

Insolvency Service



# **What will happen to my Home**

**Information about your home when bankruptcy  
occurs.**

**This leaflet covers the questions you are most likely to want answered about your home if you are made bankrupt.**

- 1. Will I lose my home?**
- 2. When will the Official Receiver or trustee sell my home?**
- 3. Can anything be done to stop the Official Receiver or trustee selling my home?**
- 4. What is meant by my 'beneficial interest' in my home?**
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- 6. How is the trustee's claim valued?**
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## **1. 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.

## **2. When will the Official Receiver or trustee sell my home?**

The trustee will sell your home if this is the only way to release money 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.

## **3. 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.

## **4. 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 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.

(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.)

## **5. 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 is to sell the beneficial interest to your husband, wife, partner, a relative or a friend.

## **6. How is the trustee's claim valued?**

The value of the trustee's claim against any property of which you are the sole or joint owner 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 home.

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

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.

## **7. 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.

It may be possible for the beneficial interest can be transferred back to you, or the beneficial interest and legal title can be transferred to your husband, wife, partner, relative or friend.

Please note they will have to pay:

- for a solicitor to act for them in the transaction;
- a sum 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 valuation. If your home is now worth less than the amount you still owe on it, the price of the beneficial interest will be set at £1.

They will also have to give the Official Receiver up-to-date details in writing of the amounts that would be needed to fully pay off the mortgage and any other charges on the property.

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 be more than £1.

#### **8. Solely owned properties: What should be done if someone wants to buy the beneficial interest?**

The Official Receiver or other trustee can transfer both the beneficial interest and legal title to you (usually after your discharge from bankruptcy) or to your husband, wife, partner, a relative or friend, but the transaction is more complicated if the property is solely owned. If you wish this to happen, please contact the Official Receiver or trustee for details.

#### **9. What happens if no-one buys the beneficial interest?**

It remains with the Official Receiver or trustee, but only for a certain period (see below). The OR's or trustees interest will be recorded at either the Land Registry or Registry of Deeds. It does not return to you on your discharge from bankruptcy. The value of the beneficial interest may increase over time if the market value of your home increases.

The benefit of any increase in value will go 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.

In most cases, if your beneficial interest in your home, or the home of your spouse or former spouse, has not been sold by the third anniversary of your bankruptcy (or by 27 March 2009, whichever is the later), it will cease to be part of your bankruptcy estate and will be returned to you.

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 beneficial interest.

If, however, the trustee is not aware of your interest in a property, he or she will have 3 years from the date on which he or she becomes aware of it to deal with your interest (for example, to sell it).

## **10. 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.

## **11. Where can I get more advice?**

This publication is for general guidance only. If you have further questions about your home and your bankruptcy, you should ask your professional adviser or the trustee handling your bankruptcy.

Please note that The Insolvency Service and Official Receiver cannot provide legal or financial advice. You should seek this from a citizens advice bureau, a solicitor, a qualified accountant, an authorised insolvency practitioner, or a reputable financial adviser or advice centre.

More information about bankruptcy is available in the following booklet:

- Guide to Bankruptcy.

**You can obtain further copies of this leaflet from our website:**

[www.insolvencyservice.detini.gov.uk](http://www.insolvencyservice.detini.gov.uk)

**You may also order copies of our leaflets and booklets by telephone by calling 028 9025 1441.**

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