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## LawTalk Blog



# My husband just went bankrupt. Will we lose the house?

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When a spouse becomes bankrupt it can be a very stressful time for the whole family.

If your spouse is made bankrupt, a Trustee in Bankruptcy is appointed and is responsible for taking control of the bankrupt's assets and selling them, where possible, to pay out creditors. This includes property and may include the family home which is not a protected asset under the *Bankruptcy Act*.

The Trustee in Bankruptcy must approach the realisation of your spouse's interest in the home with understanding, whilst protecting the rights and interests of creditors.

If the home is owned solely by your spouse then the house will be sold by the Trustee.

If the home is jointly owned (for example by a husband and wife as [joint tenants](#)), the joint tenancy is automatically severed upon the bankruptcy of any one of the joint tenants. The home ownership will change from joint tenants to tenants in common.

The trustee in bankruptcy can then sell the bankrupt spouse's share in the family home. If the non-bankrupt spouse cannot afford to buy out the bankrupt's share, then the whole home will be sold and any money left over after the sale of the home (after payment of creditors) will be divided between the bankrupt and the non-bankrupt spouse.

In this case the Trustee in Bankruptcy will usually take the following approach:

1. The Trustee will obtain a valuation of the property prior to selling it.
2. Give the non-bankrupt spouse the opportunity to buy the bankrupt spouse's interest in the property.
3. Invite the non-bankrupt spouse to join the Trustee on agreed terms to market and sell the property.
4. If there is no agreement with the non-bankrupt spouse regarding sale of the property the Trustee can ask the Court to appoint a statutory Trustee for sale over the co-owners interest to force a sale of the property.

The appointment of the statutory Trustee forces the sale of the home even if one spouse is not bankrupt and has not contributed to the bankruptcy in any way. While the Court will often try to help the non-bankrupt spouse by giving them time to relocate and find another property the outcome is usually that the property will be sold.

The Trustee in Bankruptcy has a wide discretion regarding how to sell the property and will normally also allow the bankrupt a few weeks to arrange alternative accommodation. The Trustee will only sell the home if there is equity (money left over) after paying out any remaining mortgage. Equity from the forced sale is used to pay out creditors.

Becoming bankrupt does not affect the rights of the mortgagee (the bank with whom you have a mortgage over your house), and if mortgage payments fall into arrears the bank can still take steps to [sell the property](#). If you are able, you should continue to make mortgage repayment after one spouse becomes bankrupt.

It is essential to realise that one of the consequences of bankruptcy may be the sale of your family home to pay out creditors and it is important to seek legal advice.

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