



## [Conveyancing Marketing Services Ltd](#)

### **Transfer of Equity explained**

Property owners may wish to change the legal ownership/status (transfer equity) of their property for a number of reasons some of which are listed below:

- **Marriage.** Following marriage the partners often wish to transfer the matrimonial home into joint names. This is called a **Transfer of Equity**
- . Unless the party being added to the deeds is paying full market value for the share in the property the law will deem this transfer as a gift or transaction at an undervalue (see below).
- **Divorce or separation.** Following divorce or separation the partners may wish to transfer a jointly owned property back into the sole name of one of the partners. This is also called a **Equity**
- **Transfer** and may be deemed in law as a gift or transaction at an undervalue (see below), unless full market value has been paid for the property share, or the property is being transferred as a result of a court order.
- **Tax planning.** Property owners are sometimes advised by their tax planners or accountants to transfer a share of the family home into the name of a child or other family member. This is also a **Transfer of Equity** and may be deemed in law as a gift (see below).
- **Transferring or changing** the financial status of shares in the property. Some property owners buy a property jointly but do not wish to own the property on a strictly 50/50 basis. If this is the case a trust deed is set up to explain the share that each partner owns. This trust deed is registered at the land registry. If the property owners later decide to change the percentages **Equity Transfer** would be needed plus the trust deed would need to be changed.

Whatever the reason for the transfer what may appear to be a simple arrangement can be quite complex and legal advice should be sought.

Changing a property from sole name into joint / multiple names or adding a name to the deeds.

### **What the solicitor does:**

Obtains the title deeds or an Official copy from the Land Registry in readiness for an equity transfer.

Prepares the **Transfer of Equity** deed and arranges for the parties to sign it in the presence of a witness.

Notifies any third parties who have an interest in the property, such as mortgage lenders. If the property is mortgaged or secured to a lender they must give formal written consent to the transfer.

Assess whether stamp duty is payable.

Complete the Stamp Duty Land Tax Form, arrange for this to be signed by the property owners and submit it to the Inland Revenue.

Register the transfer at the Land Registry. A Land Registry fee is payable.

Checks the legal identity of the client (this is required by law).

### **Removing a name from the deeds**

The same legal procedure as outlined above is followed

The solicitor may not act for both parties as there may be a 'conflict of interest'. Each party should appoint a solicitor who will provide independent advice.

### **Transferring property and retaining the existing mortgage**

If the property is mortgaged and the property owner intends to keep the same mortgage they must seek the approval of the lender to the transfer. The property owner will probably be asked to attend an interview or write a letter to explain the reason for the transfer (particularly if one party is being removed from the deeds).

If the lender approves of the equity transfer they will issue a written acceptance to the client and their solicitor. There may be conditions to the acceptance of equity which the solicitor must ensure are met.

If an owner is being removed from the deeds the lender will want proof that the remaining owner (s) can afford to repay the mortgage. If the lender is not satisfied that the remaining owner (s) can afford to repay the mortgage they will refuse to release the exiting owner from the liability for the mortgage payments and conditions.

If a new party is being added to the deeds then the lender will require that person to sign a mortgage deed accepting liability for the existing mortgage and the mortgage conditions. The usual credit and reference checks will be made by the lender.

## **Re-mortgaging and Transfers of Equity**

Where the property is being re-mortgaged at the same time as the transfer of equity there will be no need to obtain the existing lender's consent to the transfer. This is because the two documents will be dated simultaneously and the old mortgage will be paid off. The new lender will require all parties named on the deeds to be parties to the new mortgage.

## **Transfer of property for less than it's market value or where no money is changing hands**

Where a property or a share in a property is transferred for free or at a discount it is called a 'transaction at an undervalue'. Basically, this means that in the eyes of the world the property is being transferred for less than it is actually worth if it was sold on the open market.

There are many reasons why people transfer property for less than its current market value or for free. These may be personal reasons, such as marriage or family gift, or they may be for commercial reasons, where a property is transferred from one company to another. However, some property owners may seek to transfer property to another person to avoid losing the property as a result of insolvency or debt.

This type of transfer is affected by the insolvency laws. Simply put, if a property is transferred for less than its value, the law deems that this is a gift donated by the owner of the property to the recipient of the share in the property. If the person who transfers the property becomes bankrupt within 3 years of the donation the law can undo the transfer. This enables the law to defeat debtors who seek to protect their property from creditors by transferring it to a third party.

The insolvency laws allow the official receiver to sell the property and to pay the creditors of the insolvent person from the proceeds.

Because of the effect the insolvency law can have on property transfers the lender will insist that the property owner, who is transferring a share in a property for free or for less than it is worth, signs a deed called a Declaration of Solvency. The lender may also require the property owner to take out an insurance policy to protect the mortgage repayments. A solicitor will be able to draw up a Declaration of Solvency and will also be able to arrange insolvency insurance if required to do so. This type of insurance can be expensive and it is the property owner's responsibility to pay for the premium. However, the premium is generally a one off premium which does not need to be renewed.

## **Transfers of property at market value**

Where a share in property is being transferred for the full market value the solicitor will prepare a transfer deed which will show the price paid for that share.

The lender may ask for evidence that the full market price has been paid. Lenders often require a written valuation from a surveyor or estate agent confirming the current market value of the property.

## **Stamp duty on Transfers of Equity**

Since December 2003 the Inland Revenue require a Stamp Duty Land Tax form to be completed and signed by the property owner. This form, known as the SDLT, must be signed by the property owner (s) and delivered to Inland Revenue within one month of the date on the transfer deed. There is a fine payable for failure to send an SDLT or for sending it late. The fine may be up to £200.00. The responsibility to complete, sign and submit the form is that of the property owner. The solicitor will usually complete the form, arrange for it to be signed and then submit it to Inland Revenue. Most solicitors charge a small fee for this service.

Stamp duty may be payable on the transfer of a property whether it is sold or gifted. A solicitor will be able to advise you whether stamp duty is payable.

Some equity transfers are exempt from stamp duty, for instance where a property is being transferred as a result of a court order following divorce proceedings.

To check current stamp duty rates visit [www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)



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