

Section 1 - Before bankruptcy



What you need to know

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What is bankruptcy exactly?

Bankruptcy is a legal process that enables you to get relief from the burden of debt that you cannot repay, despite your best efforts. An insolvent person is someone who is unable to pay debts as they fall due. Bankruptcy does not cover all your debts. You will remain personally responsible for:

Court and traffic fines and Court ordered reparation (compensation) payments

Maintenance and child support payments administered by IRD

All debts incurred after the date of your bankruptcy, including tax

Advances and overpayments that you may have received from Work and Income New Zealand
Any fraudulently obtained debt.

Think first! Bankruptcy is not an easy way out

Bankruptcy should always be regarded as a last resort because:

You have an obligation to make every effort to repay the debts you have entered into

Bankruptcy will affect your life for at least the three (3) years of your bankruptcy and possibly up to seven (7) years, because credit agencies keep a record of your bankruptcy for up to seven (7) years. This can affect your ability to raise credit for up to seven (7) years

Until you are discharged from bankruptcy you will face a number of restrictions and limitations on what you can and cannot do

Control of your assets (property and the things that you own) will automatically pass to the Official Assignee (who is the Government official responsible for managing your bankruptcy).

While the things you need for daily living won't be touched, the Official Assignee has the power to sell your assets to help repay your creditors.



Important information

Explore all your options first! If you are facing bankruptcy it is well worth exploring your options and alternatives, as below:

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I cannot pay my bills. What are my options?

Take some action NOW.

If you are facing financial difficulties, it is important to take some action. Trying to ignore your financial problems or hoping they will somehow go away will not solve anything. Instead it is likely to increase the debts and therefore the pressure and stress on you.

Once you start actively looking, you will be surprised by the number of organisations that exist to help you. Some of the important sources of help are listed below and much of this help is free

Sharing your problems will relieve the stress on you and you will also benefit from the advice and experience of people that have helped many others in similar situations to work through their challenges

You need to show your creditors (the people you owe money to) that you have taken some steps to solve the financial problems facing you. Making contact with a support organisations will tell creditors that you are taking steps to get your finances under control

Creditors may be more inclined to reach some kind of settlement or agreement with you that might help you avoid going into bankruptcy if they knew you have taken some positive steps to sort out your financial problems. This might mean that you may be able to avoid bankruptcy.

Get advice from these sources

There are many people and organisations set up to help you through your difficulties. Here are some suggestions:

The Insolvency and Trustee Service (free phone 0508 467 658) can offer you help and information

The Citizens Advice Bureau is a useful starting place because they can give you contact details of other sources of help. Phone toll free 0800 367 222 or visit www.cab.org.nz for details of your local Citizens Advice Bureau

Accountants are trained to sort out financial problems, so they may be able to give you useful advice on your financial options (although they will probably charge you for their services).

If you do not have an accountant, you could contact a Budget Advisory Service. They are set up to help you sort out your finances and put together a workable budget. They also have lots of practical experience to pass on to you about coping with a possible bankruptcy. You can contact the New Zealand Federation of Family Budgeting Services on Freephone: 0508-283-438 or www.familybudgeting.org.nz.

A lawyer can help you understand the legal side of a possible bankruptcy and how it will affect you, as well as helping you get fair treatment during any bankruptcy proceedings.

If you cannot afford to pay for legal services, many of the Citizens Advice Bureaux also offer free legal clinics and you can make an appointment to see a voluntary lawyer. The appointment lasts about 20 minutes and this can be a useful first step towards getting the legal advice you may need.

You can also get free legal advice from Community Law Centres (check your yellow pages or visit www.communitylaw.org.nz for the address of the Community Law Centre closest to you. Alternatively, your local Citizens Advice Bureau (phone toll free 0800 367 222) will be able to put you in touch with the nearest Community Law Centre.

Have you spoken to WINZ (Work and Income New Zealand)? If you have any dealings with WINZ you should tell them that you're thinking about bankruptcy.

Speak to friends and family about your situation. Consider also your church group, community organisation or club you may belong to. These organisations may be able to help, or have Welfare Officers who could assist you.

If you have a gambling problem, get help from the New Zealand Gambling Helpline by calling toll free 0800 654 655.

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What steps can I take to avoid bankruptcy?

To get out of your short-term financial difficulties there are always SOME steps you can take. Here are some options and possibilities:

Get budgeting advice

Budget advisors will show you how to limit your spending to what you earn. Working through your spending with a budget advisor will give you a better understanding of where your money is going and what you can and cannot afford. Budget advisors will also help you with tips and ideas on how to save money, cut out unnecessary costs and reduce your other expenses.

Sell assets (your possessions)

This may bring in enough money to pay your creditors or significantly reduce your debt levels. Then you may come to some agreement with your creditors and avoid going into bankruptcy.

Get refinancing advice

Ask the budget advisor or your accountant or lawyer (if you have one) for suggestions on how you could refinance your debts. (For example by consolidating them, or by paying a lower rate of interest). If you have a mortgage you may also wish to speak to a mortgage broker (see the Yellow Pages) to see if you can get a better mortgage deal.

Reach an agreement with your creditors

With the help of a third party advisor such as a Budget Advisor or accountant, you may be able to reach some kind of agreement or compromise with your creditors. For example, this arrangement might allow you to repay part of your debt in full settlement of the amount you owe.



Important information

Always get a second opinion from a professionally qualified person such as a lawyer or accountant before you accept any major changes or financial arrangements. The deal offered to you may have some fish hooks or consequences you may not be fully aware of.

