

Personal Insolvency Cheat Sheet

Bankruptcy

Bankruptcy is a legal process that is in force for a period of three years and one day and may be commenced voluntarily via a process called a 'debtor's petition' or involuntarily through the court system via a 'creditor's petition'.

Upon entry into bankruptcy, an individual is discharged from all of their liabilities, except for court imposed penalties, child support and maintenance debts, HECS and HELP liabilities and debts incurred after the bankruptcy process commences.

During the term of bankruptcy, the following considerations and restrictions apply:

- The individual's divisible property (i.e. assets) is made available to the creditors of the estate; however the individual is usually able to retain some cash at bank (currently \$2,300), their necessary household furniture and effects, equity in a motor vehicle valued to the statutory limit (currently \$7,900) and tools of trade valued to the statutory limit (currently \$3,750)
- The individual may be liable to pay income contributions during the term of their bankruptcy, depending on their level of income and whether they have any dependents (thresholds are set out below)
- The individual will need the consent of their Trustee in Bankruptcy before travelling internationally and in addition to paying an application fee of \$150, they will need to satisfy the Trustee on the following matters:
 - Reasons for travel and the countries you intend to visit
 - Dates you plan to leave and return to Australia
 - Contact details for whilst you are away, including email address, phone numbers and the address of where you will be staying whilst you are away
 - Who is paying for your trip or relocation
 - If travelling for work, evidence from your employer
 - Evidence that income contributions (if applicable) are up to date
- If an individual receives an inheritance or wins lotto during the term of bankruptcy, these assets and funds are made available to the creditors of the estate
- The individual's name will appear permanently on the National Personal Insolvency Index

Bankruptcy FAQs

What is the process for an individual to enter bankruptcy voluntarily?

The process for entering voluntarily bankruptcy is called a 'debtor's petition'. The process is relatively simple and includes the lodgement of two forms – a Statement of Affairs and a Debtor's Petition – with the Australian Financial Security Authority.

If there are funds in the estate from which a Private Trustee can be remunerated, and the proposed Trustee is willing to act, a consent to act form signed by the Trustee is also sent off to AFSA. If there are no or insufficient funds in the estate, or a Private Trustee is not willing to act, then the Official Trustee handles the process.

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(Bankruptcy FAQs continued)

What is the process for dealing with an individual's house during bankruptcy?

Upon bankruptcy, the Trustee becomes the 'owner' of the bankrupt's share in any property that is in their name.

How the Trustee deals with that share in property depends on whether it is encumbered and/or owned with other people.

With their duty to creditors in mind, the Trustee is interested in recovering the equity amount as quickly and as cost effectively as possible, and this can be achieved by either:

- Agreeing with the other owner to sell the property and divide the net equity after selling costs etc
- For the other owner, or some other party, to purchase the bankrupt individual's share in the property
 - The payment for which can be addressed over time

What can't a person do during their term of bankruptcy?

- A bankrupt cannot act as a company director or take part in the management of a company
- There are bankruptcy disclosure requirements when a bankrupt seeks to obtain credit over the current amount of \$5,778
- Assets purchased by a bankrupt during bankruptcy will become available to your Trustee for the benefit of creditors (i.e. boats, caravans etc)
 - It is ok to save money, but if the funds are converted to a term deposit account, for example, then the term deposit funds would be lost
- Some jobs, registrations and professional roles may be restricting to undischarged bankrupts

Income contribution thresholds

The net of income tax income thresholds a bankrupt can earn without making contributions to their estate are set out below:

Number of dependants	Income limit
0	\$57,239
1	\$67,542
2	\$72,694
3	\$75,555
4	\$76,700
5	\$77,845

If a bankrupt earns more than these thresholds, they are required to contribute 50 cents out of every dollar above threshold to their estate. The contributions are typically estimated in advance and then reconciled to actuals at the end of each period. Contribution payments are normally aligned with the bankrupt's pay periods or by arrangement with their Trustee.