the legal queen

Free Financial Guide for Cohabitation Disputes

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Jointly Owned Property

If you own a property with another person, you will either own that property as 'joint tenants' or 'tenants in common'. This can be determined by obtaining official copies from Land Registry. We can do this electronically for you. There will be a Land Registry charge of £3 for this facility.

The type of ownership affects what you can do with the property if your relationship with a joint owner breaks down, or if one owner dies.

As joint tenants (sometimes called 'beneficial joint tenants') you have equal rights to the whole property. The property automatically goes to the other owners if you die and you can't pass on your ownership of the property in your will.

As tenants in common you can own different shares of the property (held as a percentage). The property doesn't automatically go to the other owners, if you die and you can pass on your share of the property in your will.

You can change whether you hold the property as joint tenants or tenants in common. If you hold the property as tenants in common and wish to change to joint tenants, you need both parties' consent. If you are joint tenants and wish to change to tenants in common, you do not require their consent.

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

Pre Action – Protocol

Before Court proceedings under TOLATA, the person planning to make an application should consider alternative ways to settle the dispute. Any mechanism for resolving disputes outside of the Court process is called Alternative Dispute Resolution (ADR).

The two most frequently used are mediation and negotiation.

ADR is not compulsory. However, if Court proceedings are issued, the Judge dealing with the case will be interested to see if ADR has been tried. The Court can impose penalties if ADR has not been attempted. A common form of penalty applied relates to the costs of the proceedings. The Court can:

Deprive a person who would otherwise be entitled to claim costs from the other party, or
Order a person to pay the costs of the other party if they were not willing to explore resolving the dispute through ADR.

ADR should be considered at all stages of dispute. ADR and a commitment to it should be mentioned in the pre-action letter.

Any person wishing to start Court proceedings to resolve land ownership dispute (the Claimant) is required first to set out in a letter the basis of dispute and what they propose asking the Court to do. This is known as a pre-action letter. A pre-action letter is a requirement in almost all situations. The pre-action letter should outline the background to the claim and the legal principles relied upon. It should also identify any documents on which the Claimant intends to rely on in support of the proposed claim. The pre-action letter should be sent to all co-owners (whether legal or beneficial) of the land in dispute.

The Defendant then has 14 days from receipt within which to acknowledge that they have received the pre-action letter. The Defendant ought to provide a full response within 30 days of receipt. That full response should indicate whether the proposed documents relied upon by the Defendant should likewise be identified. Any proposed counter claim as to ownership should be identified and explained. This is also an opportunity for the Defendant to ask the Claimant for any additional information or documents needed to consider the proposed claim.

A Claimant ought to respond to any reasonable request for further information and/or documents from the Defendant and to any counter claim made. This exchange process is called the pre-action protocol. The pre-action protocol encourages the Claimant and Defendant to set out their cases in full before Court proceedings start to encourage a settlement.

As part of the pre-action protocol, the Claimant and Defendant are entitled to involve an expert to help them negotiate a compromise. In disputes about land, the experts involved most frequently are valuers and surveyors, to help put a value on the land in question.

Making a Claim Under TOLATA

If it has not been possible to resolve a claim using ADR and/or the pre-action protocol, the Claimant will have to start Court proceedings against the Defendant. The rules that apply to claims about land ownership are the Civil Procedure Rules 1998 (CPR). The CPR identifies two main types of claims that a Claimant can start. The first is more appropriate where there are disputes of fact between the parties. This is called a Part 7 claim. The second is more appropriate where there is no significant dispute about the fact but where there is a disagreement about the legal principles that apply. This is called a Part 8 claim.

The application that starts the Court process is called a claim form. A fee is payable on the claim form, which varies depending on the value of the claim. Under Part 8, at the same time as filing the claim form with the Court, the Claimant should also provide the evidence in writing he or she intends to reply upon. Under Part 7, each Defendant has 14 days after receipt within which to respond to the claim form. In that response, the Defendant may concede the Claimants case, or dispute the Claimants case.

