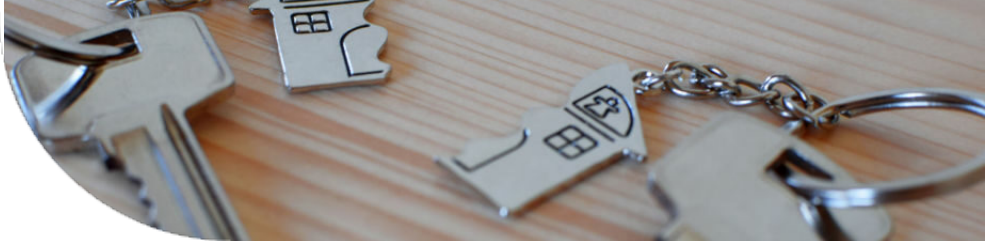

Property and Breakups: What Unmarried Couples Need to Know

What happens when a couple who are not married but live together in a property decide to separate? Instead of the Matrimonial Causes Act 1973, there is another Act to which we must turn - the Trust of Land and Appointment of Trustees Act 1996, known as TOLATA.

The Trust of Land and Appointment of Trustees Act 1996 (TOLATA)

The Act gives the court broad but specific powers to resolve disputes between multiple individuals where one or more claim to hold a beneficial interest in a property.

Typically, a TOLATA claim involves a party making an application for an Order for Sale where another individual is obstructing or refusing to agree to the sale of the property.

The court's powers are far-reaching in such claims, and it may order, in the alternative and upon such request being made, that one (or more) of the parties sell their beneficial interest in the property to the remaining co-owner(s) through a transfer of equity.

In addition, the court can award compensation to any party excluded from the property in the form of occupation rent. It is also common for the court to consider mortgage payments and renovations to the property post-separation prior to the making of an Order.

As part of the application to the court, the party submitting the claim can also include a request for the court to declare the extent of each party's interest in the property.

Separating couples

The court will consider a number of factors when deciding on how the property is held by the parties to the claim. This includes, among other things:

1. any common intentions between the parties (for example, that the property was treated as the family home);

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2. who contributed towards the deposit and mortgage instalments and the value of those contributions; and

3. the welfare of any child under the age of 18 who lives in the property.

Facts in the case

Before any TOLATA application is submitted to the court, it is essential to consider, in addition to the above, the following:

- Is the applicant registered as a proprietor on the property's title register?
- Where two or more proprietors are noted on the property's title register, how is the property declared as held on the Transfer document from the property's purchase? In addition, does a more recent Declaration of Trust deed exist?
- Has either party acted to their detriment in any way?

What happens when children are involved?

It is not uncommon for there to be young children in the relationship. In these circumstances, proceedings may also be issued under Schedule 1 of the Children Act 1989. Schedule 1 proceedings may be utilised by an unmarried parent with a beneficial interest in the property to obtain a top-up of capital to provide for their housing needs. In practice, if this coincides with the TOLATA claim, the TOLATA and Schedule 1 proceedings are consolidated.

Ways to alleviate the risk of a TOLATA application

A TOLATA application is generally submitted in the context of cohabitation, where one party obstructs the sale of a jointly owned property. For example, this may arise where there is a dispute on the extent of each party's beneficial interest in the property. If the parties enter into a Cohabitation Agreement or a Declaration of Trust before cohabiting, it may reduce the risk of making a TOLATA application, as both individuals will be more likely to accept the division of the proceeds of the sale per that document.

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Legal advice

TOLATA claims are complex, and every situation will depend on its own facts. Therefore, seeking and obtaining legal advice at an early stage is essential.

Issuing proceedings is a decision to be taken carefully, as legal costs can be significant and will likely be conducted in the civil courts, not the family courts. Therefore, a Letter Before Action should be sent detailing the claim before proceedings are issued. In addition, it is recommended that parties consider using a form of Alternative Dispute Resolution, such as mediation before or during court proceedings.

Who can make a TOLATA claim?

This article has primarily focused on TOLATA claims in the context of the commonly encountered cohabitee disputes. However, it is important to note it is not just cohabitees that can become embroiled in disputes over the ownership of property. Any individual who is a trustee of land or has an interest in property subject to a trust of land can be affected by the Act.

If you require more information or confidential advice about your circumstances and would like to come in and talk to one of our expert family law solicitors, don't hesitate to contact our family team at online.enquiries@LA-law.com.

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