



Cohabiting Couples and what to do with the property when it does not work?

The recent announcement at the Labour Party conference by the shadow attorney-general Emily Thornberry MP has re-highlighted the importance of reform of rights of cohabitants.

An increasing number of couples are deciding to cohabit rather than enter into a marriage or a civil partnership. According to the Research Briefing published in November 2022, the number of cohabiting couples has increased from around 1.5 million in 1996 to a whopping 3.6 million in 2021. Given these changes in society, it is now more crucial than ever to seek clarity in terms of cohabitants rights and obligations. We are all hoping for a cohabitation law reform in England and Wales, but until that happens, this remains a very difficult topic.

As it currently stands, there is no legal protection for unmarried couples when they separate in terms of financial provisions for themselves. Separate claims can be made when there are children under Schedule 1 of the Children Act 1989. However, if there are no children or the Schedule 1 claim is not a viable option, one needs to look at other areas of law for help, particularly where there is a property, most likely a family home, in dispute.

Trusts of Land 'TOLATA' is a piece of legislation that family lawyers would refer to when dealing with a property dispute for ex-partners who were not married. This area of law does not fall specifically under family law and the rights involved in these types of matters can be very restrictive, especially when compared to the rights of the married couples. The proceedings under TOLATA are governed by Civil Procedural Rules, instead of Family Procedure Rules. Under a TOLATA claim, a party can ask the court to:

- determine the ownership of a property that has been purchased in sole or joint names



(or the share if that is in dispute);

- confirm who can occupy the property; recover financial interest in the property;
- or order a sale of the property.

Assistance can still be offered in terms of negotiations and reaching an amicable solution, however if a settlement is not reached, parties will have to consider making TOLATA claim.

Some people choose to enter into a cohabitation agreement to clarify their respective rights and beneficial interests in any property. However, not many couples think about getting a cohabitation agreement prior to difficulties starting in a relationship as most believe they will be protected given the common misconception of '*common law marriage*'. Unfortunately, no matter how long the couple has been together or lived together, they would not have the same rights as those who married, both in terms of claims on separation or death.

It is hoped that in the lead up to the next general election we will hear more about the cohabitation law reform, but as it can take years to implement changes to the law, cohabiting couples need to be aware of their rights as they stand now. The reform is urgently needed as the lack of protection and clarity for cohabitants is putting a greater strain on the separating couples and making them even more vulnerable when there are already going through a difficult break-up. We may see some changes as the Labour Party has announced during their recent conference that they intend to tackle this reform. Nevertheless, in the meantime couples need to be aware of the potential difficulties when facing separation and what can be done if anything at all.

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