

## GUIDELINES ON FAMILY LAW PROCEEDINGS

These guidelines aim to assist you with:

- Understanding what will happen if a court makes an order concerning a joint debt
- Applications for transfers of mortgage and consents to transfer of title
- Understanding how we enforce debts affected by a family law property settlement.
- The guidelines will assist you (our customers), your legal advisers and your representatives who may be involved with family law property proceedings. That may include agreements for division of property owned by you as a married couple, the division of your joint property that is subject to a mortgage to us, or of any other debts or liabilities you may jointly or individually owe to us.

In the guidelines, when we refer to a liability to us, we are referring to the liability to us of a borrower and/or of a guarantor:

- **Guidelines Part A:** For parties where the court has made an order on the bank
- **Guidelines Part B:** For parties where no court order has been made on the bank and the parties wish to transfer a debt into one name

Our guidelines: Part A

Guidelines for parties involved in family law proceedings where the court has made an order on the bank.

1. In the course of a family court proceeding, the court may make an order requiring the bank to relieve one of you from your obligations in respect of a joint debt. In making such an order the court will take into account the capacity of the person who will be responsible for the debt to repay it on his or her own, this will often mean that the court will seek information from the bank concerning the financial situation and repayment capacity of both spouses.
2. Generally a court will not transfer a joint debt into the name of one spouse if that person does not have the capacity to repay the debt on his or her own.
3. Upon receipt of a court order requiring us to relieve one of you from your obligations in respect of a joint debt, we will where appropriate and still offer the same or similar product for sale, 're-originate' the debt. This means that if for example you have a home loan in both of your names, that loan account may be closed, at which point the spouse who will be solely responsible for the debt will need to apply for a new replacement loan in his or her name only. In some circumstances the existing joint loan account may be able to be transferred into one of your names.
4. In processing the application for the replacement loan (discussed in (3) above) we will reassess the applicant's ability to repay the loan without suffering undue financial hardship.
5. If we feel that in making an order, the court has not taken our views into account or given adequate consideration to the capacity of the relevant spouse's to repay the debt, we may seek to be 'heard' by the court. This may result in us making an application to the court seeking an amendment to its order concerning the joint debt. We will let you know if we have made such an application, and will not complete processing your application for the new replacement loan (replacing the joint loan) until the court has heard our application.
6. In circumstances where a court does not make an order on us regarding a joint debt, and you want to transfer the joint debt into only one of your names, you will need our consent. You should familiarise yourself with **Part B** of these guidelines.

### Things you need to know

You should note that these guidelines are intended to be for general information and guidance. They are not intended to be legal or financial advice. If you are contemplating or are involved in family law proceedings or a family law agreement you should seek specialist legal and financial advice.

## Our guidelines: Part B

Guidelines for parties involved in family law proceedings where no court order has been made on the bank and the parties wish to transfer a debt into the names of one of them.

1. Unless we are subject to a court order or are a party to a privately negotiated agreement between the parties to a marriage, we are not automatically required to consent to arrangements such as the transfer of property over which we have a mortgage, or the re-allocation of debt between the parties.
2. While we will try to accommodate any new arrangements, we may need to conduct investigations into the parties' financial position so as to satisfy ourselves about the ability of the transferee of property or the party who has assumed liability for joint debts owed to us to fulfil the financial commitment to us by himself or herself.
3. We might either agree to the transfer of the property subject to the mortgage and release the other party from further liability or retain our rights under the personal covenants in the mortgage against that other party.
4. In the majority of cases we will be reluctant to release joint debtors from their joint obligation to the bank where the debt is an unsecured liability.
5. Where a transfer of the property subject to a mortgage is contemplated, applicants should keep in mind the following points:
  - Allow sufficient time for us to make our assessment of the proposal; it is advisable to get in touch with us as soon as the likelihood of an agreement altering the interests of the parties in mortgaged property arises
  - Don't enter into the agreement until you know that we will agree to the transfer
  - We may be limited if we do not offer the same or similar product for sale
  - We need to make a fresh financial assessment of the party who is to assume responsibility for the mortgage debt as we do with any new loan application
  - Full financial particulars including the terms of the proposed agreement need to be provided to us before we can agree to anything
  - If there are continuing credit facilities such as an overdraft on a joint (or several) account that are secured by a mortgage, we may have to stop further drawings on the account until the matter between you is resolved or unless both parties expressly agree to further drawings
  - We are not able to divulge information about one of the parties to the other party or to their practitioners or representatives without that party's consent
  - If there are other co-owners their consent will be required to any dealing with the property
  - If other persons have guaranteed the parties' obligations to us, the consent of those guarantors might be needed before any re-arrangement of the facility
  - There may be bank and other fees and costs payable for obtaining our consent to a dealing and in connection with the dealing itself
  - Each application for our consent will be assessed on a case-by-case basis.
6. When there is a proposal for one party to be responsible to repay a jointly owed unsecured debt to us, you should obtain our formal consent to and acknowledgement of this change in liability. All bullet points as part of item 5 above should be observed.
7. You will need to contact us to ascertain our likely attitude to releasing one of the parties as soon as possible after it becomes apparent that an agreement is likely to provide for a re-allocation of liabilities.
8. If the court grants one party the sole right to reside in a property to the exclusion of the other party you should let us know. Our rights against the both parties under the mortgage over the property will be preserved unless we agree to release one of the parties from their obligations under the mortgage instrument.
9. If we decline a transfer or release a party from further liability we will be entitled to enforce that liability, if that becomes necessary.

### **Things you need to know**

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