Bankruptcy & Houses

This website is written in the context that you're still paying off a mortgage, that you've got too much other debt, overwhelming debt (like too much credit card, personal loan and tax debt), and that if possible you'd like to save the house even though you might go bankrupt.

Well the good news is that there are many options that can be looked at for you to save your house in the event of your bankruptcy. Don't think at this point that it's lost.

Hello, I'm Fred Appleton and I'm a semi retired former Chartered Accountant. Years ago, when trying to diversify my business interests, something unexpectedly and out of my control went wrong and, as I prefer to describe it, the wheels fell off and it sent me bankrupt.

For well over 14 years now I've been giving information and form filling in assistance on bankruptcy matters, mostly via the internet, to people all over Australia, just like us, through my website www.fredappleton.com.au I suggest that you read it at some point.

Also it's a good idea to bookmark this Bankruptcy and Houses website, or put it in your Favourites, so that you can come back and check it out again. To save your house there's a bit to take in.

In bankruptcy and "saving the house" issues (anywhere in Australia by the way) I have teamed up with Alan Nicholls, a likeminded Chartered Accountant and Bankruptcy trustee. In my Chartered Accountancy days, back into the mid 1990s, although I'd never met him, I used to refer clients to Alan Nicholls if they needed to go bankrupt, or had a Pty Limited company that was in trouble.

In about 2005/2006 we started to explore what could be done to save the house in bankruptcy. We both saw how pointless it was to have the bankruptcy trustee, or the bank, just sell the house asap, no matter what. A few years ago, that was the mindset.

Now I'd say that Alan Nicholls is now one of the leaders in the Saving the House in Bankruptcy field.

Read the rest of this website and then, if you'd like to discuss your position with Alan, call 1300 794 492 and ask to speak to Alan about "saving the house in bankruptcy". Say that you came from Fred Appleton's Bankruptcy and Houses website please.

If Alan is not immediately available his staff will take a few details off you, or call you back to get them, and Alan will then ring you. Alternatively, you could email him your details to alan@nichollsco.com.au

In your email set out your debt that is leading you to consider bankruptcy, tell him about your job and the amount of wage or salary that is normally credited to your bank account each pay period, your car situation, if you have dependent children or a non working spouse or partner, and then the house details. He'll want to know, and be able to check out, its address, its estimated current market value, the amount of the mortgage, the owners' names, other encumbrances, etc.

Include your phone number, that's important.

(Alan's separate website is www.nichollsco.com.au but there is no need to spend too much time looking at it, apart from helping you satisfy yourself that we are real, and that we are fair dinkum separate business entities. Alan's website doesn't say much, if anything at all, on "saving the house" issues. That's left to this website).

A bit of information though, if you go bankrupt, a registered bankruptcy trustee is appointed to administer your bankrupt estate. His job, his duty in fact, is to realize into cash whatever assets that you've got that by bankruptcy law, he can claim.

He then uses these funds, after disbursements and costs and taxes (including his fees), to pay something to your bankruptcy creditors. Alan takes his fee from the funds that your bankruptcy receives in this way. (He mostly does not need to also bill you separately as well).

Not all of a bankrupt's assets are at risk though. For example, generally speaking a bankrupt's ordinary household furniture and goods are safe. Cars are rarely lost in bankruptcy if the bankrupt wants to keep them, nor are tools of trade. Alan also lets you have up to $2,000 in the bank on the day that you are declared bankrupt. Not all bankruptcy trustees will do that.

Bankruptcy won't send you broke either. You'll still be able to earn and keep a good income.

As a bankrupt the very minimum amount that you can earn and keep, (called the Threshhold amount) is $850 per week, net after tax and after child support. (There's a separate formula to work this amount out, so I won't go into it here). If you've got dependants the $850 amount that you can keep is higher.

The $850 mentioned here applies if you've got no dependants. With dependants you can keep more, its $1,002 per week if you've got one dependant, $1,079 per week if you've got two dependants, $1,121 per week if you've got three dependants, $1138.73 per week if you've got four dependants, and $1,155 per week if you've got over 4 dependants. This is your spending money, yours to keep, yours to buy food and run the car, and pay the mortgage, and save, PLUS 50% of any amount by which you go over these threshold figures is yours too (the other 50% goes to your bankruptcy.

When you can absorb the arithmetic, life looks different.

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50% of your income over the Threshhold amount is paid into your bankruptcy for the (mostly) 3 years that you are bankrupt. This also provides a fund for the bankruptcy trustee to use to get paid.

With the permission of your bankruptcy trustee, you can also go overseas while you are bankrupt, but you must get the permission. Overwhelmingly you will get it. Discuss this with Alan if it's likely to be relevant.Concentrating on the house though, it's your equity in the house that the bankruptcy trustee can, and must sell. However, if the bankruptcy trustee so judges that it's in your creditors' best interests, it sometimes can be sold back to you after your 3 years of bankruptcy is over, or, during the 3 years of your bankruptcy he can sell your equity in it to somebody else, your mother or your father for example, or to your non bankrupt spouse or partner.

