couples

For married couples buying a property together, it's important to realise that even if you do have a Trust Deed, the court has power to override this when dividing the assets on divorce - 'pre-nups' are not yet recognised in English law.



## Our charges

How much it costs to prepare a trust deed depends on how complicated it has to be in order to deal with your situation. Once we know what you have in mind, we can then tell you what the cost will be.

One thing is certain though - a relatively small amount spent now on a trust deed will save tens of thousands of pounds in unnecessary litigation costs if there is a dispute later. Not to mention the personal upset, worry and delay such litigation will cause to both parties.

## Contents, gifts, etc.

Another issue to think about is how will the furniture and contents be divided on a sale - in the same shares as the house is owned, or in equal shares?

No-one wants to think about such things when they are buying a house, but if both parties know where they stand at the outset, there will be fewer issues in the future.

## One Step At A Time?

Buying a house can be stressful enough, and it may not be the right time to try and agree all the points necessary to prepare a Comprehensive Trust Deed or a Cohabitation Deed.

But its an important part in our service to you, as our clients, to bring these points to your attention. Whether you choose to act on these issues now, or later, is up to you.

However, one solution may be to agree to have a Basic Trust Deed prepared at the outset so that your conveyancer can register the transfer and protect both your interests, and then come back and have a more Comprehensive Trust Deed or Cohabitation Deed prepared once you have ironed out the issues.

That may well be the best way to deal with the tricky issues that Joint Ownership can lead to.

But don't forget to come back to us and ask us to deal with it for you.

Talk to us - we are always there to help you on your journey!

The Society of Licensed Conveyancers



## A Basic Trust Deed

A basic Trust Deed between two owners will record in a legally binding deed:

- What their shares are, such as half each or any other agreed percentage
- That either owner can call for the property to be sold, how and when
- Whether one owner can buy out the other owner's share at a price to be agreed, and how the price will be fixed if they can't agree on this
- They each agree to be responsible for the mortgage payments and other outgoings
- They will keep the property insured and maintained
- The costs of this will be shared in equal shares or in the same proportions as they own the property, or some other proportion
- No-one else can live at the property without the other owner's agreement
- Neither owner will try to borrow money against the property without the other owner's consent
- If the property is sold at a loss, and for less than the amount owing on the mortgage, that the debts relating to the house should be shared between the owners in the same proportions as the owners' respective shares in the property

## More Comprehensive Trust Deed/Cohabitation Deed?

In many cases, having thought about it, clients realise that it would be sensible to have a more Comprehensive Trust Deed. You might want to have a Basic Trust Deed to record the shares and points above, and a separate Cohabitation Deed dealing with some of the other to avoid future misunderstandings or awkwardness. The issues raised below feature in most cases of breakdown where they have not been agreed at the outset, and unfortunately the resulting litigation can be unpleasant. Agreeing these points at the beginning can avoid such disputes.

The other issues that a more comprehensive deed might deal with include:

- Will the percentage shares change if one owner spends their own money on improvements to the house - will their share be increased to compensate them?
- Will there be a joint bank account to pay the mortgage and outgoings from?
- Will each owner pay money into a joint bank account, and will all the other bills and outgoings be paid in the same proportion as their ownership or in some other proportion?
- Do the owners agree that neither of them can draw cash or pay money out of the joint account without the other owner's consent, and if so, do they agree that they will need to repay this money (or accept it will be taken out of their share if the property has to be sold)?
- If one owner moves out for any reason, the mortgage and household bills will still need to be paid - do the owners agree that owner who has moved out will still be liable for the their agreed share of the mortgage payments and other outgoings?
- If one owner pays the other owner's share in the mortgage payments or household bills in the meantime before the property is sold, does that owner get credit for all of these payments or just for the capital paid on the mortgage (which is in fact only a very small fraction of the mortgage payment)?
- Let's say the relationship breaks down and perhaps one owner moves out. Can the other owner have their new partner move in? Or, if they rent out some rooms (or even the whole the property) - should the rent be shared in the same proportions as their ownership shares? And if one owner moves out - are they still responsible for paying their share of the bills?
- What happens if you can't agree on something important - should you have to try and resolve the dispute by mediation before resorting to court action?