



Eatons

Bankruptcy and the Family Home

With the economy in poor shape and personal debt still at high levels, the outlook is less than rosy for people who are facing insolvency. Even after the changes made by the Enterprise Act 2002, bankruptcy is still a difficult experience for most bankrupts. This is especially true where the family home is the main asset of the bankrupt's estate.

The trustee in bankruptcy will normally seek a possession order over the property so that it can be sold to satisfy the claims of creditors.

When deciding whether the possession order is to be granted, the court is obliged to consider:

- the interests of the creditors;
- the conduct of any spouse or civil partner (current or past) in contributing to the bankruptcy;
- the needs and financial resources (if any) of the current or former spouse or civil partner and any children; and
- the other applicable circumstances of the case.

Where an application for a possession order is made more than a year after the property has vested in the trustee in bankruptcy, the court will normally regard the interests of the creditors as paramount. The 12 month delay between the bankruptcy and the application may give a false sense of security, but does at least allow time for alternative living arrangements to be made if a sale is probable.

An application to resist the possession and sale can be made if there are exceptional circumstances, but consequences for the family arising from the bankruptcy will only very rarely be considered as exceptional circumstances.

Where a delay in paying creditors is unlikely to cause them any prejudice, a case may be able to be made out that the circumstances are exceptional enough to justify the defeat of an application for possession. An example might be when there is a great deal of equity in the property, such that the debts plus interest thereon are likely to be paid in full on an eventual sale. Such an argument might apply where the creditor is HM Revenue and Customs, for example.

CONTINUED...

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Serious illness in the family (not that of the bankrupt personally, except where this creates a need for a family member to remain in the house to look after the bankrupt) may also be regarded as an exceptional factor.

There are a number of other factors that may also constitute exceptional circumstances. If you are faced with a possession application, it is important to take legal advice promptly as there may be other solutions (such as a relative purchasing the trustee in bankruptcy's interest in the property) which can be explored.

However, the best approach is to take advice as soon as you get into financial difficulty. Normally, the earlier such issues are addressed, the greater the likelihood of a satisfactory outcome – possibly avoiding bankruptcy altogether.

Contact Partner Marcus Baff for further advice.

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