

Your place, or mine?

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Buying a property with a partner is a significant personal and financial commitment. Where a couple is unmarried, and contributions to the purchase, mortgage or renovation costs are unequal, it is particularly important to record clearly what each person owns and what should happen if the relationship ends, the property is sold, or one partner dies.

Unlike married couples and civil partners, cohabiting couples in England and Wales do not have automatic financial claims against each other simply because they have lived together, even for many years. There is no such legal status as a “common law spouse” despite many thinking otherwise. As a result, without proper documentation, one partner can be left financially exposed and that’s usually where a Declaration of Trust is advisable. Not a trust per se but a document which confirms how property ownership is held.

Joint tenants or tenants in common

When buying a property together, the first key decision is whether to own it as joint tenants or tenants in common.

As joint tenants, both owners own the whole property together. Neither person has a separate identifiable share. If the property is sold, the starting point is usually that the proceeds are divided equally. If one joint tenant dies, their interest automatically passes to the surviving joint owner under the right of survivorship, regardless of what any Will says.

As tenants in common, each owner has a distinct share in the property. Those shares can be equal or unequal, for example 60/40 or 70/30. This structure is often more suitable where one person has paid a larger deposit, one person is funding renovations, or the mortgage contributions are not equal, which can usually require lender consent. A tenant in common’s share does not pass automatically to the other owner on death; it passes under their Will or, if there is no Will, under the intestacy rules. These are a set of rules the Government have written for you which dictate where your estate goes.

For unmarried couples making different financial contributions, owning as tenants in common is often the more appropriate option, provided the shares are carefully documented.

Using a Declaration of Trust to record unequal contributions

A Declaration of Trust is one of the most important documents for unmarried couples buying property together where contributions are unequal.

It records the parties’ agreed beneficial interests in the property. In practical terms, it sets out who is entitled to what share of the equity and how the proceeds of sale should be divided if the property is sold.

A Declaration of Trust can deal with issues such as:

- Who paid the deposit;
- Whether that deposit is to be protected before any remaining equity is divided;
- How mortgage payments are to be treated;
- How renovation or improvement costs will affect ownership shares;
- whether the parties own the property in fixed percentages or according to a formula;
- What happens if one partner wishes to sell and the other does not;
- How the property is to be valued if one partner buys out the other;
- Responsibility for costs such as insurance, repairs, service charges and major works;
- How sale proceeds will be distributed after repayment of the mortgage, estate agents’ fees and legal costs.

For example, if one partner pays the deposit and the other pays for substantial renovations, a Declaration of Trust can record whether those contributions are to be repaid first on sale, whether they alter the parties’ percentage shares, or whether a different formula applies depending on the increase in value of the property.

This is particularly important because disputes often arise years later, when memories differ and financial circumstances have changed. A well drafted Declaration of Trust provides evidence of the parties’ intentions at the time and can reduce the scope for disagreement.

The legal title at HM Land Registry will usually show the names of the registered owners. Where the parties own as tenants in common, a restriction is commonly entered on the title to indicate that the property is held on trust and that the owners’ beneficial interests are not necessarily held jointly. The Declaration of Trust itself sits behind the legal title, rather than being publicly available via the Land Registry’s website like the legal title.

Why informal agreements are risky

Many couples assume that because they have discussed their financial arrangements, those discussions will be enough. In practice, informal understandings are often difficult to prove.

This can be especially problematic where one person pays for improvements rather than contributing to the deposit. Renovation costs do not automatically create a corresponding ownership share. Whether those payments give rise to an interest in the property will depend on the evidence, the parties’ intentions and the surrounding circumstances. A Declaration of Trust avoids uncertainty by setting out the agreed position from the outset.

It is also important to update the arrangements if circumstances change. For example, a Declaration of Trust prepared at the time of purchase may need to be reviewed if there is a major extension, one party makes a lump sum mortgage repayment, or the couple later agrees to change their ownership shares.

The importance of making a Will

For unmarried couples, making a Will is essential. If one partner dies without a Will, the surviving partner does not automatically inherit their estate under the intestacy rules, regardless of how long they have lived together. The deceased partner’s estate may instead pass to children, parents, siblings or other relatives, depending on the family circumstances.

This can create serious difficulties where the couple owns a property together. If they own as tenants in common, the deceased partner’s share will pass under their Will or, if there is no Will, under the intestacy rules. That may leave the surviving partner co-owning the property with the deceased partner’s family or facing pressure to sell.

A Will allows each partner to decide what should happen to their share of the property on death. It can, for example:

- Leave the deceased partner’s share to the surviving partner outright;
- Give the surviving partner a right to live in the property for a specified period or for life;
- Leave the deceased partner’s share to children while protecting the surviving partner’s occupation;
- Appoint trusted executors to deal with the estate;
- Ensure the arrangements are consistent with any Declaration of Trust.

Where the property is owned as joint tenants, the right of survivorship will usually override the terms of a Will in relation to the property. Where it is owned as tenants in common, the Will is critical because the deceased’s share does not pass automatically to the co-owner.

A Will should therefore be prepared alongside, or shortly after, the property purchase. It should also be reviewed following major life events, such as the birth of a child, marriage, separation, a significant change in financial circumstances, or the purchase of another property.

Cohabitation Agreements

A Cohabitation Agreement can provide a wider framework for the couple’s financial arrangements during the relationship and if it ends.

While a Declaration of Trust focuses primarily on ownership of the property, a Cohabitation Agreement can cover broader issues, including financial arrangements concerning children, subject to the court’s jurisdiction in relation to child welfare and child maintenance.

In England and Wales, Cohabitation Agreements can carry significant weight and may be enforceable as contracts, provided they are properly prepared. Key safeguards include each party entering into the agreement freely, with full understanding of its terms, proper financial disclosure, and preferably independent legal advice. The agreement should also be fair and kept under review as circumstances change.

A Cohabitation Agreement is not a substitute for a Declaration of Trust where property ownership shares need to be recorded. The two documents often work together: the Declaration of Trust records the beneficial ownership of the property, while the Cohabitation Agreement deals with the wider financial and practical arrangements between the couple.

Practical steps for unmarried couples buying together

Before completing a purchase, unmarried couples should consider the following steps:

1. Decide how the property will be owned
2. Record the financial arrangement clearly
3. Agree what happens on sale or separation
4. Make or update Wills
5. Consider a Cohabitation Agreement
6. Review documents regularly

Conclusion

Where an unmarried couple buys a home together, unequal contributions should be documented from the outset. A Declaration of Trust can provide clarity and protection by recording each partner’s interest in the property and how sale proceeds should be divided. Wills are equally important, as unmarried partners do not automatically inherit from each other. A Cohabitation Agreement can add further protection by setting out the couple’s wider financial arrangements during the relationship and in the event of separation.

Putting these documents in place at the start of the purchase can help avoid uncertainty, reduce disputes and ensure that both partners understand their rights and responsibilities. For more information, please contact Amy Lane who can advise on Declarations of Trust and your Will(s).



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