

## The Bankrupt's Home Factsheet

<p><b>The effect of bankruptcy on your home</b></p>	<p>Immediately you are made bankrupt, your interest in all your assets including your home vests in the Trustee in Bankruptcy, other than those assets specifically excluded by Section 283(2) of the Insolvency Act 1986, i.e. tools of the trade and household items.</p> <p>The Trustee in Bankruptcy is under a duty to realise whatever equity is in your home for the benefit of your creditors, although it is often possible to negotiate a buy back of this equity by your spouse or other family members through re-mortgaging or the introduction of funds to the bankruptcy.</p> <p>If there are dependents living in the home, i.e. children under the age of 18 or still within secondary education, the Trustee will not obtain possession of the property and an order for sale within the first 12 months of you being made bankrupt. However, thereafter the creditors' interest generally takes precedence unless exceptional circumstances are applicable, whereby extensions may be granted to find alternative accommodation.</p> <p>For all new bankruptcies, the Trustee has three years from the date of the bankruptcy to apply for an order for possession and sale or a charging order in respect of your interest in your sole or principal dwelling house. If the Trustee fails to make such an application, your interest will automatically transfer back to you and shall cease to form part of your bankrupt estate.</p>	<p>For older bankruptcies, transitional provisions may apply and specific advice should be sought.</p> <p>You should therefore ensure that any offer to purchase the Trustee's interest in your property is communicated to the Trustee as soon as possible and within sufficient time for monies to be paid prior to expiry of the three year period. If it proves necessary for the Trustee to issue proceedings to protect his position, the costs of those proceedings will usually be sought as part of any agreed settlement.</p> <p>The automatic re-transfer provisions apply only to your interest in your sole or principal dwelling house and not to any other property owned by you. Even your automatic discharge from bankruptcy does not bring the Trustee's interest to an end.</p> <p>Many people in financial difficulty are under the illusion that, by transferring their interest in the home to their spouse's name, it will avoid the consequences of losing it in the event they are made bankrupt. Beware, there are wide ranging provisions within the Insolvency Act 1986 enabling a Trustee to overturn the transfer of property to a spouse or any other connected party. This can be back dated to at least five years prior to the bankruptcy order being made and in some circumstances, where it can be proven that the intention was to defraud creditors, even longer.</p>
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