

Unmarried couple and TOLATA



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What matters to you matters to us



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If you or your ex-partner own a property you shared together, then you may be able to make a claim against the property. Our family lawyers are experts in this complex area of law.

The Trusts of Land and Appointment of Trustees Act (TOLATA) gives the court power to make decision where there are property disputes between unmarried couples. The court can make decisions on ownership of a property and who can remain in the property.

TOLATA applications can be used to enforce the sale of the property or allow the property to be transferred to you.

When two or more people own property jointly, as joint tenants or tenants in common, they are known as co-owners. Co-owners hold the property on a trust of land. Often, the co-owners are both the trustees and the beneficiaries.

The Court will need to take into account the circumstances and wishes of the beneficiaries (you and your ex-partner) when reviewing any application.

The matters to which the Court is to have regard in determining an application for an Order under Section 14 include:-

- a) The intentions of the person or persons (if any) who created the trust;
- b) The purposes for which the property subject to the trust is held;
- c) The welfare of any minor who occupies or who might reasonably be expected to occupy any land subject to the trust as his home; and
- d) The interest of any secured creditor or of any beneficiary.



This list is not exhaustive. There may be other relevant factors which the Court will consider, depending on the facts of the case in question. The weight to be given to each fact in a particular case is a matter for the Court's discretion.

Any mortgage on the property will also need to be considered by the Court. The Court would want to be satisfied that any sale of the property would discharge any remaining mortgage in full.

Court proceedings can also be a very costly process. The general rule for Costs Order under the Court's discretion is the unsuccessful party will be ordered to pay the costs of the successful party but the Court may make a different Order as it is given a wide discretion.

Occupation Rent

In circumstances whereby one party has been excluded from a property which they have the right to reside in, they may make a claim for occupation rent. This is something to consider with our family law experts on a case-by-case basis.

Notice of Severance

If you own a property with your ex-partner as joint tenants there is a right of survivorship, and you will automatically inherit their share of the property if they were to die. This is regardless of any Will that either of you may have. Your ex-partner would also automatically inherit your share of the property if you were to die.

It is however possible to change the way your share of the property will pass on your death by completing a document called a Notice of Severance. A Notice of Severance can reflect that you now own the property in equal shares as tenants in common. You would then be able to leave your half of the property to whomever you should wish under the terms of your Will.

Before you decide to Sever a joint tenancy you should discuss the merits of this with a family law expert.

Schedule 1 of the Children Act 1989

When children are involved in a relationship breakdown, alongside any TOLATA application a Schedule 1 application may also be made to consolidate your claim in both the Family and Civil courts.

On an application made by a parent, when a child is aged under 18, the Court can make the following range of Financial Orders:-

- Periodical payments
- Secured periodical payments
- Lump sum settlement of property; and
- Transfer of property.

The usual starting position is that the unsuccessful party must pay the costs of the successful party in consolidated Schedule 1 and TOLATA Proceedings.

The risks are high with making the above applications and your application may not be successful. The court process can be very lengthy and costly and therefore you need to weigh up the benefits of making such an application with a family law expert.

Every case has its own set of unique circumstances which must be considered.

Please therefore contact our team to arrange a **free** half an hour appointment to discuss your case.

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