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S O L I C I T O R S

The Matrimonial Home In Bankruptcy

Bankruptcy is intended to be a protective remedy for the debtor; Indeed, it often is. That is especially so when the debtor has had High Court Enforcement Officers/County Court Bailiffs knocking on his door, or has had creditors phoning him at home and on his mobile telephone at all hours of the day and night. The debtor will be well used to unexpected visits from representatives of creditors, on his front door step, apparently eager to be sympathetic but who refuse to leave without a promise of payment, however small.

A Bankruptcy Order normally persuades even the most persistent creditors to call it a day.

What, however, of the debtor who becomes bankrupt, but who has assets, most commonly a share in a matrimonial home. The position of that debtor is very different to that of the non-asset owning bankrupt, who is likely to hear little or nothing more from his Trustee in Bankruptcy, after an initial meeting.

On bankruptcy, the bankrupt's share in his assets (to include his interest in his home), vests automatically in his Trustee in Bankruptcy, whose job it is to collect in the value of that property interest for the benefit of the creditors.

How does the Trustee do that?

The Trustee will obtain his own valuation of the matrimonial home and obtain from mortgagees details of amounts required to redeem the secured mortgage debts and thus arrive at a rough figure for the available equity in the property.

The Trustee will often seek proposals from a Co-Owner for (typically) payment of half of the value of that equity interest. The value of the Trustee's interest in the property, is likely to vary depending on factors such as the nature of the relationship of the occupants of the property, or the manner in which the property is legally owned.

In the absence of a financial deal being struck with the Trustee, it is open to the Trustee to commence Court proceedings to obtain Orders for possession and sale of the home so as to realise the value of what he maintains is his interest in the home.

What response should be made to the Trustee?

The objective for the bankrupt and his family must be to minimise the amount of the Trustee's interest. There are many ways in which the Trustee's interest in the property can be diminished, by negotiation, so as to reduce the amount of money that needs to be paid to him. Such factors arise out of decided caselaw, equitable principles and often depend on matters of fact.

One such factor might be that somebody other than the Bankrupt and his spouse has an entitlement to a share in the equity in the property.

The Trustee will be receptive to and aware of such factors. He will not necessarily, however, bring those matters to the attention of the Bankrupt or his spouse; the Trustee's primary duty is to collect in as much money as possible to pay the Bankrupt's creditors and his own fees and expenses, which may be significant.

It is, therefore, critical that the Bankrupt is well advised so as to strike the best deal possible with his Trustee as early as possible.

Summary Of Position:

The Trustee's position, in relation to the matrimonial home, needs to be addressed as early as possible in the bankruptcy process. The Bankrupt and his spouse/partner need to proactively respond to/approach the Trustee, armed with their own property valuation and with good legal advice, with a view to striking a deal.

Team members of NDP are well placed to advise on such matters, advising as they do both Trustees and Debtors in the bankruptcy scenario.