This applies particularly to deals involving debt consolidation or changes to your mortgage. Always ask for exact details of all the costs involved, including all extras and what rate of interest will apply. Then get independent advice on whether this is really a fair and favourable deal for you.

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Deal with Inland Revenue first

If you have any unpaid tax issues with Inland Revenue (IRD) such as income tax, GST or other obligations, ask a budget advisor to help you negotiate an agreement with IRD. An agreement of this kind could save you substantial extra penalties and possibly enable you to pay off what you owe through instalments. In some circumstances, you can apply to IRD for a write-off due to serious hardship. Contact IRD directly about their write-off process at www.ird.govt.nz or on free phone 0800 227 774.

Create a Creditors' Pool

If all your creditors agree, you may be able to combine all your debts into what is called a Creditors' Pool. You then repay regular amounts into this pool. The best way to negotiate this is with the help of a third party advisor such as a budget advisor, accountant, or financial advisor who is also prepared to administer the Creditors' Pool.

Pay back your debts in instalments

If your total unsecured debts come to less than \$NZ40,000 you may be able to apply to the Official Assignee for a Summary Instalment Order. A Summary Instalment Order is a formal procedure (similar to the informal Creditors' Pool or compromise options above) where the Official Assignee makes an Order that is binding on creditors. The Summary Instalment Order will allow you to pay back your debts in regular instalments over three (3) to five (5) years without the threat of further legal action while the Order is in force. A third party supervisor, such as a budget advisor, an accountant or a financial advisor will administer the procedure. Fines and student loans are excluded from Summary Instalment Orders.



Important information

A Summary Instalment Order can only be used for unsecured debts (debts for which you have not signed a personal guarantee or provided goods or property as collateral).

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Continue trading

If you run a business and your financial difficulties are only temporary, it may be possible to trade your way through them. This is only suitable for short-term difficulties and you need to get expert guidance because you can make your financial problems worse by continuing to incur debt that you are not in a position to meet.

Before you continue to trade, seek professional independent accounting and legal advice.

Get additional employment

You may be able to get a second job or additional employment that could bring in extra income to help you reduce your debt.

I want to know how I become bankrupt

Bankruptcy can happen in two ways:

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1. Voluntary bankruptcy

You can choose to become bankrupt by making an application to the Insolvency and Trustee Service by post, in person or electronically. The Court will not be involved.

You must accompany your application for bankruptcy with a completed Statement of Affairs which can also be filed electronically (using the approved form).

Discharge and annulment

If you apply to make yourself bankrupt, you will be discharged three (3) years from the date the Official Assignee accepts a satisfactory Statement of Affairs from you.

The Official Assignee will be able to annul your debtor's petition (for example if your circumstances change or you are able to pay off your debts early). The annulment process does not involve the Court.

A serious decision

Voluntary bankruptcy is a very serious decision and should only be contemplated if:

You are aware of how bankruptcy can affect you.

You have explored other options and talked to advisors (especially Budget Advisors) and other people or organisations that could help you.

After these consultations you still believe your financial position cannot be improved.

If your bankruptcy runs its full three-year course, your details will remain on the Insolvency and Trustee Service electronic register for four years after your discharge (usually a total of 7 years).

2. Creditor bankruptcy

This happens when one or more of your creditors (people or businesses you owe money to) seek to make you bankrupt by filing a Creditor's Petition. Under the Insolvency Act 2006 creditors can file a Creditor's Petition with the High Court who will then decide if you should be made bankrupt, based on the evidence supplied by your creditors and by you or your representatives.

Is there a difference between the two kinds of bankruptcy?

You will experience no practical difference. A voluntary bankruptcy and a bankruptcy as a result of a Creditor's Petition are both administered by the Insolvency and Trustee Service in the same way.



Important information

Speak to a Budget Advisor or the Insolvency & Trustee Service first. They may be able to tell you about options you have not considered.

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I cannot pay my bills. Should I declare myself bankrupt?

Ultimately the decision to make yourself bankrupt is your own decision. However, the Insolvency and Trustee Service can provide you with information to assist you with that decision. With the pressure of debt and creditors bearing down on you, you may be tempted to think that bankruptcy will solve all of your problems. Bankruptcy can indeed offer relief from most (but not all) of your debts, but it also has consequences that will affect your life and your personal assets (the possessions you own). You will not suddenly be freed from all your responsibilities because bankruptcy does not cover all your debts. You will remain personally responsible for:

Court and traffic fines and Court ordered reparation (compensation) payments.

Maintenance and child support payments administered by IRD.

All debts incurred **after** the date of your bankruptcy, including tax

Advances and overpayments that you may have received from Work and Income New Zealand

Any fraudulently obtained debt.

Think first! Bankruptcy is not an easy option

Before you make this decision:

Have you explored all the other options and sources of advice and help? You may be able to avoid bankruptcy.

Are you fully aware of the consequences: the restrictions and responsibilities that will be placed upon you when you are bankrupt?



Important information

Speak to a Budget Advisor or the Insolvency & Trustee Service first. They may be able to tell you about options you have not considered.

How will bankruptcy affect me?

After you have been declared bankrupt the Official Assignee becomes responsible for administering your affairs in accordance with the Insolvency Act 2006.

Under the Act the Official Assignee has the power to:

- Sell all or some of the assets (possessions and savings or investments) you own

- Ensure that the proceeds (if any) are fairly distributed amongst your creditors

- Investigate (if necessary) your past financial affairs

- Follow up any matters likely to result in the recovery of money for unsecured creditors

- Follow up any breaches of the Insolvency Act 2006 that could result in a prosecution against you.

