



COHABITANTS CLAIMS TOLATA APPS FACTSHEET

Cohabitant claims under the Trusts of Land and Appointment of Trustees Act 1996—

Who can apply?

Cohabitants do not have the same rights to make property claims as married couples or civil partners. Instead, disputes between cohabitants regarding their interests in a property are determined in accordance with the law of trusts. The 'common law' wife or husband does not exist in law and claims by cohabitants are very limited in comparison with spouses or civil partners. In some circumstances it may be possible to make a claim against property on behalf of a child (see: Financial arrangements for children—client guide).

There are two main ways in which a cohabitant may have an interest in a property:

- as a joint owner, or
- where the property is in the sole ownership of the other cohabitant, under a trust, whether expressly stated or otherwise

In some circumstances a cohabitant who has a potential interest in a property may make an application to the court under legislation called the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996) if the legal owner of the property does not recognise their interest.



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Who has an interest in property?

One of the first steps in determining whether you may have a claim against property is to consider whether you own the property in question jointly with your cohabitant or former cohabitant, or if the property is solely owned by just one of you. The ownership of a property and the way in which it is owned is often dealt with at the time the property is purchased, or in some cases by a subsequent legal transfer of the property.

Joint owners may own a property as either:

- joint tenants, or
- tenants in common

If you own the property as joint tenants you and your joint owner have separate rights and interests, but in relation to third parties you have the characteristics of a single owner. Under a joint tenancy the interest of one joint tenant will pass automatically to the surviving joint tenant on death. In this context the use of the word 'tenants' does not refer to a rented property but rather how a property may be owned.

If you own the property as tenants in common you and your joint owner will hold your interests in distinct shares. The main difference between a joint tenant and a tenant in common is that a tenant in common can dispose of their interest in the property either on death or during their lifetime without affecting the interests of the other co-owners as they have a distinct share in the property.

Disputes regarding interests in property often arise where a property is solely owned by one cohabitant or former cohabitant. If the cohabitant who owns the property in their sole name has made an express written declaration of trust declaring that they hold the property for themselves and their cohabitant, setting out their respective shares, this is called an express trust.



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If there is no express trust and you wish to claim a beneficial interest (because you are not a joint legal owner of the property), you must 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 beneficial interest in the property in proportion to your contributions (known as a resulting trust)
- that you can show that there was a common intention that you should have a beneficial interest in the property and that you have acted to your detriment on this basis (known as a constructive trust)
- that the legal owner has led you, either by their words or their conduct, to believe you have a beneficial interest in the property and as a consequence you have acted to your detriment, making it unreasonable for the legal owner to insist that they have total beneficial ownership of the property (known as proprietary estoppel)

It can be challenging to establish an interest in a property where it is solely owned by your cohabitant or former cohabitant and there is no written express trust. You will need to discuss this in detail with your family lawyer and provide them with as much information and, where applicable, documentary evidence as possible.



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What steps should be taken before issuing an application?

Before court proceedings are issued, consideration should be given to other ways in which an agreement might be reached, often referred to as alternative dispute resolution (ADR) or non-court dispute resolution. Your family lawyer can discuss the suitability of this with you and make recommendations as to what may be best for your circumstances. See also: Non-court dispute resolution—client guide.

In TOLATA 1996 proceedings the person who makes the claim against a property is called the applicant. The person against whom the claim is made is called the defendant.

Before commencing a TOLATA 1996 claim, sufficient information should be exchanged so that you and the other party can understand each other's position and decide whether it is possible to reach a settlement or how to otherwise proceed. Your family lawyer will discuss the steps required with you and the action you need to take.

What is the court procedure?

Once proceedings are issued, the procedure thereafter consists of three main stages: disclosure, inspection and evidence. The court manages the process throughout and will list a trial (where all the written and oral evidence is considered) if the case does not settle. It is advisable to seek to reach a settlement in most cases.

Disclosure is the ongoing process by which both parties reveal what relevant documents are or have been in their possession. Documents must be disclosed that both support and adversely affect your case and the other party's case. You must both carry out a reasonable search for documents and disclose what is proportionate to your case.



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What are Part 36 offers?

During the course of the proceedings you may be advised to make or respond to a Part 36 offer. This is an offer to reach a settlement, which, if made in accordance with certain rules, carries costs consequences if refused by the party to whom the offer was made, depending on the ultimate outcome of the case. 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. A Part 36 offer is a useful tactical weapon if you want to attempt settlement without potentially compromising your case.

Your family lawyer can discuss the appropriateness and implications of a Part 36 offer with you based on the circumstances of your case.