

SCENARIO 3

BANKRUPTCY – BUY TO LET PROPERTY

This sample scenario is designed to illustrate the basic features of bankruptcy, its effect on the family home where there is equity, the treatment of buy to let properties and includes the possible outcome for both secured and unsecured debt.

1. MARTIN'S STORY

Martin is an accounting technician who earns a monthly net income of € 1,555. He lives with his wife Monica who works in a bank. They have no children. They have a family car, which is required for Martin's work, and is valued at € 9,000 and furniture which is valued at € 1,500. Martin and Monica bought their home thirteen years ago. The house is held in Martin and Monica's joint names. It is worth € 300,000, and the outstanding mortgage is € 255,000. Martin and his brother Michael jointly own a two bed apartment currently valued at € 130,000 with an outstanding mortgage of € 210,000. The apartment is currently occupied at a rent of € 900 per month. Martin has discussed his intention to enter into bankruptcy with Michael and explained the implications. Martin has a total of € 98,000 in unsecured debt consisting of an overdraft (€ 45,000) and credit card debts (€ 53,000). His monthly debt commitments are as follows:

- Mortgage repayment on his and Monica's home of € 821 (50% of mortgage payment)
- Mortgage repayments on apartment of € 676 (50% of the mortgage payment)
- Unsecured debt repayments of € 1,500

He has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from his creditors. Martin is unable to pay his debts in full as they fall due and acknowledges he is insolvent.

Martin wishes to petition to adjudicate himself bankrupt.

2. MARTIN'S CURRENT INSOLVENT POSITION

Assets	Value	Loan	Monthly Income	
Family Home	€ 300,000	€ 255,000	Net Income	€ 1,555
Apartment	€ 130,000	€ 210,000	Apartment Rent	€ 450
Car	€ 9,000			
Furniture	€1,500			
Total	€ 440,500	€ 465,000	Total	€ 2,005
Debts			Monthly expenses	
Secured debts			Total Set Costs ¹	€ 737
Family home mortgage		€ 255,000	Rent/Mortgage ²	€ 821
Apartment mortgage		€ 210,000	Childcare Costs ²	€ 0
Unsecured debts			Reasonable Living Expenses	€ 1,558
Bank Overdraft		€ 45,000	Apartment Mortgage Repayments	€ 676
Credit Card debts		€ 53,000	Total expenses before unsecured debt repayments	€ 2,234
Total		€ 563,000	Deficiency prior to meeting unsecured debt obligations (€2,005-€2,234)	(€ 229)

3. ELIGIBILITY

Martin believes he is eligible for bankruptcy because

- ✓ Martin is unable to meet his obligations to his creditors.
- ✓ Martin has considered whether his circumstances could be more adequately dealt with through a PIA and Debt Settlement Arrangement [DSA] with regard to the nature and value of his affairs but he was unable to agree same with his creditors. Accordingly Martin will need to provide an affidavit proving this to the satisfaction of the Court.
- ✓ Martin must accompany the petition with a Statement of Affairs³ which shows that his debts exceed his assets by at least € 20,000. In this case debts exceed assets by € 122,500 (€ 563,000 - € 440,500).

¹ The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the website (www.isi.gov.ie). Martin's circumstances meet those covered by Table 8. "Two adult household, no children, vehicle" of the Guide (Two adults = € 1,473.29). For the purposes of this scenario it is assumed that Martina and Monica split the Total Set costs between them, leaving €736.65 for each to bear. For illustrative purposes and ease for the reader, the RLE figure is rounded to €737.

² The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses". For the purposes of this scenario it is assumed that Martin and Monica split the total set costs and mortgage payments evenly between them.

³ A Statement of Affairs is a document setting out the individuals assets, liabilities, income and expenditure at adjudication.

4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

1	Pay fee	Transfer € 650 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. The relevant account details are set out at Appendix 1: Official Assignee's Account Details
2	Complete documents	Prepare Petition, which must be verified by Affidavit and a Statement of Affairs. Both the Affidavit and Statement of Affairs must be sworn. Please read carefully the notes for completion of forms at www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments .
3	Get documents stamped	The above documents must be stamped. Stamp Offices are located around the country, details of which can be found on : www.courts.ie/offices.nsf/webcobycounty?OpenView The necessary stamp duty must be paid and currently it is € 82.50 for the Petition and € 20 for the Affidavit.
4	Get court date	File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 650 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.
5	Declared Bankrupt	At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.
6	Meet Official Assignee (OA)	An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.
7	Statutory Sitting	Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your Statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.
8	Next three years	Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.
9	Discharged	Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.

