

(This Q & A appeared in the Sunday Times on September 25, 2005)

Q THERE is a bankrupt who owes money to five creditors, including myself.

He has to pay only \$250 a month in total to us; yet, he still owns two properties which are not fully paid for.

One is a four-room HDB flat jointly owned with his wife, the other a condominium owned jointly with his wife and brother. A third party is said to be servicing a condo loan on behalf of the bankrupt.

Can a bankrupt continue to own a private home like this? If not, what can I do to force a sale of the condo so the proceeds can be used to repay the creditors?

A Once an individual becomes a bankrupt, the Official Assignee (OA) comes into the picture. His role is to gather all the bankrupt's assets and to dispose of them, raising as much money as possible to satisfy creditors.

As for the HDB flat: The HDB Act states that an HDB flat does not vest in the OA once a person is declared a bankrupt. This means there is nothing much you can do about this.

With regards to the private property: The Bankruptcy Act makes it clear that the bankruptcy order will not affect the rights of any secured creditor -that is, the bank - to realise or otherwise deal with his security.

The OA will not insist that the bank sell the property. While banks have the prerogative to take back the security if the borrower becomes bankrupt, it is up to the bank to exercise that right, even if the instalments are paid on time by a third party.

My understanding of the practice is that the OA may ask the bankrupt to sell his share of the property to the other joint owners.

But this is done on a case-by-case basis and where the net current value of the property exceeds the outstanding loan amount to the bank.

The OA would also be mindful not to burden the other joint owners, who may not be in a financial position to purchase the bankrupt's share.

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