Acknowledgement, Defence or Counter Claim

Generally, a Defendant must first confirm safe receipt of the claim form within 14 days (called the acknowledgement). Any defence and counter claim must then be sent to the Claimant and filed with the Courts within 28 days.

Under Part 8 the Defendant must file an acknowledgement within 14 days of receiving the claim form. It must say whether the case is conceded or disputed. If disputed, the acknowledgement should be accompanied by any evidence in writing the Defendant intends to rely upon.

Allocation

Once a Court knows a land claim is disputed by a Defendant (through a defence), it will allocate a dispute to a track. There are three tracks and allocation is generally decided by a value of the claim and the complexity of the dispute. These three tracks are:

The small claim track, for claims worth less than £10,000 where the trial of the claim is not likely to take more than 1 day and there is no substantial prehearing preparation.

The fast track, for claims worth more than £10,000 where the trial of the claim is likely to last more than 1 day, and expert evidence is likely to be required.

The multi-track will normally be dealt with at a Civil Trial Centre. A case will be allocated to the multi-track if they are considered to be specialists' proceedings under part 49 CPR, or if the claim is relevant under part 58-62 CPR.

Under Part 7, the Court decides which track is appropriate by asking the parties to complete an allocated questionnaire. On receiving the allocation questionnaires, the Court will either set down a structure for how the rest of the cases will be run (called directions) or will schedule a Case Management Conference (CMC).

Under Part 7, applications are usually sent to the multi-track. Allocation questionnaires are not generally used, instead, Part 8 applications usually are scheduled for a Case Management Conference (CMC).

Court Hearings

Under Part 7, a Court may make directions on receiving the allocation questionnaires or at a CMC. Unless a case is particularly complex, it will make directions without calling a hearing and without the parties needing to go to Court.

At any stage, the Court may schedule a CMC and there may be more than one. At a CMC, the Court will:

Review the progress of the claim and preparation for trial;
Consider compliance by all parties with existing directions;
Make any further directions needed to progress the claim; and
If possible, try to help identify and reduce the issues between the parties.

It may be possible to use a CMC as a form of Judge-led mediation. Provided the Judge and parties are willing, the Judge may consider any settlement proposals and give a non-binding indication of the likely outcome. The indication may help the parties settle the claim, or at least part of it. A Judge who conducts CMC in this way could not then hear the trial.

Once the Court is satisfied the case is ready for trial, it will look to schedule the trial. This usually involves a document called the pre-trial checklist.

Part 36 Offer of Settlement

Any time before the trial, either party may make an offer to compromise the claim. This CPR provides a mechanism for communicating settlement offers on a formal basis. Offers made using this mechanism are called Part 36 offers. A Part 36 offer must be in writing and must remain open for acceptance for at least 21 days. A Part 36 may have costs consequences so should be fully considered.

Final Hearing

If settlement cannot be reached, a final hearing will be listed. At the trial the Judge must take into account the following issues when deciding a claim:

The intentions of the parties in relation to ownership of the property;
The purpose for which the property was acquired;
The welfare of any child who has (or who might have been expected to have) their home in the property;
The claim of any secured creditor (such as a mortgagee) or any other person or organization with a claim to the property.

After reading the documents, hearing the evidence of the parties and considering the legal arguments, the Judge will give his or her decision (the Judgement).

The Judge who hears the trial usually also has to decide what to do about the costs of the claim. The general rule is that costs will follow the outcome. So, a Claimant who makes a successful claim will usually be entitled to recover costs. A Defendant who successfully disputes a claim will usually be entitled to recover costs. However, the Court retains the power to make the Costs Order if it believes it does justice to the case overall.

Settlement

If at any stage, you are able to reach a settlement this should be embodied in agreement. If proceedings have been issued, a Tomlin order will be required.

If you have further questions about cohabitation claims, please get in touch with us at tracey@moloneyfamilylaw.com.

How Moloney Family Law Can Help

At Moloney Family Law, our dedicated family law solicitors are committed to supporting you through every step of your child arrangement case. From mediation and negotiation to court representation, we provide expert legal advice tailored to your situation, ensuring the best possible outcomes for you and your child.

For more information, please visit our website or contact Tracey.


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