Shared ownership agreement residential property

**Dated:** [date]

[Names of all Owners]

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|  |  |
| --- | --- |
| The Schedule: | Allocation of areas |

This agreement is dated: [date]

It is made between:

|  |  |
| --- | --- |
| [name of first Owner] | of [address] (“ABC”) |
| And |  |
| [name of other Owner] | of [address] (“DEF”) |

The Owners have agreed to purchase the Property for use as [living them alone / each of them and their families/ investment].

These are the agreed terms:

# Definitions

These definitions apply unless the context requires a different interpretation:

|  |  |
| --- | --- |
| "Confidential Information" | means all information about an Owner and his family, their affairs and their business, in any medium, without limit. |
| "Furniture and Fixtures" | means all furniture, carpets, fixtures and fittings, appliances and possessions used in common, contributed or purchased by the Owners for use in the Joint Area. |
| "Joint Area" | means those parts of the Property which are exclusive to the Owners and used jointly by them. It does not include “common parts” of a building, most of which is altogether outside this ownership, for example if the Property is a flat. |
| “Owner” | means a party to this agreement or a person who becomes a party to this agreement or who otherwise stands in the shoes of a party to this agreement, whether by operation of law or by contract and collectively referred to as “the Owners. |
| “Personal Area” | means the area allocated by agreement to each of the Owners for his exclusive use. Areas are specified in Schedule 1. |
| "Property" | means the property situated at [complete address] which is the subject of this agreement. |
| “Sale Owner” | means an Owner who wishes to sell his share or a person in whom a share vests by operation of law (for example an executor). |
| “Share” | means a share in the Property. |

# Interpretation

In this agreement unless the context clearly requires otherwise:

* 1. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
  2. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
  3. a reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
  4. a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context otherwise requires. The schedules form part of this agreement.
  5. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.
  6. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
  7. [except where stated otherwise,] any obligation of any person arising from this agreement may be performed by any other person.
  8. a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, belief or awareness that person would have if he had made reasonable inquiries.
  9. a reference to a specific statute includes any statutory extension or modification, amendment or re-enactment of that statute and any regulations or orders made under that statute.
  10. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

# Terms of beneficial interest

* 1. The Property is held by [two of] the Owners as tenants in common.
  2. The beneficial interest in the Property is owned in the proportions set out:

|  |  |
| --- | --- |
| [name 1] | 00% |
| [name 2] | 00% |
| [name 3] | 00% |
| [name 4] | 00% |
| Etc, etc | 00% |

* 1. The Owners listed above have paid for the Property according to the proportions owned and shall be entitled in those proportions to all the rights and obligations of Ownership, including any profit or loss on sale.
  2. If any Owner listed above shall at any time require that the Property be sold, such demand shall be met in accordance with the conditions set out later in this document.

# Relationship of Owners

* 1. This agreement contains the entire agreement between the Owners, none of whom relies on anything else, said or written.
  2. This agreement does not create any partnership or joint venture between the Owners.
  3. None of the Owners is an agent of any other and none has authority to enter into any commitment on behalf of any other except as may result from this agreement.

# Price and payment for the Property

* 1. The Owners agree to [finance / have financed] the purchase of the Property by contributing, in cash:

|  |  |
| --- | --- |
| [name 1] | $[111] |
| [name 2] | $[222] |
| [name 3] | $[333] |
| [name 4] | $[444] |
| Etc, etc | $[555] |

* 1. In addition to the above cash, the Owners have borrowed / intend to borrow the sum of $ [amount] from [lender if known]
  2. That money will be held by [ABC] to be paid to the seller of the Property.
  3. That money will be paid immediately to [name] solicitors, who have been instructed by the Owners jointly.
  4. [ABC] is authorised to take the necessary steps to ensure that the transfer of the Property proceeds swiftly.

