



**Post-Bankruptcy  
frequently asked  
Questions  
July 2017**



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

# Frequently Asked Questions

**DISCLAIMER:** This guide has been produced by the Insolvency Service of Ireland (ISI) and is intended as a general, non-technical guide for insolvent debtors in relation to 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.

## **Q. When will I be discharged?**

All persons adjudicated after 30/07/2015 will automatically be discharged from bankruptcy on the 1<sup>st</sup> anniversary of their date of adjudication, unless their bankruptcy terms have been extended by the Court due to their failure to co-operate with the Official Assignee or their failure to disclose assets to him.

## **Q. What could prevent me from being discharged?**

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

## **Q. What will happen to the assets in my bankruptcy estate?**

Under the Bankruptcy Acts, where a bankrupt person is discharged from bankruptcy automatically and without need of a Court order, their assets continue to be retained post-discharge in their bankruptcy estate for realisation (sale) and distribution to their creditors by the Official Assignee.

**Q. What do I need to do now that I am discharged?**

A. You continue to have a duty under the Bankruptcy Acts 1988 – 2015 to co-operate with the Official Assignee and his staff in relation to your bankruptcy estate. We may occasionally need to contact you to clarify information about assets held.

**Q. Will my name be removed from the Bankruptcy Register at any time?**

A. No - the Register is a record of all bankruptcies, including those that have been discharged. The register is held in hard copy format by the Examiner of the High Courts' office. A person searching the Register is told the status of the bankruptcy and the date it was discharged, as appropriate. No information is given about the address or other details of a former bankrupt person.

**Q. Will the ISI need to contact me after my discharge date?**

A. You are required, under legislation, to comply with requests issued by the ISI, following your discharge from bankruptcy. In some cases, assets from your bankruptcy estate may continue to be administered after your discharge date and queries may arise regarding their administration, necessitating a phone call, letter or email.

**Q. I have been discharged from bankruptcy. Can I now seek credit from financial institutions?**

A. Please note that credit ratings and the decision on whether or not to give credit is a matter for each individual lender. The ISI has no role in this matter. The following is for information purposes only.

You may seek credit from financial institutions post-bankruptcy. However, it should be noted that bankruptcy has an adverse effect on your credit rating. The decision on whether or not to give credit is up to the lender and this is always the case.

Bankruptcy returns you to solvency – this means that after discharge from bankruptcy, you will be able to pay your debts as they fall due. Returning to solvency should not to be confused with a return to credit worthiness, which is determined by each financial institution using their own criteria.

Your credit rating information is held by the Irish Credit Bureau (ICB). This is based on reports submitted to them by the main financial institutions recording your repayment history for any loans. Any missed payments may be recorded and could impact on your credit rating. Any major events such as loan write-offs, loan restructures and bankruptcy will be recorded by the ICB and may also have an impact on your credit rating. The ICB holds information about borrowers and their loans for 5 years after the event is first recorded.

By law, financial institutions must ensure that information they hold or give to anyone else about you is correct and up to date. You have the right to insist that they correct any incorrect information about you.

If you find a mistake in your report, ask your lender, in writing, to correct these details. Most lenders will act to correct any mistake and amend your credit report immediately. However, if you experience problems or delays, or if your lender fails to put things right for you, you can consider making a formal complaint and referring the matter to the Office of the Data Protection Commissioner.

**Please note:** The ICB cannot change your credit report unless a lender requests it to do so. Further information can be found at <http://www.icb.ie/>.

## Family Home

### Q. What will happen to my family home?

A. 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 in order to decide whether it is in negative or positive equity (equity is where the value of the property is greater than the outstanding loan amount). The Official Assignee, having valued your family home, will write out to you before the three-year period elapses to inform you whether he believes your property is in positive or negative equity.

Where your family home is in positive equity, the Official Assignee has a duty to your creditors to realise this equity. 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 former bankrupt, once the purchase funds are proven not to be the former bankrupt's. Alternatively, he will sell his interest to the former bankrupt's spouse/civil partner. The Official Assignee will accept staged payments for up to a maximum of 24 months and on final payment will transfer his interest to the former bankrupt or their spouse/civil partner. If the former bankrupt or spouse/civil partner is unwilling or unable to purchase the Official Assignee's share, the Official Assignee will apply to the Court for permission to sell the property 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.

**Q. 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. What happens since I have not paid the mortgage for quite some time?**

A. 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 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.

**Q. What happens if I do not want my family home back?**

A. 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. This means you will not be subject to your original mortgage obligations either.

**Q. I am separated from my spouse/partner who was bankrupt. 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 I am in the family home paying the mortgage with no support from my spouse/partner. Can I prevent him/her from getting back his/her half-share?**

A. The Bankruptcy Act was amended on 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. Your family home is in negative equity and under bankruptcy legislation 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.

**Q. My spouse/partner from whom I am separated has contacted me to tell me that he/she has informed the ISI 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?**

A.

▪ **Positive Equity Property**

The policy of the Official Assignee is to sell his interest in family homes in positive equity to the former bankrupt or their spouse/civil partner, once the purchase funds are proven not to be part of the bankruptcy estate. Alternatively, as in your case, he will sell his interest to the former bankrupt's spouse/civil partner. The Official Assignee will accept staged payments for up to a maximum of 24 months and on final payment will transfer his interest to the bankrupt or their spouse/civil partner. 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 former 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, under the legislation, re-vest in (transfer automatically back to) the bankrupt on the third anniversary of their adjudication. If, as in this case, the former 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 in simple terms 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 Mortgagee 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.

We strongly recommend 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.

### **Bankruptcy Payment Orders**

**Q. I have a Bankruptcy Payment Order but my circumstances have changed. What will I do?**

A. 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 individual.

If you have had a change of circumstances, you will need to provide vouching for these changes to the ISI. On receipt of this vouching, the ISI will reassess you, and, if there is a change in your surplus income, make an application to Court to vary or strike out the Bankruptcy Payment Order.