



Enterprise Act 2002

2002 CHAPTER 40

PART 10

INSOLVENCY

Individuals

261 Bankrupt's home

- (1) The following shall be inserted after section 283 of the Insolvency Act 1986 (definition of bankrupt's estate)—

“283A Bankrupt's home ceasing to form part of estate

- (1) This section applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
- (a) the bankrupt,
 - (b) the bankrupt's spouse, or
 - (c) a former spouse of the bankrupt.
- (2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—
- (a) cease to be comprised in the bankrupt's estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (3) Subsection (2) shall not apply if during the period mentioned in that subsection—
- (a) the trustee realises the interest mentioned in subsection (1),
 - (b) the trustee applies for an order for sale in respect of the dwelling-house,
 - (c) the trustee applies for an order for possession of the dwelling-house,

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- (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
 - (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.
- (4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—
- (a) cease to be comprised in the bankrupt’s estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—
- (a) shall not begin with the date of the bankruptcy, but
 - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt’s interest.
- (6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—
- (a) in prescribed circumstances, and
 - (b) in such other circumstances as the court thinks appropriate.
- (7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt’s estate to give notice that this section applies or does not apply;
 - (b) about the effect of a notice under paragraph (a);
 - (c) requiring the trustee of a bankrupt’s estate to make an application to the Chief Land Registrar.
- (9) Rules under subsection (8)(b) may, in particular—
- (a) disapply this section;
 - (b) enable a court to disapply this section;
 - (c) make provision in consequence of a disapplication of this section;
 - (d) enable a court to make provision in consequence of a disapplication of this section;
 - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”
- (2) Section 313 of the Insolvency Act 1986 (c. 45) (charge on bankrupt’s home) shall be amended as follows—
- (a) in subsection (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time, ”,
 - (b) after subsection (2) insert—

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“(2A) In subsection (2) the charged value means—

- (a) the amount specified in the charging order as the value of the bankrupt’s interest in the property at the date of the order, plus
- (b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.”,

and

(c) at the end insert—

“(5) But an order under section 3(5) of that Act may not vary a charged value.”

(3) The following shall be inserted after section 313 of that Act—

“313A Low value home: application for sale, possession or charge

(1) This section applies where—

- (a) property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
 - (i) the bankrupt,
 - (ii) the bankrupt’s spouse, or
 - (iii) a former spouse of the bankrupt, and
- (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

(2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

(3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).”

(4) The following shall be inserted after section 307(2)(a) of the Insolvency Act 1986 (c. 45) (after-acquired property: exclusions)—

“(aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,”.

(5) In section 384(2) of that Act (prescribed amounts) after “section 273;” insert—

“section 313A;”.

(6) In section 418(1) of that Act (monetary limits in bankruptcy) after the entry for section 273 insert—

“section 313A (value of property below which application for sale, possession or charge to be dismissed);”.

(7) In subsection (8)—

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- (a) “pre-commencement bankrupt” means an individual who is adjudged bankrupt on a petition presented before subsection (1) above comes into force, and
 - (b) “the transitional period” is the period of three years beginning with the date on which subsection (1) above comes into force.
- (8) If a pre-commencement bankrupt’s estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—
- (a) cease to be comprised in the estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (9) But subsection (8) shall not apply if before or during the transitional period—
- (a) any of the events mentioned in section 283A(3) of the Insolvency Act 1986 (c. 45) (inserted by subsection (1) above) occurs in relation to the interest or the dwelling-house, or
 - (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.
- (10) Subsections 283A(4) to (9) of that Act shall have effect, with any necessary modifications, in relation to the provision made by subsections (7) to (9) above; in particular—
- (a) a reference to the period mentioned in section 283A(2) shall be construed as a reference to the transitional period,
 - (b) in the application of section 283A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which subsection (1) above comes into force, and
 - (c) a reference to the rules is a reference to rules made under section 412 of the Insolvency Act 1986 (for which purpose this section shall be treated as forming part of Parts VIII to XI of that Act).

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