

# DIVORCE LENDING - SPOUSAL BUYOUT

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# Divorce Lending

Navigating a divorce is hard enough but when property is involved it does add another layer of issues. Learn how a lender will look at your financial picture when you have a home that is part of a divorce. The approach is different for a purchase or a refinance. These are not the only scenarios but the most common.

## Purchase with Contingent Liability

1. If your borrower wants to buy a house but is still on the mortgage of their current house, this debt does not have to affect their buying power. When a borrower has outstanding debt that was assigned to another party by a court order (such as under a divorce decree or separation agreement) and the creditor **does not** release the borrower from liability, the borrower has a contingent liability. However, the lender **is not required** to count this contingent liability as part of the borrower's recurring monthly debt obligations. The lender is also not required to evaluate the payment history for the assigned debt after the effective date of the assignment. The lender cannot disregard the borrower's payment history for the debt before its assignment. If a buyout is still needed see below.

## REFINANCE - SPOUSAL BUYOUTS

1. If the borrower has a court order (such as a divorce decree or separation agreement) and one spouse is buying out the other spouse on a conforming loan, the loan is not considered cash-out as long as the spouse keeping the property does not receive any cash-out and all funds are itemized to the spouse on the closing disclosure.
2. The key in most divorces is that one spouse wants to be removed from title and liability (mainly to protect credit or receive funds). This is the main catalyst in needing to divide up and settle the assets at the earliest possible time frame. The cash to buy out the other spouse is also an issue if cash on hand is not available. Most agreements will state a timeline for removal of the liability and/or sale. Having a court document allows the refinance to be expedited as a non cash-out which saves money.

## VALUE OF PROPERTY

1. The value of the property (not including alimony, and/or child support) is usually the hardest battle in negotiating the property settlement. Both sides are not usually in agreement on the value of a property. The Appraisal Independence Requirement can help with this. The appraisal is randomly ordered through an Appraisal Management company. All that is required is that the appointment is made by the spouses. This is an excellent tool to use that will save everyone time and money.

## ALIMONY, CHILD SUPPORT AND SEPARATE MAINTENANCE PAYMENTS

- 1 When the borrower is required to pay alimony, child support, or separate maintenance payments under a divorce decree, separation agreement, or any other written legal agreement and those payments continue to be made for more than ten months, the payments will be considered as part of the borrower's recurring monthly debt obligations. However, voluntary payments do not need to be taken into consideration and an exception is allowed for alimony. A copy of the divorce decree, separation agreement, court order, or equivalent documentation confirming the amount of the obligation must be obtained and retained in the loan file.

For alimony and separate maintenance obligations, the lender has the option to reduce the qualifying income by the amount of the obligation in lieu of including it as a monthly payment in the calculation of the DTI ratio.

\*\* while these are not all the guidelines pertaining to divorce lending, these are the most common that need to be understood. All guidelines and rates are subject to change without notice. \*\*

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