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## HOW SAFE IS THE FAMILY HOME?

## THE PIT FALLS OF TRANSFERRING YOUR HOME TO YOUR SPOUSE AS AN ASSET PROTECTION MEASURE

Many business owners or employees in high risk jobs transfer their family home to their spouse as an asset protection measure to keep it “safe” from creditors.

But is the family home really safe?

The answer is, probably not!

If all you do is transfer the family home to your spouse without your spouse paying market value for your interest in the family home or if you continue to contribute to payment of the mortgage after it has been transferred, then the family home is **not** safe.

Even purchasing the family home in your spouse’s name will not keep it safe, if you provide part of the funds to purchase the family home or contribute to paying the mortgage.

If the family home is transferred to a spouse for no consideration or if you continue to make financial contributions to the family home you retain an equitable interest in the family home. So whilst the transfer may be effective in stopping creditors from lodging caveats over the family home, if the worst happens and you end up in Bankruptcy, your equitable interest in the family home will be realised by the Bankruptcy Trustee for the benefit of your creditors.

Many of our clients tell us in a first meeting that their family home is safe because it is in their spouse’s name but this is rarely the case. The questions we ask (and a bankruptcy trustee will ask) are:

1. Where did the money (deposit) come from to pay for the family home?
2. Where does the money come from to pay the mortgage?
3. Who has paid from renovations and upkeep of the family home?
4. Was the family home initially purchased in your spouse’s name?
5. When was the family home transferred to your spouse’s name?

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The name on the certificate of title for a family home is simply the starting point for investigating whether a person has an interest in the family home. Whether person has an interest in the family home will be determined primarily in light of who has made financial contributions towards the family home.

In the majority of cases, the family home may be registered in the spouse's name but the couple pool their financial resources and then pay the mortgage and living expenses from those pooled resources. If this is the case, a bankruptcy trustee will generally be entitled to 50% of the equity in the family home.

In circumstances where the family home is transferred to a spouse shortly prior to bankruptcy for no consideration the worst-case scenario is that the transfer could be considered a transfer to defeat creditors which carries criminal ramifications.

Accordingly, it is important that you seek qualified legal and accounting advice prior to implementing any asset protection strategies to ensure that the strategies will be effective.

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