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Debts and creditors

WHAT HAPPENS TO THEM IF I BECOME BANKRUPT?

Once you are bankrupt, unsecured creditors should stop contacting you. To make sure this happens you must list all your debts in your Statement of Affairs when you apply to become bankrupt, including:

- debts you owe jointly with someone else
- any loans to you from friends and relatives
- debts that you will still need to pay if you are bankrupt.

Your bankruptcy will not affect a creditor's right to pursue another person, such as:

- a person who is a guarantor for your debts
- debts in joint names with another person (eg your wife or husband).

DEBTS YOU STILL HAVE TO PAY DURING BANKRUPTCY

You will have to pay:

- debts which are not provable in bankruptcy eg:
 - penalties and fines imposed by a court
 - damages from accidents (eg car accidents) except under certain circumstances
 - student assistance/supplement loans
- any new debts you run up after your bankruptcy commences

To avoid suspension of your driver's licence and/or your motor vehicle registration, you will need to pay your debts for parking, traffic and other infringements of state laws. Most states have the power to suspend your licence and/or your motor vehicle registration until payment is made.

If you fail to pay certain debts for essential services to your home (eg electricity, gas, telephone) it may result in disconnection of these services.

The Australian Taxation Office (ATO) may keep your tax refund and offset it against any debt you owe the Commonwealth (eg ATO, Child Support Agency).

DEBTS YOU HAVE TO PAY AFTER YOUR BANKRUPTCY ENDS

Although you are released from most debts at the end of your bankruptcy, there are others you may still be required to pay. For example, after bankruptcy you will remain liable for

- debts incurred by fraud
- maintenance debts, including child support
- accumulated HECS (Higher Education Contribution Scheme) and HELP (Higher Education Loan Program) debts.

HOW WILL MY CREDITORS BE AFFECTED?

Unsecured creditors generally lose the right to recover their debts eg:

- banks, finance companies and credit unions for personal loans, credit cards and store cards
- service providers, doctors, lawyers and tradespeople.

If you become bankrupt, any legal action taken against you by unsecured creditors must stop, eg a summons, a garnishee from your income or bank account or recovery action by a sheriff or bailiff.

If creditors continue to demand that you pay their debt, you should immediately tell your trustee who will inform the creditor of your bankruptcy. If you are being harassed or coerced about debts, you may obtain further information from the Australian Competition and Consumer Commission website at www.accc.gov.au or call the Infocentre on 1300 302 502 regarding your rights as a consumer and the procedures to lodge a complaint.

Secured creditors hold security over your assets which entitles them to take and sell them if you fall behind in payments eg:

- banks with a mortgage over a house
- finance companies with a chattel mortgage, lease or bill of sale over a car, furniture or electrical goods
- hire purchase arrangements where you have not paid the full amount
- creditors secured by government legislation over houses and land, such as council/shire rates and water rates.

If you become bankrupt, secured creditors may contact you to find out what will happen to an asset. You may be able to make arrangements to keep a secured asset. However, you should talk to a financial counsellor or bankruptcy trustee beforehand.

Some creditors may retain ownership of items purchased from them until their debt has been paid in full (eg sales subject to retention of title clauses, goods on consignment or commission). Creditors holding a security deposit or bond (eg a landlord) are entitled to keep it to reduce your debt.

If you have difficulty working out your debts and creditors, you should talk to your creditors to ask whether your debts are secured. You can also talk to a financial counsellor if you are unsure about what types of debts and creditors you have.