

Guidelines

for parties involved in Family Law proceedings

Guidelines

These guidelines set out the manner in which we will:

- deal with applications for transfers of mortgages and consents to transfer of title pursuant to a Family Court determination or approval; and
- otherwise enforce debts affected by a family law property settlement.

The guidelines contain general information and are not a substitute for 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.

A person's liability

A person's liability to us can be either as a borrower or as a guarantor of another person's debt. In these guidelines, a reference to a liability includes both borrower's and guarantor's liabilities.

These guidelines are for the assistance of parties and their legal advisers involved with family law proceedings eg:

- agreements for division of matrimonial property;
- division of joint property that is subject to a mortgage to us; and
- division of other joint and several liabilities owed to us.

1. Normally orders of the Family Court are privately negotiated agreements between parties to a marriage and do not bind third parties unless they are expressed to do so. Therefore, we will not normally be bound by an order of the Family Court or a private agreement between parties to a marriage to permit the transfer of a property mortgaged to us or the re-allocation between the parties of debts owed by them to us. Unless we are a party to or expressly bound by the order of the Family Court we have to agree to the transfer or re-allocation.
2. Where we are satisfied that the transferee of property mortgaged to us or the party who has assumed liability for joint debts owed to us can fulfil the financial commitment to us, we will try to accommodate the new arrangements.
3. Where a property that is subject to a mortgage to us is to be transferred from one party of a marriage to the other, our primary consideration is – whether the proposed transferee has the financial means and ability to service the mortgage debt without undue hardship and that the existing security is adequate.
We might either:
 - agree to the transfer of the property and the mortgage and release the other party from further liability; or
 - retain our rights under the personal covenants in the mortgage as regards that party.

4. Where joint debts owed to us are to be re-allocated to one of the parties of a marriage, we may either:
 - preserve our rights against both joint debtors; or
 - after taking account of all relevant circumstances, agree to retain the right of recourse against just one of them.
5. In the majority of cases we would be reluctant to release joint debtors from their joint obligations where their debt is unsecured.
6. In the case of family law proceedings or under family law agreements where joint debtors attempt to transfer responsibility between them (and we decline to release them from joint and several liability), the transfer should include an indemnity from the party who is to assume responsibility for meeting the joint liability in favour of the party who is to be relieved from joint liability.
7. Where parties to a marriage contemplate a transfer of property subject to a mortgage to us, applicants should keep in mind the following points:
 - a. We need to make a fresh assessment of the transferee's capacity to service the loan;
 - b. We may require the transferee to provide to us full financial particulars including the terms of the proposed agreement;
 - c. If there are continuing credit facilities such as overdrafts on your joint and several account that are secured by the mortgage, we may have to stop further drawings on that account until the matter is resolved or unless both parties expressly agree to further drawings;
 - d. We are not able to divulge information about one of the parties to the other party or to their legal advisers or representatives unless we have that party's consent;
 - e. Allow sufficient time for us to make assessment of the proposal; it is advisable to get in touch with us as soon as the likelihood of a settlement or court order altering the interests of the parties in mortgaged property arises;
 - f. Don't enter into the agreement or seek any court order until you know we will agree to the transfer;
 - g. There may be bank fees payable for the application for our consent to the transfer;
 - h. Each application for our consent will be assessed on a case-by-case basis.

8. Where unsecured joint and several liabilities of the parties or a liability of one of the parties are proposed to be assumed by one of the parties, either in whole or part, an application to us for consent to recognise the change in liability should be made. The points a. to h. above should be observed. However, we may be reluctant to release one of the parties from liability although we may be prepared to do so in special cases. You should contact us as soon as possible to ascertain our likely attitude to releasing one of the parties after it becomes apparent that an agreement or a court order is likely to provide for a re-allocation of liabilities.
9. If we decline a transfer or to release a party from further liability we will be entitled to enforce that liability, if that becomes necessary.

These guidelines are published on our website and copies are available on request.