* The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

5. DEBTOR JOURNEY TO BECOMING BANKRUPT

The following process was drafted in consultation with the Examiner's Office and reflects the documentary requirements of that office in relation to a bankruptcy application.

The ISI Bankruptcy Division

- a) Martin (the applicant) will lodge € 650 electronically with the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1).

The Examiner's Office

- b) Martin or his solicitor will then prepare a Petition and a Statement of Affairs. The Petition must be verified by an Affidavit. Both the Statement and Affidavit must be sworn before a Commissioner for Oaths (after they have been checked by the Examiner's Office). These forms together with other relevant forms are available on the Courts Service website (www.courts.ie) and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details his property, income and liabilities. Notes for completion of forms are available on the ISI website.
- c) When he has completed the forms he may submit them in draft format to the Examiner's Office for consideration to ensure that they are in order to be placed before the High Court. He can do this in person; by post or by email to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: examinersmail@courts.ie)
It is his responsibility to ensure that all his papers contain information that is true and accurate.
- d) The Examiner's Office will check that he has completed the forms correctly and if all is in order they will return the forms to him to be sworn before a Commissioner for Oaths. If there are any errors or omissions in his draft forms, the Examiner's Office will notify him and return the forms to him for correction. Once he has made the appropriate corrections to the forms, he should then re-submit them to the Examiner's Office.

- e) When his forms are in order, he must take the forms and go to his local Stamp Office in his local Court district and pay the necessary stamp duty on them (currently € 82.50 for the Petition and € 20 for an Affidavit. A list of Stamp Offices around the country can be found here : www.courts.ie/offices.nsf/webcobycounty?OpenView

If he wishes to proceed with his application he should submit the following list of documents to the Examiner's Office together with the receipt for the € 650 lodgement paid to Official Assignee's Office.

1. The **Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 2 copies. There is stamp duty due on the Petition of € 82.50. There is stamp duty of € 20.00 due on an Affidavit.
2. **His Statement of Affairs** (Form no. 23) plus 2 copies.
Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

3. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 2 copies. There is no stamp duty due on this form.
 4. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 2 copies. There is no stamp duty due on this form.
 5. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 2 copies. There is no stamp duty due on this form.
- f) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
- g) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- h) Once he has been given a Court date he must attend Court on that date – this will take place in the Four Courts in Dublin. The Court number will be available in the Court legal diary, available on the Courts Service website www.courts.ie
- i) Bankruptcy is a private and confidential process until he has been adjudicated bankrupt.

Appearance at the High Court

- j) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- k) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- l) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- m) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- n) His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him
- o) His secured creditors can:
 - rely on security (i.e. sell property or allow mortgage be paid off) and not claim in bankruptcy
 - abandon security and claim for full debt in bankruptcy
 - sell or value their security and claim for the debt shortfall in the bankruptcy.

The ISI Bankruptcy Division

- p) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement/ order will last for a period of up to 5 years.
- q) He will be automatically discharged from bankruptcy in 3 years.
- r) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

*The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

6. POSSIBLE OUTCOME FOR MARTIN FROM BANKRUPTCY

Martin has now been adjudicated bankrupt and all his property is now vested in the Official Assignee.

The Official Assignee will assess the current mortgage payments by Martin to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

Home with Monica

The family home has a value of € 300,000 and there is an outstanding mortgage of € 255,000. There is therefore € 45,000 equity in the family home. As Martin's share of the family home is now vested in the Official Assignee, 50% of the € 45,000 belongs to the Official Assignee.

Monica will have the option to purchase the Official Assignee's interest in the family home for € 22,500 [50% of the Equity]. The Official Assignee will have to apply to Court to sell this interest to Monica. If Monica is unable to raise the funds immediately she may apply to the Court for a postponement on the order for sale to enable her to raise the finance. The Court will consider the interests of the creditors, and Monica in determining whether to postpone a sale. If Monica cannot purchase the Official Assignee's interest, the Official Assignee will apply to Court for an order for Sale. For the purposes of this scenario it is assumed Monica is able to raise the € 22,500 and the Official Assignee gets Court approval to sell his interest to Monica.

BUY-TO-LET PROPERTY

The Official Assignee will instruct the tenant to pay the rent directly to him as the rent will form part of the bankruptcy estate for the benefit of the creditors. The Official Assignee will not pay the mortgage in respect of the property. The lending institution may on foot of its mortgage agreement appoint a receiver to collect the rent and from that time onwards the rent will no longer be paid to the Official Assignee. On the basis that there is no equity in the property and the bank prove the security to the satisfaction of the Official Assignee he will surrender possession to the bank where no receiver has been appointed. For the purposes of this scenario we assume the Bank appoint a receiver, values its security at € 130,000 and claims for the shortfall of € 80,000 in the bankruptcy.

