

# Law change stops race to court

Leigh Adams

Changes to the Family Law Act which are expected to become law early in the new year should put an end to the race to the courts which has traditionally involved many small-to-medium enterprises and the wives of their predominantly male owners.

The amendments will mean that a woman who is divorcing her bankrupt husband, and people to whom the husband and his business owe money, will no longer have to be first up and best dressed in the fight to determine who gains access to the husband's assets.

Although the changes will apply equally to men who divorce their bankrupt wives, such actions are relatively uncommon. The number of men going bankrupt far exceeds the number of women who find themselves in that situation.

Until now, if a husband was declared bankrupt before property orders were made, his wife missed out entirely because all the money went to the creditors. Conversely, if the husband became bankrupt after property orders were made, the creditors missed out because the lion's share had already gone to the non-bankrupt wife.

This winner-takes-all approach encouraged the non-bankrupt spouse and the bankrupt's creditors to see who could get into court first to gump the other by



Spouses and creditors of bankrupts will get a fairer go with changes to the Family Law Act.

Photo: ANGELA WYLIE

having bankruptcy or family court property settlement orders issued.

Next month's changes address three separate scenarios. The first is where a couple separates after one spouse has become bankrupt. The second is where a spouse becomes bankrupt during property settlement proceedings but before the Family Court has made property orders. The third is where a spouse becomes a bankrupt after property orders have been made but not yet implemented.

Under the new laws, the non-bankrupt spouse in the first scenario can have his or her interest in the property recognised

and take part in a distribution from the bankrupt's estate.

In the second scenario, the trustee in bankruptcy will be able to make submissions on behalf of the bankrupt's creditors.

In scenario three, the trustee will be able to ask that the Family Court proceedings be reheard so that the interest of creditors can be taken into account.

These changes are a natural progression of those made in December last year, when the Family Court was given the power to cancel pre-nuptial agreements that were entered into with the intention of defeat-

ing claims that creditors might make against a spouse who accepted that he or she might one day experience financial difficulties.

Such agreements were particularly common with self-employed professionals and business owners.

If the changes are effective, they will produce greater transparency and give both creditors and non-bankrupt spouses a fairer go than was previously the case.

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