Bankruptcy

This fact sheet is for information only. You should get professional legal or financial counselling advice about your personal situation.

Main ideas

• Declaring yourself bankrupt can give you a fresh start.

• Bankruptcy is a big decision with many consequences. Carefully consider the advantages and disadvantages for you.

• Financial counsellors can help. Their services are free.

In this fact sheet:

Bankruptcy – protection from legal action but you lose some control

When you become bankrupt, a bankruptcy trustee takes control of your property and finances. In exchange, you are protected from legal action by the people/companies you owe money to (your creditors). You will be released from many, but perhaps not all, of your debts.

You can go bankrupt yourself, or be forced into bankruptcy. Bankruptcy means you are unable to pay your debts when they are due. This is called being 'insolvent'. There isn't a minimum amount you need to owe before you can choose to go bankrupt. If you are being forced into bankruptcy, the debt must be over $10,000. Read our fact sheet about Being Made Bankrupt if you are being forced into bankruptcy and get legal advice immediately.

Bankruptcy usually lasts 3 years and 1 day but can be extended to 5 or 8 years. It can be extended if you behave dishonestly (don't tell the truth about all your property and debts), don't follow the rules or don't co-operate with your trustee, or if you don't pay income contributions when you should.

Choosing to go into bankruptcy

You can decide to declare yourself bankrupt. This is called a 'debtor's petition'. Always talk with a free and independent financial counsellor first and explore other options. Bankruptcy may be suitable if:

- You will not have enough money to live on if you pay all the monthly repayments on your loans and debts.
- You do not have assets that could be sold to repay the debts (for example, you rent your home and your only other asset is a low value vehicle).
- You understand, and can live with, the restrictions that bankruptcy will bring now and in the future.

Being forced into bankruptcy

If you owe more than $10,000 and you are unable to pay your debts as they fall due (keep up with your repayments), your creditors may be able to force you into bankruptcy. This is called a 'creditor's petition'.

You should get legal advice if you receive any of the following:

- A statement of claim.
- A bankruptcy notice.
- A creditor's petition.

- Threats of being forced into bankruptcy.

For more detailed information, read our fact sheet about Being made Bankrupt.

‘Temporary debt relief’

If you are considering bankruptcy, but feel you are being rushed into a decision because your creditors are starting enforcement action you can consider a ’Temporary Debt Relief’ application. For example, there may be a court order to take money from your bank account or wages (called a ‘garnishee’) to pay your debts, and this is not leaving you enough money to live on.

Applying for Temporary Debt Relief (also known as a Declaration of Intention to File a Debtor’s Petition) gives you a 21 day freeze to get advice on bankruptcy and decide what to do next.

Temporary Debt Relief is generally not a good option if you own a house or assets, or have anything else to lose by going bankrupt.
Applying for ’Temporary debt relief’ is an act of bankruptcy. Your creditors can use it to make you bankrupt even if you choose not to go ahead.

If you are facing urgent enforcement action, you could also make an application to pay by instalments. For details about this process read our fact sheet about the NSW Local Court. This can stop your goods being taken, or reduce the amount paid under a garnishee.

You can also try negotiating directly with the lender, but it is often difficult by that stage.

The advantages of declaring bankruptcy

Bankruptcy can be a fresh start. The advantages include:

- Most creditors will stop contacting you.
- Legal action to recover many types of debt will stop.
- You are released from most debts once your bankruptcy ends (usually 3 years and 1 day).
- You can keep protected property such as essential household goods and a cheap motor vehicle (in NSW, your essential household goods are normally protected whether you go bankrupt or not).
- You can still earn an income (with some exceptions) – but you may need to pay contributions if you earn above a certain amount.

You can keep protected property

If you are bankrupt, you can keep some property. But everything else will be taken and sold to pay your creditors.

You can keep items such as:

- ordinary clothing
- essential household property (such as furniture and appliances but not antiques or high value items)
- tools of trade up to the prescribed amount ($4,350, October 2024)
- a car/motorcycle worth up to the prescribed amount ($9,400, October 2024)
- superannuation, as long as it stays in your super fund
- life insurance policies
- payments from life insurance or superannuation received on or after the date of the bankruptcy. Payments received before the date of the bankruptcy are not protected.
- compensation received directly by you for personal injury (or property bought almost entirely with compensation money) – but you must have documents showing a clear money trail to show that's where the money came from.

