

COHABITATION DISPUTES & ToLATA

Cohabitation disputes over property are increasing as many more couples decide to live together.

WHO HAS AN INTEREST IN PROPERTY?

Cohabitants do not have the same rights to make property claims as married couples or civil partners. The 'common law' wife or husband is a myth and does not exist in law. The ownership of a property and how it is owned is often dealt with when a property is purchased. Joint owners may own property as either **Joint Tenants** or **Tenants-in-Common**.

Under a joint tenancy, one joint tenant's interest will automatically pass to the surviving joint tenant on death, irrespective of any declaration in a Will. As Tenants-in-common, the owners will hold interests in distinct shares. Thus, a tenant in common can dispose of their interest in the property to whomever they wish, either in their Will or during their lifetime, without affecting the interests of the other co-owners.

WHAT IF I AM THE NON-OWNER?

If the property is solely owned by one cohabitant and the owning cohabitant has made an express written declaration of trust declaring that they hold the property for themselves and their cohabitant, in distinct shares, the non-owning cohabitant may have an interest under this **express trust**.

However, it can be challenging to establish an interest in a property solely owned by one cohabitant where there is no written express trust.

In the absence of ownership or an express trust, you need to establish one of the following:

- that you contributed in money or money's worth to the purchase of the property, and that there was a common intention to hold the property in proportion to your contributions (known as a resulting trust)
- there was a common intention you should have a beneficial interest in the property and that you have acted to your detriment in reliance of this (known as a constructive trust)
- that the legal owner has led you, either by their words or conduct, to believe that you have a beneficial interest in the property, and as a consequence, you have acted to your detriment (known as proprietary estoppel)

Disputes between cohabitants are determined following the law of trusts. However, it may also be possible to make a claim on behalf of a child (see our *Children* guide).

WHAT STEPS CAN I TAKE TO CLAIM MY INTEREST?

A cohabitant who has a potential interest in a property, which is not recognised by the legal owner, may make an application to the court under the Trusts of Land and Appointment of Trustees Act 1996 (ToLATA 1996). However, court proceedings for ToLATA claims are complex areas of law and often costly.

Our family lawyers can discuss with you various alternative options that are available, e.g. Mediation or Arbitration. However, court proceedings should be the last resort, and it is usually advisable to reach a settlement in most ToLATA cases. See also: *Non-court dispute resolution—client guide*.

WHAT IS THE COURT PROCEDURE?

Once ToLATA proceedings are issued, the procedure consists of three main stages: disclosure, inspection and evidence. First, there must be full disclosure of evidence, including documents that can support and adversely affect your and the other party's case. The court manages the process throughout. Ultimately, in the absence of agreement, a Judge will determine all the evidence at a Final Hearing.

During the proceedings, you may be advised to make or respond to a Part 36 offer. A Part 36 offer will not be shown to the trial judge but will be disclosed at the end of the trial when the court is asked to consider who should pay the costs of the proceedings. Thus, a Part 36 offer is a sound tactical weapon if you want to attempt settlement without potentially compromising your case.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.