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What restrictions will I face?

The period of bankruptcy typically lasts for three years. Here are some of the main restrictions that will apply while you are bankrupt:

Finances and property

Once you are bankrupt, the Official Assignee will handle the majority of your debts in accordance with the Insolvency Act 2006.

Ownership of your property will also transfer to the Official Assignee.

You will also be obliged to provide the Official Assignee with any information he requests about your affairs including any change in your employment status or address.

Other restrictions

You are also prohibited from leaving New Zealand without consent from the Official Assignee.

If you want to get credit for yourself or someone else exceeding \$1,000 from anyone you must tell them that you are an undischarged bankrupt

You must get the express written consent of the Official Assignee to be self-employed or be employed by a relative or a trust, company or other entity controlled, managed or owned by a relative.

You must get the express written consent of the Official Assignee to be involved in the running or management of any business.

Anyone can view your details

Information about your bankruptcy will be available online on this website. These details can be viewed by you or your creditors at any time.

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Will everyone know I am bankrupt? Will it be advertised?

The Official Assignee is required by law to publish details of your bankruptcy:

In the New Zealand Gazette.

On this website

To prove to creditors that you are bankrupt you can show them the formal 'Notice to Bankrupt' that you will receive at the start of your bankruptcy, or refer them to the Insolvency and Trustee Service website www.insolvency.govt.nz.

Most businesses that sell on credit and certainly all credit agencies keep track of bankruptcy notifications because this helps them assess customers' credit risk.

What public record will be kept of my bankruptcy?

A record of your bankruptcy will be freely available from this website. <http://www.insolvency.govt.nz/>

This record will include both current and previous bankruptcies (if any) from which you have been discharged. Credit reporting agencies (for example, Veda Advantage or Dun & Bradstreet) will also keep a record of your bankruptcy history for up to seven years, as well as other information that may affect your credit rating.



Important information

It is worth viewing the information held by credit agencies about you as this might affect your credit rating. The Privacy Act gives you the right to have accurate information shown about you. You can ask for your credit file from the website www.mycreditfile.co.nz or phone Veda Advantage on 09 356 5851.

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Will I have to face my creditors?

Your creditors can request a meeting during your period of bankruptcy, but this is rare. However, the Official Assignee (who is an Officer of the Court responsible for managing your bankruptcy) may call a meeting to find out the cause of your bankruptcy and to examine some matters in more detail, such as your assets (things you own, including property) and your liabilities (the money you owe).

Once you have been declared bankrupt you will be required to attend such a meeting if it is called. You will also be required to take an oath that the evidence you give is truthful.

What happens to my debts?

On the date you are declared bankrupt, responsibility for most (not all) of your debts passes from you to the Official Assignee. Your debts are effectively frozen and will no longer accrue interest or penalties. These frozen debts become provable debts in your bankruptcy estate.

Contingent debts are also provable in bankruptcy. Contingent debts are debts that are not immediately payable but which become payable on occurrence of an event such as default. For example, a guarantor becomes liable for his guarantee only if the debt that is guaranteed does not get paid by the debtor. The guaranteed debt is provable or included in your bankruptcy. If you have provided a guarantee to a creditor on another person's behalf before the date of your entry to bankruptcy, then it is a provable debt that is included in your bankruptcy.

Creditors will be required to file a claim with supporting evidence for the money that you owe them. As from the date that you are declared bankrupt, creditors cannot pursue you for payment and you are not permitted to pay them.

Any payments you wish to make to creditors should be made to the Official Assignee who will distribute any funds collected equally amongst all of your creditors.

The Official Assignee now also has control over all your assets and must decide how to raise as much money as possible from your assets to pay your debts.

Student loans are a provable debt in your bankruptcy.

Provable debts are all debts outstanding at the date of your bankruptcy except for the following which you will remain personally responsible for:

Court and traffic fines and Court ordered reparation (compensation) payments.

Maintenance and child support payments administered by the IRD.

All debts incurred after the date of your bankruptcy, including tax

Advances and overpayments that you may have received from Work and Income New Zealand

Any fraudulently obtained debt.

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What about a debt I owe jointly with another person?

What about unsecured debts I owe jointly with another person?

The debt you owe will be covered by your bankruptcy. However, if the other person is not bankrupt, the creditor can still pursue the other person for the full amount of the debt.

A friend signed as guarantor on my loan. How will they be affected after my bankruptcy?

The guarantor signed a contract stating that they would pay the creditor if you do not. Bankruptcy does not change this, so the creditor can still pursue the guarantor for repayment after your bankruptcy.

What is the difference between a 'secured' creditor and other creditors?

It is quite common for people to offer assets such as property or a vehicle as security for loans. Creditors that lend money and take security over such assets are secured creditors. In the event of default under the loan you have with them, they have the right to repossess and sell the secured asset to satisfy what you owe them. If, after they sell the asset, there is a shortfall, you are liable to pay this outstanding amount. If you are bankrupt, this shortfall will be a provable debt in your bankruptcy.

Secured creditors remain outside of bankruptcy until they become unsecured creditors. In bankruptcy, you are required to continue paying secured creditors otherwise you risk losing any assets you have offered as security such as your family home and household effects.

Creditors that do not have security over any of your assets to safeguard the money they have lent you are unsecured creditors.

Example

John Brown owns a house valued at \$175,000. John has a mortgage on the house with \$100,000 still outstanding. John's equity or stake in the property is \$75,000.

The bank is a secured creditor and has the right to sell John Brown's property to recover its money if John fails to make any mortgage payments.

