

Chapter 13: Bankruptcy by Creditor's Petition checklist

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Note: This checklist is only a guide. [Find the most recent indexed amounts on the AFSA website](#), as these are updated regularly. It is the responsibility of the worker using the list to ensure that the information provided to clients is comprehensive, accurate and up-to-date.

[Interactive PDF](#)

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Client Name:

Date:

Worker:

File no:

Most common process for making a person bankrupt:

- Obtain a judgment(s) for debt for \$10,000 or more
- Apply for and serve a Bankruptcy Notice (within 6 years of date of judgment)
- File and serve a Creditor's Petition (within 6 months of the expiration of the Bankruptcy Notice)

Other acts of bankruptcy that a Creditor's Petition can be based on (these are examples – there are many others):

- Debt Agreement proposal or termination = no judgment required
- Execution of a writ on a judgment against the person's property = judgment may be more

Where is your client up to in the process?

- Judgment but no Bankruptcy Notice – **Go to 1**
- Bankruptcy Notice – **Go to 2**

- Creditor's Petition – **Go to 3**

Note: If your client has failed to comply with a Bankruptcy Notice or the date for a Creditor's petition hearing has passed, contact the court (or use the Commonwealth Courts Portal) to determine whether a sequestration order has already been made. If yes, refer for immediate legal advice. Time limits apply.

1: Options after judgment but before issue of a Bankruptcy Notice:

- Pay the creditor (all or as much as possible – try and get the debt below \$10,000 noting a Bankruptcy Notice can still be issued unless all is paid. Partial payment does not have to be accepted)
- Apply to pay by instalments through the relevant Court (and seek a stay of enforcement if not automatic)
- Get legal advice about setting judgment aside (if obtained by default) or appeal if obtained at hearing
- If the debt collector or creditor is a member of the Australian Financial Complaints Authority, consider lodging to assist with a realistic repayment arrangement.

Note: You can negotiate an informal repayment arrangement but this will not prevent the issue of a Bankruptcy Notice. Only a stay of enforcement in the original court will prevent the issue of a Bankruptcy Notice.

2: Options after a Bankruptcy Notice has been served (personal service is NOT required):

- Pay within time limit, usually 21 days (pay all or as much as possible – get debt below \$10,000 if possible. Note, partial payment does not have to be accepted.)
- Negotiate repayment arrangement extending time to comply with the Bankruptcy Notice (noting, the creditor may want payment within 6 months of the validity of the notice)
- Get legal advice about setting judgment aside (if obtained by default) or appeal if obtained at hearing AND applying for time to extend compliance with the Bankruptcy Notice

Note: You can still apply to pay by instalments after a Bankruptcy Notice has been issued but this will **NOT** prevent the creditor from continuing with bankruptcy proceedings.

3: Options after a Creditor's Petition has been served (personal service is required unless a substituted service order has been made by the court – the debtor may only get a few days' notice):

- Pay the creditor (all or as much as possible – get debt below \$10,000 if possible) – note that the creditor may not accept partial payment at this late stage
- Negotiate to adjourn by consent as you enter a repayment arrangement to pay or sell assets
- Always turn up to court or apply for permission to attend by telephone/online (debtors should never ignore a Creditor's Petition unless they are content to be made bankrupt)
- At Court, seek adjournment to pay or seek legal advice

Grounds for a sequestration (bankruptcy) order to be made by the court:

- Act of bankruptcy less than 6 months before the filing of the Creditor's Petition; and
- Debt of over \$10,000 still owed (can be to a different creditor, a group of creditors, or other amounts owed to original petitioning creditor provided debts were owed prior to the act of bankruptcy relied on); and
- Creditor's Petition validly served (personal service required).
- Note: Debtor can oppose the Creditor's Petition in some circumstances but must get legal advice as otherwise they may incur costly, unnecessary legal costs from the creditor, which they will have to pay.

Warnings to clients:

- Legal fees accumulate with every document served and every court appearance (whether or not the debtor appears)
- Trustee's fees start to accumulate as soon as a sequestration order is made – notify the Trustee if the client is likely to seek a review of the order or appeal, or seek annulment
- Get urgent legal advice if a sequestration order has already been made – time limits apply
- File a statement of affairs as soon as possible after a sequestration order has been

made, even if the bankrupt intends to apply for a review or appeal because –

- the period of bankruptcy (3 years 1 day) does not start to run until a statement of affairs has been filed
- the bankrupt's chances of successfully setting aside the sequestration order can be jeopardised by failure to supply a statement of affairs
- the bankrupt can be compelled to complete a statement of affairs and may be at risk of prosecution for non-compliance

For more information **see Chapter 10** of the Bankruptcy Toolkit.