Property Rights for Unmarried Couples Who Are Separating

What happens when a couple who are not married but own a property together decide to separate?

There is no such term as ‘common law’ wife or ‘common law’ husband and this area of law is often generally misconstrued.

Most people are surprised to find out that the legislation that governs this situation is completely unrelated to the Family Law Legislation, Matrimonial Causes Act 1973. Furthermore, people are also surprised to learn that there is no such term as ‘common law’ wife or ‘common law’ husband and this area of law is often generally misconstrued.

TOLATA

The Trust of Land and Appointment of Trustees Act 1996 (known as TOLATA) gives Courts certain powers to resolve disputes about the ownership of the property (or land). A TOLATA claim can be issued:

- 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.

Separating as an unmarried couple

A claim under TOLATA may be wide in regard to who can make the claim but this article focuses on separating unmarried couples. Anyone in the relationship who has an interest in a property or land may apply to the Court for an Order concerning their interest.

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In determining an application the Court will have to consider, amongst other things, the intentions of the parties; the reasons for the purchase; the welfare of any child under the age of 18 who lives in the property or might reasonably be expected to live there as his or her home; and the interests of any secured creditor such as a mortgage lender.

It is important to understand what has gone on to determine an interest and a lot of information will need to be gathered to do this such as:

- In whose name was the property purchased?
- Is there a tenancy in common or joint tenancy?
- Was there any written Declaration of Trust or Declaration of the Beneficial Shares?
- Has either party acted to their detriment in any way not directly contributing to the purchase?
- Was there any Right to Buy (or similar) discount?

It should be noted that this list is not exhaustive.

Official Copy Entries will need to be obtained from the Land Registry to look at the title property. Documents relating to the points raised above will also need to be produced along with a copy of the conveyancing file from the solicitors at the time that the property was purchased.; a valuation of the property will also need to be obtained.

The process

Before a claim is issued, a Letter Before Action will need to be sent detailing the claim. The parties have a duty to negotiate to see if matters can be resolved before any Court proceedings otherwise the parties could be penalised on costs. The party who would be a defendant should acknowledge the letter of claim within 21 days of receipt and give a timescale for his or her response. The parties can be referred to Alternative Dispute Resolution (ADR), such as mediation or arbitration to assist with negotiations.

When a claim is issued, a witness statement will support the claim and the defendant will have to respond within 14 days of service of the claim and witness statement. The defendant will have to support his or her evidence by witness statement. This can be filed up to 14 days later if the parties so agree or the Court may grant an extension of time.

Further evidence can be provided by any party with the permission of the Court. The Court will then set the case

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down for an Initial Directions Hearing where directions should be agreed upon between the parties and the Court has powers to consider whether Alternative Dispute Resolution is appropriate. It also has powers to order joint valuations of the property and to order further Witness Statements if required. The Court can also order disclosure between the parties and can make an Order for one party to pay the other's costs.

Proceedings are expensive and the cost of bringing a case to a Final Hearing may be astronomical. The proceedings will not be commenced in the Family Court and are classed as 'Civil Proceedings' and this has serious cost implications.

An application under the Children Act 1989 can be issued alongside a TOLATA application for a transfer or settlement of property if there are children involved, and if it is appropriate to do so.

It is important that legal advice is obtained in connection with this difficult and complex area of law.

If you want to speak to one of our specialist family lawyers at Lester Aldridge please call 01202 786161 or email online.enquiries@LA-law.com.

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