Who gets paid first?

If the Official Assignee is able to raise any cash from your bankrupt estate, the funds will be distributed in the following order:

1. The Official Assignee's costs of administering your bankruptcy estate
2. Petitioning creditor's costs and disbursements
3. Any GST and any wages you owe to employees
4. Secured creditors
5. Unsecured creditors

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Section 2 - Insolvency Act 2006



What you need to know

[An overview of the Insolvency Act 2006](#)

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[The No Asset Procedure](#)

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An overview of the Insolvency Act 2006

The Insolvency Act 2006 came into force on 3 December 2007 and contains some new arrangements as well as a significant reform of the previous legislation. The Insolvency Act of 1967 created personal bankruptcy laws that focused on an individual trader going bankrupt. The legislation reflected a social background of nearly full employment and relatively restricted consumer access to credit.

Some 40 years later, our economic life has changed radically. People have far greater access to easy credit, credit cards and other ways of accumulating debt. Personal bankruptcy now tends to be consumer debt driven and the Insolvency Act 2006 recognises this.

Online services

In the interests of speed, efficiency and transparency, the Insolvency Act 2006 also moved the administration of insolvency and bankruptcy proceedings away from the Courts to the Insolvency and Trustee Service.

Much of the work is now completed, administered or supervised online and publicly searchable electronic registers are now available, such as the registers of Summary Instalment Orders and the new No Asset Procedures.

The Summary Instalment Order

In a nutshell

If the Official Assignee decides that you do not meet the criteria for the No Asset Procedure, (for example, you have some assets or income to pay off some of your debts) you have another alternative to bankruptcy. This is the Summary Instalment Order, essentially a formal arrangement with your creditors that allows you to pay back all, or an agreed part, of your debt by instalments.

Who may apply for an order?

You or any of your creditors (with your consent) can apply for a Summary Instalment Order.

You may be granted a Summary Instalment Order if the Official Assignee is satisfied that:

Your total unsecured debts (excluding any student loan balance) are more than \$1 ,000 but not more than \$4 0,000.

You are unable to pay those debts immediately.

However, before making the order, the Official Assignee must allow the debtor or a creditor to make representations, if the debtor or creditor wants to do so.

Fines and student loans are excluded from Summary Instalment Orders.

How to apply for a Summary Instalment Order

Get help if necessary from a Budget Advisor or Community Law Centre to complete the prescribed application form, as some of the terms may not be familiar to you. The form can be completed and submitted online or downloaded from the www.insolvency.govt.nz website. Note that both you and your creditors are allowed to make representations before the Official Assignee makes a Summary Instalment Order.

Your application must include all of the following:

A statement that you propose to pay your creditors in full; or

A statement revealing what percentage of the debt you propose to pay (for example, repay 80 cents for every dollar of debt). If you have reached agreement with your creditors on this amount, then mention this. The total amount of the weekly or other instalments that you propose to pay. The name and address of your proposed Supervisor; or

Your written reasoning explaining why you consider that a Supervisor is not necessary.

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Details and possessions

Your application must include:

Your full name and address.

Details of the goods that you own.

The names and addresses of each creditor.

The amount and nature of each of the creditors' debts.

Whether any of the debts are secured and the value of the charge.

Whether any of the debts are guaranteed by any person.

The amount of your earnings and expenditure.

The name and address of your employer(s), if any.

How much must I pay back?

The Official Assignee will assess your application and order that you pay back your debts by instalments (or otherwise) according to your circumstances. You may also have come to some agreement with your creditors about the amount to be repaid, and this will be taken into consideration.

Additional orders

In addition to an order for the payment of the debts in instalments, the Official Assignee may make orders covering:

Your future earnings or income.

The sale of goods that you own or possess (some of these may be sold to help repay your debts).

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Who supervises my Summary Instalment Order?

The Official Assignee will appoint an approved Supervisor to administer your Summary Instalment Order. The Official Assignee may require a bond from new Supervisors (such as a Supervisor you propose) to ensure they perform their duties satisfactorily.

In certain cases the Official Assignee may decide a Supervisor is not necessary.

What does the Supervisor do?

The Supervisor has the authority to:

Supervise your compliance with the terms of your Summary Instalment Order and any other order made by the Official Assignee.

Direct your employer to pay all or part of your earnings to the Supervisor.

Charge you a fixed or prescribed amount for carrying out these duties.

Other duties of the Supervisor

The Supervisor must send a notice of the Summary Instalment Order to every known creditor.

The Official Assignee may require the Supervisor (or a past Supervisor) to provide any documentation relating to your property, conduct, or dealings.

If the Supervisor has failed to supervise your compliance adequately the Official Assignee can appoint a replacement Supervisor.

Avoid getting into more debt!

It is important to be aware that:

When you are working through your Summary Instalment Order it is an offence to raise credit or take out a Hire Purchase (HP) over \$100 without first disclosing that you are currently going through a Summary Instalment Order.

The penalty for committing a penalty offence of this kind can lead to a jail term of one year or a fine not exceeding \$5,000 or both. [Top](#)

How long does a Summary Instalment Order last?

Your Summary Instalment Order will normally run for three years, but can in special circumstances be extended to five years.

Variation or discharge of order

If circumstances change, you (the debtor) or any creditor or the Supervisor may at any time apply to the Official Assignee to vary or discharge a Summary Instalment Order. The Official Assignee has the authority to make an appropriate decision.

Is the information made public?

Yes. There will be a new publicly available electronic register of current Summary Instalment Orders. Advice of your entry into a Summary Instalment Order will remain on the Insolvency and Trustee Service website for the life of your Summary Instalment Order.

