



myerson

Myerson **Property**

Our guide to TOLATA Property Disputes

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Welcome

Why Myerson?

At Myerson, our Real Estate Litigation solicitors are experts in advising on all aspects of property disputes. We understand the complications surrounding property ownerships and we act as trusted advisers to our clients, aiming to resolve their matter sensitively and with a positive outcome.

As a Top 200 UK Law Firm, we are also proud to be ranked in many legal disciplines as '**Top Tier**' in the prestigious international directory **The Legal 500**, providing a truly bespoke and personal service.

All of the solicitors in our real estate litigation team are specialists and have a detailed understanding of real estate law and procedures. Your matter will be handled discreetly and efficiently.

Our specialist, dedicated team of property dispute solicitors have in-depth knowledge and a wealth of expertise in both bringing and defending complex TOLATA matters.



TOLATA Property Disputes

Joint ownership of property

Joint ownership between unmarried couples, friends, parents, and siblings is increasing. Whether this is due to help getting onto the property ladder, inheriting a property under a will or another reason, jointly owned properties come with the potential for a difficult and upsetting ownership dispute in future years.

The most common situation can be seen between unmarried couples. Contrary to popular belief, in England and Wales, there is no such thing as a “common law spouse”. When cohabiting couples separate, the rules for dealing with the property are the same as owners who are not in a relationship and jointly own property unless you have children together.

Cohabiting couple's property ownership disputes

How do disputes arise?

Many disputes over jointly owned property arise when a relationship breaks down, and the owners disagree on whether the property should be sold or what proportion of the equity each of them should receive when the property is sold or ownership transferred.

What can I do?

An express trust would outline who held the legal title to the property, who held beneficial interests in the home, and in what shares.

Implied trusts can also arise in cases where the property is registered in the names of both parties but there has been no declaration of the extent of the beneficial interests or where the legal title is registered in the name of one party only, and the other wants to establish that they have a beneficial interest in the property.



If you own a property with someone else and cannot agree on either the sale of the property or the splitting of equity, it is possible to apply to the Court to resolve the situation.

Applications are made to the Court under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA). The Court has wide-ranging powers under TOLATA and can make an order that the property be sold and/or how the equity should be split.

Is there an express declaration of the size of the beneficial interests?

If there is an express provision in the transfer document or a declaration of trust, the parties will be bound by those terms unless they can establish:

- that the declaration was invalid or incorrect;
- there has been fraud, mistake or undue influence; or
- that there has been a subsequent variation.

This may be difficult to establish, but in some cases possible.

One of the joint owners moved out of the property and stopped paying the mortgage. Are you entitled to a greater share?

Paying the mortgage or other household expenditure does not entitle you to a greater share of the equity.

You may be entitled to compensation for the money spent through 'equitable accounting'. This allows the Court to adjust the money received by each party, even where shares are fixed.

Included in equitable accounting can be payments towards the mortgage or in some cases improvements to the property, or an obligation on one party in occupation to pay occupation rent to the other party post separation.

If you have excluded your ex-partner from the property, then they may be entitled to ask you to pay a rent for occupying the property and may insist on conditions for your continued occupation of the property.



What if partners are splitting up and one party is refusing to sell the property that is owned jointly?

In these circumstances, an application can be made to the Court to order a sale of the property and for a determination as to how the proceeds of the sale are to be divided.

What if you have separated from your ex-partner who you lived with for years in a property in their sole name. Are you entitled to anything?

It is possible for a person who is not the legal owner of a property, but has made certain types of contribution towards it, to acquire financial interest in it. This is potentially a complicated situation, which would turn on the facts of each case.

What if my ex-partner and I have children together, does that mean I am entitled to more of the property?

In these circumstances, you may have extensive financial claims pursuant to Schedule 1 of the Children Act 1989. These claims can include a housing claim, lump sum claim, a claim for maintenance over and above the Child Maintenance Service payments and an order to pay your legal fees.

Housing claims are normally restricted to providing accommodation for you and your children whilst the children are under the age of 18 years or remain in full time tertiary education.



You're in safe hands!

If you would like further information about how we can help you with **TOLATA Property Disputes**, or if you have any questions, please don't hesitate to contact a member of our **Property Litigation** team today.

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