



**General frequently  
asked questions in  
Bankruptcy  
2017**



**ISI**  
**Tackling problem debt, together**

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# Frequently Asked Questions in Bankruptcy

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**DISCLAIMER** This guide has been produced by the Insolvency Service of Ireland (ISI) and is intended as a general, introductory, non-technical guide for insolvent debtors in relation to the availability of, and the processes involved in seeking bankruptcy. If, after reading this guide, you require further information of a general nature, please consult the ISI website, [www.isi.gov.ie](http://www.isi.gov.ie), or contact the ISI's office at 076-1064232.

The ISI has no role in providing legal advice or interpreting the law and this guide is not an interpretation of, or advice on the law. In addition, the ISI has no role in providing financial advice. If you are in doubt in relation to your legal or financial position, please take appropriate professional advice.

## 1 General

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### 1.1 What is bankruptcy?

Bankruptcy is a process where the ownership of an insolvent person's property transfers to the Official Assignee in Bankruptcy to be sold by him for the benefit of those to whom the individual owes money (creditors). Bankruptcy proceedings are brought in the High Court. The application for a Bankruptcy Order is filed in the Office of the Examiner of the High Court. When the person's property is sold, the Official Assignee will make sure that the proceeds are shared out fairly among creditors and any outstanding debt will be written off. Bankruptcy normally lasts for 1 year.

### 1.2 How much does it cost to go bankrupt?

There is an initial fee of €200 payable to the Official Assignee as a bankruptcy petition fee. On adjudication the judge will direct that you undertake to pay the cost of publishing a notice of your bankruptcy in Iris Oifigiúil. The cost depends on the length of the notice but is likely to be in the order of €70.

### 1.3 Am I eligible to seek bankruptcy?

In order to be declared bankrupt, you must be insolvent, i.e. you are unable to pay your debts to creditors, in full, as they fall due. Your debts must exceed your assets by more than €20,000. You

must have made reasonable efforts to make use of the alternative arrangements to bankruptcy such as a Debt Settlement Arrangement (DSA) or Personal Insolvency Agreement (PIA) to the extent your financial circumstances permit you (see [www.backontrack.ie](http://www.backontrack.ie)).

#### **1.4 What steps do I need to follow to declare myself bankrupt?**

- 1.** You must lodge €200 with the Bankruptcy Division of the Insolvency Service of Ireland (ISI) as a bankruptcy petition fee.
- 2.** You must swear an affidavit stating that you have made reasonable efforts to make use of the alternative arrangements to bankruptcy such as a Debt Settlement Arrangement or Personal Insolvency Arrangement to the extent your financial circumstances permit you. This affidavit must reference your efforts to make use of alternative insolvency arrangements to the Court in the form of a letter from your Personal Insolvency Practitioner (PIP) or Approved Intermediary (AI).
- 3.** You must present a Statement of Affairs, which will set out your financial situation and it must disclose that your debts exceed your assets by more than €20,000.
- 4.** You must prepare a petition for bankruptcy in which you must undertake to advertise notice of your bankruptcy adjudication as directed by the Judge.
- 5.** You must make various statements regarding your Centre of Main Interest (COMI), domicile or related matters. COMI is defined as being where you conduct your business as reasonably ascertainable by your creditors.
- 6.** The Affidavit, Statement of Affairs and Petition documents must be stamped, witnessed and lodged with the Office of the Examiner of the High Court who will assign you a court date for your bankruptcy hearing. Further details on these documents and how to fill them in can be found in the “Notes for filling out forms for bankruptcy” section of the ISI website at the following link, <http://isi.gov.ie/en/ISI/Notes>

#### **1.5 What happens in court on the day of adjudication?**

Once you have been given a Court date you must attend Court on that date – this will take place in the Four Courts in Dublin. The location/Courtroom number will be published in the Legal Diary, available on the Courts Service website [www.courts.ie](http://www.courts.ie). At the Court hearing, if the Court is satisfied that all of your papers are in order, your initials will be called out by the Court Registrar. At this point you will stand up and the Judge will adjudicate you bankrupt. The judge will direct that you

undertake to place an advertisement in Iris Oifigiúil, the Irish State Gazette, and on the Insolvency Service of Ireland website, within 21 days of the date of adjudication, in order to notify creditors of your bankruptcy. On the day of adjudication you must produce to the bankruptcy inspector (or email the Bankruptcy Division of the Insolvency Service of Ireland), a copy of the Statement of Affairs that you filed with the Examiner's office. You must also produce a Statement of Personal Information to the Bankruptcy Inspector. This form will have been issued to you before your court date with your receipt for the bankruptcy petition fee. This information will help us to more efficiently administer your estate.

