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Bankruptcy & Bankrupt's Property (ie Private Residence)

Section 58(1) of the Bankruptcy Act 1966

"Where a Debtor becomes Bankrupt, the property of the Bankrupt not being after acquired property vests forthwith in the Official Trustee or if at the time when the Debtor becomes a Bankrupt a Registered Trustee" if so appointed.

Section 129AA(3) provides that if vested property is not dealt with by the Trustee within six (6) years of the Bankrupt's discharge date (at present three (3) years after commencement), the property reverts in the Bankrupt. The Trustee may though before the expiration of the reversion date provide an "Extension Notice" for a further three (3) years and there is no limit as to how many "Extension Notices" a Trustee may issue. In summary, the longer it takes to resolve the Trustee's interest the greater the equity as the Mortgage decreases and the property value increases.

How does this effect a Bankrupt's property interest?

A house jointly owned on one parties Bankruptcy becomes severed to the effect it is then owned as Tenants in Common on a 50/50 split. (ie non Bankrupt spouse/Trustee)

Ordinarily the Trustee will provide the non - Bankrupt spouse with the opportunity to purchase the Trustee's interest for an adjusted net equity amount, however the spouse will be required to pay Stamp Duty on the 50% purchase price and a transfer will be provided to transfer that interest from the Trustee.

Example

| | |
|-------------|------------------|
| House Value | \$300,000 |
| Mortgage | <u>\$250,000</u> |
| Equity | <u>\$ 50,000</u> |

Bankrupt's 50% say \$10 - \$15,000
(Plus Stamp Duty on the \$150k)

The upside is the Mortgage is not impacted and family retains the property albeit now in the non-Bankrupt's name.

As always, if you or your clients need advice on any business turnaround or insolvency matters do not hesitate to contact us.

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