

## THE BANK AND THE FAMILY HOME IN BANKRUPTCY

### WILL I LOSE MY HOME?

Bankruptcy does not equal definitely losing your family home. Losing your family home is not a certainty and may not even be likely depending on your circumstances.

If the family home is mortgaged, then in practice, the bank owns the family home until the mortgage is repaid. The bank may choose to keep the property outside of bankruptcy proceedings and enter into an arrangement with you which would allow you continue to live there, repay the mortgage during your bankruptcy period and be in a position after bankruptcy to reclaim full ownership of the home once all mortgage payments are made in the future.

What you own prior to bankruptcy is any value in the home above what is outstanding on the mortgage (this is called the property's 'equity'). So if the house is worth €200,000 and the amount owed on the mortgage is €100,000 then you own a positive equity to the value of €100,000.

In bankruptcy, this 'equity' is transferred over to the Official Assignee in Bankruptcy along with all your other assets and debts and you start fresh. This equity can be positive or negative as the value of the home may be less than what is outstanding on the mortgage.

### WON'T THE BANK CHOOSE TO SELL THE HOME?

Banks are commercial enterprises and are seeking to make profit. As such, they are likely to choose an option which will yield the best profit for them.

If they will make more money by receiving payments from you over a period of time rather than a once off lump sum in a sale of the property then they may well to choose that option.

Consider the scenario where the house is only worth €100,000 but the mortgage owed to the bank is €200,000. The bank may well choose to

keep the property out of bankruptcy and seek to 'do a deal' with you whereby they would get more through regular repayments over a period of time than they would in a once off sale.

*Note: What you will be allowed offer the bank in terms of repayments may be limited to what the official assignee will consider a reasonable living expense.*

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## WHAT WILL THE OFFICIAL ASSIGNEE ALLOW YOU TO PAY FOR A MORTGAGE?

The Official Assignee's approach to this has been to allow for the fact that people in bankruptcy need a place to live and whether renting or paying a mortgage, this cost must be considered in calculating how much of their income they are allowed to keep for reasonable living expenses and how much of their income must go to the creditors.

What is reasonable for a mortgage repayment is often calculated by looking at what a typical rent would be for a house that meets the needs of the family concerned.

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## THE BANK WANT MORE THAN THE OFFICIAL ASSIGNEE WILL ALLOW ME TO PAY. CAN SOMEONE ELSE PAY MY MORTGAGE OR PART OF IT?

**Yes.**

If you are fortunate enough to have a fairy god mother to swoop in and pay your mortgage then this is a real option. The mortgage will not be in default and so the bank will not want to sell and the official assignee cannot restrict another person from paying a mortgage on a property. It is a gift and not an income on your part.

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## WHAT HAPPENS IF THE HOME IS ALSO IN MY PARTNER'S NAME?

If the debt is shared then both of you entering bankruptcy may be the best option. In that scenario, the above considerations remain the same here.

If your partner has no debt but owns a share of the home then they retain their ownership share.

If the property is in negative equity then your partner can often buy back the interest you transferred to the Official Assignee in Bankruptcy. He usually charges a nominal fee of about €5,000 for this as he will have no incentive to try and sell a 50% share of a property which is in debt.

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## IS ANY OF THIS DIFFERENT BECAUSE A 'VULTURE FUND' NOW OWNS MY DEBT?

**No.**

You the debtor are in the same position but simply owe the money to someone else.

## FOR MORE INFORMATION

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