



Legal Services Commission
OF SOUTH AUSTRALIA

BANKRUPTCY

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

Contact the Legal Helpline 1300 366 424

(TTY 8463 3691) 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. Bankruptcy is not to be taken lightly - it has serious effects. You should seek professional help before acting. Many organisations provide free financial counselling, see our pamphlet on Debts for their contact details.

There are two types of bankruptcy:

Voluntary Bankruptcy. You can go bankrupt yourself for any amount of money that you cannot pay. There is generally no court hearing if bankruptcy is voluntary.

Forced Bankruptcy. A creditor can apply to send you bankrupt if you owe that creditor or several creditors more than \$2,000.

The creditor must apply to the Federal Court or Federal Magistrates Court for a bankruptcy order, called a Sequestration Order. The court can dismiss a bankruptcy petition if it believes at the hearing that you are willing and able to pay your debts.

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.

ALTERNATIVES TO BANKRUPTCY?

• Financial Counselling

Talk to a financial counsellor who can help you look at other options. See the SA Financial Counselling Association website at <http://www.safca.info> for details of your nearest financial counsellor.

Informal Arrangements

You can make an informal agreement to settle with your creditors but this should be in writing to be binding. This does not involve costs, and may be a solution if you can keep up payments as promised. However, no creditor can be forced to accept part payment on a debt.

• Debt Agreements

If your debts, assets and income are below certain limits you may be eligible to put a formal proposal to your creditors through the Official Receiver. Information is available from ITSA (see below).

• 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 is practical. Fees are charged.

• 7 Day Moratorium

You can file a notice of intent to go bankrupt which stops creditors taking action to force payment for up to 7 days. In those 7 days you can consider your position and perhaps negotiate payment with creditors. Get advice first. Only one such notice can be filed each 12 months.

ADVANTAGES OF BANKRUPTCY?

- Most debts can be written off allowing a fresh start
- Creditors cannot contact or harass you
- You will not be sent to gaol for not paying your bills
- You can keep certain things - (See "What Things Can I Keep?")

WHAT THINGS CAN I KEEP?

- Necessary household furniture and personal things
- Vehicles worth less than \$6,500 if they are primarily used as means of transport (\$12,000 for bankrupts who jointly own a vehicle)
- Tools of trade up to the value of \$3,250 if they are going to be used to earn income
- 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
- If you earn more than a certain amount (currently \$41,823.60 for a single person with no dependants and indexed each year), you may have to make contributions towards your bankruptcy
- 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 borrow more than \$4,669 without telling the lender you are bankrupt. This includes writing a cheque for goods or services for more than \$4,669
- 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.

WHAT THINGS WILL I LOSE?

- Any house or land that you own. If you own a house or property jointly with another person then a charge is registered on 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
- Expensive jewellery
- Valuable furniture
- Your interest in a motor vehicle/s over \$6,500 (you are entitled to the first \$6,150 if the vehicle is sold). For jointly owned vehicles the amount is \$13,000.
- 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 where 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. However, if you are still bankrupt when you finish paying off the goods, the trustee may take them if they are the type of goods the trustee can take. (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 have an ordinary bank account.

ARE THERE ANY DEBTS NOT WIPED OFF?

Debts you must still pay:

- Child Support payments
- Fines imposed by a court
- 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.
- HECS-HELP, FEE-HELP or OS-HELP debts which arise after 1st January 2005. New HECS/HELP debts after the bankruptcy period are not removed either.
- Gas, electricity and phone service providers may demand a security deposit if bills are not paid.

HOW LONG WILL I REMAIN IN BANKRUPTCY?

The normal period of bankruptcy is 3 years from when the Statement of Affairs is filed but you can be kept bankrupt for up to 5 or 8 years. Your bankruptcy will be annulled if you repay your debts in full, including the trustee's fees, or if an offer put to your creditors through your trustee is accepted.

DOES IT COST TO GO BANKRUPT?

There are costs in bankruptcy, however there is no filing fee or application fee for a person who voluntarily goes bankrupt under a debtors petition.

If a creditor applies to have you made bankrupt (forced bankruptcy) then they will have to pay the costs, however those costs may become another debt to be paid in priority to other debts.

The Insolvency and Trustee Service Australia usually handles the bankruptcy for voluntary debtors. 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 in the bankrupt estate. However, they are entitled to ask for a minimum fee (currently \$1,538), if there are no assets or funds in the estate.

HOW TO GO BANKRUPT

You can collect forms and more detailed information about bankruptcy and debt agreements from:

Insolvency and Trustee Service Australia

Level 9/80 King William Street

Adelaide SA 5000

Telephone: 1300 364 785 (cost of a local call)

Once the forms are accepted you are bankrupt. For most voluntary debtors there will be no need to attend court. You can choose your own trustee by having a registered trustee sign a consent form. If no consent is signed or lodged the Official Trustee will be assigned.

**To order copies of this free fact sheet visit
www.lsc.sa.gov.au or telephone 8463 3528.
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