Who Pays the Mortgage After Separation?

Separation brings difficult decisions, and finances are often a major source of stress. If you own a home together, one of the first questions is: who is responsible for the mortgage after separation?

The answer is not always as simple as “the person who stays in the house pays.”

Moving out doesn’t end your responsibility

If you move out of the family home, you may still be responsible for mortgage repayments, insurance, rates, utilities, repairs and other property expenses.

Where both parties are joint mortgage holders, both remain legally responsible for the home loan. This means the person who leaves the home may still be responsible for mortgage repayments, even while paying rent or other expenses for separate accommodation. Moving out does not automatically remove you from a joint loan. From the lender’s perspective, they want the loan paid and if you are both borrowers, you are both liable.

What if one person refuses to pay?

Separation can create an immediate financial burden, as two households generally need to be supported instead of one. One person may be paying rent while the other remains in the former family home with the joint mortgage.

If one party to a joint mortgage stops making repayments and arrears accrue, the lender may pursue both borrowers for the outstanding debt. This can negatively affect both parties' credit ratings or in some cases, parties may face foreclosure. This means, sale of the home.

To avoid unnecessary and expensive litigation, some common arrangements we see in family law include:

- Continuing existing arrangements: Both parties agree to maintain the usual mortgage repayments until a final property settlement. These payments may be relevant when determining post-separation contributions and property entitlements.
- The person remaining in the home pays: The party remaining in the property meets the mortgage repayments, while the other party pays rent for alternative accommodation.
- Requesting temporary repayment relief: You may be able to ask your lender to defer or reduce repayments for a period, depending on your circumstances and the lender's requirements.
- Selling the property: you and your ex may agree to sell the property and use the proceeds to discharge the mortgage and associated costs. Any remaining funds can potentially be held in trust until a final property settlement is reached.

If your former partner is refusing to contribute to the mortgage, it is important to understand your options before the situation escalates. Come and have a chat with us about your circumstances so we can help you understand your rights, options and next steps.

Who should stay in the home?

There is no automatic rule that requires one person to leave the family home simply because the relationship has ended.

Some separated couples choose to continue living under the same roof for a period of time, while others decide that one party will move out and establish separate accommodation.

Before making this decision, it is important to consider the practical and financial consequences, including the mortgage, children's needs, living expenses and how the arrangement may affect the eventual property settlement.

If there are concerns about family or domestic violence, safety should always be the priority. In those circumstances, it is important to seek urgent legal advice about your options and appropriate arrangements for living separately.

Get advice before making major financial decisions

There is no universal formula for deciding who should pay the mortgage after separation. Your income, assets, debts, children, living arrangements and ownership structure can all make a difference.

Before stopping payments, closing joint accounts, moving out or agreeing to an informal financial arrangement, consider speaking with one of our experienced family lawyers.

At Andersons Solicitors it is our priority to ensure you feel heard and understand your rights so you can confidently make decisions about your home, your children, your finances and your future.

We offer a 90-minute initial meeting to develop a “Family Road Map” tailored to your personal situation.

All your concerns will be addressed in this appointment, and your lawyer will explain the process and outline a plan for next steps. All of a set fee.

For more information or to book your 90 minute “Family Road Map” appointment, please call 8238 6666 or complete our **Contact Form**.