



# BACKHOUSE SOLICITORS

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## A Guide to Property Rights for Unmarried Couples

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# INTRODUCTION

More unmarried couples than ever are choosing to buy property together, seeing it as both an exciting milestone and a practical way to take their first step onto the housing ladder. However, the legal position for unmarried partners is very different from that of married couples or civil partners, and many are unaware that their rights are far from automatic.

Ownership often depends on whose name appears on the title deeds, how the mortgage is structured, and each partner's financial contributions. Without clear documentation or agreements in place, misunderstandings can easily arise if the relationship breaks down.

Understanding your legal position early and taking steps to protect your interests is essential to avoid costly conflict and ensure both partners are treated fairly.

# PROTECTING YOUR INTERESTS

Having the right agreements in place can help to avoid disputes over ownership or contributions in the future, which can quickly become complex if the relationship ends.

This guide outlines the key legal principles you need to understand and how to protect your financial interest in the property.

# DECLARATIONS OF TRUST

A Declaration of Trust is a deed which sets out terms relating to the ownership of a property between two parties and records the parties' interest in the property, particularly if unequal contributions have been made. This can be done in simple percentage terms, or it is possible to have more complicated arrangements taking account of growth in the value of the property over time and even how much each party contributes towards a mortgage and the upkeep of the property.

## WHICH ARRANGEMENT SHOULD YOU CHOOSE?

When purchasing a property, it is important to consider how you would like the property to be held and what arrangement will be better suited for both parties and their circumstances.

There are two ways in which two people can own a property:

**Joint Tenants** – This means that you will each have an undivided share in the property, rather than each having a specific share. This type of ownership is usually recommended for married couples or those in a civil partnership, but it's not typically suitable for people who are not in that kind of relationship. If one of you dies, your share of the property will not form part of your estate (you cannot leave it to someone in your Will), and it will automatically go to the other person, who can then do whatever they want with it.

**Tenants in Common** – This means your shares of the property will be separate and divided from the outset, and each of you can decide what happens to your share in your Will, following normal inheritance tax rules. If the relationship breaks down in the future, one of you might want to leave the property or buy the other out of the property. This can cause problems if you haven't agreed on how to handle it beforehand. So, it's a good idea to have a Declaration of Trust in place.

# IF THERE IS A DISPUTE

If an unmarried couple separates, the court will not automatically assume the property should be split equally or redistributed fairly, unless the property is held as joint tenants. Instead, the court looks for clear evidence of what the parties intended when they bought the property if there is a dispute. A Declaration of Trust provides that evidence in writing, making it far easier to determine each person's rights.

A Declaration of Trust is also vital where contributions are unequal. Often one person pays a larger deposit, covers more of the mortgage, or pays for renovations or improvements. The document can specify how those contributions are recognised, for example by ensuring one person receives their deposit back first or by setting out specific ownership percentages. Without a Declaration of Trust, the law may assume equal ownership regardless of who paid what, which can lead to unfair outcomes.

If a dispute arises, a Declaration of Trust becomes particularly valuable. If the relationship breaks down and there is disagreement about how the sale proceeds should be divided, the court will look first at any written agreement made at the time of purchase. Where a Declaration of Trust exists, the court will usually enforce it. This avoids arguments based on memories, informal conversations, or conflicting interpretations of past behaviour, and it greatly reduces uncertainty.

The document can also help if one person wants to sell the property and the other does not. It can include directions on when the property may be sold, how disagreements about selling are resolved, and whether one owner can force a sale. Without such provisions, disputes may end up in court, which is often slow, stressful, and expensive.

A Declaration of Trust is equally important if one owner dies. Unmarried partners do not automatically inherit each other's share of a property, particularly if the property is held as Tenants in Common. Without clear documentation, the deceased person's share may pass to their family, potentially forcing a sale of the property. A Declaration of Trust can clarify ownership shares and work alongside a will to prevent disputes and protect the surviving partner.

# WHAT IS TOLATA?

Legislation exists that provides a way for disputes concerning the ownership of property and use of land held in trusts to be resolved, known as TOLATA (Trusts of Land and Appointment of Trustees Act 1996).

Unmarried couples will often attempt to reach an informal agreement about their shared property. While this can sometimes be quicker and more cost-effective, it is not always successful. If an agreement cannot be reached, unmarried couples have the option to bring a TOLATA claim.

## CAN YOU MAKE A TOLATA CLAIM?

There are several instances where it may be possible to bring a TOLATA claim, such as;

- ✓ You paid the deposit and the mortgage is in both your names
- ✓ Your partner/ex-partner is the sole legal owner of the property
- ✓ Your partner paid the deposit and the mortgage is in both your names
- ✓ You both contributed equally to the deposit
- ✓ Your partner paid the deposit and the mortgage is in their sole name, but you contribute towards payments
- ✓ The property is held in joint names, but you have not made financial contributions, however, you have dependents living at the property with you

# HOW TO MAKE A TOLATA CLAIM

If all other avenues to resolve the dispute have been exhausted and you want to make a TOLATA claim, there are a few steps you will need to take.

## GATHERING EVIDENCE

legal documentation that evidences the ownership of the property, communication between all parties involved in the dispute, and any financial contributions made towards the purchase, mortgage, or maintenance of the property must be provided.

## LEGAL ADVICE

As TOLATA claims can be complex, obtaining professional legal advice and representation is highly recommended.

## RESOLUTION

Before bringing a claim, you should try to resolve the dispute amicably through negotiation or mediation as this can be a faster and more cost-effective option.

## LETTER BEFORE ACTION

This is an important step in the process that involves sending a formal letter to the other party outlining your claim, any evidence, and your proposed resolution (e.g. selling the property, distribution of selling price, etc).

## FILING A CLAIM

To proceed with filing a TOLATA claim you will need to complete the relevant forms, pay court fees, and submit your claim. A legal professional will take you through the process and ensure each step is completed correctly.

## SERVING A CLAIM

The other party is formally served with the court papers. This includes copies of the claim form, particulars of the claim, and any supporting documents.

## COURT PROCEEDINGS

Be prepared to attend court hearings and provide evidence.

## DECISION

The court will review the evidence and arguments from both parties and decide the outcome of the case. Both parties must comply with the court's decision and take the appropriate action required of them.

# POSSIBLE RESOLUTIONS

Before bringing a TOLATA claim, you should first decide the outcome you want, there are several possible resolutions:

- **Order for Sale**
- **Declaration of Interests**
- **Transfer of Property**
- **Regulation of Trusts**
- **Mediation and Alternative Resolution**
- **Interim Orders**

A legal expert will offer advice and guidance relating to these resolutions.

## HOW CAN BACKHOUSE SOLICITORS HELP?

Here at Backhouse Solicitors, our experienced Litigation and Dispute Resolution team is skilled in achieving successful outcomes for clients. Whether you want to understand your options or pursue a claim, we are here to help.

Contact us today to arrange your free initial consultation.

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