Amicus Law
SOLICITORS

Important points to consider when **buying property with another person**

If you are purchasing a property with another person there are some important things that you should consider, especially if you are unmarried or one of you is making a greater financial contribution towards the purchase. There are also further points to consider if funds are being gifted or loaned from a family member or friend.

This short guide is designed to give you more information about these scenarios.

The first thing to note is that there are two ways that two or more people can 'own' a property together and this is as either **Joint Tenants** or as **Tenants in Common**.

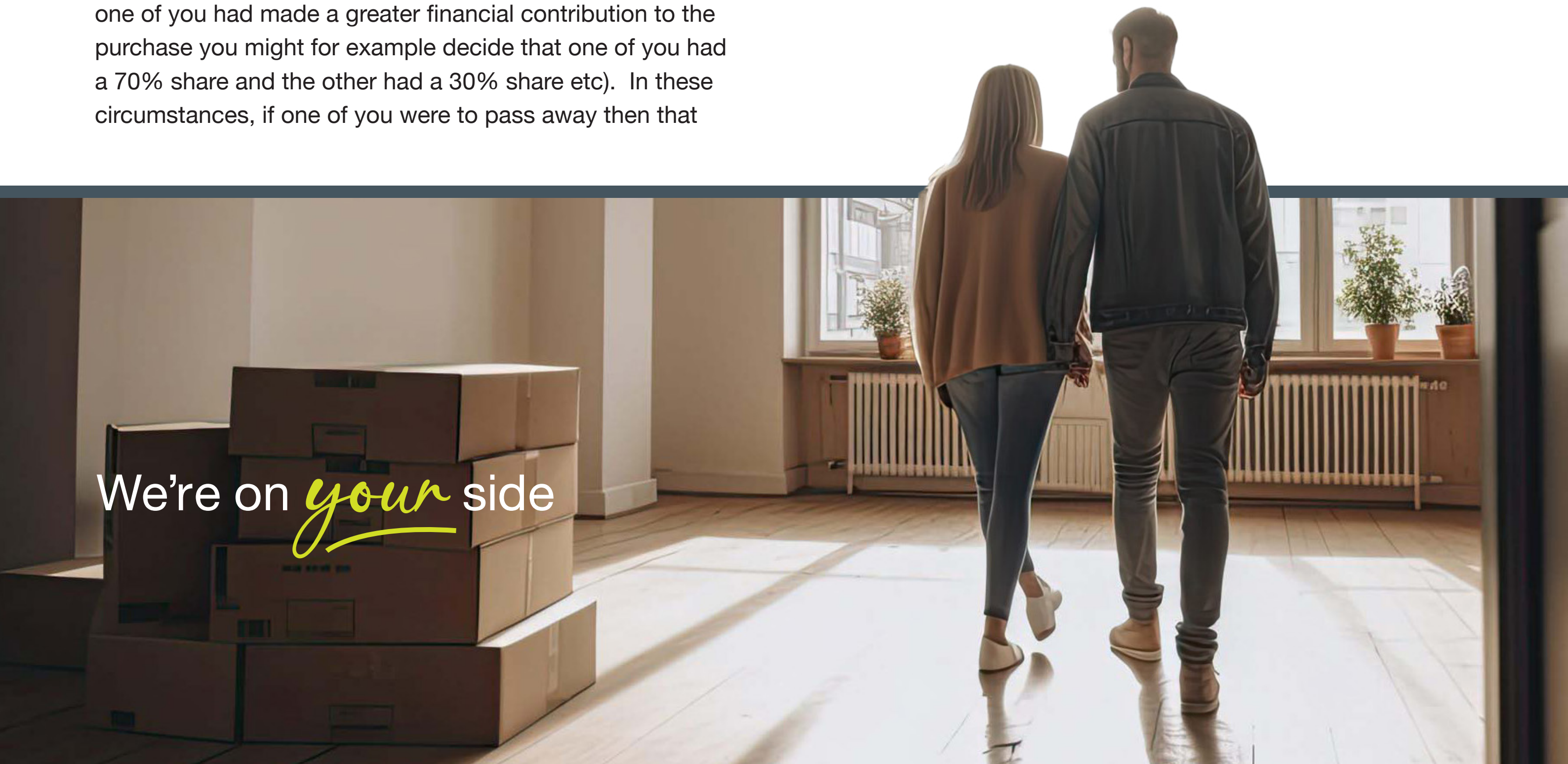
Although rather morbid, the easiest way to explain the difference between the two is that if you hold the property as **Joint Tenants**, you have an equal and identical share in the entire property and if one of you were to pass away, then that individual's share of the property would automatically go to the surviving owner, and the surviving owner would own the property 100% outright.