Get legal advice first before you go bankrupt.

Disadvantages of bankruptcy

The main disadvantages of bankruptcy are:

- **Your property and assets are taken**
  Your assets (property you own) may be sold to pay your debts (except protected property). This includes your home if you own it or are paying off a mortgage.
- **Your cash is taken**
  Any money you have in a bank account or in cash will be taken to pay your debts. You will only be left with a small amount to live on ($1,000-$2,000).
- **You may have to pay contributions**
  If your annual income is over a certain amount ($71,826.30 (after tax) base amount, October 2024), you may have to pay contributions towards your debts. The income you can earn before having to pay contributions increases if you have dependants.
- **Trustee investigations**
  The trustee can investigate your financial affairs going back many years. They can reclaim assets you have given away or sold for less than the true value.
- **Bankruptcy does not release you from all types of debt**
  You will not be released from court fines, council rates, penalties and fines imposed by a court, most HELP/HECS-type debts and student loans, child support debts, family law maintenance payments or debts incurred by fraud. You will still have to pay these debts.
- **You will not be released from unliquidated debts**

These are debts where liability has not been admitted and the amount owed not agreed. For example, damage to another person's vehicle after an accident. If you have debts like these, get legal advice before considering bankruptcy.

- **Money or property received while you are bankrupt may be taken**
  The trustee can take inheritances, property or money you get while you are bankrupt. If there is enough money to pay all your debts, interest and your bankruptcy administration costs, your bankruptcy is annulled and ends early. Anything left over is paid to you. But usually this means you've paid a lot more than what your debts were, so it's better not to go bankrupt if you are expecting to receive any money or property.
- **You can't work in some jobs**
  Some professions or licensed trades have restrictions or 'show cause' requirements if you are bankrupt, or have been bankrupt in the past. Some work-related licences also require you not to be in bankruptcy. For example, accountants, lawyers, real estate agents, and some government and managerial positions. Check with your professional body, or trade union.
- **You'll be banned from being a company director**
  You cannot be a director of a company or otherwise actively involved in managing a company.
- **You may have problems getting credit, rental property and other services**
  Bankruptcy will be listed on your credit report for 5 years or 2 years from your discharge, whichever is longer. It will also be listed on the National Personal Insolvency Index forever (this can be searched by the public for a fee). This may make it difficult to borrow money – especially during the credit report listing. It may also make it difficult to rent property, access telecommunications and other services or buy insurance.
- **You may be restricted from overseas travel**
  You need to apply for your trustee's written permission to go overseas, and pay a fee. You may have to surrender your passport.
- **Borrowing and trading may be restricted**
  You need to tell the lender or customer that you are an undisclosed bankrupt before you borrow, accept goods on credit or hire purchase, or offer to supply goods or services if the value is over the prescribed amount ($7,046, October 2024).
- **You may be restricted from taking or continuing legal proceedings**
  You will not be able to take or continue legal proceedings without the permission of your trustee, unless the matter is about personal injury to you or your family.

You can check the prescribed amounts on the Australian Financial Security Authority website.

Other things to think about when considering bankruptcy

Bankruptcy can have long term consequences

Bankruptcy may not be wise for small debts. Consider this case study:

> Jodhi went bankrupt because she couldn't pay a $5,000 credit card debt. Two years later she inherited $40,000 when her grandfather died.
>
> By then the cost of ending the bankruptcy (paying debt including interest, plus all the expenses and fees of the trustee) was over $30,000. She got less than $10,000 from her inheritance.
>
> She also continued to have problems getting pay TV services connected and getting further loans because her credit report showed she had been bankrupt.

When you own property with someone else

The trustee will take your share of the property.

The other owner(s) will be given the option to buy your share of the property from the trustee.

If they cannot afford to do this, the property may be sold and the other owner(s) given their share of the proceeds. The other owner should get their own legal advice if they don't agree with the trustee's assessment of their share.