What happens when the Summary Instalment Order is made?

After the Official Assignee has made a Summary Instalment Order:

A creditor cannot begin or continue a proceeding against you unless you have failed to meet your obligations under the order.

Any proceedings still in Court must be halted at the time of the order, unless the Official Assignee gives permission for the case to proceed.

Resolving disputes with creditors

Creditors who have 'proved' their debts (supplied satisfactory documented evidence such as invoices and signed agreements showing you owe them money) have certain rights. They can:

Object to the Supervisor's acceptance or rejection of any creditor's claims.

Apply to the Official Assignee to resolve disputes with claims.

Apply to be included as a creditor in the administration of your estate under the Summary Instalment Order for the amount of the debt.

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Distribution of the money you pay

Your Supervisor must distribute the money paid you under the Summary Instalment Order in the following order:

1. Pay administration costs (including the supervisor's remuneration) in accordance with the prescribed scale.
2. Pay the Official Assignee's costs and fees.
3. Pay the debts in accordance with the order.
4. Pay any surplus to you (the debtor).

You will be discharged from all unsecured debts when you have completed all payments required under your Summary Instalment Order.

If you fail to keep up your payments

Your Supervisor must notify the Official Assignee as soon as practicable if you fail (default) to make a payment in accordance with your Summary Instalment Order.

In such a case the Summary Instalment Order can be terminated and your creditors can then start legal proceedings to pursue you for outstanding debt. The result may be that your only option is to go into bankruptcy.

The No Asset Procedure

Who is the No Asset Procedure designed for?

If you find yourself insolvent (unable to pay your bills as they fall due) the No Asset Procedure can offer you an alternative to the three-year form of bankruptcy. It is designed for people who have accumulated consumer debt and for whatever reason find their financial affairs have become unmanageable.

In a nutshell

Provided you qualify, the No Asset Procedure provides an alternative and more flexible way to resolve your financial situations than going into bankruptcy. It aims to get you back on your feet sooner so you can contribute to the economy.

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Some benefits:

The No Assets Procedure lasts for only 12 months, compared to the usual three-year period of a bankruptcy.

You do not have to go to court.

Once you have been admitted to the No Asset Procedure, your creditors cannot begin or continue any step to recover or enforce a debt (unless your circumstances have changed or you have made false statements to gain admittance to the No Asset Procedure).

Termination and discharge

You are automatically discharged from the No Asset Procedure after 12 months (as compared to three years for most bankruptcies).

On discharge, your debts (excluding the debts listed below) are cancelled, and you are not liable to repay any part of them, including any penalties and interest that may have accrued.

What debts must I still pay?

Certain obligations are excluded from the No Asset Procedure. You must continue to pay any or all of these that apply to you:

Maintenance orders made under the Family Proceedings Act 1980

Child support amounts made under Child Support Act 1991

Your student loan balance

Court fines and reparation

Advances and overpayments that you may have received from Work and Income New Zealand

Any fraudulently obtained debt.

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A once-in-a-lifetime chance

It is important to realise that the No Asset Procedure offers those who qualify a one-off opportunity to sort out their financial affairs and get back on their feet.

If you are accepted into the No Asset Procedure it is important that you use this opportunity wisely to regain control of your financial affairs because you cannot apply for this procedure a second time. This is a compelling reason for you to get help from the Budget Advisors, Citizens Advice Bureau or Community Law Centres.

If you get into uncontrollable debt again, you may have to apply for a Summary Instalment Order or become bankrupt.

How do I apply for the No Asset Procedure?

You have to apply to the Official Assignee for entry to the No Asset Procedure scheme. You will be encouraged to seek early assistance from the Insolvency and Trustee Service, Budget Advisors and your Creditors.

You must complete the prescribed Application Form and a Statement of Affairs Form. If either form is incorrect or incomplete the Official Assignee may reject it.

The Official Assignee may decide to accept you into the No Asset Procedure if:

You have no realisable (sellable) assets to pay your creditors.

You have not previously been admitted to the No Asset Procedure. (It is a once-only opportunity for a fresh start.)

You have not previously been declared bankrupt.

Your total debts (excluding any student loan balance) are not less than \$1,000 and not more than \$40,000.

You can satisfy the Official Assignee through the prescribed means test that you cannot repay any amount towards your debts.

There is no evidence that creditors have faced enforcement issues and you are not using a trust or any other method of concealing your property (assets).

There are no creditors' petitions pending against you.

You have completed a satisfactory Statement of Affairs before you apply for admission to the No Asset Procedure.

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What happens if I am rejected?

If you are rejected from the No Asset Procedure your options may be either a Summary Instalment Order or Bankruptcy. Get further information from the Insolvency and Trustee Service, a Budget Advisor or the Citizens Advice Bureau.

Getting admitted

You are admitted to the No Asset Procedure when the Official Assignee sends you a written notice. The Official Assignee will then notify all your creditors and advertise that you have been admitted.

Your name will appear in a publicly searchable electronic register of people admitted to the No Asset Procedure. The record of your entry will remain on the Insolvency and Trustee Service website for four (4) years after discharge.

What are my responsibilities under the No Asset Procedure?

You must:

Supply the Official Assignee with any reasonable request, to provide assistance, documents, and information necessary for applying the no asset procedure to the debtor.

Notify the Official Assignee as soon as practicable of any change in your circumstances that would allow you to repay an amount towards your debts.



