A GUIDE TO

# PROPERTY OWNERSHIP DISPUTES

## TOLATA CLAIMS

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## Welcome

Dealing with property ownership disputes can bring uncertainty and may feel overwhelming. This guide is designed to provide a clear overview of what a TOLATA claim is, why they happen and other common questions clients may have regarding TOLATA claims.

It is intended for general guidance and information only and should be read alongside the tailored advice we provide based on your individual circumstances.

While every effort has been made to ensure the information is accurate, it should not be treated as a substitute for professional advice; for advice specific to your situation, we recommend speaking with one of our solicitors.

## About Us

At Bright Legal Solicitors, our role is to provide clear practical legal advice and support throughout the process. We are a dynamic law firm with a proven track record of delivering exceptional legal services. Led by an award-winning solicitor with over 28 years of experience, our Litigation team combines extensive expertise with a personal, client-focused approach. We are committed to protecting what matters to you and providing practical solutions that help you move forward with confidence.  You can find out more about our team by clicking here.

## What is a TOLATA claim? Understanding Property Ownership Disputes

Property disputes are often difficult because they involve more than just money. They usually arise after a relationship has broken down, a family arrangement has gone wrong, or two people who once shared the same plans no longer agree about what should happen next.

A common question we are asked is:

**"I have an interest in a property, but we cannot agree. What can I do?"**

The answer may involve a claim under the **Trusts of Land and Appointment of Trustees Act 1996,** usually referred to as a **TOLATA claim.**

TOLATA provides a legal framework for resolving disputes about property ownership. It allows the court to decide issues such as who owns a property, what share each person is entitled to, and whether the property should be sold.

## Why do TOLATA disputes happen?

Many TOLATA disputes begin with informal arrangements.

A couple may buy a house together without discussing what would happen if they separated. A parent may contribute money towards a deposit believing they will have a share in the property. Siblings may invest in a family property without recording their agreement.

At the time, there may seem to be no reason to put anything in writing.

The problem usually appears later, when circumstances change.

One person may want to sell. Another may want to stay. Someone may believe they own half of the property while the other person disagrees.

When agreement cannot be reached, the court may need to determine the parties' rights.

## Does the name on the Title Deeds decide ownership?

Not always.

The Land Registry records the legal owner of a property, but legal owner and beneficial ownership are not necessarily the same thing.

A person who is not named on the title deeds may still have a beneficial interest in the property. This means they may be entitled to a share of its value.

For example, someone may have contributed significantly towards the purchase price, paid towards the mortgage, funded improvements, or relied on an understanding that they would have an interest in the property.

Whether a claim exists depends on the evidence and the circumstances of the individual case.

## What does a TOLATA claim ask the Court to decide?

A TOLATA claim can deal with a number of issues, including:

- Whether someone has a beneficial interest in a property
- The size of each person's share
- Whether a property should be sold
- How sale proceeds should be divided
- Whether someone should be allowed to occupy the property

The court does not simply look at who paid the most money or whose name appears on the paperwork. It considers the whole history of the arrangement.

## How does the Court decide who owns what?

There is no straightforward formula.

The court will consider the evidence surrounding the purchase and ownership of the property, including:

- Financial contributions
- Mortgage payments
- Renovation costs
- Discussion between the parties
- Written agreements
- Emails and messages
- The way finances were managed
- The parties' intentions over time

A person's contribution is important, but it is not always decisive. The court's role is to establish what the parties intended and whether that intention changed.

## What do the Courts say about property ownership?

The leading cases show that property ownership disputes are decided by looking at the reality of the arrangement.

Some examples:

| Case Name | Legal Issue | Outcome |
|---|---|---|
| Stack v Dowden [2007] | • Mr Stack (C) and Ms Dowden (D) were unmarried but cohabited as a couple with their children in the home<br>• C and D contributed unequally to the purchase of the property with C contributing 35% and D contributing 65%<br>• C sought a court order for the sale of the property and for equal division of the proceeds<br>• While D argued that beneficial interest should be divided by the relative contribution of each party. | • At first instance, the court held that the beneficial interests were equal (50:50).<br>• But D appealed and subsequently the court ordered net proceeds to be divided 65% and 35% in D's favour<br>• **Jointly owned property is usually presumed to belong equally to both parties, but that presumption can be challenged where the evidence shows a different intention.** |
| Jones v Kernott [2011] | • Mr Kernott [D] and Ms Jones [C] were an unmarried couple cohabiting a property they bought in their joint names.<br>• They later separated with C remaining in the property with their children<br>• They agreed to cash in the life insurance policy they both contributed to and share the proceeds, with D using his proceeds to put down the deposit to purchase a home for himself<br>• C commenced an action for declaration that she owned the entire beneficial interest in the property, while D sought an order severing the joint tenancy.<br>• It was accepted by the parties that at the time of separation that they held the property in equal shares. | • The parties owned the property in unequal shares, with C holding 90% and D holding 10%<br>• Their intentions had changed since they separated<br>• **Ownership shares can change where the evidence demonstrates that the parties' intentions have changed.** |

These cases are important because they show that the Court looks beyond the title deeds and considers the complete history of the property arrangement.

## What evidence will be needed?

Evidence is often the deciding factor in a TOLATA claim.

Documents that may be relevant include:

- Bank statements
- Mortgage records
- Conveyancing documents
- Land Registry information
- Invoices for improvements
- Emails
- Text messages
- WhatsApp conversations
- Written agreements

A conversation that seemed unimportant at the time may become significant years later if it helps establish what the parties understood about ownership. For this reason, taking advice early can be important. It allows evidence to be preserved and the strengths and weaknesses of the case to be assessed properly.

## Can a TOLATA claim be avoided?

Sometimes.

Court proceedings are not always necessary. Many property disputes are resolved through negotiation or mediation.

A settlement can provide certainty and avoid the time, stress and cost involved in litigation.

However, successful negotiation usually depends on both parties understanding their legal position. A person who knows the strength of their case is in a much better position to negotiate effectively.

## Can the Court order a property to be sold?

Yes.

A common reason for bringing a TOLATA claim is where one owner wants to sell and the other refuses.

The court has the power to consider whether sale should take place. The decision will depend on the circumstances, including why the property was purchased, the intentions of the parties and the interests of those involved. A sale is not automatic, but it is one of the remedies available to the court.

## How long does a TOLATA claim take?

The timescale varies considerably. Some disputes can be resolved relatively quickly through negotiation. Others become more complicated and require detailed evidence, property valuations and court hearings.

The earlier the issues are identified, the greater the opportunity to resolve matters efficiently.

## Getting advice on a TOLATA claim

Property ownership disputes can have a significant financial consequence. They can also be emotionally difficult, particularly where the dispute involves a former partner or family member.

A solicitor can help you understand your position, assess the available evidence and advise on the most appropriate way forward.

In some cases, the right outcome is achieved through negotiation. In others, court proceedings are necessary to protect a person's legal rights.

The important first step is understanding where you stand.

If you are involved in a dispute over property ownership, taking advice at an early stage can help you make informed decisions about what happens next.

## Contact us

If you would like advice about a TOLATA Claim or have any questions about the information contained in this guide, our team would be pleased to help.

To arrange an initial consultation, please contact us:

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