

Guidelines for Parties involved in Family Law Property Proceedings

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Background

We recognise the difficulties for our customers when they are involved in family law proceedings especially where there are joint debts and a jointly owned matrimonial home or financial obligations. In particular:

- obtaining the bank's consent to the transfer of jointly owned property to one of the parties when the property is subject to a mortgage to the bank; and
- understanding the bank's position if a settlement or court order re-allocates a joint debt of the parties to just one of them.

To assist, we have published guidelines setting out the manner in which we will:

- deal with applications for transfers of mortgage whether pursuant to a Family Court order or otherwise; and
- enforce debts affected by a family law property settlement.

We are committed to taking extra care of our vulnerable customers including those who are experiencing family or domestic violence, financial abuse, or any other personal or financial circumstance causing significant detriment. We encourage you to let us know if you are in a vulnerable situation.

Our staff will treat you with sensitivity, respect and compassion and will work with you to identify a suitable way for you to undertake your banking. In the context of family law disputes, this may include consenting to or facilitating the transfer of a debt to another person (e.g. a spouse) if we deem, at our sole discretion, it is appropriate in the circumstances (unless we are compelled by the Family Court).

Purpose of these guidelines

These guidelines will assist you (our customer), your legal practitioners and representatives involved with family law property proceedings (including agreements for division of matrimonial property) and the division of your joint property that is subject to a mortgage to us and your other joint and several liabilities owed to us.

Liabilities

Where customers hold joint loan accounts, invariably the account holders will have a joint and several liability to the bank. In that case, ING is entitled to ask for the debt to be repaid by the parties jointly or by each of them severally (individually).

An agreement between joint account holders for one of them to take complete responsibility for a joint and several debt will not change the right of the bank to require either or both parties to pay the debt. ING must consent to the re-allocation of liability before it is bound. For example, if one spouse has a credit card debt and the other spouse agrees to assume responsibility for the debt, ING's rights against the credit card holder are not affected unless it agrees to recognise the change of responsibility.

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

Guidelines

Situation 1: When the court has made an order compelling ING

1. In the course of a Family Court proceeding, the court can make orders or issue injunctions that affect the rights, liabilities or property interests of third parties such as a bank. For example, an order could require ING to relieve one person from their obligations in respect of a joint debt.
2. We ask that you contact us as soon as possible if it appears likely that an order affecting ING's interests will be made by the Family Court.
3. In contemplating such an order, the court will consider, among other things, the capacity of the person who will be responsible for the debt to repay it on their own without experiencing undue hardship. This often involves the court seeking information from the bank concerning the financial situation and repayment capacity of both spouses.
4. 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.
5. Upon receipt of a court order compelling us to relieve one person from their obligations in respect of a joint debt, we will, where appropriate, offer the same or similar product for sale to 're-originate' the debt. Practically, this could mean that the joint loan is closed, at which point the spouse who will be solely responsible for the debt will need to apply for a new replacement loan in their name only. At our sole discretion, in some circumstances, the existing joint loan account may be transferred into one person's name.

6. In processing the application for the replacement loan, we will reassess the applicant's ability to repay the loan without suffering undue financial hardship in accordance with our obligation to act with the care and skill of a diligent and prudent banker.
7. If we consider 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 an application for the new replacement loan (replacing the joint loan) until the court has heard our application.
8. 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 person's name, you will need our consent. Please review our guidelines for **Situation 2: When the court has not made an order compelling ING**.

Important Information: 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 family law proceedings or a family law agreement you should seek specialist legal and financial advice.

Situation 2: When the court has not made an order compelling ING

1. Unless we are compelled by a court order or party to a privately negotiated agreement, we are not automatically required to permit the transfer of property over which we have a mortgage or the re-allocation of debt between the parties owed to us (either secured or unsecured).
2. In circumstances where our consent is required, we may need to conduct investigations into the parties' financial position 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 without undue financial hardship. If we are satisfied, we will try to accommodate any new arrangements.
3. In most cases, we are reluctant to release joint debtors from their joint obligation to ING where the debt is an unsecured liability.
4. We might either agree to the transfer of the property subject to the mortgage to the party assuming responsibility and release the other party from further liability or retain our rights under the personal covenants in the mortgage.
5. Where a transfer of property subject to a mortgage is contemplated, applicants should keep in mind the following points:
 - a. allow sufficient time for us to make an 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;
 - b. do not enter into the agreement until you know that we will agree to the transfer;
 - c. we need to make a fresh financial assessment of the party who is to assume responsibility for the mortgage debt as if it is a new loan application in accordance with our obligation to act with the care and skill of a diligent and prudent banker;
 - d. where the court intends making an order requiring one of the parties (A) to pay a lump sum or an amount by instalments in settlement of the other party's (B) interest in property, if A is to borrow that amount, we will take that amount into account when assessing A's ability to service the existing loan facility. Depending on A's financial circumstances, we might not be satisfied that the existing facility together with the new obligation to B can be serviced by A without undue financial hardship;
 - e. full financial particulars including the terms of the proposed agreement need to be provided to us;
 - f. if there are continuing credit facilities 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 is resolved or unless both parties expressly agree to further drawings;
 - g. 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;
 - h. if there are other co-owners their consent will be required before any dealing with the property;
 - i. 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;
 - j. there may be bank and other fees and costs payable for obtaining our consent to a dealing and in connection with the dealing itself; and
 - k. each application for our consent is assessed on a case-by-case basis.

6. When there is a proposal that one party is to be responsible to repay the bank for jointly owed unsecured debt, an application to the bank for consent to recognise the change in liability should be made. The points a to k above should also be observed.
7. You will need to contact us to ascertain our position on releasing one of the parties as soon as possible after it is 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 other party under the mortgage over the property would be preserved unless we agree to release the other party from the mortgage.
9. If we decline a transfer or to release a party from their liability, we will, unless prevented by a court order or injunction, be entitled to enforce that liability if that becomes necessary.

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