



LUCAS JOHNSON
BUSINESS RECOVERY & INSOLVENCY

What will happen to my home in bankruptcy?

Free Confidential Advice
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Will I lose my home?

The official receiver or the trustee (if an insolvency practitioner has been appointed in place of the official receiver) may have to sell your home to help pay your bankruptcy debts. This applies whether the home is freehold or leasehold and whether it is solely or jointly owned.

Please note that if your home is mortgaged and you fall behind with your payments, your lender may be able to sell your home. You should consider contacting your lender about your bankruptcy and your mortgage payments.

When will the Official Receiver or trustee sell my house?

The trustee will sell your home if this is the only way to release your interest in the value of the property to your creditors.

If your husband, wife or children are living with you, it may be possible for the sale to be put off until the end of the first year after your bankruptcy. This gives them time to make other housing arrangements.

After that time, if the trustee's interest in the house remains, the court will only refuse an order for sale in exceptional circumstances or if the value of your interest in the property is worth less than £1,000.

Can anything be done to stop the Official Receiver or trustee selling my home?

Your husband, wife, partner, a relative or friend may be able to buy your beneficial interest in the home. This will stop the official receiver or trustee selling your home later.

What is meant by my 'beneficial interest' in my home?

This is your interest in the proceeds of sale of the property. It is different from the legal title to the property, which is held by the owner.

If there are any amounts owed on mortgages or other loans secured on the home, these will be repaid first from any proceeds of the sale. Your beneficial interest is calculated after deducting these amounts

If you are the sole owner, the beneficial interest is the whole value of the property. If there are joint owners, the beneficial interest is usually an equal share of the value.

What happens to my beneficial interest and legal title to my home when I am made bankrupt?

Your beneficial interest always transfers to the official receiver or trustee. Usually, if you are the sole owner, the

legal title also transfers to the official receiver or trustee. If the home is jointly owned, the legal title remains with you and the co-owner; but the official receiver or trustee may still take action in relation to the property (such as applying for an order for possession or sale).

The official receiver or trustee has to realise (or sell) the beneficial interest to raise money to pay your creditors. One way of doing this may be to sell the beneficial interest to your husband, wife, partner, a relative or a friend.

What is a bankruptcy restriction notice?

A bankruptcy restriction notice is an entry at the Land Registry against a property that is solely owned by a bankrupt. A restriction is automatically placed when a bankruptcy order is made. It puts on record that the bankrupt is no longer the legal owner of the property and does not have the ability to sell the property or enter into any other dealings in connection with the property - only the trustee can do this.

The restriction will not be removed until the trustee has been paid for their legal and beneficial interest in the property. If your interest in the property is returned to you (see below - What happens if no-one buys the beneficial interest?), the trustee will notify the Chief Land Registrar that the property is now yours again.

What is a Form J restriction?

A Form J restriction is an entry at the Land Registry, made on the application of the trustee, against a property that is jointly owned by a bankrupt. It is a record of the trustee's beneficial interest in the property. It means that the Land Registry must notify the trustee of any dealings in connection with the property.

A Form J restriction is different from a charge, which relates to a claim for a specific amount of money.

The legal interest in a jointly owned property does not transfer to the trustee. So a bankrupt and the co-owner can still sell the property, but the trustee must be paid the value of the bankrupt's beneficial interest from the sale proceeds.

The Form J restriction will only be removed when the trustee has been paid their beneficial interest in the property.

How is the trustee's claim valued?

The value of the trustee's claim where a Form J restriction has been registered is simply the value of the trustee's beneficial interest in the property. This value may therefore change, depending on the value of the property and amounts owed on mortgages and other charges secured on the property.

Even if the value of the beneficial interest is more than the costs, fees and debts of your bankruptcy, the trustee may be able to claim the full amount of the beneficial interest. This is because creditors are entitled to interest on the money they are owed if there are enough assets in the bankruptcy to pay this.

If the value of the beneficial interest is less than the costs, fees and debts owed in your bankruptcy, then the

trustee needs to be paid only the value of the beneficial interest to release the Form J restriction.

Jointly owned properties only:

What should be done if someone wants to buy the beneficial interest?