### **1.6 How long does my bankruptcy period last?**

You will automatically be discharged from bankruptcy on the 1<sup>st</sup> anniversary of your date of adjudication, unless your bankruptcy term has been extended by the Court due to a failure to co-operate with the Official Assignee and his staff or a failure to disclose your assets to him.

### **1.7 What could prevent me from being discharged from bankruptcy?**

Discharge can be extended for up to 15 years in cases found by the Court to have involved serious non co-operation with, or non -disclosure of assets to, the Official Assignee.

### **1.8 What are the immediate effects of bankruptcy?**

When the Court adjudicates you bankrupt, ownership of all your assets will transfer to the Official Assignee, including your interest in the family home. The Official Assignee will realise (sell) these assets where there is value and distribute the proceeds among your creditors. Your unsecured creditors can no longer seek repayment directly from you. They must make a claim to the Official Assignee and all correspondence should be forwarded to him.

## 2 Debts and Assets

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### 2.1 Why is the bank still ringing and writing to me about my mortgage?

Secured creditors retain their rights in bankruptcy and can still contact you whether you are currently servicing the mortgage or not.

If you are not paying your mortgage, the bank retains the right to apply to the court to sell the property. If this happens the bank will receive the sale price of the property.

If there is a shortfall between the sale price and the mortgage amount, the bank can make a claim for the shortfall in bankruptcy but will not be able to pursue you directly for the shortfall amount. It then becomes an unsecured debt.

You should note that if your spouse/civil partner is named as a party to the mortgage, then they may be held joint and severally liable. The bank may pursue your spouse/civil partner for the full amount outstanding.

### 2.2 What happens to my bank/credit union accounts?

You are allowed to retain €1,000 for reasonable living expenses in the form of cash in your possession or a current account with a bank. On the day that you are adjudicated bankrupt, all other accounts held in credit by financial institutions, will be frozen. If you owe debts (credit cards, mortgage etc.) to the bank that you hold an account with, they may have a right to offset any monies in your accounts against the debts held. All other monies become the property of the Official Assignee to whom the funds will be transferred by the financial institution and who will use them to pay creditors of your estate.

### 2.3 What will happen to my assets after I have been adjudicated bankrupt?

When the Court adjudicates you bankrupt, ownership of all your assets will transfer to the Official Assignee, including your interest in the family home.

## **2.4 What will happen to the assets in my bankruptcy estate after I have been discharged?**

Under the Bankruptcy Acts 1988-2015, when you are discharged from bankruptcy, your assets continue to be retained post discharge in your bankruptcy estate for realisation (sale) and distribution to your creditors by the Official Assignee. The family home continues to vest in the Official Assignee and he will evaluate the equity position of the property within three years of the date of adjudication. If the family home is in positive equity he has a duty to creditors of the estate to realise that equity. He will seek to sell this equity to the former bankrupt or their spouse/civil partner. If the family home is in negative equity, then the family home will re-vest in the bankrupt subject to the mortgage.

## **2.5 Will my name be removed from the Bankruptcy Register at any time?**

No - the Register is a record of all bankruptcies, including those that have been discharged. A person searching the Register must pay €10 for each individual registry search. During the bankruptcy period, a search will yield the name, address and status of the bankruptcy. Following discharge from bankruptcy, a search of the bankruptcy register will reveal the name and the date of discharge. No information is given about the address or other details of a former bankrupt person.

## **2.6 What types of debt can be included in bankruptcy?**

Personal loans, cash loans, credit card debts, business/commercial loans, family maintenance payments under Court orders, Revenue debts, personal guarantees, unsecured portion of property loans, trade debts.

## **2.7 What types of debt cannot be included in bankruptcy?**

Court fines in respect of criminal offences, new debts incurred by you after the date you are made bankrupt.

