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Separating to save the house, not ideal

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As we struggle through the current economic climate, many business owners are going to great lengths to minimise claims on their personal and business assets.

This includes business owners separating from their partners and transferring matrimonial property into their partner's name to try and defeat creditors.

Unfortunately, many people are still under the false impression that if they separate before declaring bankruptcy they will be successful in avoiding creditors, according to Anton A Richardson, family lawyer at msl (Michael Sing Lawyers).



"When deciding who will win in competing claims between the creditor and the non-bankrupt spouse, we look to specific legislation that deals with this issue," said Mr Richardson.

The Bankruptcy and Family Law Legislation Amendment Act 2005 addresses what should happen in cases where family law and bankruptcy law collide.

If a court has made an Order for property adjustment and it subsequently comes to the court's attention that there has been a miscarriage of justice, then the court can overturn that earlier Order.

A miscarriage of justice can be due to fraud, duress, suppression of evidence (including failure to disclose relevant information), false evidence or other circumstance.

The court can also overturn a Binding Financial Agreement if the court is satisfied that either party entered into the agreement with the purpose of defrauding or defeating a creditor of the party, or if either party entered into the agreement with reckless disregard of the interests of a creditor of a party.

An application to the court to overturn the Order or Binding Financial Agreement can be made by a person affected by the Order, including a bankruptcy trustee of the creditor who cannot recover the debt because of the Order.

Once the court has overturned the Order or Binding Financial Agreement then it can make a new Order taking into account the effect of the proposed Order on the ability of a creditor of a party to recover the creditor's debt.

"If your business is in trouble, before wasting time and money trying to hide your assets, seek professional legal advice to learn how to best address the situation and protect your property," Mr Richardson advised.

Anton A Richardson is a lawyer at msl and is also an Australian Accredited Mediator in accordance with the Australian National Mediator Standards.

Msl is a one of Queensland's largest full-service law firms with award winning offices on the Gold Coast and Brisbane CBD.

They have specialists dealing in all areas of law including business and commercial, property and conveyancing, family law, workplace law, migration, litigation, intellectual property, sports law and environmental planning.

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