It's the bankruptcy's "interest" in your equity in the house that he can sell. Mortgages aren't changed, and the names on the title aren't changed, but the trustee will more than likely place a Caveat on the title to protect the bankruptcy's interest

The important thing to note is that the sale of your equity back to you at the end of your bankruptcy, or to anybody else during your bankruptcy, will be based on the value of the house at the time of sale, and not the value at the time of bankruptcy.

Sometimes you may have no equity in your house at the point of bankruptcy. What happens in this case is covered shortly.

Of course, unless you are up to date with your mortgage payments, or are somehow otherwise in breach of your mortgage, the bank or whoever has the mortgage may repossess the house.

Here's a simple scenario so you'll begin to understand how the house, quite legally and properly, can be saved.

Let's presume that the house is worth $450,000 and that the mortgage is $400,000. You can see there that the owners (presuming joint ownership) have $50,000 equity in the house.

Now, in this scenario, only one joint owner is going bankrupt and the mortgage is up to date and the presumption is that without your present debt burden, you'll be able to keep it up to date.

It's the bankrupt's half share of the $50,000 equity that the trustee is interested in, and by law, entitled to recover for the bankrupt estate, by forcing the sale of the house if necessary.

If nothing can be organised and so a sale takes place, the other non bankrupt joint owner is paid his or her share of the net proceeds.

Normally the bankruptcy trustee has got the 3 years of the bankruptcy available to him to realize these funds, or such longer time if the bankruptcy is extended, plus 6 more years after that. I think that by application to the court, or something like that, the period can be extended further.

The trustee must recognize the other owner's rights etc, but if the trustee has to force the sale, bankruptcy law is on his side.

A practical and fair solution to everybody, and one which Alan Nicholls often tries to accommodate if possible, is to offer the bankrupt's share of the house's net equity, in this example $25000, to the other joint owner (presuming that the house value remains the same). In this way, sometimes this transaction may not have to take place for 3 years. That then gives the other owner time to save the funds, or to see if somebody like grandma can come to the party.

As I said earlier, the values for this transaction will be the based on the house value at that time.

If the bankrupt estate can receive the $25000 in this way, or whatever the bankrupt's share of the net equity then is, then the trustee would have recovered, for the benefit of the creditors, the same amount as if he had sold the house on the open market.

And don't forget, the trustee can be paid his fees and costs from the amount so received, so he might not ask you to pay him separately. You should discuss the fee scenario with Alan.

Alternatively, presume that both joint owners go bankrupt. The trustee could decide not to sell the house for the three years of the bankruptcy. The bankrupts would still occupy it and pay the mortgage and all costs, but in those three years, they would have the chance to save up the $50,000 equity, or if the equity by then would be more, then the new amount would have to be saved.

After bankruptcy, you could buy the bankruptcy's "interest in the house" back off the trustee.

This sort of scenario, and others, could be looked at, particularly if there is currently little or no equity in your house.

The above are fairly simplified examples of how houses can be saved in bankruptcy.

There are of course other scenarios, such as no equity in the house at the time of bankruptcy.

In all of this there are ts to be crossed and an I or two to be dotted, but from your point of view, the important thing is that if you've got an emotional attachment to the house, and it makes sense to try and save it, then it is possible.

Not all bankruptcy trustees may look at this sort of thing. It's a matter of judgement.

If this is what you're looking for then, as I said above, you're invited to contact Alan Nicholls.   He will explain it all to you and if he chooses to do so he can agree to become your bankruptcy trustee, and handle your bankruptcy and "save the house" issue, no matter where you are in Australia.

(One thing, you'll tend to get lost in the system if Alan has to call you more than 2 times and you haven't answered or returned his calls, so please answer your phone, or return his message promptly, or email or phone him again).

This is not a costly exercise either. Alan gets paid out of the proceeds that your bankruptcy estate collects in. My service will liaise with Alan's office and then prepare the necessary bankruptcy (and houses) paperwork for you. The fee payable to my office will be about $595 for one owner going bankrupt, and $396 for any other joint owner if you both go bankrupt. Sometimes, if there's extra paperwork over and above the norm, it may be a bit dearer, but not much (say $40 to $50 or something like that.

Alan's office will refer your matter on to my office for processing, and my colleague Helen Millward will handle the bankruptcy paperwork and forms. (Helen is at my cost, not yours). You can discuss paying the above by instalments with Helen if that's needed.

If you become involved with us you'll find Alan very fair, no ego trips, but very professional, and he'll stick to the law.

As I've said earlier, in due course please take the time to read my earlier mentioned website on bankruptcy too, www.fredappleton.com.au My email address is hello@fredappleton.com.au

Now let's see if we can get you back on your feet and on with your life.

Fred Appleton

1300 794 492