Your share will go towards your debts and bankruptcy administration costs. If there is anything left over, it will be paid to you and your bankruptcy may be annulled (but you will have paid much more than you owed originally, because of trustee fees and other bankruptcy administration costs).

Secured assets may be at risk for a long time

The trustee is interested in the equity you have in the asset. Your equity is the value of the asset (such as your home) less the amount you owe (for example, the amount of your mortgage).

If you have little or no equity in an asset, the trustee will sometimes allow you to keep it for the time being (for example, if your mortgage is almost the same as, or more than, the value of your home).

If your equity is enough to cover the costs of the sale and pay out something to your creditors, the trustee will likely sell the asset. They will pay out the secured creditor (your mortgage) and pay the rest to your creditors and for the trustee's fees. This can happen at any time during bankruptcy and for a long time after you have been discharged from bankruptcy. Over time, the value of your home may go up, and your mortgage may go down, and so your equity will increase. The trustee can sell your home later if your equity increases.

Anything you pay during this time to stay in the home (for example, your mortgage, rates, insurance) is essentially ’rent’ for being allowed to continue to live there.

If the trustee has not sold the asset (for example, your home) by the time you are discharged from bankruptcy, you may be able to buy the property back from the trustee. It is up to the trustee to agree.

If you are hoping to keep your home after bankruptcy, get legal advice before you go bankrupt. It’s very important you understand it can be high risk and high cost, and that it will be out of your control whether you are successful. It will be the trustee’s decision whether they want to sell or not, and will be affected by property price movements.

Criminal offences

Most bankruptcies run smoothly, without any issues. But there are some criminal offences related to bankruptcy. Most of these relate to dishonesty, hiding property or income, not telling the trustee about income or property or name or address changes or not cooperating with the trustee.

Travelling overseas without trustee permission, or taking out credit without disclosing you are bankrupt are also offences.

It is also an offence if, in the two years before you apply for bankruptcy, you have either:

- been involved in gambling or hazardous speculation
- taken on credit where it was clear you could not pay it back.

> Talk to a financial counsellor or get legal advice, before going bankrupt, if you have any concerns.

Applying for bankruptcy

Your bankruptcy application may be rejected if the Official Receiver:

- thinks you can pay your debts in a reasonable time, and are unwilling to pay
- sees you have been bankrupt 3 times before, or once before in the last 5 years.

Step 1. Talk with a free financial counsellor

A financial counsellor will talk through the consequences of bankruptcy and what it means for you. They will also talk through the alternatives so you can make sure this is the best decision for you.

If bankruptcy is the wrong decision for you, it can be an extremely costly mistake and usually cannot be ‘undone’. This fact sheet is only a small outline of the main consequences of bankruptcy and you should always get personalised advice on your situation.

You can find a financial counsellor through the National Debt Helpline website or by calling the National Debt Helpline on 1800 007 007.

Step 2. Read the information provided by AFSA

The Australian Financial Security Authority (AFSA) regulates bankruptcy and processes the forms. They also act as the trustee in many bankruptcies. Read AFSA’s online information about ‘What is bankruptcy?’ and the ‘Consequences of bankruptcy’.

Step 3. Complete the bankruptcy form

Complete the bankruptcy form online. You will need to

- Create an account with AFSA before you can begin.
- Verify your name and contact details.
- Submit documents that prove your identity.

Complete the form on paper. Call ASFA on 1300 364 785 and ask them to send you a paper form. Alternatively, most financial counsellors have a paper form.

Whether online or on paper, answer every question. If the question is not applicable, answer NO.

List all your debts, including those that will not be wiped out by bankruptcy. List all your assets, including your protected property. You may include notes about why you think the property is protected. **Get legal advice before going bankrupt if you have any property, whether you think it should be protected or not.**

Be very careful to make sure the information you give is accurate and complete.

Contact a financial counsellor if you need help to fill out these forms.

Step 4. What happens next

If accepted, AFSA will send you a written confirmation with your confirmation number which you can give to your creditors.

If not accepted, you should be notified with reasons for the rejection. Talk to a financial counsellor if you’re not sure what to do next.

Need more help?

There is more information in our Being made Bankrupt fact sheet.

For a list of other resources visit our Useful Links webpage.

Last updated: December 2024