## **3 What do I have to do to aid the Bankruptcy process?**

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### **3.1 What are my duties and obligations in connection with bankruptcy?**

You must attend Court on the day your bankruptcy application is listed. You must co-operate fully with the Official Assignee and his staff in all matters relating to your bankruptcy. Ownership of all your property will automatically transfer to the Official Assignee. You may, having already completed a Statement of Personal Information and a Statement of Affairs, be interviewed by Bankruptcy Division staff in relation to your estate. You must publish a notice of your bankruptcy on the ISI website and in Iris Oifigiúil as directed by the Judge.

You also have other legal obligations in connection with the administration of your estate and assets. These include: the delivery of your accounts or documents to the Official Assignee when requested, the delivery of your title deeds to property and any other assets to the Official Assignee, assisting the Official Assignee in the administration of your estate, and disclosing any property acquired by you since the date of your bankruptcy order to the Official Assignee. You must also inform the Official Assignee if you change your address.

### **3.2 Do I have to complete every section of the Statement of Affairs/ Statement of Personal Information forms?**

Yes, you must complete every section of the Statement of Affairs and Statement of Personal Information. These list your contact details, your family circumstances, your assets, liabilities and income and are vitally important to the effective administration of your bankruptcy estate. All fields must be filled in and if they do not apply, you should write n/a (not applicable). By filling in the data in a clear and thorough manner, you will minimise the need for the Official Assignee to contact you via phone or email. In those cases where it is felt that the information provided is insufficient or evasive, the case will be passed to our investigations team for further examination.

### **3.3 Who manages my estate?**

There are a number of different teams within the Bankruptcy Division of the ISI who administer estates on behalf of the Official Assignee. These teams include:

**Finance:** You will be in contact with representatives of the Finance Team when you pay your petition fee.

**Courts:** You will meet representatives of the Courts Team at court on the day of adjudication. You must provide them with your personal contact details. You will also need to contact Courts Team to advertise your bankruptcy on the ISI website.

**Case Management:** This team records information provided in your written Statement of Affairs and Statement of Personal Information. They will contact you to clarify information provided or follow up where information is missing. The Case Management Team deals with claims for existing debt submitted by creditors.

**Non-property Assets:** The function of this team is to realise all non-property assets (cars, pensions, jewellery, and furniture) for the benefit of your creditors.

**Property:** The Property Team administer all properties in your estate. All residential investment properties vest in the Official Assignee and will be realised for the benefit of your creditors.

**Investigations:** This team review potential non-declaration of assets as per the sworn Statement of Affairs and assets that were transferred prior to adjudication with a view to recovery in the event that there may be value for the creditor of the estate.

**Income Payment Assessment (IPA):** This team assesses your income and sets it against your Reasonable Living Expenses to see if you are in a position to give a portion of your income for distribution to the creditors of your estate

Over the course of your bankruptcy you may have contact with representatives from each of these teams.

## **4 How does bankruptcy affect my day to day life?**

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### **4.1 Are any assets exempt from my bankruptcy?**

The role of the Official Assignee is to investigate the full extent of your property and sell or otherwise dispose of your property and distribute the proceeds to your creditors. The only assets that do not

transfer to the Official Assignee are essential assets up to a value of € 6,000 (including vehicles), or more, if the High Court allows. You must identify which assets you wish to keep (Work tools, car, etc.). Any property you acquire during the period of your bankruptcy transfers to the Official Assignee if and when the Official Assignee claims it and you are under a legal duty to declare such acquired property to the Official Assignee.

#### **4.2 Can I obtain credit from someone while I am bankrupt?**

If you obtain credit of € 650 or more without disclosing your bankruptcy to the credit provider, you are guilty of an offence under the Bankruptcy Acts 1988-2015. You should be aware that being bankrupt may affect your credit rating and may influence any information about you held by rating reference agencies such as the Irish Credit Bureau. This means you may find it more difficult to get credit in the future.

