

ABBHEY & RICHARDS

CO-OWNERSHIP OPTIONS

Parties: Shilpa Jennings and Daniel Rodriguez

Property: 9 Castle Hill Blakey

Joint tenants

If you both own the property as joint tenants, both of you own all the property—neither of you are entitled to a separate part.

The joint tenancy gives “rights of survivorship”. This means that if one of you dies, the property automatically passes to the other surviving joint tenant. No part of the property belongs to the estate of the person who has died.

This automatic right makes this method of co-ownership attractive to people who are married.

If one of you dies and the other re-marries, the survivor could transfer the property into joint names of joint tenants. It is possible that any children from the previous marriage may be left without any claim to the property or proceeds of sale.

A joint tenancy can be “severed”. This changes it into a tenancy in common with an equal or unequal split, depending on the circumstances (see the following notes).

Tenants in common

If you own the property as tenants in common, each of you holds an agreed proportion of the property, for example 50:50, 40:60 or any other agreed proportion.

Your part can be transferred either during your lifetime as a gift, or on your death by your will or intestacy (where there is no will). In this way you can deal with different contributions each of you make to the purchase price.

If you separate, the property cannot be sold without both of you being a party to the contract and transfer.

If you decide to be tenants in common, you will need to discuss and decide in what proportions you wish to hold the property.

We can prepare a document called a 'Declaration of trust' to record unequal contributions to the purchase price. It can also record, for example, unequal contributions to mortgage payments and your intentions in the event of a breakdown in your relationship.

Should the relationship between you break down at any stage in the future, then either of you could make an application to the court for a declaration about the extent of each of your interests in the property. When deciding on such an issue, the court will take into account various factors such as:

- (i) your intentions when you bought the property (which may have been set out in a Declaration of trust);
- (ii) the purpose for which you bought the property;
- (iii) the welfare of any child who occupies or might reasonably be expected to occupy the property; and
- (iv) the interests of any secured creditor.

As well as making a declaration as to the extent of the person's interest in the property, the court can also make an order as to who should occupy the property should your relationship break down.

General

You may wish to think about signing a document now, which records your intentions as co-owners in buying the property and the reason for buying it. This document could also deal with your intentions for the property in respect of any children.

Although this document might not be legally binding, a court could take it into account as evidence of your intentions and purposes at the time you bought the property.

We realize that considering your own death is not something you might automatically think of when you buy a property. Unfortunately, with the changes in the law and the status of marriage, you may feel the need to give these matters some careful thought. I would strongly recommend that you make a will if you have not already done so, or update any wills you have already made. Our Mr Mark Richards would be happy to help should you wish to discuss this.

The way in which property is owned can have significant tax implications on death if you have substantial investments or other assets, and you die within a short time of each other. If you are concerned about this aspect, we would be happy to help you.

We **Shilpa Jennings** and **Daniel Rodriguez** confirm that we understand the contents of this and also that we wish to hold the above property as **joint tenants** / **tenants in common** (% share and % share)

Signed.....DATED.....

Signed.....DATED.....