Important: avoid getting into further debt

Once you have applied for entry to the No Asset Procedure, you must not obtain credit (including hire purchase credit), either alone or jointly with another person, of more than \$100 without first informing the credit provider that you have applied for entry to the No Asset Procedure.

Note that this restriction starts once you have applied for entry, not once you have been accepted. You need to make this commitment at the application stage.

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Can my creditors apply to stop me being admitted?

Once you have been accepted by the Official Assignee for entry to the No Asset Procedure, the Official Assignee will send a summary of the your assets and liabilities to each of your known creditors.

If a creditor (a person you owe money to) objects to you being admitted to the No Asset Procedure they are able to apply to the Official Assignee to have the No Asset Procedure terminated.

A creditor can also object at any time during the 12-month course of the No Asset Procedure if your circumstances change. For example, you may have a windfall that allows you to pay off your debts.

Can my entry into the No Asset Procedure be terminated?

Yes, your entry can be terminated if the Official Assignee discovers that:

You have concealed assets with the intention of defrauding your creditors (for example, by transferring property to a trust, or asking any other person to conceal assets that you own).

Note that in such a case the Official Assignee can apply for a Court order for your assets to be preserved (from sale or disposal) until your case has been judged.

You had incurred debt prior to applying for a No Asset Procedure, knowing that you are unable to repay it.

Your circumstances have changed, enabling you to repay an amount towards your debts.

If your entry into the No Asset Procedure is terminated, the Official Assignee will send you written notice and also advise all your known creditors of the termination.

Statement of Affairs

You will need to complete a Statement of Affairs form as part of your application for entry into the No Asset Procedure. This enables the Official Assignee to gain an understanding of your financial position. If necessary, you may be required to attend an interview.

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Information you need to gather

To complete the Statement of Affairs and prepare for a possible interview, you need all this information:

Details of any real estate either currently or previously owned by you either on your own or with any other person.

Copies of any relevant documentation and details of any mortgages on the property.

Details of any motor vehicles either currently or previously owned, copies of any registration papers and details of any money owing on the vehicles.

Details of any assets either currently or previously owned by you, including information about any hire purchase arrangements and copies of any relevant documentation.

Details of all your bank accounts, shares you own, other investment details, life insurance policies and other financial assets.

Details of any Trusts you are a trustee or a beneficiary of.

Details of any Superannuation Scheme you belong to or any Life Insurance Policy you are a beneficiary of.

Details of any money owed to you.

The names and addresses of all of your creditors and the amounts owing to them.

Details of your employment status.

Your IRD number and Passport details.

You must comply with any reasonable request of the Insolvency and Trustee Service to complete a form or attend an interview.

What assets can I retain?

You are allowed to retain the following assets:

Your necessary tools of trade (maximum value fixed at the Official Assignee's discretion).

Necessary household and furniture effects including clothing for yourself and dependants (maximum value fixed at Official Assignee's discretion).

Motor vehicle (Maximum value \$5,000). [Top](#)

Section 3 - During bankruptcy



What you need to know

What happens first after I become bankrupt?

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What responsibilities do I have when I am bankrupt?

What if creditors continue to pursue me?

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Can I work? What are the restrictions?

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How does bankruptcy affect my bank accounts and daily living?

Can I travel overseas?

If I move overseas will I be bankrupt there as well?

How long am I bankrupt?

Can I shorten my bankruptcy period?

What if I am not happy with a decision from the Official Assignee?

What happens first after I become bankrupt?

You will deal with the Insolvency and Trustee Service

After you have completed your Statement of Affairs and application for entry to bankruptcy, the Insolvency and Trustee Service will contact you in writing to confirm the outcome of your application. If your application has been accepted, you will be bankrupt and it is possible that the Insolvency and Trustee Service may contact you to obtain further information, documentation or clarification about your affairs.

If, however, you have been made on the application of a creditor or creditors to the High Court, you will be contacted by the Insolvency and Trustee Service (that acts on behalf of the Official Assignee) shortly after you are made bankrupt and you will be required to complete a Statement of Affairs form so that the Insolvency and Trustee Service can get an understanding of your financial position. If necessary, you may be required to attend an interview.

You should complete and submit your Statement of Affairs as soon as possible if you have been made bankrupt on the application of a creditor(s). The period of your bankruptcy will not begin running until the Official Assignee has received a satisfactory Statement of Affairs. If you neglect or fail to provide a Statement of Affairs, it is possible that you will remain bankrupt for longer than three (3) years.

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Information you need to gather

To complete the Statement of Affairs and prepare for a possible interview, you need this information:

Details of any real estate either currently or previously owned by you either on your own or with any other person. Copies of any relevant documentation and details of any mortgages on the property.

Details of any motor vehicles either currently or previously owned, copies of any registration papers and details of any money owing on the vehicles.

Details of any assets either currently or previously owned by you, including information about any hire purchase arrangements and copies of any relevant papers.

Details of all your bank accounts, shares you own, other investment details, life insurance policies and other financial assets.

Details of any Trusts you are a trustee or a beneficiary of.

Details of any Superannuation Scheme you belong to or any Life Insurance Policy you are a beneficiary of.

Details of any money owed to you.

The names and addresses of all of your creditors and the amounts owing to them.

Details of your employment status.

You must comply with any reasonable request of the Insolvency and Trustee Service to complete a form or attend an interview.

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Who is the Official Assignee?

The Official Assignee is responsible for administering all bankruptcies in New Zealand. When you are declared bankrupt, Insolvency & Trustee Service staff, acting on behalf of the Official Assignee, will administer your bankruptcy estate.

What responsibilities do I have when I am bankrupt?

