



## Retaining the matrimonial home within a bankruptcy

*Note: certain names and details have been changed to protect the privacy of the persons involved.*

Mr Barnes was a builder, with his own business. His Wife had her own antique's business. They had two children of school age and owned a large house in a desirable area, which had a mortgage outstanding. Mr Barnes' business was becoming insolvent but Mrs Barnes had no financial problems. Mr Barnes wanted to know what to do to safeguard his position and was concerned that he did not lose the family home.

Mr Barnes had no income saved from his business and his only significant asset was his interest in the matrimonial home. As there was little prospect of him being able to obtain regular work if his business shut down and because Mr Barnes did not want to have to sell the family home to raise some cash, then a voluntary arrangement was not appropriate. This left the option of trying to struggle on or to await bankruptcy.

After a review, we found that Mrs Barnes had been married before and had contributed her divorce settlement monies to the purchase of the family home. It was Mr Barnes first marriage. In addition a number of improvements and building works had been carried out.

The family home was worth £350,000 with equity, after deducting the mortgage of £200,000.

We advised that Mr Barnes should petition for his own bankruptcy, which would immediately remove all the pressure and stress of creditors pressing for payment whilst enabling Mr Barnes to concentrate on protecting the family home from any claim the trustee in bankruptcy might make.

A trustee was appointed and as we expected he immediately claimed that he was entitled to half of the equity ie £100,000. We then advised Mrs Barnes to lodge a claim with the trustee saying that she was entitled to the £150,000 from the equity, being the sum which had been put into the property as a deposit from her divorce and that she had never gifted any of that money to Mr Barnes. The trustee had to accept, but then asked £25,000 being half the balance after deducting £150,000. We then advised Mrs Barnes to tell the trustee that she had paid for the costs of building works and improvements to the property and provided copies of bills and paperwork to support the claim. As Mr Barnes had little or no money during the build period it was clear that Mrs Barnes would have had to pay for these works.

Ultimately, the trustee agreed to accept £5,000 for Mr Barnes interest in the property instead of the £100,000, which appeared at first to be available.

### COMMENT

Because Mr and Mrs Barnes took advice they were helped to protect the family home. Without assistance from experienced insolvency personnel, the Barnes' could easily have accepted the trustee's claim at face value and either had to increase their mortgage or sell the home to raise the £100,000 asked for. Thus a careful review of circumstances can reveal information that may assist in the protection of assets.