

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

Key Definitions

Beneficiary = In relation to a trust, a person who has an interest in property subject to the trust, including a person who has such an interest as a trustee or a personal representative.

Beneficially entitled = A reference to a beneficiary who is beneficially entitled does not include a beneficiary who has an interest in property subject to the trust only by reason of being a trustee or personal representative

Interest in possession = This includes the receipt of rents and profits or the right to receive the same, if any. A person who is a beneficiary only by reason of being an annuitant is not to be regarded as entitled to an interest in possession in land subject to the trust

Trust of land = A trust of property that consists of, or includes, land. Trusts of land can be express, implied, resulting or constructive and include bare trusts and trusts for sale. The definition includes a trust created or arising before or after 1 January 1997, when TOLATA 1996 came into force.

When can an application to the Court be made?

- To determine whether jointly-owned property should be sold.
- To quantify the respective beneficial shares that each co-owner or co-habitee is entitled to.
- To determine whether a party has a beneficial interest in the property, usually where that party's name is not on the legal title and the legal owner is disputing the claim.
- To determine whether property subject to a trust of land should be sold on the application of a creditor of a beneficiary.

Orders the Court can make

- For the land subject to the trust of land to be sold or for sale to be postponed.
- For the regulation of the right of beneficiaries to occupy the land subject to the trust of land
- For the land to be partitioned without obtaining the consent of the beneficiaries

What will the Court take into account when making their decision?

- The intentions of the person or persons who created the trust.
- The purposes for which the property subject to the trust is held.
- The welfare of any minor who occupies, or might reasonably be expected to occupy, any land subject to the trust as their home.
- The interests of any secured creditor of any beneficiary

This is a non-exhaustive list of the factors the court will take into account. There may be other relevant factors which the court will consider, depending on the facts of the case.