# Use of the Property

The Owners agree that they will:

* 1. use their respective Personal Areas only as living accommodation for [name people or relationships].
  2. accept full responsibility for all visitors to their respective Personal Areas.
  3. not come into the Personal Area of any other without invitation.
  4. at all times, occupy their respective Personal Areas as their home and only as their home.
  5. make clear to all visitors that they may not reside at the Property.

# The Furniture and Fixtures

* 1. The Owners can jointly finance the purchase of any Furniture and Fixtures.
  2. All Furniture and Fixtures shall remain the property of the person so placing them but shall be subject to wear and tear by all occupiers of the Property.
  3. Fixtures or fittings lost or damaged, other than by normal wear and tear, shall immediately be repaired or replaced by the Owner who damaged them.
  4. Normal maintenance of the Furniture and Fixtures will be the joint liability of the Owners and will be shared.
  5. The Owners are free to remove from the Property any Furniture and Fixtures contributed by them. If they do so, they shall give at least four weeks’ notice to the other Owners.

# Joint expenses

* 1. Expenses relating to the Personal Area of any Owner shall be paid only by that Owner.
  2. Expenses relating to the Joint Area shall be paid in the proportions in which the Owners own the Property:

OR

* 1. Expenses relating to the Joint Area shall be paid in the following proportions:

|  |  |
| --- | --- |
| [name 1] | 00% |
| [name 2] | 00% |
| [name 3] | 00% |
| [name 4] | 00% |
| Etc, etc | 00% |

# Management and Expenses

* 1. Within one week of today, the first named Owner, or some other Owner by agreement of the Owners, shall, by [28 days] notice in writing, call a meeting of the Owners.
  2. At least [once / twice] in every year [name], the chairman of the last previous meeting, or some other person agreed by the body of Owners, shall, by [28 days] notice in writing, call a meeting of the Owners.
  3. At the meeting, motions will be put, on which the Owners will vote, each vote weighted according to the percentage Share. A proxy, appointed in writing, may vote on behalf on any Owner as well as for himself.
  4. The Owners shall exercise control over the Property management by discussion and votes at the meeting.
  5. [Except as specified in this agreement, no decision taken at any such management meeting shall over-ride any provision of this agreement.]
  6. The first item for the attention of the meeting shall be the appointment of a chairman of the meeting. An Owner may vote for himself. It shall not be necessary for a nomination to be made formally, nor to be seconded. The second item shall be the location and time of the next meeting. The third shall be the appointment of a manager of the Property for the next following 12 months.
  7. Each Owner agrees that he will act as Property manager (the “Property Manager”) in turn, if no other person agrees to take the role.
  8. The Property Manager shall be responsible for:
     1. collection of cash from all Owners in proportion to their Ownership to create an expenses fund in a bank account opened for that purpose, such fund not to exceed the sum of estimated expenses for two years.
     2. payment of all bills relating to the Property.
     3. insurance of the Property and its contents in the joint names of the Owners;
     4. finding and managing local cleaning and other services as the Owners shall agree;
     5. preparing a list each month of all Expenses relating to the Property, accrued in that month, whether paid by him or not, and submit it to the Owners at the next meeting.
     6. securing the Property in accordance with the instructions of the meeting.
  9. If any Owner shall fail to pay money on account of current or prospective Expenses, he shall not be entitled to occupy the Property until such deficiency has been made good.
  10. No payment shall be made to the Property Manager for his personal time and other expenses in dealing with the management of the Property [except such sum as is voted to him by the Owners at a meeting].