At the start of your bankruptcy you will receive a formal Notice to Bankrupt which sets out in detail your obligations as a bankrupt person.

If you do not understand any parts of this Notice you can speak either to the Insolvency and Trustee Service toll free on 0508 467 658 or seek independent advice.

If you cannot afford to pay for a lawyer then contact the nearest Community Law Office. Visit www.communitylaw.org.nz for addresses of all Community Law Centres. Alternatively, the local Citizens Advice Bureau (call toll free 0800 367 222) will be able to put you in touch with the nearest Community Law Centre.

Your main responsibilities under bankruptcy are that you must:

Co-operate fully with the Official Assignee.

Comply fully and honestly with all requests for information and not wilfully mislead or withhold any information or conceal any assets.

Notify the Official Assignee whenever you change your address, name, financial circumstances, employment or terms of employment.

Attend interviews or examinations on oath if requested.

Fulfil all duties imposed on you by the Insolvency Act 2006, in particular the provisions contained in your Notice to Bankrupt.

The responsibility to be open and honest

It is very important to be open and honest in your dealings with the Insolvency and Trustee Service. Bankruptcy is a legal process that enables people to get relief from debt burdens that they cannot possibly repay, despite their very best efforts.

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Important point

Bankruptcy does not offer an opportunity for you to hide your assets or possessions from creditors or the Official Assignee.

Remember, the Official Assignee is there to assist you, as well as your creditors, during your bankruptcy. In return for this relief from your creditors, you have an obligation to be open and honest about your financial affairs.

Under the Insolvency Act 2006, you are legally obliged to provide information to the Insolvency and Trustee Service even after you have been discharged. There are penalties for dishonesty or concealing important information about your true financial position.

What if creditors continue to pursue me?

If the debt arose before the date of your bankruptcy, contact the Insolvency and Trustee Service and inform them of the creditor in case their claim has not been recorded with the Official Assignee.

Write the date of your bankruptcy on the bill, along with your insolvency number if you know it and the Insolvency & Trustee Service phone number (0508 467 658) and mail it back to the creditor.

The fact that you may continue to receive bills for these debts does not mean that the debts are not included in your bankruptcy.

Important point

Things you reasonably need to carry on daily life will not be taken from you, but it would also be unreasonable, for example, for you to expect to keep a luxury car when a more modest vehicle would suit your circumstances.

What about any money that is owed to me?

You must tell the Official Assignee about all your debtors (the people who owe you money).

Remember that it is your duty during your bankruptcy to forward any money you receive for debts owing to you to the Official Assignee.

The Official Assignee will try to recover any money owing to you and will use it to help pay off your debts.

However, if the costs involved in collecting the money outweigh the value for the creditors, the debt may be written off. Any funds you receive for debts owing to you should be forwarded to the Official Assignee.

It is important to supply the Official Assignee with evidence of the money owed such as a debtors' list, copies of invoices sent, or copies of contracts. These will be necessary to enable the Official Assignee to pursue the debt through the normal channels.

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Important point

If any creditor continually puts you under pressure to pay a bankruptcy debt, contact the Insolvency & Trustee Service immediately.

Can I work? What are the restrictions?

If you become bankrupt, retaining your job or finding work is obviously an important step to rebuilding your life. A job will help you pay for daily costs, such as rent, electricity and food, and it will also help you meet any on-going responsibilities such as maintenance and child support. Remember that you cannot avoid these obligations by becoming bankrupt.

Employment restrictions

However, there are some restrictions on the kinds of employment that you can take. While you are still bankrupt you must obtain the express written consent of the Official Assignee before you can:

Be self employed, start a business or go into partnership

Take part in the management or control of any business or company

Be employed by a relative or a trust, company or other entity controlled, managed or owned by a relative.

You may apply to work in any of these ways, but to do so without consent is an offence under the Insolvency Act 2006 and you may be prosecuted.

Taking on an extra job

If you take on an extra job to help pay off your debts, remember that you will have to pay secondary tax on your additional earnings. You should tell the Insolvency & Trustee Service if you take on an extra job.

Will my wages be taken off me if I become bankrupt?

There is no restriction on the amount you can earn but you will need to complete a budget form. This will allow the Official Assignee to assess if you can afford to make regular contributions to your bankruptcy estate for the benefit of your creditors.

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Will I still receive income tax refunds during my bankruptcy?

Any tax refunds due to you during your bankruptcy will be sent by Inland Revenue direct to the Insolvency and Trustee Service. The money will be used to help pay the costs of administering your estate and your debts.

You will get a new IRD number

When you are declared bankrupt, Inland Revenue will issue you with a new IRD number.

They will send notification of your new number directly to you.

You should use the new number from the date of your bankruptcy onwards and let your bank, employer (or WINZ) know what your new IRD number is.

What will happen to my possessions?

Will I lose my possessions?

Normally household effects are not taken, but it depends upon the value and nature of the possessions. You must disclose all your assets (things you own) to the Official Assignee.

Your assets at the date of your bankruptcy become the property of the Official Assignee who will decide what assets (if any) will be seized and later sold by the Official Assignee for the benefit of your creditors.

Prior to selling such assets, the Official Assignee will take into account the costs and practicality of selling any goods and also your needs.

What can I keep?

Under the Insolvency Act 2006, a bankrupt person is entitled to retain the combined sum of \$1,000 held in bank accounts at the date of their bankruptcy, tools of trade and furniture and personal effects at the Official Assignee's discretion. A bankrupt is also permitted to retain a motor vehicle with a maximum value of \$5,000. However, the Official Assignee has the discretion to consider your circumstances and may allow you to keep more than this.