#### **4.3 Can I operate a bank account while I am bankrupt?**

Yes, you can operate a bank account. Maintaining a bank account is an essential requirement in the normal course of living and will assist you in vouching your income and expenses. Whilst the Official Assignee notifies financial institutions that bankruptcy legislation does not prevent persons made bankrupt from holding or operating a bank account, it is a matter for the financial institution itself to decide whether it still wishes to keep you as a customer. Generally, financial institutions do continue to keep their customers who are made bankrupt, although they may impose conditions on the nature of accounts they may hold. You are allowed to retain €1,000 for reasonable living expenses in the form of cash in your possession or a current account with a bank. Please note that all other bank accounts will be frozen on the day of adjudication. If you owe debts (credit cards, mortgage etc.) to the bank that you hold an account in credit with, they may have a right to offset any monies in your accounts against the debts held.

#### **4.4 Can I travel outside the jurisdiction while I am bankrupt?**

There is no outright prohibition on you travelling abroad but you must inform the Official Assignee if you intend to do so. However, if it appears to the High Court that you may be leaving the State in order to avoid the consequences of your bankruptcy, you may be arrested.

#### **4.5 Will details of my bankruptcy be published anywhere?**

Yes – notification of your bankruptcy will appear in Iris Oifigiúil, on the ISI website and the Register of Bankruptcies maintained by the Office of the Examiner of the High Court.

#### **4.6 Will bankruptcy affect my employment?**

You can usually continue in current employment or seek new employment while you are bankrupt. Under the Companies Act 1963, as amended, it is an offence for a bankrupt person to act in various capacities in relation to a company without the consent of the Court. These capacities include director, auditor, manager, liquidator or receiver of a company. Certain professions may be governed by bodies where members' personal finances are subject to regulatory requirements.

## **5 Income Payment Assessments and Orders**

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### **5.1 How is my income payment contribution assessed?**

Your income is set against your Reasonable Living Expenses (RLEs). The ISI believes that you are entitled to a reasonable standard of living while you address your debt problem. If you tackle your debt using one of the ISI's solutions, there is a reasonable standard of living that you are entitled to which allows for expenses such as food, clothing, health, household goods and services, communications, socialising, education, transport, household energy, childcare, insurance and modest allowances for savings and contingencies. Further details can be found at [http://www.isi.gov.ie/en/ISI/RLEs Guidelines](http://www.isi.gov.ie/en/ISI/RLEs_Guidelines). Your RLE allowance is deducted from your income and any surplus figure is paid to the Official Assignee on a weekly or monthly basis (as agreed between you and the IPA team) for distribution to the creditors of your estate.

The Official Assignee will seek a contribution from your income after applying the Insolvency Service of Ireland Guidelines on Reasonable Living Expenses, if there is surplus income available. These guidelines take a person's family situation into account when calculating how much of his/ her surplus income (if any) can be paid to the Official Assignee. The High Court, in determining what, if any, contribution it may require you to pay, may also have regard to the ISI Guidelines. An Income Payment Agreement/Bankruptcy Payment Order will last for 3 years and ideally should be agreed to at the earliest stage of bankruptcy. This is to ensure that you as a bankrupt person are subject to

it for the shortest period possible after your bankruptcy has been discharged. Social Welfare payments are not liable to be taken by the Official Assignee or the Court; however, if the bankrupt is receiving social welfare payments plus other income and the total funds received exceed ISI thresholds; the surplus will be taken by the Official Assignee as a contribution towards bankruptcy estate debts.

Example:

A couple with two children aged 5 and 7 years old and one car. They are earning €2800 per month and are paying an €800 mortgage payment per month. By inputting their marital status, number and age of children, their need for a car and their mortgage responsibilities into the Reasonable Living Expenses calculator at [www.backontack.ie](http://www.backontack.ie) we arrive at an RLE figure of €2615.07.

Income: €2800

RLEs: €2615.07

Total: €184.93

There is a total of €184.93 surplus income per month left to service debts over a 36 month period.

## **5.2 What is the difference between a Bankruptcy Payment Order and an Income Payment Agreement?**

Your initial assessment will result in an Income Payment Agreement. This is an agreement drawn up between you and the Official Assignee, where there is surplus income available for distribution to the creditors of your estate. This agreement will be formalised through the Court during the period of your bankruptcy, at which point it becomes a Bankruptcy Payment Order.

## **5.3 What happens if my financial circumstances change during my bankruptcy?**

If your financial circumstances change you must notify the Official Assignee and the terms of your Income Payment Agreement/Order may be altered, to take account of this. Your financial circumstances may be reviewed periodically throughout your bankruptcy and you will be obliged to complete an income and expenses form to assist in the assessment.

