

# Beating bankruptcy

**Andrew Bowers of Re10 Insolvency Practitioners examines the options available to individuals in situations where a petitioning creditor has recently enforced bankruptcy and the debtor owns a home with sufficient equity to pay off their unsecured debts and the costs and expenses of the bankruptcy in full.**

According to the Government's latest statistics there were over 63,000 bankruptcies during the year to 31st Mar 2007, up by 33% on the previous year. I estimate that, of these, almost 10,000 were as a result of creditor petitions; the main petitioners being H M Revenue & Customs and Local Authorities for non payment of tax and council tax respectively. About 6,000 bankrupts per annum have an interest in a property. Many of these own assets that are more than sufficient to pay their debts in full but, for one reason or another they have not done so and a bankruptcy order has been made.

Getting out of bankruptcy is not a simple process and there is more than one choice. Advice on options should always be sought quickly in order to reduce some of the substantial costs that will inevitably be incurred.

## **Individual Voluntary Arrangement (IVA) or Fast Track Voluntary Arrangement (FTVA)**

Post bankruptcy IVA's have distinct advantages over an annulment application with bridging finance. The procedure for obtaining annulment of the bankruptcy order following the approval of an IVA was very much simplified by the Enterprise Act 2004. The fact that an independent trustee can be prevented from being appointed can also result in substantial savings for the bankrupt.

It is surprising that FTVA's are little used and that the Insolvency Service is reluctant to promote or implement them.

An IVA/FTVA is an agreement that is entered into between the individual and his creditors. It is often appropriate in situations where sufficient funds can be raised to pay either the debts, costs and expenses of the bankruptcy in full or a substantial dividend to creditors. The IVA/FTVA proposals can be drafted in such a way as to enable:

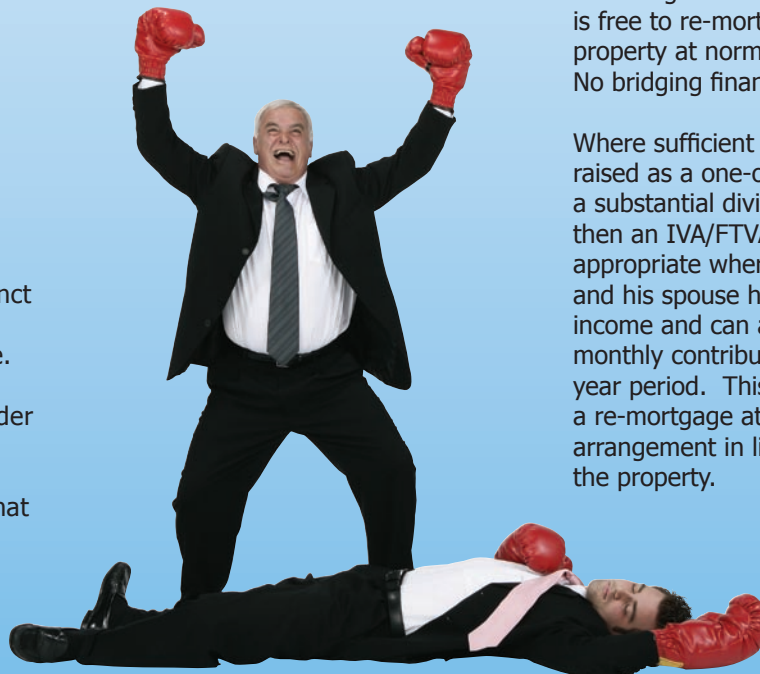
- interest on debts to be frozen
- all creditors to be bound by the terms of the IVA/FTVA proposals.

- an annulment of the bankruptcy order to be obtained following approval of the IVA/FTVA.
- fees to be fixed so that there is more certainty as to the likely dividend to creditors.
- a mechanism so that creditors claims can be agreed
- the debtor to be free to re-mortgage to raise the agreed lump sum in settlement of creditors claims

Following the approval of the IVA/FTVA an annulment (cancellation) of the bankruptcy order is obtained by making a simple application to court. No attendance at court is required.

Following the annulment the debtor is free to re-mortgage his or her property at normal interest rates. No bridging finance is required.

Where sufficient funds cannot be raised as a one-off lump sum to pay a substantial dividend to creditors, then an IVA/FTVA may still be appropriate where the bankrupt and his spouse has disposable income and can afford to pay a monthly contribution over a five-year period. This could also involve a re-mortgage at the end of the arrangement in lieu of any equity in the property.



## Bridging Finance

Another option to consider is to obtain bridging finance with a simultaneous application to court for an annulment of the bankruptcy order and a subsequent re-mortgage.

However, it is important to appreciate that this route might not be appropriate or even possible where, for example:

- the debts, costs and expenses of the bankruptcy cannot be paid in full. There may be numerous other unsecured debts in addition to that of the petitioning creditor.
- the initial cost of raising finance (which I understand to be as much as 10 per cent for bridging finance, plus interest, plus whatever fee is charged for arranging the re-mortgage) cannot be paid in full. This route almost always involves the appointment of solicitors (who often require up front fees) and attendance at court which also adds to the cost. The overall costs when compared to an IVA/FTVA is usually more expensive.
- this option cannot prevent an independent Trustee from being appointed and the consequential escalation in costs.
- the headroom is insufficient to cover the loan-to-value criteria of the lenders.
- the property is jointly owned.

- the property is jointly owned and the non-bankrupt spouse has a claim under the equity of exoneration.

Bridging finance is not required where the bankrupt has obtained his discharge. This is usually after 12 months of the making of the bankruptcy order, but could be after only several months.

Leaving matters this length of time would almost certainly result in an independent trustee being appointed.

## Third Party Funds

Where debts are small and third party funds are available to pay these in full together with the official receivers fee, Trustee's fees and petitioning creditors costs, it may be appropriate to pay these in full then make an application to court for an annulment. However, it is important to act quickly.

## Staying Bankrupt

The bankrupt might be financially better off by staying bankrupt and simply negotiating and agreeing the value of the Trustee's interest in the property where this is small. This option could particularly be appropriate where the bankrupt's spouse has a valid claim under the equity of exoneration.

This could eliminate all or part of the Trustee's claim over the equity in the property. Such claims often arise where funds have historically been raised against the security of a jointly owned property from which the non-bankrupt spouse has received

no benefit whatsoever, for example, where funds have been invested in a failed business venture.

## Where to get help

The Official Receiver is unable to provide any advice to the bankrupt.

Government advice organisations and debt advice Charities are simply not geared up to advise on complex debt matters.

General practice solicitors who do not employ specialist insolvency practitioners often struggle to get to grips with understanding the legislation and processes involved in seeking bankruptcy annulment orders.

Mortgage brokers and other financial advisors are often motivated by the opportunity of providing bridging finance and a re-mortgage without considering all the options.

On the one hand, it is important that advice is sought from a qualified insolvency practitioner who will make an assessment of the circumstances and provide best advice on the full range of available options, whilst advice is also required in relation to raising finance.

Re10 and Turnaround Finance bring together the requisite skills to enable each case to be assessed on its own merits by people who are experienced in such matters and qualified to do so. It is imperative that such advice is sought at an early stage in order to avoid some of the costs referred to above.

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Call us on **0800 169 1539**  
for a free, confidential, no obligation discussion.

This leaflet has been prepared for information only. It is targeted at those individuals who are considering or have just become bankrupt and have a property or assets they want to secure from their Trustee and / or need to obtain a cancellation of their bankruptcy order.

