

Bankruptcy

What is bankruptcy?

Bankruptcy is a legal process to deal with unmanageable debt, but it also has serious long term consequences. Before deciding to go bankrupt, get legal advice or seek free financial counselling to understand your options.

The government agency that manages bankruptcy is the Australian Financial Security Authority (AFSA). Visit the AFSA website at www.afsa.gov.au. AFSA cannot give you legal advice about your options, but can provide information which may help you decide what to do.

Types of bankruptcy

There are two types of bankruptcy.

Voluntary bankruptcy: You can choose to go bankrupt, but you need to carefully consider your options and understand the consequences. Your Bankruptcy Form can be lodged online with AFSA. Get legal advice or see a free financial counsellor first to explore all options.

Forced bankruptcy: A creditor can ask the Court to make you bankrupt if they have a judgment for \$10,000 or more, and they have issued a bankruptcy notice. If you receive a bankruptcy notice or court papers, get legal advice quickly.

What is a trustee?

Once you are made bankrupt, a trustee is appointed to manage your bankrupt estate. Property that is covered by bankruptcy will vest in (is taken by) the trustee. You are required to co-operate with your trustee by giving financial details and answering questions. In most cases

the Official Trustee is appointed, although you can ask for a private registered trustee to manage your bankruptcy.

The trustee will deal with your creditors for debts incurred before the date of your bankruptcy, and distribute any money from your estate to help pay those debts.

Alternatives to bankruptcy

Informal arrangements: It is possible to negotiate with creditors to either waive or reduce debts. Get help from a free financial counsellor, who can speak to your creditors on your behalf to propose an arrangement that is manageable. A free financial counsellor can be contacted on the National Debt Helpline on 1800 007 007.

Debt Agreement: A debt agreement is a formal arrangement to pay creditors a certain amount over a fixed period of time. The agreement is managed by an administrator, and must be voted on by creditors before it takes effect. Fees also apply, and it is not for everyone based on income and asset thresholds.

Personal Insolvency Agreement: this is different to a debt agreement and has different criteria. Contact AFSA for further information.

Advantages of bankruptcy

Most debts incurred before the date of bankruptcy are released once your bankruptcy finishes. Creditors cannot contact you and must deal with the trustee.

Bankruptcy

Disadvantages of bankruptcy

- Not all debts are released, including debts incurred after the date of bankruptcy.
- You will lose assets which are taken by the trustee to sell to pay your creditors (more information is set out below).
- Your bankruptcy is noted on your credit record and remains on the National Personal Insolvency Index permanently.
- You cannot be a director of or manage a company whilst bankrupt.
- Some occupational licences are affected by bankruptcy.
- Your ability to travel overseas is restricted.
- If you earn over a certain threshold, you will be required to make contributions to your bankruptcy. Your ability to borrow is also affected.

What things can I keep if I am bankrupt?

Certain property vests in (is taken by) the trustee to sell to pay creditors. However there are exceptions:

- Household goods
- A motor vehicle up to a certain value**
- Tools of trade up to a certain value**
- Superannuation, although if you receive an income stream, it may be assessed for contributions.
- Payments or money and any assets bought with that money, from personal injury or compensation claims (including certain statutory assistance schemes).
- Payment from superannuation are not protected if they were made prior to the date of bankruptcy.

** These values change annually and are published on the AFSA website.

What will I lose if I am bankrupt?

Any property (land or house) that you own will vest in the trustee. It is only your share that vests, so if you own a house jointly with another person, the trustee becomes the joint owner with the other person.

The other person may be asked to sell the property, or buy out your interest. If there is a mortgage and little equity, you may be able to negotiate with the trustee to keep the property as long as you maintain payments.

If your car is worth more than the threshold amount, it may be sold subject to any outstanding loan. Again, if you

are paying it off and there is little equity, you may be able to retain it as long as payments are being made.

After-acquired assets are things like an inheritance, gift or lottery win. The trustee may claim after-acquired assets for a period of time even after you have been discharged.

A court or the trustee can review the sale or disposal of assets prior to bankruptcy and can set aside the transaction.

Debts that are not included

Debts you must still pay include:

- Child support payments
- Court imposed penalties or fines
- Any student assistance or supplement loans
- Generally tax debts are released, but be aware that the ATO may deduct any money you owe pre-bankruptcy from your tax refund
- Certain Centrelink debts, but only if the payments were obtained by fraud which needs to be proved
- Council and water rates
- Secured debts, such as your mortgage

How long will I remain bankrupt?

Normally, bankruptcy lasts for 3 years and one day from the date that you submit your Bankruptcy Form. However, if you fail to co-operate with your trustee, that period of time may be extended for up to 8 years. You are also required to assist your trustee for a period of time after you are discharged.

It is possible to annul the bankruptcy to be released sooner than 3 years, either by paying your debts plus expenses in full. There are other legal options, including applying to court, but you should get legal advice first.

More information

Deciding to go bankrupt is a serious step with far reaching consequences. Each person's circumstances are different and it is important to understand that there are alternatives which are less drastic and may be appropriate for you. For free financial counselling and legal advice to help you decide what to do, contact:

National Debt Helpline 1800 007 007

Legal Help Line 1300 366 424

This information is general and not a substitute for legal advice. The Legal Services Commission provides free advice for most legal problems. 08/23