



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER VI

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS ETC

Rights of occupation

171 Rights of occupation etc. of bankrupt's spouse

- (1) Nothing occurring in the period to which section 131 above applies shall be taken as having given rise to any rights of occupation under the Matrimonial Homes Act 1983 in relation to a dwelling house comprised in a bankrupt's estate.
- (2) Where a spouse's rights of occupation under the said Act of 1983 are a charge on the estate or interest of the other spouse or of trustees for the other spouse and the other spouse is adjudged bankrupt—
 - (a) the charge shall continue to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, shall bind the trustee of the bankrupt's estate and persons deriving title under that trustee; and
 - (b) any application for an order under section 1 of that Act shall be made to the court having jurisdiction in relation to the bankruptcy.
- (3) Where a person and his spouse or former spouse are trustees for sale of a dwelling house and that person is adjudged bankrupt, any application by the trustee of the bankrupt's estate for an order under section 30 of the Law of Property Act 1925 (powers of court where trustees for sale refuse to exercise powers) shall be made to the court having jurisdiction in relation to the bankruptcy.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (4) On such an application as is mentioned in subsection (2) or (3) above the court shall make such order under the said section 1 or the said section 30 as it thinks just and reasonable having regard to the interests of the bankrupt's creditors, to the conduct of the spouse or former spouse so far as contributing to the bankruptcy, to the needs and financial resources of the spouse or former spouse, to the needs of any children and to all the circumstances of the case other than the needs of the bankrupt.
- (5) Where such an application is made after the end of the period of one year beginning with the first vesting, under Chapter V of this Part, of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

172 Rights of occupation of bankrupt

- (1) This section applies where—
- (a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt; and
 - (b) any persons under the age of eighteen with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.
- (2) Whether or not the bankrupt's spouse (if any) has rights of occupation under the Matrimonial Homes Act 1983—
- (a) the bankrupt shall have the following rights as against the trustee of his estate—
 - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof, except with the leave of the court;
 - (ii) if not in occupation, a right with the leave of the court to enter into and occupy the dwelling house; and
 - (b) the bankrupt's rights shall be a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.
- (3) The Matrimonial Homes Act 1983 shall have effect, with the necessary modifications, as if—
- (a) the rights conferred by paragraph (a) of subsection (2) above were rights of occupation under that Act;
 - (b) any application for leave such as is mentioned in that paragraph were an application for an order under section 1 of that Act; and
 - (c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse.
- (4) Any application for leave such as is mentioned in subsection (2)(a) above or otherwise by virtue of this section for an order under section 1 of the said Act of 1983 shall be made to the court having jurisdiction in relation to the bankruptcy.
- (5) On such an application as is mentioned in subsection (4) above the court shall make such order under the said section 1 as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.

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- (6) Where such an application is made after the end of the period of one year beginning with the first vesting, under Chapter V of this Part, of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

173 Payments in respect of premises occupied by bankrupt

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of section 172 above or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt shall not, by virtue of those payments, acquire any interest in the premises.