# Undertakings by the Owners

Each Owner agrees with the others that he will:

* 1. not accumulate anything in or on the Property which can be hazardous to life or health;
  2. promptly identify and repair any defect in which becomes apparent in his Personal Area;
  3. keep clean and in good repair the Joint Area and any parts of the Property over which rights are exercised in common with others, such as entrances, halls, stairways, lifts and passageways;
  4. fully co-operate with the other Owner in making emergency or other repairs to the Joint Area;
  5. clean, maintain and keep free from blockages and obstructions all baths, sinks, lavatories, cisterns, drains, gutters, pipes, chimneys and the like;
  6. not use the Property for any improper, immoral or illegal purpose;
  7. not license or sublet any part of the Property unless authorised by the other of them in writing;
  8. not play music or allow any noise which at any time might reasonably cause annoyance to any other Owner or neighbours;
  9. not cause nuisance or annoyance to the other Owner or any neighbour, nor do anything which may detract from the reasonable use and enjoyment of the Personal Area of any other Owner.
  10. not make any alterations, improvements or additions to the Property which may affect the other Owner unless they have consent from the other Owner in writing;
  11. not keep or allow pets of any kind on the Property;
  12. not smoke tobacco or any other substance in or on the Property / Joint Area;

# Warranties and indemnities

Each Owner warrants to the others that:

* 1. He will not hold himself out as sole Owner of the Property at any time.
  2. He has no criminal record.
  3. Each Owner agrees to indemnify the other Owners against any claim or demand, including reasonable lawyers' fees, made by any third person due to or arising in any way out of the use of the Property by that Owner.

# Confidentiality

* 1. The Owners are aware that in the course of owning and living in the Property they will each have access to and be entrusted with Confidential Information.
  2. The Owners undertake for themselves, their family members (and every other person reasonable in their contemplation) that both during and after termination of this agreement they will not divulge to any person or make use of (and shall use their best endeavours to prevent the disclosure of) the Confidential Information.

# Long stop termination date

* 1. This agreement shall be terminated following a sale of the Property as soon as possible after [long stop date].
  2. Immediately following the sale, an account shall be drawn. All money due to third parties shall be paid, account shall be taken of any tax jointly due (but not of tax due by an Owner individually) and the balance paid to the Owners in the proportions in which they share ownership. This agreement shall then forthwith terminate.
  3. For the avoidance of doubt, an Owner may sell to or buy from another Owner, a Share in the Property, by agreement and subject to any terms, at any time. Any such arrangement shall not affect the rights and obligations of either of them under this agreement.
  4. An interest in the Property may be divided provided no resulting Share is less than [10] % of the whole Property.

# Termination and assignment

Alternative 01 - one party agrees now, to buy out all others at future date at valuation less an agreed discount]

* 1. [ABC] agrees to buy the interest of [DEF] / all the parties, on or before 31st December 2018 at a price reflecting 95% of a valuation as at 31st October 2018 that date by [valuer’s name and address].
  2. Immediately following the sale, an account shall be drawn. All money due to third parties shall be paid, account shall be taken of any tax jointly due (but not of tax due by an Owner individually) and the balance paid to the Owners in their proportionate Shares. This agreement shall then forthwith terminate.

[OR Alternative 02 - whole arrangement terminates by a sale of property when one Owner wants to leave. The leaver compensates the remainder with pre-fixed sum.]

* 1. A Sale Owner may terminate this agreement by giving to the other Owners [three] months’ notice of his intention to sell the Property. Such notice having been given, all Owners shall consider and agree a route to sale which will achieve the best price and shall jointly appoint such professional advisers as may be necessary to affect the sale. This agreement shall not terminate until the Property has been sold and all Expenses due have been paid.
  2. All expenses of sale shall be borne by the Sale Owner. In addition, there shall be due by the Owner giving notice of sale to each other Owner, the sum of $ [amount] (being an agreed sum as compensation for loss of holidays and amenity). This sum shall be due despite any continued occupation of the Property during the allocated periods.
  3. If the Sale Owner claims against any other or others that he called for a sale on account of the breach of this contract by that other or others, then the money payable in the last previous sub paragraph shall not be due and payable and instead all expenses of whatever nature shall be borne in the proportions agreed in this agreement.
  4. The Owners agree that the terms of this paragraph are fair and reasonable and do not constitute a penalty.
  5. Any termination of this agreement by this paragraph shall be without prejudice to any other rights or remedies to which an Owner may be entitled.

