

# Guidelines for parties involved in Family Law



We recognise the difficulties for anyone, especially our customers, when they are involved in family law proceedings. Where those proceedings involve property or financial obligations, those proceedings may involve us.

For example, where you have joint debts (such as home loans and investment loans), and a jointly owned matrimonial home, the court may order us to release one of you from a joint debt. When the court makes such an order it will take into account our views on each spouse's individual capacity to repay the debt, and may seek further information on this from us.

If we receive such an order, there are two different actions we might take depending on your individual circumstances. We may either:

- vary the existing loan contract to release one of you from the joint debt and from the security property title deed which will result in the remaining borrower being solely responsible for repaying the loan and being the sole owner of the security property, or
- assist the remaining borrower to apply for a new RAMS loan where all or part of the loan amount will be used to repay the joint debt resulting in the remaining borrower being solely responsible for repaying the new loan and being the sole owner of the security property.

In circumstances where a court does not make such an order, and you want to transfer a joint debt into only one of your names, you will need our consent. Even if you both agree that only one of you will be responsible for repaying the debt, we still have the right to require either or both of you to repay it (except of course where we have agreed to the change of who is liable to repay the debt or, a court has ordered us to relieve one of you from your obligation to repay the debt). Releasing one of you from the joint debt is only possible if the remaining borrower has the capacity to solely repay the debt.

These guidelines aim to help 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 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 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 lender](#)
- **Guidelines Part B** - [For parties where no court order has been made on us](#) and the parties wish to transfer a debt into one name.



# Guidelines for parties involved in Family Law

## Part A - For parties where the court has made an order on the lender

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 lender 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 lender concerning the financial situation and repayment capacity of both parties.
2. Generally a court will not transfer a joint debt into the name of one party 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 work with you and decide whether the loan will be varied, or whether a new loan application will be lodged for consideration. Where the loan is varied, the remaining borrower will be solely responsible for repaying the debt. Where a new loan application is lodged, the borrower will receive a new loan contract outlining the new repayments, loan term with details of all terms and conditions.
4. In all cases, 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 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.

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## **Part B - For parties where no court order has been made on us and the parties wish to transfer a debt into one name.**

1. Unless we are subject to a court order or are a party to a privately negotiated agreement between the parties, 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 fulfill the financial commitment to us solely.
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 us 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 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 a line of credit with joint (or several) borrowers that is 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 we can agree to any re-arrangement of the facility
  - There may be 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

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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. 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 both parties to the mortgage over the property will be preserved unless we agree to release one of the parties from their obligations under the mortgage instrument.
8. If we decline a request to transfer or release a party from further liability we will be entitled to enforce that liability, if that becomes necessary.

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For more information, call **13 RAMS, *that's* 13 7267**

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