

What if your client goes bankrupt?

Bankruptcy occurs when someone cannot pay their bills. It provides for the bankrupt's affairs to be sorted out in an orderly manner so that both the bankrupt and the persons owed are treated fairly. A bankrupt person can be either male or female, married or otherwise, and may be a minor. Note: Someone cannot be made bankrupt for a debt less than \$200.

How does someone become bankrupt?

Before someone can be made bankrupt, there must have been an act of bankruptcy. One of the following things must have occurred:

- ✦ They fraudulently gave one person owed preference over another person.
- ✦ They avoided creditors by leaving, or attempting to leave, or are about to leave New Zealand, or if they are already out of New Zealand, remain out of New Zealand, or leave their home or remain absent to avoid creditors.
- ✦ A creditor has served a bankruptcy notice and it is not complied with and there is no counterclaim.
- ✦ They give notice to any of their creditors that they won't be able to pay their debts.
- ✦ At any meeting of their creditors, the person admits that they can't pay their bills.
- ✦ Possession has been taken of their property by a legal process and the judgment issued is not satisfied within 7 days after possession has been taken.
- ✦ Prejudicing their creditors or preferring one creditor over another, the person removes or attempts to remove any of their property from anywhere, or conceals or attempts to conceal any of their property.

Formal steps

A petition has to be presented to the High Court either by:

- ✦ The person who is going bankrupt stating that that they declare bankruptcy.
- ✦ A person owed money seeking the Court to declare the person bankrupt.

Benefit to the person being made bankrupt

It may seem strange to think that there is any benefit to a person being made bankrupt.

Although passing over almost everything they own, it could be said that a bankrupt person gains to the extent that they will be immune from legal action from creditors and ultimately will be released from their commitments.

Benefit to persons owed

The creditors benefit from the orderly conduct of the bankrupt's affairs as there are strict procedures ensuring that no undue preferences are given.

What property can be sold

The bankrupt's property that is available to those owed includes all:

- ✦ Mortgaged property and buildings;
- ✦ Land owned with others;

- ✦ Chattels, ie movable property such as a piano. Also goods, stock, shares, units, bonds, money, and bills of exchange;
- ✦ Rights under contracts; and
- ✦ After acquired property provided it devolves on the bankrupt before discharge, eg bequests by will.

What cannot be sold

There are certain exceptions to the above as follows:

- ✦ Where the bankrupt is holding the property merely as a trustee for others.
- ✦ Household furniture and effects to the value of \$2,000.
- ✦ Tools of trade not exceeding \$500 in value. Money to the value of \$400.
- ✦ Rights of action personal to the bankrupt.
- ✦ Joint family homes - the home is protected to the sum of \$82,000 (since 1996), except where the property is settled without the Registrar giving notice in the prescribed manner and the settlor is adjudicated bankrupt within 2 years after the date the property is settled.
- ✦ Pension and welfare payments including accident compensation payments.
- ✦ The Matrimonial Property Act 1976 gives the bankrupt's spouse a protected interest in a one-half share of the matrimonial chattels and the equity of the matrimonial home to a total of \$82,000 (since 1996). These assets, if owned by the bankrupt, pass to the Official Assignee and may be sold. The bankrupt's spouse is entitled to a protected sum from the net proceeds of sale.

What happens to someone who is made bankrupt

The following is a brief summary of some of the effects of bankruptcy:

- ✦ Publicity through notice in the *Gazette* and newspapers placed by the Official Assignee.
- ✦ Cannot carry on business without the consent of the Official Assignee.
- ✦ Notification to Official Assignee of change in address and certain other matters required.
- ✦ Unless excused by the assignee:
 - ✦ surrender and delivery of all books, documents, etc;
 - ✦ attendance at certain meetings;
 - ✦ execution of certain transfers as necessary;
 - ✦ disclosure of existence of property both at the time of bankruptcy and property which devolves in the bankrupt before discharge; and
 - ✦ aid to the utmost in the administration of their estate.
- ✦ A bankrupt cannot hold various positions under the Companies Act, including that of director.
- ✦ Bankruptcy does not affect existing contracts, but the assignee assumes the position of the bankrupt. If the contract is incapable of being completed, bankruptcy may well be grounds for cancellation or the contract.

See Us First

- ✦ Before making any financial decisions.
- ✦ To assist you in meeting the necessary legal or financial requirements.
- ✦ If you consider that any of the issues contained in this fact sheet may affect you.

Disclaimer

Important: This is not advice. Clients should not act solely on the basis of the material contained in this fact sheet. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. We believe the contents to be true and accurate as at the date of writing but can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents. This fact sheet is made available to our clients as a helpful guide for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.