If an insolvency practitioner is handling your bankruptcy, then your husband, wife, partner, relative or friend should contact the insolvency practitioner for information on what to do about buying the beneficial interest.

If the official receiver is handling your bankruptcy, your husband, wife, partner, relative or friend should contact the official receiver. If your beneficial interest has a value of more than £1,000 they may be able to take part in a property conveyancing scheme run by The Insolvency Service and a firm of solicitors.

Under this scheme, the beneficial interest can be transferred back to you, or it can be transferred to your husband, wife, partner, relative or friend.

Please note they will have to pay:

- for a solicitor or licensed conveyancer to act for them in the transaction;
- £211 (as at April 2010) to cover the official receiver's legal costs. This amount must be paid in advance. It includes an allowance for expenses that may be incurred in the transaction. If the allowance is not fully used, they will receive a refund;
- the cost of an independent valuation unless you already have a very recent independent valuation of the property;
- the agreed purchase price for the beneficial interest based on the evaluation.

They will also have to give up-to-date details, in writing, of the amounts needed to pay off the mortgage and any other charges on the property.

If your husband, wife, partner, relative or friend cannot afford the costs of the scheme at present, they may still be able to take part later. They should contact the official receiver about this.

If, later, they approach the official receiver to buy the beneficial interest, and the property has increased in value, the purchase price is likely to have increased.

If the home is mortgaged, the lender may have to agree to the sale - the solicitor or licensed conveyancer dealing with the transaction will be able to advise on this.

Solely owned properties:

What should be done if someone wants to buy the beneficial interest?

If the property is solely owned the transaction is more complicated. This is because the legal title, as well as the beneficial interest, must be transferred.

If you wish this to happen please contact the official receiver or trustee for details. As with jointly owned

properties, the value of your interest in the property must be in excess of £1,000.

In this type of transaction, there is no fixed-price property conveyancing scheme. The current cost of the official receiver's legal fees, which the purchaser would need to pay, is approximately £500.

Stamp duty land tax

Anyone wishing to buy back the trustee's interest in your property may become liable for Stamp Duty Land Tax.

They should seek independent legal advice before taking any action.

What happens if no-one buys the interest in the property?

It remains with the official receiver or trustee, but only for a certain period (see below). It does not return to you on your discharge from bankruptcy. The value of the interest may increase over time if the market value of your home increases.

The benefit of any increase in value will go to the official receiver or trustee to pay your debts, even if the home is sold some time after you have been discharged. You and your family will have to move out if the home has to be sold to pay your creditors.

If, on the third anniversary of your bankruptcy, your home has not been sold, your interest in the property will usually be returned to you.

For this to happen the home has to be the main residence of:

- you; or
- your spouse or former spouse; or
- your civil partner or former civil partner.

The exceptions to this are:

- if your trustee has applied for an order for sale of the house;
- if your trustee has applied for an order of possession for the house;
- if your trustee has applied for an order imposing a charge on the house; or
- if you and the trustee agree that you will incur a specified liability in respect of the interest in the property.

If, however, the trustee is not aware of your interest in a property, they will have 3 years from the date on which they become aware of it to deal with your interest (for example, by selling it).



Deeds of Acknowledgement

If the property is sold, any shortfall on the mortgage loan (or any other loan that is secured on your home) is still a bankruptcy debt. This applies even if you have been discharged from your bankruptcy, as you are released from the debt on discharge.

Sometimes, after the date of the bankruptcy order a lender might ask you sign a document in which you agree to be responsible for the debt and any shortfall arising on the sale of the property. This is known as a deed of acknowledgement of a debt.

If you sign it, the lender will be able to ask you to pay the debt after you have been discharged from your bankruptcy.

If you are asked to sign a deed of acknowledgement you may wish to take legal advice before doing so.

The lender can ask any joint borrowers who are not bankrupt to pay the shortfall in full, whether or not they have signed a deed of acknowledgement.

What happens if I rent my home?

If you fail to keep to the terms of your tenancy agreement, for example by not paying your rent, the landlord may take action against you. The official receiver or trustee will normally have no interest in your home to sell for the benefit of creditors. In most cases the official receiver or trustee will need to tell your landlord that you are bankrupt. We suggest you seek legal advice on what may happen under your tenancy.