

BANKRUPTCY



This information is general and should not be a substitute for legal advice. The Legal Service Commission provides free advice for most legal problems. Contact the Legal Helpline on 1300 366 424 www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

WHAT IS BANKRUPTCY?

Bankruptcy is a way of saying "I can't pay my debts!" The general effect of bankruptcy is to wipe the slate clean, so that you can make a new start. However, it is not to be taken lightly because it has serious and long term effects. Get legal advice or financial counselling advice as soon as possible if you are considering bankruptcy or have received a Bankruptcy Notice or Court documents.

THERE ARE TWO TYPES OF BANKRUPTCY

Voluntary bankruptcy: You can go bankrupt yourself for any amount of money that you cannot pay (within limits). Always ask for advice before making this decision, as there may be other options available to you.

Forced bankruptcy: A creditor can ask the Court to make you Bankrupt. This is only if you have been given a Bankruptcy Notice for a Court judgment for more than \$5,000. If you get a Bankruptcy Notice or Court papers relating to Bankruptcy, get help to work out your options.

WHAT IS A TRUSTEE?

A trustee is someone appointed to take charge of your property and handle your bankruptcy. You must co-operate with your trustee, such as by giving your financial details when asked. In most cases the trustee will be the Official Trustee, although a registered trustee may be used. After you are declared bankrupt, unsecured creditors are required to deal only with your trustee. This takes the pressure off you. If creditors contact you, refer them to your trustee owner (wife).

ALTERNATIVES TO BANKRUPTCY

Financial Counselling: Talk to a financial counsellor who can help you consider other options, such as hardship or a waiver of debts. See the SA Financial Counselling Association website at www.safca.info for your nearest Financial Counsellor or phone 1800 007 007.

Informal Arrangements: You can make an informal arrangement with your creditors to pay outstanding debts. There is no cost to do this, although your creditors do not have to accept your proposal. Get assistance from a Financial Counsellor to see if this option is appropriate for you.

Personal Insolvency Agreement: There is another formal agreement which you can make with your creditors. This requires a majority in number and at least 75% in value of the creditors present either personally, by telephone, by attorney or by proxy, at a meeting of creditors and voting to accept the offer which is then binding on all creditors. A registered bankruptcy trustee can tell you whether a formal arrangement such as this is practical. Fees are charged.

21 Day Moratorium: You can file a notice of intent to go bankrupt which stops creditors taking action to enforce payment for up to 21 days. In those 21 days you can consider your position and perhaps negotiate payment with creditors. Get advice about this first. Only one such notice can be filed each 12 months.

ADVANTAGES OF BANKRUPTCY?

- Most debts incurred by you before the date of going bankrupt can be written off
- Creditors cannot contact or harass you
- You will not be sent to gaol for not paying your bills

WHAT THINGS CAN I KEEP IF I AM BANKRUPT?

Necessary household furniture and personal things

- Motor vehicles with equity under the threshold of \$7,350*
- Tools of trade used to earn income up to a value of \$3,500*

*NB these amounts change each year, so check with AFSA

- Some insurance policies
- Money or assets (including a house) obtained from personal injury or compensation damages. If the house has been acquired using some compensation monies and the rest from income,



only that percentage of the house paid for by compensation money is protected

- Superannuation (unless received as a pension, in which case it may be assessed as income)
- A house bought with a Veteran's Affairs loan

DISADVANTAGES OF BANKRUPTCY?

You may lose things of value that you own (more detail below – What Things Will I Lose?)

- Bankruptcy will be noted on your credit record for 7 years from the date it starts
- You cannot be a director, promoter or manager of a company without permission of the court
- Some occupational licences are affected by bankruptcy
- You cannot travel overseas without the written permission of your trustee
- You must advise your trustee of any changes in your financial circumstances or your address. Failure to disclose this information can result in the bankruptcy period being extended
- Gas, electricity and phone service providers may demand a security deposit if your bills are not paid
- If you earn more than \$52,500* you may have to make contributions towards your bankruptcy
- You cannot borrow more than approximately \$5,000* without telling the lender you are bankrupt. This includes writing a cheque for goods or services for more than \$5,000

*NB these amounts change each year, so check with AFSA

WHAT THINGS WILL I LOSE?

- Any house or land that you own. If you own a house or property jointly with another person the trustee will own your share of the property. Pressure may be placed on the other owner to either sell or buy your interest. If necessary your trustee can get a court order for the sale of the property, which adds significantly to cost
- Expensive jewellery and valuable furniture
- If the equity in your motor vehicle is over the threshold amount, it will be sold, and the borrower paid out.
- Stocks and shares
- Inheritances received under a will, gifts and any lottery winnings received while you are bankrupt
- A court can look at fraudulent or undervalued transactions to return assets when the real reason for disposing of the property was to save it from your creditors. Things that you gave away or sold for less than market value up to 5 years ago may also be recovered by your trustee.

GOODS YOU ARE PAYING OFF

If you are paying off goods you may be able to keep them as long as you keep up the payments. If you are still bankrupt when the goods are paid off (whether by you or by someone else), the trustee may be able to take the goods because it has become an asset (See "What Things Will I lose?"). The trustee can only take the goods before the debt is paid off with the consent of the person or company the money is owned to.

CAN I KEEP A BANK ACCOUNT?

Yes. In most instances you can still operate an ordinary bank account.

ARE THERE ANY DEBTS NOT WIPED OFF?

Debts you must still pay include:

- Child Support payments
- Court imposed penalties or fines
- Unliquidated claims (for example, motor vehicle property damage) where the precise amount of the claim against you had not been agreed or ordered before you went bankrupt
- Debts incurred through fraud
- Tax debts - the Australian Taxation Office may deduct any money you may owe them from your tax refund cheque during the period of the bankruptcy
- Centrelink and Austudy debts are deductible from future benefits after the bankruptcy has been discharged where Centrelink have proved a fraud has been committed. Overpayments are not included in this so will be wiped off at the end of the bankruptcy period.
- Student assistance/supplement loans (HELP - Higher Education Loan Program)/HECS -Higher Education Contribution Scheme/ SFSS)

You will also be responsible for all debts incurred after the date of your bankruptcy.

HOW LONG WILL I REMAIN IN BANKRUPTCY?

The normal period of bankruptcy is 3 years from the date that the Statement of Affairs is lodged by you but you can be kept bankrupt for up to 5 or 8 years. Even after that period finishes, you are still required to co-operate with the trustee. Your bankruptcy will be annulled if you repay your debts in full, including the trustee's fees. This can be a very expensive option, depending how much work the trustee has done and fees can be very high.



WHAT DOES IT COST TO GO BANKRUPT?

AFSA handles your bankruptcy if you decide to go bankrupt. If a creditor has to go to Court to make you bankrupt, it will have to pay the Court costs, although those costs are payable out of your estate (assuming you have any assets) in priority to other debts. A fee is charged for administering your estate and this is based on the money received from the sale of your assets. Registered trustees charge fees on an hourly rate. They can usually only recover their fees from assets realised in the bankrupt estate.

If you decide on a Debt Agreement or a Personal Insolvency Agreement, fees will be charged.

MORE INFORMATION

Bankruptcy is a serious step and has long reaching and sometimes unintended effects. Get advice first about the alternatives to bankruptcy from one of the following organisations:

- Legal Service Commission of SA Legal Helpline 1300 366 424
- Financial Counselling Helpline Doorways Service 1800 007 007
- Australian Financial Security Authority (AFSA) 1300 364 785

AFSA has the forms to complete to go bankrupt on www.afsa.gov.au