

Am I a creditor?

What you need to know

If you are owed money by a person who has not paid their debt to you, you should seek independent legal advice about how to enforce your debt. Enforcing or trying to recover your debt may involve referring it to a debt collection agency, lodging the debt with a credit reporting agency, seeking a court judgment in your favour or, if you're owed more than \$1,000, you could start bankruptcy proceedings.

If you are owed money by a person who has become bankrupt or entered a No Asset Procedure (NAP) or Summary Instalment Order (SIO), or by a company that has gone into liquidation, you are a creditor. You need to make the Official Assignee aware of what you are owed.

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Bankruptcy Proceedings

If you are an [unsecured creditor](#) who is owed more than NZ\$1,000, you can, with the help of a solicitor, make an application to the High Court for a bankruptcy notice. If a bankruptcy notice is served, this notice has to be served on the person who owes you the money (the debtor). Your solicitor can help you arrange this. Once the bankruptcy notice is served, the debtor has 10 working days from the date of service to pay you what is owed.

If the debtor fails to make payment within 10 working days of being served, you can then file a creditor's petition in the High Court. A filing fee is payable to the High Court when filing a creditor's petition.

A creditor's petition is a formal application to have the debtor made bankrupt. The creditor's petition needs to be served on the debtor. Again, your solicitor can assist with this. The petition will confirm a date and time for your application to be heard at the High Court. The creditor's

petition must be served on the debtor at least 10 working days prior to the hearing date.

At the hearing, the Court will make a decision about whether a bankruptcy order should be made. If the debtor is not in a position to repay what is owed, then the Associate Judge may make an order to bankrupt them. If the debtor needs more time to pay what is owed, then the Court may adjourn the hearing. If the debtor pays the debt at or immediately before the hearing, then your application can be withdrawn and the Court will decide whether your costs should be paid by the debtor.

What is a secured creditor?

A secured creditor is someone who is owed money by an individual or by a company and has a valid security interest over one or more of the individual's or company's assets.

Secured creditors are entitled to sell the secured assets in the event of default. Secured creditors cannot claim in the bankruptcy, NAP, SIO or liquidation process unless they have valued or sold the assets that are subject to their security and a shortfall remains. Once the secured assets have been sold, the secured creditor ceases to be a secured creditor and becomes an unsecured creditor for any shortfall after sale of the secured asset. If there is a surplus after sale, this is payable to the Official Assignee for the benefit of all creditors.

Bankruptcy, NAP, or SIO secured creditors

In a bankruptcy, NAP or SIO, it is possible for the secured creditor and debtor to continue in their finance arrangement. If the debtor were to default on the finance agreement, then the secured creditor still has the right to repossess the secured assets and sell them to recover their money. Upon sale of the secured asset, the creditor ceases to be secured and becomes unsecured. If a shortfall results following the sale of the secured assets, the creditor can make a claim for the shortfall amount.

Liquidation secured creditors

In liquidation, a secured creditor is asked to choose what they wish to do with their security. They can decide to either:

- realise their security and claim for any shortfall experienced as an unsecured creditor or
- value the property subject to their security and claim as an unsecured creditor for the expected shortfall, if any or
- surrender their security and claim in the liquidation for their whole debt as an unsecured creditor.

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What is an unsecured creditor?

An unsecured creditor is someone who is owed money by an individual or by a company, but does not have a valid security interest over any of the individual's or company's assets.

Bankruptcy or liquidation unsecured creditors

As an unsecured creditor of someone that has gone bankrupt or a company that has gone into liquidation, you are entitled to file a claim in the bankruptcy or liquidation estate. This will entitle you to share in any distribution made by the Official Assignee after all of the bankrupt's or company's assets have been sold. You can file a claim electronically, or by completing a physical claim form. In both instances, you will need to provide evidence to support your claim. If you fail to do so, you might be excluded from any dividends made to creditors.

No Asset Procedure unsecured creditors

Debtors entering the No Asset Procedure will have no realisable assets and no means to pay any money back to creditors. Therefore, as a creditor it is unlikely you will be required to file a claim.

Summary Instalment Order unsecured creditors

Debtors subject to Summary Instalment Orders (SIO) will have a means to repay some, or all of their debts. Before the Order is made creditors will be sent details of the proposed SIO and given the opportunity to object to the terms proposed.

Claims can be filed electronically, or by completing a physical claim form. Evidence must always be provided to support claims and failure to do so may result in exclusion from payments to creditors

How do I find out what procedure a debtor has entered?

You can conduct a search of all the registers which are available on the Insolvency and Trustee Service website. You can search for:

- a bankrupt
- a person that has entered a No Asset Procedure
- a person that is subject to a Summary Instalment Order

- a company that has gone into liquidation. Please note that only liquidations administered by the Official Assignee will be found on the Insolvency and Trustee Website. A comprehensive register of all liquidations can be found on the Companies Office website at www.companies.govt.nz.

Overseas creditors

If you are a creditor that is based outside New Zealand and are owed money by a debtor based in New Zealand that enters bankruptcy or a NAP, you are not able to pursue them for payment in New Zealand. However, should that debtor leave New Zealand and return to the country in which you are based, you can pursue them for payment as the debtor's bankruptcy or NAP only applies in New Zealand and does not extend to overseas countries.

If you are an unsecured creditor that is based outside New Zealand and are owed money by a debtor based in New Zealand that enters a SIO and includes you as a creditor in that SIO, you are not able to pursue them for payment in New Zealand. However, should the debtor return to the country where you are based, you are able to pursue them for any shortfall that may have been left after completion of their SIO in that country. For example, if you only receive 50% of what you were owed from the SIO, you can pursue that debtor once they return to your country for the remaining 50% of their debt. Your SIO only applies in New Zealand and does not extend to overseas countries.

Voluntary Administration creditors

Voluntary Administration (VA) provides creditors with an opportunity to have their affairs examined and rearranged with a view to avoiding liquidation. Creditors play an important part in determining the future of the company by voting at meetings convened by the administrator. Creditors vote on resolutions based on their number and the value of their claims. To ensure you have a voice at these meetings, you must file a claim with the administrator. Evidence must always be provided to support claims.

The moratorium in place during a VA is not binding on creditors who have a security interest over all, or substantially all, of the company's assets. Substantial secured creditors can appoint a receiver if they choose provided they do so within ten (10) working days of receiving notice of the appointment of an administrator. The administration can continue over any of the company's remaining unencumbered assets.



Further information

See the [How do I file a claim?](#) section to learn how to file a claim online.