#### **5.4 How long will I have to make payments for?**

An Income Payment Agreement and then Bankruptcy Payment Order lasts for 3 years and ideally payment terms should be agreed to at the earliest stage of bankruptcy. This will ensure that you as a bankrupt person are subject to it for the shortest period possible after your bankruptcy has been discharged. In cases of non-compliance, the Bankruptcy Payment Order period can be extended to five years.

#### **5.5 I have a Bankruptcy Payment Order but my circumstances have changed, what do I do?**

If your financial circumstances change, you must notify the Official Assignee and the terms of your Bankruptcy Payment Order may be altered, to take account of this. Variance of an order has to be formally done through the Courts. The Court may at any time, on the application of any interested person, vary an order, having regard to any changes in the family responsibilities or personal situation of the subject of the order. The IPA team can provide information on how to start the Court process.

#### **5.6 Why weren't all my expenses included in my income assessment?**

Not all expenses are deemed admissible There are certain special circumstances admissible under Reasonable Living Expense guidelines. Further details can be accessed at, [http://www.isi.gov.ie/en/ISI/RLEs\\_Guidelines](http://www.isi.gov.ie/en/ISI/RLEs_Guidelines).

#### **5.7 What is considered reasonable for housing costs?**

Housing (mortgage or rent payments) vary across the country and cannot be applied universally like the set costs. These costs will be added to your set costs provided they are determined to be reasonable by the Official Assignee.

## **6 Self Employed, Business Partnerships and Pensions**

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### **6.1 Can I still trade while I am bankrupt?**

Unless there are legal restrictions on un-discharged bankrupts practicing in your profession, you can continue to work and earn a living as before. However, you cannot use assets (other than excepted

articles) which you owned at the date you were adjudicated, as ownership of these assets transfers to the Official Assignee. You must trade in the same name in which you were made bankrupt. If you trade in a name other than that in which you were made bankrupt without disclosing this name, you are guilty of an offence. You must notify the Official Assignee of any business or trade in which you engage.

## **6.2 I am self employed, what are my obligations to the Revenue Commissioners?**

When you are adjudicated bankrupt, the Revenue Commissioners are informed and will be in contact with you. It is in your interests to agree your tax returns at the earliest possible date following your adjudication. The Revenue will calculate what you owe them up to the date of adjudication and claim for this figure in bankruptcy. The Official Assignee, as part of his duties in administering your estate, will pay a dividend to Revenue where funds are available. Any taxes incurred after the date of adjudication are not part of your bankruptcy estate and you must file your returns, make payments and fulfil your obligations to the Revenue Commissioners as normal. Please note that any monies due back to your estate from the Revenue Commissioners, in the form of refunds, become the property of the Official Assignee.

## **6.3 How will bankruptcy affect business partnerships?**

When a partner is adjudicated bankrupt, the partnership is automatically dissolved unless the partnership agreement provides otherwise. Partnership assets are first used to pay partnership debts and if there is any surplus remaining, then and only then can they can be used to pay a bankrupt partner's debts out of his share of such surplus.

## **6.4 What happens to my pension?**

The rules governing how the Official Assignee approaches pensions were revised on 03/12/2013 removing most pension funds from vesting in the Official Assignee. If you were adjudicated bankrupt on or after this date the following guidelines apply.

Generally, your pension assets are not transferred to the Official Assignee. However, pension income receivable by you will be treated as income for the purposes of your bankruptcy.

Approved Retirement Fund (ARF) and Vested Personal Retirement Savings Accounts (Vested PRSAs) may be included in your bankruptcy estate for realisation and payment to your creditors.

Where a bankrupt person has made excessive contributions to a pension scheme in the three years before being adjudicated bankrupt, the Official Assignee may apply to Court for an order to make the excessive amount available for distribution to the creditors.

If however, you have a pension entitlement that has matured on adjudication or will mature within five years of your bankruptcy order, the Official Assignee will have the right to claim it for the benefit of the bankruptcy estate.

If you were adjudicated bankrupt before 3/12/2013, all funds other than the occupational pension scheme funds vested in the Official Assignee. Please contact this office to discuss the criteria applied in those circumstances.

