



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER IV

##### ADMINISTRATION BY TRUSTEE

##### *Disclaimer of onerous property*

#### **315 Disclaimer (general power).**

- (1) Subject as follows, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
  - (a) any unprofitable contract, and
  - (b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section—
  - (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and
  - (b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

*Status: Point in time view as at 01/07/2005.*

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- (4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the estate under section 307 (after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value) [F1 or 308A], except with the leave of the court.
- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

#### Textual Amendments

**F1** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 117(4)

#### Modifications etc. (not altering text)

**C1** S.315, applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**C2** S. 315 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), ss. 154, 155, 164(1), 182(4), [Sch. 22 para. 7\(1\)](#); [S.I. 1991/878, art. 2, Sch. .](#)

**C3** S. 315 restricted (1.1.1996) by [1995 c. 30, s. 21\(2\)\(b\)](#) (with ss. 1(1), 2(2), 26(1)); [S.I. 1995/2963, art. 2](#)

S. 315 excluded (11.12.1999) by [S.I. 1999/2979, reg. 16\(1\)](#)

### 316 Notice requiring trustee's decision.

- (1) Notice of disclaimer shall not be given under section 315 in respect of any property if—
- (a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and
  - (b) the period of 28 days beginning with the day on which that application was made has expired without a notice of disclaimer having been given under section 315 in respect of that property.
- (2) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

#### Modifications etc. (not altering text)

**C4** S. 316 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

### 317 Disclaimer of leaseholds.

- (1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee or mortgagee and either—
- (a) no application under section 320 below is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served, or
  - (b) where such an application has been made, the court directs that the disclaimer is to take effect.

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- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 320, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

**Modifications etc. (not altering text)**

- C5** S.317 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)  
**C6** S. 317 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\), art. 13, Sch. 1 para. 1\(c\)](#)

**318 Disclaimer of dwelling house.**

Without prejudice to section 317, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

- (a) no application under section 320 is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this section was served, or  
(b) where such an application has been made, the court directs that the disclaimer is to take effect.

**Modifications etc. (not altering text)**

- C7** S.318 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**319 Disclaimer of land subject to rentcharge.**

- (1) The following applies where, in consequence of the disclaimer under section 315 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).
- (2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

**Modifications etc. (not altering text)**

- C8** s. 319 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**320 Court order vesting disclaimed property.**

- (1) This section and the next apply where the trustee has disclaimed property under section 315.
- (2) An application may be made to the court under this section by—

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- (a) any person who claims an interest in the disclaimed property,
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or
  - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (3) Subject as follows in this section and the next, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
- (a) a person entitled to it or a trustee for such a person,
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person, or
  - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (4) The court shall not make an order by virtue of subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of any order under this section shall be taken into account in assessing for the purposes of section 315(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (6) An order under this section vesting property in any person need not be completed by any conveyance, assignment or transfer.

**Modifications etc. (not altering text)**

**C9** S. 320 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**321 Order under s. 320 in respect of leaseholds.**

- (1) The court shall not make an order under section 320 vesting property of a leasehold nature in any person, except on terms making that person—
- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.
- (2) For the purposes of an order under section 320 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.
- (3) Where subsection (1) applies and no person is willing to accept an order under section 320 on the terms required by that subsection, the court may (by order under section 320) vest the estate or interest in the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

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The court may by virtue of this subsection vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

- (4) Where subsection (1) applies and a person declines to accept any order under section 320, that person shall be excluded from all interest in the property.

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**Modifications etc. (not altering text)**

**C10** S. 321 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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