



Guidelines for parties (married or defacto) involved in separation proceedings

Background

Under clause 40 of the Code of Banking Practice UBank has agreed to publish guidelines setting out the manner in which it will:

- a) deal with applications for transfers of mortgage and consents to transfer of title pursuant to the determination or approval of a Court arising out of separation proceedings; and
- b) otherwise enforce debts affected by a property/financial settlement following the breakdown of a relationship.

These guidelines are to assist parties to a relationship, their legal practitioners and representatives with proceedings, arising out of the breakdown of a relationship, relating to:

- the division of property, which is subject to a mortgage to the bank; and
- alterations to liabilities owed to the bank by either one or both parties to the relationship.

Liabilities

A person's liability to the bank can be either as a borrower or as a guarantor of another person's borrowing from the bank. In these guidelines, a reference to a liability to the bank includes both borrowing and guarantee liabilities.

Where customers hold joint loan accounts, both account holders are liable both in their own right and jointly. This means that the bank is entitled to recover the debt from both parties jointly and from each of them individually.

Generally, an agreement between the parties for one of them to take responsibility for a joint debt does not change the right of the bank to require either or both parties to pay the debt. The bank has to consent to the re-allocation of liability before it will be bound by any such agreement.

However, the bank may be required to re-allocate liability where a Court has made an order binding on a third party (such as the bank) pursuant to the Family Law Amendment Act 2003 (Cth).

Guidelines

We use your information to provide you with the product or service you asked for, and for other purposes including:

1. Unless the bank is ordered by a Court, or is a party or has consented to a private agreement reached between the parties, the bank is not automatically required to consent to arrangements such as:
 - the transfer of property mortgaged to the bank; or
 - the re-allocation of the liability for a debt between the parties.

2. Where parties propose to transfer property subject to the bank's mortgage or re-allocate the liability of a debt between the parties, either by property settlement (financial agreement) or court order, the parties should keep in mind the following points:
 - a) Each proposal for the bank's consent will be assessed on a case by case basis
 - b) Do not enter into an agreement or seek a court order until you have discussed the proposed arrangement with the bank.
 - c) Allow sufficient time for the bank to make a full assessment of the proposal, which will involve a full financial assessment by the bank of the party who is to assume responsibility for payment of the mortgage debt. The bank will need to consider the parties' financial position, so as to satisfy itself of the ability of the transferee of the property, or the party who has assumed liability for the joint debt owed to the bank, to fulfil the financial commitment to the bank by himself or herself without undue financial hardship.
 - d) Full financial particulars including the terms of the proposed agreement must be provided to the bank.
 - e) Where the parties seek orders from a Court directing one of the parties (A) to pay a lump sum or an amount by instalments in settlement of the other party's (B's) interests in property, and A needs to borrow the settlement amount, the bank will need to take that additional amount into account when assessing A's ability to service the existing loan. The bank must be satisfied that the existing debt together with the new debt can be serviced by A without causing undue financial hardship to A.
 - f) If there are continuing credit facilities such as an overdraft on a joint (or several) account that are secured by a mortgage, the bank may have to stop further drawings on the account until the matter is resolved or unless both parties expressly agree to further drawings.
 - g) The bank is not able to divulge personal or financial information about one of the parties (or their practitioners or representatives) without the consent of the party whose details is sought;
 - h) If there are other co-owners of property their consent will be required prior to any dealing with the property;
 - i) If other persons have guaranteed the parties' obligations to the bank, the consent of those guarantors might be needed before any alteration of liability or transfer of property occurs; and
 - j) There may be bank and other fees and costs payable to obtain the bank's consent to a dealing and in connection with the dealing itself.
3. When there is a proposal that one party is to be responsible to repay the bank for a jointly owed unsecured debt, an application to the bank for consent to recognise the change in liability must be made and points a) to j) above need to be observed. However, in the majority of cases the bank will be reluctant to release joint debtors from their joint obligation to the bank where the debt is an unsecured liability.
4. If a Court grants one party the sole right to reside in a property to the exclusion of the other party the bank's rights against the non-resident party under the mortgage over the property is preserved unless the bank agrees to release that party from the mortgage.
5. If the bank declines either a transfer of property to a party or the release of a party from further liability it will be entitled to enforce its original contractual rights if necessary.

These guidelines are intended to be for general information and guidance. They are not intended to be legal or financial advice. They are not a substitute for legal or financial advice. If you are contemplating or are involved in separation proceedings or considering settling your property/financial affairs as a result of a relationship breakdown you should consider seeking specialist legal and financial advice