

## Being made Bankrupt

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

### Main ideas

• Bankruptcy is serious. Everything you own (except some protected items) will be sold to pay your debts.

• Don't ignore court documents especially a bankruptcy notice, or a creditor's petition. If you don't respond in time, you could end up bankrupt.

• Other people can force you into bankruptcy if you owe more than \$10,000.

• You can be made bankrupt without ever turning up to court.

• Watch out for strata, school fees, and business debts.

• Financial counsellors can help. Their services are free.

## In this fact sheet:

### Bankruptcy is serious

• Don't ignore court documents

• Common causes of bankruptcy: strata, business debts, school fees

### Steps a creditor takes to make you bankrupt

• Step 1. Statement of Claim

• Step 2. Default judgment

• Step 3. Bankruptcy Notice

• Step 4. Creditor's Petition

• Step 5. Sequestration Order

## Bankruptcy is serious

If you are forced into bankruptcy, all your property, apart from some protected items, will be sold and the money paid to the people you owe money to (your creditors).

A bankruptcy trustee takes control of your property and finances. If you own your home or

you are paying it off, it can usually be taken and sold by the trustee. Any other property or valuables you own may also be taken to be sold.

You may also have to pay contributions from your income (depending on what you earn) and face other restrictions and consequences.

[Read our Bankruptcy fact sheet for a summary of what bankruptcy means.](#) Always get legal or financial counselling advice about your personal situation.

## **Don't ignore court documents**

If you receive paperwork, such as a Statement of Claim, Bankruptcy Notice, or Creditor's Petition, a letter from the bankruptcy trustee, or find your bank account is frozen, get legal advice urgently!

**The earlier you act, the more options you usually have.**

**If you ignore court notices, a court can make you bankrupt without you being there.** If you have already been made bankrupt, there are time limits for having the decision reviewed.

If you are made bankrupt when you could have paid the debt, it will cost you many thousands of dollars more than the amount of the debt to try to set aside (undo), or annul (pay out) the bankruptcy. Sometimes tens of thousands or more, depending on how complex the dispute or the bankruptcy is. You may have to pay all the costs of the creditor's legal team, and the trustee, as well as your debts.

If you own your home or other assets (or expect to receive anything like an inheritance), you need to get legal advice immediately. In most cases, assets including your home will be sold if you become bankrupt. [Read our fact sheet about Bankruptcy, for more information.](#)

If you have already been made bankrupt, get advice immediately.

## **Common causes of bankruptcy: strata, business debts, school fees**

You can be made bankrupt for any type of debt over \$10,000. But the most common types of debts we see in the bankruptcy courts (the Federal Circuit Court) are:

1. **Strata levies.** This may be special levies, or quarterly levies added up over time. Strata companies are very active in the bankruptcy lists. The owners' corporation know you have an asset (your property) that could be forcibly sold to repay the debt. If you have a dispute with strata, get legal advice as early as possible. Do not simply stop paying your levies because fees, interest and legal and court costs can build up so high you can be made bankrupt and forced to sell your home. Keep paying whatever you can afford, and get legal advice (if there is a dispute), or financial counselling advice (if you are having trouble with payments) as early as possible.

[Marrickville Legal Centre can give advice on strata disputes \(but not bankruptcy matters\).](#)

2. **Business or commercial debts.** These debts can be sizeable. Business deals may have gone wrong, or a business ends up closing down. If you dispute the debt, talk to a private solicitor urgently for legal advice, or ring the Small Business Debt Helpline on 1800 413 828 for financial counselling advice.
3. **School fees.** Occasionally schools will take bankruptcy action against one or both parents. If you dispute the debt, get advice as early as possible. You may need to get a copy of the contract signed when your kids were enrolled. Both parents may be jointly and severally liable – the school can chase whoever they think is more likely to pay the debt.

## Steps a creditor takes to make you bankrupt

The most common way to force someone into bankruptcy is set out below – it can take as little as 8 weeks from the start of court action to get to a bankruptcy hearing. But there is an even faster process some creditors can use to go straight to a Creditor’s Petition (see Step 4 below).

### Step 1. Statement of Claim

The creditor starts court action. They serve (send) you a Statement of Claim or Summons. This may be posted to your last known address in some cases (depending on where you are in Australia). The Statement of Claim or Summons lists the money the creditor claims you owe.

Get legal advice urgently. In NSW, you have 28 days to respond. In other states it may be shorter (for example, 21 days). [Read our fact sheet about NSW Local Courts](#) to understand how to respond to court action in NSW.

### Step 2. Default judgment

If you don’t respond to the Statement of Claim within 28 days, the creditor can apply to the court for a default judgment. (Different timeframes apply outside of NSW.)

In NSW, the Court will not tell you when a default judgment is made against you. Contact the NSW courts registry on 1300 679 272 to find out if there is a judgment listed.

#### A default judgment debt can seem unfair

If you don’t think you owe the money claimed, get legal advice immediately – there are time limits to set aside a judgment or appeal.

It is very hard to accept something that seems unfair. But if you have no legal defence, you need to pay or face the consequences, which may include bankruptcy. Pay the judgment

debt if you can. However, some people own nothing, have very little income, and don't care about the other consequences of bankruptcy. [Read our NSW Local Court fact sheet for information about other court enforcement options that you may experience.](#)

Get legal advice immediately. Our [NSW Local Court fact sheet](#) has information about how to respond to court action in NSW.

### Step 3. Bankruptcy Notice

The creditor must serve (send) you a Bankruptcy Notice. This usually gives you 21 days to pay the debt in full.

