



DIVORCE LENDING · PLAIN-ENGLISH GUIDE

Court-ordered assignment of debt

When one spouse keeps the marital home, a divorce decree can shift who's responsible for the mortgage.

Here's what that actually does, and just as importantly, what it doesn't.



There are **two separate legal worlds** in play here, and mixing them up is the most common mistake in divorce lending. Your **divorce decree** lives in family law: it governs what you and your ex owe each other. Your **mortgage note** lives in contract law: it governs what each of you owes the lender. A court can order the first. It cannot rewrite the second.

What the court order CAN do

- **Assign the mortgage to one spouse.** The decree can make the spouse keeping the home solely responsible for the payment, and order them to hold the other harmless, refinance by a set date, or sell if they can't.
- **Free up the departing spouse to buy their own place now.** This is the powerful part. Under Fannie Mae guidelines, a court-ordered assignment lets the departing spouse **exclude the marital mortgage from their debt-to-income**, based on the decree alone. No 12-month waiting period. They can qualify for their own financing right away, instead of looking like they carry two mortgages.

The "12 months of payments" rule you may have heard about is a **different, alternative path**, used when there is no court order. With a divorce decree assigning the debt, you do not need it. The two are alternatives, not both required.

What it CANNOT do

It cannot remove the departing spouse from the loan. They signed the note, and the lender was never part of the divorce, so a court can't change that contract. Until the loan is refinanced, paid off, or formally assumed with a release of liability, **both names stay on it with the lender.**

The tradeoff

Keeping the mortgage

- The spouse keeping the home keeps the existing loan and its rate.
- The departing spouse can finance their own home now, mortgage excluded from their DTI.
- No refinance costs today.

The catch

- The departing spouse is still legally on the loan with the lender.
- If a payment is ever late or missed, it hits their credit too.
- Their only recourse is to enforce the decree against their ex, not against the lender.

Short story: a court-ordered assignment is a genuinely useful tool for **qualifying**. It can let the departing spouse move on and buy now while the other keeps a good rate. But it is **not a clean break from the debt**. The departing spouse stays tied to that loan, and their protection is only as strong as the decree and the ex's reliability. When keeping the home matters, plan the eventual refinance or payoff, not just the assignment.