

Who pays the mortgage after separation?

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One significant area of apprehension before or immediately after separation is who pays the mortgage (or mortgages) for any real property together with other joint expenses. This can be particularly difficult when one spouse remains living in the home and the other needs to find alternative accommodation (for which they often need to pay).

Who is responsible for the mortgage?

The reality of life is that for a joint mortgage, whether that be with your spouse, family member or simply a friend, you are “joint and severally liable”.

What this means is if one party stops paying the mortgage because of a relationship break-up, the bank will hold you both liable and will pursue both of you for any arrears accrued. The fact that one party has continued to pay “their share” does not affect that you are both still liable for the loan.

To add insult to injury, your credit records are often intertwined, and if you have unpaid debts such as a mortgage, this can negatively impact your long-term credit ratings.

What are my options to deal with mortgage payments after separation?

There are a few options (largely dependent on your financial circumstances) at the time of separation which needs to be thought through very carefully prior to any decisions being made.

These include:

Come to an agreement to sell the property, pay off the mortgage and split the proceeds (assuming the property has some surplus funds).

One spouse can remain in the property with their name only on the mortgage and “buy out” the other spouse. This can be a difficult option to satisfy the banks that the person taking over the mortgage has the capacity to make the mortgage repayments without relying on the other party’s income.

It is imperative that you keep your bank informed of your circumstances. In our experience, banks are far more reasonable with customers who explain to them their individual circumstances and will work with you to try and find a solution. Banks do not wish for a fire sale. They would much prefer to keep their client in the long term and find a short-term solution to resolve this situation.

In addition to keeping your bank informed, we always encourage clients to shop around with different mortgage brokers to seek advice on other products in the market to ensure your loan (and your circumstances) is competitive and comparable to what is out there.

What if we can’t agree on what to do with the family home?

Unfortunately, sometimes parties cannot agree as to how the mortgage should be repaid (even in the short term).

An experienced family lawyer can assist you:

to negotiate the repayments (as well as other household expenses) with the other party and see if agreement can be reached;

to work through the income of each party against the various expenses, to look through alternative options;

if required, to file an application with the Family Court to seek urgent relief for the payment of the mortgage.

Can I ask the bank to suspend mortgage repayments?

With the current pandemic, many people have exercised their option to ask the bank to provide a 3 – 6 month “COVID-19 holiday” from mortgage repayments.

Whilst each individual bank has different conditions on these “holiday” requests, this can always be an option until a more permanent arrangement is agreed (or ordered by a court).

If you need advice in the expectations around mortgage repayments, the liability of who is to pay or assistance in negotiating the payment, the team at Meillon & Bright has extensive experience in matters where this dispute arises.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.