

INSOLVENCY GUIDANCE PAPER – NO. 3

BANKRUPTCY – FAMILY HOMES

INTRODUCTION TO INSOLVENCY GUIDANCE PAPERS

Insolvency Guidance Papers (IGPs) are issued to Insolvency Practitioner to provide guidance on matters that may require consideration in the conduct of insolvency work or in an Insolvency Practitioner's practice.

Unlike Statements of Insolvency Practice, which set out required practice, IGPs are purely guidance and practitioners may develop different approaches to the areas covered by the IGPs.

IGPs are developed and approved by the Joint Insolvency Committee, and adopted by each of the insolvency authorising bodies.

Authorising bodies

Recognised Professional Bodies

The Association of Chartered Certified Accountants
Insolvency Practitioners Association
The Institute of Chartered Accountants in England and Wales
The Institute of Chartered Accountants in Ireland
The Institute of Chartered Accountants of Scotland
The Law Society
The Law Society of Northern Ireland
The Law Society of Scotland

Competent Authorities

The Insolvency Service (for the Secretary of State for Trade and Industry)
Department of Enterprise, Trade and Investment (for Northern Ireland)

BANKRUPTCY – FAMILY HOMES

Introduction

1. It is in the interests of the debtor and the creditors, and in the wider public interest, that a family home, and any other residential property available for use by the debtor or the debtor's immediate family, are dealt with fairly and expeditiously in a bankruptcy. This can happen only if the debtor and others who may have an interest in the properties have sufficient information to understand how the bankruptcy affects them, and the options available to them. Failure by a trustee to provide information and explanations can prolong the realisation process, cause unnecessary distress to those involved, and also give rise to complaints.

Affected parties

2. Where the debtor has an interest in a property falling within the estate, the trustee should consider at an early stage whether the property is or has been the home of any person other than the debtor, and if that person could be affected by the bankruptcy and the sale of the property.
3. Those potentially affected include:
 - the debtor's spouse, former spouse, or unmarried partner;
 - members of the debtor's immediate family;
 - a joint legal owner;
 - anyone who has contributed towards the purchase of a property (including making mortgage payments);
 - anyone in occupation of the property other than under a formal tenancy agreement; and
 - a trustee under a previous bankruptcy.
4. A trustee will make enquiries of the debtor to establish the properties within the estate and whether any other persons may have an interest in them. It is recommended that a trustee should write to the debtor and any other affected parties as soon as possible, after the appointment or of becoming aware of the property or the third party interest. An initial communication may give a broad explanation of the process and timescales to be followed in the proceedings with further, more specific information provided as it becomes available. This is in addition to the trustee's statutory obligations.

Information to be provided

5. A trustee should provide the debtor and any other affected parties with sufficient information at appropriate times to enable them to understand the possible consequences of the bankruptcy, so that they can make an informed decision or seek advice. The information to be provided might include (as appropriate to the circumstances):
 - an explanation of the trustee's interest, and why that interest may continue after discharge from bankruptcy;
 - the circumstances in which the property will revert to the debtor, and why it may not revert;
 - an explanation of why the trustee needs to realise the property;
 - the way in which the property and the trustee's interest would be valued;
 - an explanation of how any changes in the value of the property, and payments under a mortgage, may be treated;
 - how any mortgage, or other security for the repayment of any loan, may be treated;
 - details of the steps that the trustee can take, and any timetable, for realising the property; and
 - a copy of the Insolvency Service leaflet "What will happen to my home".
6. It is also recommended that a trustee:
 - seeks offers from affected parties as appropriate, giving sufficient time for responses and explaining any dead-lines;
 - be prepared, in appropriate circumstances, to meet the debtor and other affected parties to discuss any problems that may arise; and
 - advises that affected parties should take independent advice.

Timing of communications

7. After the initial communications outlined above, it is recommended that a trustee writes regularly to the debtor and other affected parties pending realisation of the property. Whilst such communications should be as circumstances dictate, it is recommended that this should be normally every 12 months. The matters to be dealt with might include (as appropriate to the circumstances):
 - whether the trustee's intentions have changed, and the effect on the likely timetable for realisation;
 - any changes in the value of the property and the trustee's interest;
 - any changes to the positions of the affected parties; and
 - whether the trustee is seeking offers for the estate's interest in the property.

Dealing with offers

8. A trustee has a duty to obtain a proper price for the benefit of the estate, but the bankruptcy should not be unnecessarily protracted and account should be taken of the effect of future costs. It is recommended that the consequences of any action, or delay, in respect of a property should be explained to affected parties and where appropriate, to creditors.
9. If an affected party makes an offer to purchase the trustee's interest in the property the trustee should deal expeditiously with the offer. If the offer is rejected, the trustee should normally provide an explanation of why the offer was regarded as inadequate.

Guidance for affected parties

10. As noted above, it is recommended that a trustee advises the debtor and other affected parties to take independent advice in relation to the property. It may be appropriate for the trustee to recommend, in the first instance, contact with a solicitor or Citizens' Advice Bureau. The Insolvency Service leaflet "What will happen to my home" is available via www.insolvency.gov.uk

Duty of care

11. Nothing in this Paper imposes or implies any duty of care by an insolvency practitioner to a debtor, or any person with an interest in a property, over and above what may be imposed by legislation or case law.