## **7 Property related issues within Bankruptcy**

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### **7.1 How will property owned jointly with a bankrupt person be affected?**

Where a person owns property jointly with a bankrupt person, the bankruptcy splits the joint ownership. The non bankrupt co-owner and the Official Assignee then hold separate interests in the property and the Official Assignee will have the right to sell the property to realise his half share.

### **7.2 What will happen to my family home?**

You should be aware that bankruptcy can result in the loss of your home. Serious consideration should be given to this fact when considering bankruptcy. You should always seek to obtain independent professional advice before entering the bankruptcy process. The Official Assignee has a three year period from the date of adjudication to monitor the valuation of your family home to ascertain whether it is in negative or positive equity. The Official Assignee, having valued your family

home, will write out to you six months before the three year period elapses and inform you whether he believes your property is in positive or negative equity.

Where your interest in your family home is in positive equity, the Official Assignee has a duty to your creditors to realise this interest. In order to value the Official Assignee's interest in the property, we will arrange for a further professional valuation of your property. You are entitled to seek your own independent valuation as well.

The policy of the Official Assignee is to sell his interest in positive equity family homes to the bankrupt. Alternatively, he will sell his interest to the bankrupt's spouse/civil partner. The Official Assignee will accept staged payments for up to a maximum of 12 months and on final payment will transfer his interest to the bankrupt or their spouse/civil partner. If the bankrupt or spouse/civil partner is unwilling or unable to purchase the Official Assignee's share, he will apply to the Court for permission to sell the home on the open market. It should be noted that the Official Assignee, is not entitled to sell your estate or interest in your home, without an order of the High Court under Section 61(4) of the Act.

If your interest in your family home is in negative equity and the Official Assignee has not issued proceedings seeking sale of the family home within 3 years of the date of adjudication of bankruptcy, the family home may re-vest in you, subject to any existing mortgage. If you do not wish the property to re-vest in your name, you should communicate that to the Official Assignee in writing.

**7.3 I have received a letter saying that my family home is transferring back to me. I am happy to have it back as I am still living there with my spouse/partner but I do not know what will happen about the mortgage as I have not paid it for quite some time.**

Your interest in your family home automatically transfers without need of any conveyance back to you, as does the mortgage. If you default on your mortgage loan payments, the mortgage lender can still sell your home on foot of the mortgage but it cannot recover against you any shortfall amount between the mortgage amount and the net sale proceeds recovered. However, if your spouse/partner is also a party to or has guaranteed the mortgage loan, the mortgage lender would still be able to seek payment of the shortfall sum from him/her where he/she has **not** been adjudicated bankrupt.

#### **7.4 I do not want my family home back. What should I do?**

There is a mechanism that prevents your family home transferring back to you. The Official Assignee will contact you before your family home is due to transfer back to you. The letter will confirm that the Official Assignee has found your family home to be in negative equity. A form will be enclosed for you to fill out which will prevent the family home's transfer back to you. As stated above, if the mortgage payments are not being paid the mortgage vendor can sell the property but it cannot pursue you for any shortfall between mortgage debt and net sale proceeds, as such shortfall was written off on your bankruptcy.

#### **7.5 I am separated from my spouse/partner who was bankrupt. However, I am not a bankrupt. My spouse/partner is named on the mortgage. I have just been told that the half share of my family home is going back to him/her. My spouse/partner left me and doesn't live in the home. I am in the family home paying the mortgage, with no support from my spouse/partner and I do not want him/her getting back his/her half share.**

The Bankruptcy Act was amended as of 29 January 2016 and the changes to the Act mean that the Official Assignee, subject to certain exceptions<sup>1</sup>, must allow negative equity family homes to transfer back to the bankrupt. If your family home is in negative equity, under bankruptcy legislation it will, legally, go back to your spouse/partner. It is a matter for yourself to seek legal advice on your rights under Family Law to have that half share transferred to you by a Family Law Court.

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<sup>1</sup> There will be no automatic re-vesting where:

- a) The Official Assignee and the bankrupt agree in writing that the property does not re-vest.
- b) The Court orders that the property does not re-vest.
- c) The Court extends the 3 year period and re-vesting does not happen until the date the Court specifies.