OTHER ASSETS

Martin has an entitlement to keep essential assets (e.g. car, furniture, tools of his trade) up to the value of € 6,000. As Martin's owns 100% of the furniture valued at € 1,500 and the car is valued at € 9,000, he has exceeded the € 6,000 threshold for essential assets by € 4,500. Martin must select which of his assets are to be regarded as essential assets. For the purposes of this scenario we assume Monica pays € 4,500 to the Official Assignee in order to retain all essential assets above the € 6,000 threshold.

INCOME

The Official Assignee will seek an Income Payment Agreement shortly after adjudication for the surplus of Martin's income over his Reasonable Living Expenses. This agreement, which will be reviewed every six months will last up to 5 years.

Martin will have his income assessed solely and therefore only receives a deduction of 50% of the RLE of the household.

Martin's monthly income and expenses after adjudication

Net monthly income	€ 1,555
Less	
Total Set Costs	€ 737
Rent/Mortgage	€ 821
Reasonable Living Expenses	€ 1,558
Available to bankruptcy estate	(€ 3)

For the purposes of this scenario it is assumed that Martin cannot reach an Income Payment Agreement with the Official Assignee as there is no surplus per month available to the bankruptcy estate after having deducted sufficient sums in respect of Reasonable Living Expenses. The Official Assignee will review Martin's income and expenditure should there be any change in his financial circumstances.

There will be a total amount of € 17,200 (See Appendix A) available for unsecured creditors as a final distribution of the estate, and Martin has no repayment obligation for the remaining unsecured debt. Martin will be automatically discharged from bankruptcy after three years once he has fully cooperated with the Official Assignee.

Martin's position before and after bankruptcy

Assets	Before bankruptcy	Dividend	Debt write down	After OA Income Payment Order	Repayment %
Family Home	€ 300,000				
Apartment	€ 130,000				
Car	€ 9,000			€ 6,000 ¹	
Furniture	€ 1,500			€ 1,500	
Total	€ 440,500	€ 0	€ 0	€ 7,500	
Debts					
Secured debts					
Family Home	€ 255,000				
Apartment	€ 130,000				
Unsecured debts					
Personal loan	€ 45,000	(€ 4,348)	(€ 40,652)		9.6%
Credit card debts	€ 53,000	(€ 5,121)	(€ 47,879)		9.6%
Apartment	€ 80,000	(€ 7,731)	(€ 72,269)		9.6%
Bankruptcy Fees		(€ 9,800)			
Total (100%)	€ 563,000	€ 27,000	€ 160,800		
Deficiency/Surplus	(€ 122,500)			€ 7,500	

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

Administration Fee	€ 2,000
Realisation Fee	€ 7,300 ²
Distribution Fee	€ 500
	€ 9,800

¹ We assume the car depreciates €3,000 over the life of the bankruptcy.

² The Realisation Fee is calculated based on a sliding scale as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter at 1%.

7. MARTIN'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

- m) Martin's accommodation costs / mortgage repayments are reasonable as assessed by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- n) The family home is held in Monica's sole name and Martin pays a contribution to the mortgage going forward.
- o) Martin's unsecured debt has been discharged.
- p) Martin will have repaid € 17,200 of his unsecured debts and the remaining € 160,800 is written off. This represents a 9.6% return for the unsecured creditors based on amounts outstanding prior to Martin being adjudicated bankrupt.
- q) Martin is solvent.
- r) After three years Martin will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.
- s) Martin is not in a position currently to contribute to the bankruptcy estate. This will be reviewed and once he is in a position to do so an Income Payment Agreement will be put in place. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

8. APPENDICES

APPENDIX A: DIVIDEND PAYMENT TO UNSECURED CREDITORS

Assets Realised			
Family Home	€ 22,500		
Car excess	€ 4,500		
Total Assets in Estate	€ 27,000		
Income Contribution			
€ - x 5 years	€ - ¹		
Total Income in Estate	€ -		
Dividend Calculation			
Total value in Estate	€ 27,000		
Less Costs and Fees	<u>€ 9,800</u>		
Available to unsecured Creditors	€ 17,200		
Unsecured Creditors		Dividend Paid	Percentage Return
Bank Overdraft	€ 45,000	€ 4,348	9.6%
Credit Card	€ 53,000	€ 5,121	9.6%
Apartment	€ 80,000	€ 7,731	9.6%
Total	€ 178,000	€ 17,200	

¹ Martin's Income and Expenditure will be reviewed on a six monthly basis. The proceeds of any contribution made to the bankruptcy estate will then be distributed by dividend to the unsecured creditors.