If you own the property as **Tenants in Common** however, then you would each own a specified share in the property (i.e. you could elect to own the property as **Tenants in Common** with you each owning 50% of the property, or if one of you had made a greater financial contribution to the purchase you might for example decide that one of you had a 70% share and the other had a 30% share etc). In these circumstances, if one of you were to pass away then that person's share in the property would pass to their estate and be dealt with in accordance with their Will, rather than automatically passing to the other owner.

We would usually expect that married couples purchasing a property are likely to hold the property as **Joint Tenants**, but this is not a requirement. If, for example, one of them had children from a previous relationship, then they might wish to hold the property as **Tenants in Common** so that their share in the property could be passed on to their children through their Will rather than passed directly to their spouse.

If you decide to hold the property as **Tenants in Common** in unequal shares, the information presented to the Land Registry when the property is registered will be quite limited and will only set out the percentage split between you. There are some **additional legal documents** that you may wish to consider that can set out the arrangements between you in greater detail which will assist in the event of a breakdown in the relationship and these are:-

Declaration of Trust & Cohabitation Agreements



Declaration of Trust

A **Declaration of Trust** is a document that sets out the financial contributions made by each party in much greater detail and can set out, for example, who provided the deposit monies, who is going to be making the mortgage payments etc. This document can dictate how the proceeds of sale will be divided between the parties in the event of a sale. By use of what is known as a **"Form B restriction"** at the Land Registry, this position can be protected, requiring a certificate to be provided confirming that any disposal is in accordance with the provisions of the declaration of trust before any sale or transfer of the property can be registered.

Cohabitation Agreements

A cohabitation agreement is a legal document which is usually drafted in the form of a Deed to govern your cohabitation and in the event of separation, the division of any assets owned or acquired during your relationship.

Unlike on divorce or civil partnership dissolution, there is no particular set of rules that automatically applies if you split up from someone you have been living with. There is no such thing as 'common law marriage'. Living with someone for a certain period of time doesn't mean you are automatically entitled to some financial support or to share their property after you split up. This means that where a couple has not been married or in a civil partnership, sorting out disputes about property without an agreement can be expensive and take a long time. A good cohabitation agreement can mean that areas of potential dispute on separation are reduced or eliminated.

Many couples also find the process of making a cohabitation agreement means that they have the chance to think and talk about how living together is going to work financially, meaning that arguments about money are less likely later on.

There are very few limitations in relation to what can be included in a cohabitation agreement with such agreements regularly including the following;

- who owns (and owes) what at the time of the agreement, and in what proportions
- what financial arrangements you have decided to make while you are living together-

  Many people find it convenient to have a joint bank account when they live together but need to decide what contributions they are going to make to that account. Will the contributions be equal and if not, will you consider the money in the joint account to be equally owned? What will the joint account be used for and when should your personal accounts be used instead? If you are not using a joint account, who will pay which of the household bills and will this be considered an equivalent contribution to something else? What about credit cards and debts?
  If major purchases are made during your relationship, will they be owned equally or in the proportions paid towards the purchase?
- how property, assets and income should be divided if you should split up
- pensions – You can agree to nominate death in service benefits children

The above are but a few elements which can be included in a cohabitation agreement but it can be as comprehensive or as simple as you seek. Please contact us if you would like to discuss these further.

Other points to consider...

Third party financial contributions

In the event that a property is being purchased using funds provided by a third party, for example money given by a family member for a deposit or restoration works to a property, that third party should also be given the opportunity of seeking independent legal advice with a view to protecting the contributions and financial interest that they may have in the property.

The third party's financial interest in the property can also be secured in the form of a **Declaration of Trust** or by an expressed interest registered as a Restriction on registered land at the Land Registry.

Making a Will

If you purchase a property jointly as **Tenants in Common** you will be able to include your share of your property in a Will.

In circumstances where a property is held as **Joint Tenants** you cannot leave your share of the property in a Will as it would not form part of your estate for succession purposes.

However, if you do wish for your share of a property to form part of your estate on death, it is possible for the joint tenancy to be severed by a **Notice of Severance**, turning the property ownership into a **Tenancy in Common**. In this instance, you should then seriously consider making a Will to protect your respective interests in the property and we have a dedicated Wills team at AmicusLaw that would be happy to assist with this. Again, please contact us for more information.

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