**7.6 My spouse/partner who I am separated from has rang me to tell me that he/she has informed you that he/she does not want the family home back. I am still living in the family home and I am paying the mortgage, what happens to my home now?**

▪ **Positive Equity Property**

The policy of the Official Assignee is to sell his interest in family homes in positive equity to the bankrupt or their spouse/civil partner. In your case, he would seek to sell his interest to you, the bankrupt's spouse/civil partner. You would have to pay 50% of the equity figure. The Official Assignee will accept staged payments for up to a maximum of 12 months and on final payment will transfer his interest to you. If you are unwilling or unable to purchase the Official Assignee's share, he will apply to the Court to get the necessary permissions to sell the home on the open market. It should be noted that the Official Assignee, is not entitled to sell your estate or interest in your home, without firstly obtaining an order of the High Court under section 61(4) of the Bankruptcy Acts 1988 – 2015.

▪ **Negative Equity Property**

If the interest in the family home of your spouse who is a bankrupt (or now a discharged bankrupt) is in negative equity and the Official Assignee has not issued proceedings seeking sale of the family home within 3 years of the date of adjudication of bankruptcy, the Official Assignee's interest in the family home will automatically re-vest in (transfer automatically back to) the bankrupt on the third anniversary of their adjudication. If, as in this case, the bankrupt indicates that they do not wish their interest in the property to re-vest in their name, he/she must jointly sign a form with the Official Assignee, stating that he/she does not wish the property to re-vest.

At this point the Official Assignee will decide to disclaim his interest in the property. This means that he will, through the Courts, formally renounce his interest in the property. All parties interested in the property are put on notice of these Court proceedings. The parties may include the Mortgage Bank, the spouse/civil partner who is servicing the mortgage and living in the property and any judgment mortgage holders. The Courts will then remove the Official Assignee from title and it is

open to you, on proving you are servicing the mortgage, to apply to the Court at the hearing to have the disclaimed half interest transferred to you by Court order.

The ISI strongly recommends that you engage professional legal advice to guide you through this process and ensure that you have the necessary proofs for the Court to succeed in any such application.

## **7.7 I have a tenant in a residential investment property that I owned pre-bankruptcy.**

### **What do I have to do?**

When the Court adjudicates you bankrupt, ownership of all your assets will transfer to the Official Assignee. You have an obligation, under the terms of the Bankruptcy Acts 1988-2015, to inform us where you have a sitting tenant in an investment property. Failure to inform us of a tenancy agreement and retention of rent monies post adjudication could result in an extension of the bankruptcy period for up to 15 years. When you inform us of a tenancy agreement, we require that you provide us with the keys to the property, a copy of the lease agreement and the contact details of the tenant. We will then write out to the tenant explaining the situation to them and informing them that they must now pay their rent directly to the Official Assignee's rental agents. The monies received from the rent payments will be used towards paying a dividend to the creditors in your estate.

## **7.8 How will property that I own abroad be affected?**

Under the European Community Insolvency Regulation, bankruptcy proceedings in Ireland may be recognised as insolvency proceedings in all European Community Member States (except Denmark), where the centre of main interest (COMI) of the bankrupt person is within Ireland. COMI is the place where you primarily conduct your business on a regular basis, as reasonably ascertainable by your creditors. The Official Assignee, under the European Community Insolvency Regulation, is entitled on foot of the Bankruptcy Order here to realise property of the bankrupt person across the European Community for the benefit of creditors. Where the bankrupt person's centre of main interest is in another EU country (except Denmark) but they have an establishment (business) within Ireland, then secondary proceedings may be instituted here but only to administer the estate of the bankrupt person within Ireland. The Official Assignee can equally enforce his bankruptcy order

outside the EU and in Denmark, by obtaining an “order in aid” in the Courts of the relevant foreign country.

### **7.9 How does bankruptcy affect property transferred by the bankrupt person?**

Bankruptcy has legal implications for property transfers made before the date of the Bankruptcy Order. The Official Assignee can review, and possibly challenge, any property transfers made before bankruptcy. He may apply to Court to set aside these transactions by the bankrupt. The Official Assignee will apply to void pre-adjudication transfers where they were done to reduce bankruptcy estate assets and defraud the entitlements of creditors to have same sold to pay their debts.

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