

Cohabiting Couples - What happens when there is a Dispute?

If you and your ex-partner own (or one of you owns) a property you cohabited in together, then you might be able to make a claim under The Trusts of Land and Appointment of Trustees Act ("TOLATA").

Disputes may arise between couples who have cohabited together in a property which is jointly owned or owned by only one party. Cohabiting couples who separate are often surprised to learn that there is no protection under family law for non-married couples who share a property. These situations are not usually dealt with by family solicitors but dispute resolution solicitors, as they concern disputes over property ownership.

What is a TOLATA Claim?

A TOLATA claim is where two individuals who have lived together in a property have a dispute arise regarding an aspect of their cohabitation, usually after separation. The dispute could be regarding who actually owns the property, whether the property should be sold or who should carry on living at the property. TOLATA gives the Court powers to resolve disputes between unmarried couples regarding the ownership of property. The court can make decisions as to:

- The ownership of a property; and
- Who can remain in the property.

You can make a TOLATA claim even if you are not an owner of the property.

There are certain circumstances in which a TOLATA claim can be made. These include:

To force the sale of land or property. To reoccupy a former family home when an ex-partner refuses to leave. By parents/grandparents wanting to recover their financial interest in the property. To determine the share you each own.

Settling out of court

It is a good idea to consider whether your dispute regarding the property ownership can be settled out of court before a TOLATA claim is made. It is not compulsory but is positively encouraged. If the matter does escalate to court, the Judge will be keen to see that alternative methods to settle the dispute have been attempted. The Judge can impose costs penalties in respect of the proceedings if parties have unreasonably refused to engage in alternative dispute resolution.

Settlement by alternative methods can be a much better option for separating couples especially if you have children together and is a much less expensive and stressful route than going to court.

The most common means of settling a TOLATA claim out of court are:

- Mediation (This is where an independent specialist called a mediator is used to help you and your ex-partner come to a mutual agreement)
- Solicitor negotiation (This is where your solicitors will work with you and your ex-partner to negotiate a settlement)

TOLATA Claim Process

If you are unable to settle your dispute out of court, the usual process for making a TOLATA claim is as follows:

Letter Before Claim

This is a letter sent to your ex-partner which sets out your legal position and what you'd like. The letter should ideally attach evidence to support it. Response

After receiving the letter your ex-partner has a short period of time to respond and set out their case either agreeing or disagreeing with the points made. Negotiations and settlement

At this point it may still be possible to settle your claim between you and your ex-partner without going to court. This is a preferred option that carries less risk and is faster than going to court which means that the parties will incur less legal costs.

The settlement may include one party agreeing to buy the other's share of the property or agreeing to the property being sold at a certain value.

If the parties are able to agree on a settlement, the matter will reach its conclusion and the claim will not continue any further.

Court

If you are not able to settle your claim out of court within the negotiation stage, and you have a strong legal position, then you can issue a formal TOLATA claim for the Court to decide.

It will depend upon your specific circumstances as to how long the process takes. The circumstances can include how complex your case is and how open both parties are to engage in negotiations.

Our Services

We are able to assist you in relation to both making or defending a TOLATA claim. We are also able to provide you with advice if you are currently cohabiting or co-owning a property to protect you from a future TOLATA claim being made if your relationship breaks down.

Furthermore, we can offer advice and assistance in respect of a professional negligence claim if you believe that you received poor advice from a solicitor or licensed conveyancer who did not advise you correctly in relation to your property and your interests in it at the time of purchase or sale.

If you need help in making, defending or getting advice to protect yourself from a TOLATA claim, please do not hesitate to contact our team of dispute resolution experts on 01384 371662 to arrange an initial consultation.