Money

Bankrupts can see their homes sold to pay debts

BUSINESS MATTERS

One of the lesser known consequences of bankruptcy is the loss of your home, which can be sold in order to pay off debts, explains **Lisa Thomas** insolvency practitioner at Plymouth-based Neville & Co

We have all read the small print from our bank reminding us that 'your home is at risk if you not keep up your payments on your loan'. However it is not just the mortgage that you need to keep paying to prevent your home from being repossessed and sold. You can be evicted from your house if you are declared bankrupt.

A person can be made bankrupt if they owe more than £750 and don't pay it back. In these circumstances anyone made bankrupt may lose control over what happens to their home if they have even a modest level of equity in it.

On bankruptcy a trustee will be appointed to deal with the bankrupt's estate and they have a duty to realise any assets to attempt to repay the creditors in the bankruptcy.

This often incudes a freehold property that the bankrupt lives in, even if it's jointly owned with a spouse.

A restriction will be placed on the property with the Land Registry preventing the property from being sold or mortgaged without the trustee's permission.

The trustee will ask for the property to be valued independently. They will also work out the mortgage balance due with any redemption penalty to the bank and deduct the likely legal fees and agents fees to sell the house.

If the property is jointly owned often the split of equity is 50:50 unless they have information showing it should be split differently.

A trustee has three years to start the process to realise the equity in a bankrupt's home. If they fail to start the process within this time the bankrupt can keep the home.

This rule changed in 2004 because after going bankrupt in the late 1980s a number of people were caught out thinking their home was their own only for a trustee to then appear at a later date asking for the increase in value.

The trustee can either agree to sell the equity to a third party eg the spouse or a family member of the bankrupt or agree with the bankrupt that the house should be sold. If an agreement cannot be reached to sell amicably then the trustee will apply to court for an order that the property be repossessed and sold.

Case law dictates that for the first year of bankruptcy, the rights of the bankrupt and their family outweigh those of the bankruptcy creditors so a court will not usually grant a repossession order during the first year, however after a year the creditors and costs of bankruptcy will outweigh those of the bankrupt and any dependants living there so an order is more likely to be granted.

The three-year time restriction rule only applies to the bankrupt's main home so a trustee has longer to deal with any other properties a bankrupt may own.

Some individuals have been known to transfer their share of the property into another person's name (usually their spouse) just prior to bankruptcy in the mistaken belief it will stop the trustee from having an interest in their home however there are wide ranging and far reaching powers to set aside such transactions including a rule that allows a trustee an unlimited amount of time to go back where the intention was to put the asset beyond the reach of creditors.

If you or someone you know needs advice as to whether you should apply for bankruptcy or whether an alternative option might be more appropriate you should seek legal advice or call me on 01752 786800 to set up an initial free meeting.

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Firm's Islamic finance expertise

Seven finance specialists at law firm Foot Anstey have secured the Islamic Finance Qualification. The globally-recognised benchmark for Islamic finance practitioners is run by the Chartered Institute of Securities and Investment.

The qualification covers Islamic finance from both a technical and a shariah perspective. Foot Anstey's Islamic finance team, which includes banking, real estate and corporate lawyers, is headed by Imam Qazi. It has closed over £200 million worth of financing and investment deals for shariah compliant banks and Middle Eastern investors over the past year.

Stoical approach to finances readies workforce for reforms

BY VICKY SHAW

Pensions provider Nest reports there's been a fundamental shift in the way consumers handle their finances

The tough economy has triggered a new mood of financial stoicism among Britons and raised the chances of the Government's landmark scheme to place millions of people into workplace pensions being a success, a report has found.

A fundamental shift in the way consumers handle their finances has taken place, which has helped to make workers much more receptive to reforms which will automatically place them into pension schemes over the next five years, according to pension provider Nest and researchers the Futures Company.

The report was published as the first anniversary of auto-enrolment approaches. Over 1.6 million people have been placed in workplace pensions since the roll out of the scheme started last October with larger firms which tend to have more experience of pensions.

Three-fifths (61%) of people surveyed for the report who are yet to be placed in a workplace pension plan to stay in it, showing a sharp increase from less than half (47%), when similar research was carried out in 2011. Just under one fifth (18%) of consumers disagree with the idea of auto-enrolment, marking a downward shift from 27% in 2011.

So far, the rate of people staying in schemes once they have been opted in has been higher than many pundits had expected, with around nine in 10 people who are being auto-enrolled remaining in their pensions.

In trying to explain the "surprisingly low" opt-out rates, the report pointed to "growing evidence that the recession has changed consumer attitudes towards money".

More than half (57%) of people questioned said they will never spend money as freely as they did before the financial crisis, marking an increase from 48% a year ago and 43% in 2010.

Despite some more optimistic news about the economy in recent months, the report found that people are still keeping a tight control on their purse strings, with just 29% of people saying they do not pay off their credit card balance each month, down from 52% in 2011.

Three fifths (61%) of consumers said they think twice before making even a small purchase, up from 48% in 2009 and 45% of 25 to 34-year-olds regularly use their mobile phone to compare prices.

Of the workers questioned who have now been placed in a workplace pension, around half (51%) of those who had remained in said they felt it was time to start saving for retirement while a similar proportion (48%) agreed it made financial sense because the employer also contributes. However, around one in seven (13%) also said they had remained in their pension because they had been "too busy" to opt out.

> 'A definite intent in minds to save more and spend less'
>
> Pensions provider Nest

The report said: "It's this trend towards a sense of financial responsibility for the future that appears to provide more fertile ground for automatic enrolment than was expected.

"There is a definite intent in people's minds to save more and spend less... Automatic enrolment gives people a straightforward way to convert their best intentions into action."

The drive to get more people saving for their future aims to head off a looming retirement saving crisis, amid fears that people are living for longer but not putting enough aside for their later years.

Up to nine million workers are expecting to be newly saving into a pension or saving more as the reforms roll out.

Office for National Statistics (ONS) figures showed last week that the number of private sector workers saving into a company pension fell to an all-time low since records began in 1953 of 2.7 million last year, just before automatic enrolment started. The peak for private sector pension saving was in 1967, when 8.1 million people were saving into a pension.

Ill-briefed investors could have mis-selling claim

Hundreds of thousands of consumers in the South West could have been mis-sold investment products, according to research from claims management firm EMCAS.

EMCAS found that in Devon more than 60%of those surveyed had not been asked about their attitude to risk during the advice process for choosing an investment product .

Less than one in three had all the alternative investment products explained to them.

In Cornwall, just 29% said the full pros and cons of their product had been discussed as part of the sales process.

Of those polled only 23% in Cornwall, and less than a third in Devon, said their investment adviser had been upfront about how they make their money.

Almost a third of Cornish respondents expressed that they were not confident that they were given the right advice by their financial advisor in the first place. In Devon this figure stands at one in five.

EMCAS is urging consumers to get to grips with their investments to make sure they understand the nature of the products they hold.

The company believes that this is crucial if consumers who have been mis-sold a product are to seek redress.

CEO Craig Bernhardt said: "Consumers need to take charge, to look at their investments and ask themselves – why did I choose this product? What was it about the advice I was given that made me think it was right for me? Did the advisor talk to me about how happy I was to take risks? Is this product performing as I expected it to?

"There will be many consumers who took out investment products that knew they had risks attached But that is very different from those consumers who now look at their investments and don't understand how they were ever suited to their needs. These people need to look long and hard at their investments and then ask further questions about the advice they were given. This could well unearth that they have a case to be answered."