# Ownership terminated by operation of law

If the Share of any Owner passes by operation of law, then:

* 1. The benefit and obligations of this agreement shall be binding on any successor in title;
  2. The other owners [one or more of the other owners] may by notice in writing, demand that the Property be sold and that all expenses of sale shall be borne by the successor in title of the Owner whose Share has passed by operation of law.
  3. The Owners agree that the terms of this paragraph are fair and reasonable and do not constitute a penalty.

# Miscellaneous matters

* 1. No amendment or variation to this agreement is valid unless in writing, signed by each of the parties or his authorised representative.
  2. The parties acknowledge and agree that this agreement has been jointly drawn by them and accordingly it shall not be construed strictly against either party.
  3. So far as any time, date or period is mentioned in this agreement, time shall be of the essence.
  4. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
  5. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.
  6. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
  7. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
  8. The parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
  9. Any communication to be served on either of the parties by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

|  |  |
| --- | --- |
| It shall be deemed to have been delivered: | |
| if delivered by hand: on the day of delivery; | |
| if sent by post to the correct address: within 72 hours of posting; | |
| if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.[Take care before agreeing to accept service by e-mail. It may be convenient, but you or your counter party (the other side) could miss or accidentally delete the message] | |

* 1. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
  2. This agreement may be executed in multiple counterparts each of which shall be considered an original and all or any one of which constitute one and the same instrument.
  3. The validity, construction and performance of this agreement shall be governed by the laws of [state] and any dispute arising from it shall be litigated only in [state].

**Where parties are corporate person**

Signed by [personal name] on behalf of [named Owner] as its representative who personally accepts liability for the proper authorisation by [named Owner] to enter into this agreement.

Signed by [personal name] on behalf of [named Owner] as its representative who personally accepts liability for the proper authorisation by [named Owner] to enter into this agreement.

**Where parties are individuals**

Signed by

Signed by

## The Schedule: Allocation of areas

Joint Area

[Enter description of part of the Property for common usage such as kitchen, entrance way; garden, garage, stairs, lift and common passage as mutually agreed].

Personal Areas:

[Enter complete details about the Personal Area exclusively to be owned and possessed by each Owner in clear terms. A plan may be necessary].

Explanatory notes:

Shared ownership agreement residential property

General notes

1. This template is applicable where a residential property is to be purchased under joint ownership. It serves two purposes: first it is a trust deed, setting out the ownership shares; secondly it is a “sharing agreement” regulating the arrangements between the owners for all practical matters.
2. You should make sure your solicitor/conveyancer/settlement agent has bought the property for you as tenants in common (as opposed to joint tenants) and you should insure it in your joint names.
3. You should use the names of all of the owners to replace “(ABC)” and “(DEF)”. Simply insert their names in the agreement as and where required.

Paragraph specific notes

Note: numbering refers to paragraph numbers.

1. **Definitions**

You may change the terms as suitable to your agreement. We may not have been able to provide you with defined terms which are precisely suitable to your requirement. By all means use the search/replace function in your word processor to change them. But if you do change the defined word, make sure it applies to every use of it in the document.

Remember too, that when a word or phrase is defined, the defined meaning, capitalised, takes precedence over the common meaning of that word or phrase.

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really fit the text you have left in place.

1. **Interpretation**

There are some very important points here that affect many other parts of the document. Leave these items in place unless there is a good reason to edit or remove. We suggest that you read them a couple of times so that as you run through the rest of the document, bells ring!

1. **Terms of beneficial interest**

It is perfectly possible to own the property in one set of shares, pay expenses in some different ratio and occupy it under a third ratio. However, we strongly advise that the property is bought and occupied and all expenses paid in some simple proportion, by percentage.

1. **Relationship of Owners**

This is a basic provision to make legal relationships clear.