#### What you should do

**Get legal advice immediately.** Your options include:

- **Do nothing** (and risk being made bankrupt) – check our Bankruptcy fact sheet for some information about what bankruptcy could mean for you. Talk to a free financial counsellor for advice if you think bankruptcy may be your best option.
- **Pay in full** by the due date (within 21 days).
- **Negotiate repayments** with the creditor (and start paying if you haven't already). Ask them to agree in writing not to take further action if you keep making repayments.
- **Oppose the Bankruptcy Notice.** It is rare for there to be grounds to challenge the Bankruptcy Notice, it may only add legal costs to your debt – get legal advice immediately!
- **Pay some of the debt to get it under \$10,000** before a Creditor's Petition is issued. Sometimes the creditor may not accept payments, but it is worth trying if you can find the money. Creditors may also add in one of your other creditors to get the total amount owed over \$10,000. Or the creditor may add in other amounts that have become due since the judgment.
- **Apply to the court to pay the debt by instalments**, but this won't automatically stop the bankruptcy proceedings. An instalment order will only prevent bankruptcy if you get it **before** a Bankruptcy Notice was issued and keep it up to date. You still need to negotiate with the creditor not to take further steps against you.

### Step 4. Creditor's Petition

A creditor can apply to the court for a Creditor's Petition to make you bankrupt if it can show:

- you owe \$10,000 or more (this can be to the creditor, or across several creditors)
- there has been an act of bankruptcy in the last 6 months.

The usual act of bankruptcy is not paying the debt in full within 21 days of getting a

Bankruptcy Notice.

**But sometimes the first time you will know about being forced into bankruptcy is the Creditor's Petition.** This is because the creditor doesn't always have to issue a statement of claim, get a judgment or issue a bankruptcy notice if they have another act of bankruptcy to use. These other acts of bankruptcy include:

- you proposing or terminating a [Part 9 Debt Agreement \(read our fact sheet about Debt Agreements\)](#)
- you filing for Temporary Debt Protection or a Declaration of Intention to File a Debtor's Petition
- having the Sheriff try unsuccessfully to repossess your personal goods to pay a judgment debt.

### **What you should do**

**A Creditor's Petition is very serious. You will almost certainly be made bankrupt if you do not act. Get legal advice urgently.**

The Creditor's petition will have a date and time for you to go to court. It will say whether you need to attend in person, by telephone or teleconference.

You must attend, or you could be made bankrupt in your absence. If you are required in person but can't make it, you must contact the court as early as possible to organise to attend by phone or teleconference. If this is absolutely impossible, send an explanation to the court about why you cannot come, with written evidence (for example, doctor's certificate).

On the first court appearance, you are likely to get an adjournment to either:

- get legal advice
- raise the money to pay the debt (for example, by selling your home or another asset, or applying for a loan).

In NSW and Victoria, you can ask the court to refer you to a free financial counsellor at the court for advice about insolvency. They can also refer you to legal advice. But do not wait until the hearing to get advice – it is always best to get advice as early as possible, before you go to court.

An adjournment means the hearing is postponed. You will need to attend court again. Unless you want to be made bankrupt, the next time you attend court you will need to either:

- have filed paperwork opposing the Creditor's Petition (you will need legal advice to do this, and you will need to have legal grounds for doing so)
- be prepared to argue for another adjournment. You will need to explain to the court

why you should not be made bankrupt. It is best if you can give evidence, for example, the contract for sale and agency appointment showing your house is on the market, or a loan approval, or you have filed documents in another court challenging the debt.

The court will only adjourn the matter a limited number of times. The more adjournments you get, the more likely it is the court will make you bankrupt the next time you are back in court. This is because the longer the debt goes unpaid, the more it looks like you are insolvent and unable to pay your debts as they fall due – this is what the court is looking at when deciding to declare you bankrupt. The court may order you to provide a written statement (an affidavit) by a set date if you want another adjournment.

You can be made bankrupt owning a lot of assets because you did not sell those assets to pay your debts when they fell due. That is usually the worst possible outcome. You are almost always better off selling the assets yourself to repay debt rather than having a bankruptcy trustee sell them. Bankruptcy trustees charge hundreds of dollars per hour when administering bankruptcies, and those fees (and all the costs of your bankruptcy) will be paid out of the sale of your assets.

Continue to negotiate with the creditor during the court process. You may be able to convince the creditor to stop the court proceedings by consent. Usually they will only do this if you can pay the debt and their legal costs, or they are satisfied you are acting quickly and showing you are taking active steps to repay the debt (for example, by putting assets on the market).

The longer the court hearings go on, the more legal and court costs get added on to what you owe.

## **Step 5. Sequestration Order**

The court can make a Sequestration Order declaring you bankrupt. This can happen at any creditor's petition hearing, if the court is satisfied you cannot pay your debts as they fall due.

The creditor must be able to show:

- you owe \$10,000 or more
- there has been an act of bankruptcy in the last 6 months.

### **What you should do**

You must file a Statement of Affairs. You must do this by law – it is an offence not to and you can be fined.

Even if you are thinking about applying to set aside or annul your bankruptcy, the court may need a Statement of Affairs to make a decision.

The period of bankruptcy (usually 3 years and 1 day) does not start until you have filed your Statement of Affairs. If you do not file a Statement of Affairs, you may remain bankrupt forever.

**Get legal advice immediately if you want to challenge the bankruptcy**, or if you have any concerns about what it means for you. You only have 21 days to request a review of the decision. You can request an extension if you have good reasons, but the longer you leave it, the harder it will be and the more trustee and bankruptcy costs will be added to what you owe.

If you intend to oppose or annul the bankruptcy (by paying all the debts and expenses), you need to let the trustee know immediately in writing. They can minimise the bankruptcy work they do to reduce the amount you finally pay.

## **Need more help?**

Ring our Credit & Debt Legal Advice line [1800 844 949](tel:1800844949)

[For a list of other resources, visit our Useful Links page.](#)

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