

**WILL COURT AWARD CHILD CUSTODY TO A BANKRUPT?
Straits Times – 30 January 2005**

Question:

I AM in my 30s. I intend to divorce my husband, who was declared a bankrupt early last year due to debts with several banks. He had used my name to apply for a bank loan. The outstanding amount is about \$8,000 and he is still paying off the minimum amount every month.

If I file for divorce, what is my share of the sale proceeds of our HDB flat? Can the Official Assignee (OA) have the first claim on my share? If yes, can I make a claim on my husband's Central Provident Fund (CPF) money in order to buy another flat with my daughter? If I am able to produce an IOU note proving that my husband used the funds I took up for him, can the law order him to service the loan even if we are divorced?

I earn a gross salary of \$2,500 a month. I want to have full custody of my daughters, aged five and eight. Will the law award child custody to my husband, who is an undischarged bankrupt?

Answer:

A DIVORCE petition can only be filed if one of the five grounds is met. I assume you know what these are and that you meet the requirements.

Once the petition is filed, the court will decide how the matrimonial assets are to be divided between you and your husband. Matrimonial assets refer to any property acquired by either, or both spouses after the date of the marriage, and would include the HDB flat, your husband's CPF assets and any assets acquired by you. The court will divide the matrimonial assets in just and equitable proportions, taking into consideration a number of factors, such as:

- How much each party contributed in terms of money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- Any debt owing by either party for their joint benefit or for the benefit of any child from the marriage;
- The needs of the children (if any from the marriage);
- How much each party contributed to the welfare of the family, including looking after the home or caring for the family; and
- The extent, if any, of the assistance or support given by one party to the other party, including giving support to the other party in carrying out his or her occupation or business, as well as the length of the marriage.

As you can see, the court looks at the whole picture before deciding how matrimonial assets are to be divided.

Based on the brief facts you have given, it is not possible to state the quantum share amount that you are entitled to.

As a general rule, once a person is made a bankrupt, his assets vest in the OA. The exceptions include an HDB flat (and proceeds from the sale of that flat) and CPF monies.

I would suggest that you consider the option of selling your flat very carefully. Important factors in this regard include the amount outstanding, and whether the CPF Board or the bank has the first charge on the property. Have you satisfied the HDB's requirements that will allow you to sell the flat? Is your house in negative equity?

An alternative to selling is to buy out your husband's share.

As for whether you can claim a share of your husband's CPF monies, the answer is yes if the CPF assets fall within the category of matrimonial assets.

Since CPF monies cannot be withdrawn until a member reaches the age of 55, your entitlement to your husband's CPF assets would normally be satisfied by giving you a larger share of the other matrimonial assets.

So in short, you cannot actually use his CPF funds to buy another flat for yourself and your daughters.

In any event, the CPF Board will not approve of a CPF member using his funds if he is not also named as an owner of the flat.

As for the loan, if you had signed the loan application form, then the bank will look to you for the repayment of the loan. The IOU will assist you in filing a Proof Of Debt against your husband's estate should you wish to recover the loan from him.

On your final question, when determining who is to have 'custody' (which is really the right to make major decisions concerning the welfare and upbringing of the child, such as education, health and religion) and 'care and control' of the child (which gives the parent the right to have the child live with him/her on a daily basis), the most important consideration the court looks at is the welfare of the child.

The court will look at all aspects of the well-being and upbringing of the child.

A parent who is an undischarged bankrupt cannot be automatically ruled out from having custody or care and control of the child.

The court will take into account a number of factors:

- The role each parent has played in the child's life and the stability in life which each parent is able to offer;
- Whether, in the child's interest, the status quo should be maintained so that the child should continue to stay in the living environment he is accustomed to, or with a care-giver that he is attached to;
- The age of the child: All things being equal, a young child should be looked after by the mother; and
- The wishes of the child, where they are old enough to express an independent opinion.
- If the child is female, the court is more inclined to grant her care and control to the mother.

Naina Parwani
Partner
Parwani & Co