1. **Price and payment for the Property**

It is important to think through and set down clearly, your precise arrangements for who pays what and when. This paragraph provides alternatives for the purchase price depending on whether the property has already been bought at the time it is signed.

1. **Use of the Property**

It is very important to set down the precise “rules” as to who is allowed to live and visit and under what circumstances. Arrangements like this one may be undertaken with friends or relatives. Everyone is anxious not to “rock the boat” so avoid saying anything controversial. However, this agreement is specifically to open up the wishes and requirements of the owners, so it provides an opportunity to set down matters which might just be unwelcome if stated verbally after a problem has arisen. If the property is to be developed then further detail to this end will be required.

1. **Joint expenses**

We cannot know what expenses will be incurred nor how you will wish to share them. The important point here is to make sure you do have agreed arrangements. If one owner may not be able to meet such commitments as they come due, then a system should be put in place for regular advance payments of a specified sum to be paid into a joint bank account.

1. **Management and Expenses**

What you want in this paragraph depends on how many people will share the property and on what terms you intend to manage it. For example, this paragraph can be redrafted as to ensure payment of the expenses in a joint bank account in good time to meet the demands as they become due.

Remember that as far as any supplier, contractor or tradesman is concerned, the bill will be paid by the person named on it. If that is to be you, make sure you are going to get the money in from your co-owners!

1. **Undertakings by the Owners**

This is a menu of items which could be included in this agreement, provided to prompt your consideration. No doubt you will think of many more and delete many of these.

1. **Warranties and indemnities**

A simple indemnity. Leave or remove, depending on the relationship between the co-owners.

1. **Confidentiality**

A useful provision for all owners. Neither side wants his life to be revealed on a social network.

1. **Long stop termination date**

A long stop termination is advisable in case all else fails. All parties can take comfort that they can see a point in time when they will have their money back. This date may be two years or ten years ahead. The actual date is immaterial.

13.1 This provision can stand alone if required as it provides a simple but brutal termination. There is nothing to prevent the sharers to enter into a new agreement at or before that date if they so wish.

1. **Termination and assignment**

A simple and fair exit strategy is essential. However, the legal position complicates your choice. Under Australian law, any co-owner can obtain a court order for the sale of the property, even if another owner objects. However, the judge may take notice of the agreement and may well delay the effect of the order or make it on terms which avoid penalising the “innocent” party.

A second issue is that it may be undesirable for a party wishing to leave the arrangement to be free to sell his share to any (awful!) person he likes, leaving the other owners to make the best of a difficult relationship. On the other hand an owner may be compelled to sell by unforeseeable circumstances. He may simply dislike the house location, or he may have suffered the death of a very close relative. In the first case, those remaining may have little sympathy; in the second case, they may have great sympathy.

The difficulty for the draftsman here is in how best to reconcile the opposing interests that may arise on a proposed sale. If the property is owned by two or three parties only, they may agree simply to sell up and close down the agreement. If there are more owners than two, then all those wishing to carry on will be inconvenienced by the seller. If that happens, it is only fair that the person wanting out should be obliged to pay some penalty to the others to cover their financial loss and inconvenience.

When you draft your version, we advise you to take the strong and brutal view. You can always agree something gentler if circumstances arise which merit sympathy. Generally speaking, the more there are of you in the arrangement, the stricter it should be.

1. **Ownership terminated by operation of law**

Then there is the question of transfer by operation of law. What happens if one of the owners dies or is made bankrupt? The provisions in this document are intended to protect the owners left with the property. They can always decide to take a more generous position if they so choose, but as far as the agreement is concerned, the “innocent” owners are protected. It is particularly important that the rights of a trustee in bankruptcy are limited. Any provision in those terms is void - for obvious reasons. But a provision that the benefit of the agreement shall not be assigned without approval of the owners may effectively prevent the executor or Official Receiver from assigning the interest outside the existing owners.

1. **Miscellaneous matters**

This paragraph contains a number of special points. We have identified each of these as important to protect you.

End of notes