Where the finance fits in the matter

When a buyout goes wrong, the loan is rarely the problem on its own. The problem is *when* it was tested — usually after the figure was agreed, after the deadline was set, and sometimes after the orders were sealed.

It sets out a typical matter where one party keeps the home: what the finance needs at each stage, and where the two tracks most often come apart.

Two tracks, one settlement

	THE PROPERTY MATTER	THE FINANCE
1	**Positions forming** Before negotiation or mediation. No figure agreed.	**Three things, in this order.** 1 **A fundability view.** The payout range the retaining party could fund on their own income, and where the new loan sits against 80% of the lender's valuation — the level above which lenders mortgage insurance applies. Or, for a client who is leaving, what they can borrow next and how the joint loan constrains it until discharge. Nothing is lodged and no credit check is run. 2 **The figure tested as it moves.** Each number under discussion checked against that range, while there is still room to change it. 3 **The lender's valuation.** This — not an estimate or an agent's appraisal — is what sizes the loan. **Done here, these are inputs to the figure. Done later, they are constraints on a figure that is already fixed.**
2	**Negotiating value and split** The split and the payment figure are being worked through.	CONTINUES ALONGSIDE As the number moves, it is re-checked against the range.
	GATE The figure should not be locked until the work above is done. Everything after this point is harder and more expensive to change.	
3	**Value and split settled** The payment figure follows from the two.	**How the lender will classify it.** Lenders differ on whether a buyout is treated as a refinance or as a cash-out. The same transaction gets different pricing and different mortgage insurance treatment depending on which — and it is not visible from the orders.
4	**Terms drafted** Consent orders or a financial agreement. The deadline set here is the one the finance has to fit inside.	RUNS ALONGSIDE STAGES 4 AND 5 **Application → approval → the approval clock.** Lenders differ on whether they assess on final draft terms or need the sealed document — that single difference decides whether this can start at stage 4 or must wait for stage 5. Approvals also expire, and a decline here needs weeks for a second lender, not days.

> *Waiting to be sealed or signed — largely outside anyone's control, and where the two tracks most often come apart.*

5 **Sealed or signed**

The payment obligation is now fixed.

The lender needs the final document before settlement.

Settlement — the two tracks meet. Taking a name off the **title** and off the **loan** are two separate changes; neither follows from the other, and both must be provided for. Both land on the same day: the new loan funds, the joint loan is discharged, the transfer registers and the payout is made, together in one electronic settlement. The conveyancer lodges the duty form beforehand.

Where the two tracks come apart

1. **The figure is agreed before it is tested.** The most common problem, and the easiest to avoid: a view takes a few days and a short list of documents.
2. **The valuation arrives after the figure.** A lower valuation reduces the equity and the security at the same time, so it can move a file across the 80% line even though the split has not changed.
3. **The approval and the sealing drift apart.** An approval obtained early can expire while the orders wait; an application left until after sealing starts the clock with no time left on it.
4. **The deadline allows for only one lender.** A decline is not the end of a file, but a second lender needs weeks, not days. A term measured in days from sealing assumes nothing goes wrong.
5. **The departing party's rehousing runs through the same settlement.** Until the joint loan is discharged it remains their liability and can block their next purchase. If they are counting on the federal deposit scheme's single-parent path (2% deposit, no mortgage insurance, no income cap), note two conditions: eligibility requires being *divorced*, not merely separated, and no property interest once the new home settles.

THE VALUATION MOVES, NOT THE SPLIT

LOAN $520K · 55% SPLIT	$950K	$920K
Equity	**$430,000**	**$400,000**
Payment to other party	**$236,500**	**$220,000**
New loan required	**$756,500**	**$740,000**
Loan against value	**79.6%**	**80.4%**
Against the 80% line	**$3,500 under**	**$4,000 over**

Illustrative only. Figures show the mechanism, not any matter or lender.

WHAT THE NUMBERS DO

A valuation $30,000 below the agreed figure lowers the payment by $16,500 — but it lowers the security too, so the loan-to-value ratio still rises.

At $920,000 the file is $4,000 over the line, and mortgage insurance applies to the whole loan. Avoidable, if the valuation comes before the figure.

Between separation and settlement

- **The lender is not a party to your orders.** Both remain jointly and severally liable for the whole joint loan until it is discharged. Whatever the orders say about who pays, the lender's position changes only when the lender agrees — which means a fresh assessment of the remaining borrower alone. Until then arrears are generally reported against both.
- **Hardship help does not need the other borrower's consent.** AFCA's position is that a request need not come jointly, and that a lender declining solely because the co-borrower will not agree has not met its obligations. Arrangements it lists include capitalising arrears, extending the term, reducing or waiving repayments, and agreeing not to pursue one borrower while retaining rights against the other. A disclosure of family violence should be accepted at face value, without evidence such as an intervention order.
- **A disputed account should move to two-to-sign** once the lender knows the parties are in dispute — with the practical consequence that redraw and offset may become unavailable to either party.
- **We deal with one party to any given matter**, whichever side you act for, and never share their details with the other.

Summarising The AFCA Approach to joint accounts and family violence (afca.org.au) for orientation only — not legal advice, and lender conduct differs.

Where we stop

We do not advise on the division of property, the drafting of orders, duty or tax. What we add is timing: when the finance should be tested, and whether a given figure on a given timeframe can be funded. Where the real issue is hardship, we say so and refer clients to the National Debt Helpline on 1800 007 007.

You handle the law; we handle the lending

Whichever side of the matter you act for, we can show you how a lender will read the file — what works, what doesn't, and why — early enough to shape the outcome rather than explain it afterwards. No cost, no obligation, and no referral fee in either direction.

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Results vary depending on individual financial circumstances. Credit approval is subject to lender assessment criteria.

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