



FOR FAMILY-LAW PROFESSIONALS · ATTORNEYS · MEDIATORS

Five things that decide whether the housing plan survives

A settlement can be fair, signed, and still impossible to finance. Here is what a lender actually checks — while the language can still be changed.



The problems below are not judgment calls. They are **underwriting rules** that apply after the decree is entered, when nobody can fix them any more. Every one of them is cheap to solve while the agreement is still a draft, and expensive to discover afterward.

1 · The buyout's wording decides its price

A refinance that pays one spouse their equity can be treated as a **rate-and-term** refinance rather than a **cash-out** — better pricing, more equity reachable. But only when the file supports it:

- The property was **jointly owned for at least 12 months** before closing.
- A written agreement describes the transfer **and the disposition of the proceeds**.
- The loan pays **the buyout and nothing more**.
- The spouse keeping the home **receives none of the proceeds**.

Silence is not neutral here. A decree that says a buyout is owed but never says the refinance is what pays it gets read as cash-out: a worse rate and tighter limits, on identical facts. **One caution:** avoid fixing the buyout at a set dollar amount. The lender's appraisal decides the equity.

2 · Support income has a start date, and it starts a clock

Support counts as qualifying income only with a **six-month history of actual receipt**, plus evidence the obligation continues **at least three more years**. The six months runs from the first payment received — **not** from the date of the decree.

So a decree entered in March with support beginning in April puts qualifying in October. If that same decree requires a refinance within 90 days, it has required something that cannot happen. This is the most common unforced error I see.

Partial or irregular payments are worse than none: if the payor pays late or short, the income **cannot be counted at all**, whatever the order says.

3 · How support is labeled changes what the *payor* can buy

For the spouse **paying**, the two are not equivalent. Spousal support, equalization and separate maintenance may be handled by **reducing qualifying income** instead of counting as a monthly debt. Child support is a debt, full stop. The two methods produce different ratios on identical facts, and that gap is often the difference between approved and declined.

Neither spouse's housing is independent of the other's. **A split that works beautifully for the recipient can quietly price the payor out of anything.**

4 · Deadlines that assume a yes

- A **60- or 90-day refinance requirement** is reasonable on its face and routinely impossible: seasoning, support timing, a credit event, an appraisal.
- When it is missed, your client is **in breach of their own judgment** over something nobody checked.
- A deadline tied to an **event** rather than a date — or with a stated remedy if financing is not available — costs nothing to draft.

5 · Who is actually on the note

- A **quitclaim deed moves ownership**. It does nothing to the mortgage.
- The departing spouse stays **fully liable**, and the debt still counts against them on their next purchase.
- Only a refinance, a sale, or a lender-approved **assumption** removes them — and on an older low-rate loan, assumption can preserve a payment nothing on the market today will match.

If it would help, send me the draft. I will read the housing and financing language and tell you what underwriting will do with it — no charge, no obligation, and I do not need to be the lender. The useful version of that conversation happens while the agreement can still be changed.