Will they inspect my house?

A house inspection is not normally carried out. However, the Insolvency and Trustee Service may decide to inspect your home to assess what household effects or other possessions you reasonably need to carry on daily living.

Any luxury items owned may be seized and sold for the benefit of creditors. It is inherently unfair for a bankrupt person to retain luxury items when creditors are out of pocket.

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Will I be allowed to keep my car?

You should be aware that the Official Assignee may sell your motor vehicle for the benefit of your creditors if it has a value of more than \$5,000. The decision will be made on a case-by-case basis, taking into account the value of the vehicle, any amount owing and whether the vehicle is jointly owned.

Please let the Official Assignee know immediately if your car is not insured.

Will I be allowed to keep my house?

The money you have invested in your house is an asset in your bankruptcy, even though there may still be money owing on your mortgage.

If you have paid off more money on the house than you owe, the Official Assignee may sell the house for the benefit of your creditors. Where there is more money owing on the house than you have paid off, the Official Assignee may not take any action.

The decision is made on a case-by-case basis, taking into account such variables as the market value of the house, the amount still owing on the mortgage, the cost of selling the house and other debts on the house (such as rates) that are outstanding.

If you remain in the house, you should continue to make your mortgage payments and meet all other ongoing house expenses such as rates and insurance until the Official Assignee makes a decision on how to deal with the house.

If your house is registered under the Joint Family Homes Act 1964, there is extra protection from creditors to the value of \$103,000. You should discuss this with the Insolvency and Trustee Service.

If your property is uninsured you must advise the Official Assignee.

What about life insurance policies and superannuation schemes?

Any superannuation schemes or life insurance policies you own, or are entitled to benefit from, including Kiwisaver are assets in your bankruptcy and become the property of the Official Assignee. These may be surrendered for the benefit of your creditors.

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What happens to jointly owned possessions?

The Official Assignee will first calculate how much of the asset you own. The Assignee may then decide to sell or cash up your share in the asset if this will benefit your creditors. In this case your partner/spouse or any co-owner of the asset will have first option to purchase your share.

Example

If your property is worth \$300,000 and you have already contributed \$200,000 to your mortgage, it is likely that the Official Assignee will pursue a sale.

If this happens, the outstanding amount will be returned to the mortgagor and the remainder will be used to pay creditors.

The Official Assignee in this case will take into consideration how easy it would be to sell the property.

What happens to the assets owned by my partner/spouse or children?

If the Official Assignee is satisfied that a third party (not you) owns the assets and you have no legal or equitable entitlement to them, they are unlikely to form part of the bankruptcy estate.

If your partner or spouse has a separate income, the Official Assignee cannot touch this income but it will be taken into consideration when the Official Assignee assesses your ability to make contributions into your bankruptcy estate for the benefit of your creditors.

What happens if I have a windfall?

The Official Assignee may make a claim to all or any part of significant winnings or an inheritance you may receive during the term of the bankruptcy. As a bankrupt, you are obliged to inform the Official Assignee of any such change in circumstances. Failing to do so is an offence under the Insolvency Act 2006 and you may be prosecuted.

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What about items on hire purchase?

You must tell the Official Assignee

Any items that are on hire purchase or subject to a security will remain your responsibility during bankruptcy, but you must tell the Official Assignee about them.

If you do not pay a secured creditor for goods bought on Hire Purchase or a Finance Agreement, they are still legally able to repossess the secured items.

If you cannot afford or do not want to keep paying, you should make an arrangement for the goods to be returned to the creditor.

If a supplier repossesses an item, the remaining debt you owe to them after they sell the secured asset will be covered by your bankruptcy.

The item could be given back or sold

Depending on the item and the amount still owing, the Official Assignee may require you to voluntarily surrender the item back to the supplier. If the value of the secured asset is greater than what is owed to the secured creditor, the Official Assignee may decide to sell the item and use the proceeds from the sale to help pay your debts.

Keeping the item

If you wish to continue with the hire purchase you may be required to enter into a new contract. If you want to keep an item, you should advise the creditor that you want to continue with the agreement and keep paying for the item.

What happens if I have sold or given away the item?

If the items have been sold or given away by you and you intend to stop payments you should let the creditor know this. Any amount left outstanding is likely to be provable in your bankruptcy estate.

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Important tip

Please check the Terms of your hire purchase agreement or credit contract before you sell or give away items on which you still owe money.

It may be illegal for you to sell or give the item away because you might be breaking the terms of the contract.

How does bankruptcy affect my bank accounts and daily living?

Will I be allowed to keep my bank account?

The Official Assignee will allow you to keep a personal bank account, but not a business bank account. Business accounts will be closed by the Official Assignee.

However, once you become bankrupt, your bank may not wish to continue to have you as a customer and may close your account. It is their decision—they are not forced to accept or keep you as a customer. The Official Assignee has no involvement in what services a bank may choose to provide you after you have entered bankruptcy or some other insolvency procedure such as a No Asset Procedure or Summary Instalment Order.

Alternatively, they may choose to freeze your account (particularly if you owe them money) so you might find that any funds you put into your account after your bankruptcy will be frozen. This could take a while to sort out, so it is important that you contact your bank, preferably before you become bankrupt, to make banking arrangements.

Consider a new bank

If you owe your bank money at the time of your bankruptcy, it may be advisable to find a new bank.

This may not be easy after your bankruptcy, but you might want to approach Credit Unions, Building Societies, or some of the smaller banking institutions. Let them know about your bankruptcy when you open your new account.

Remember to advise the Official Assignee of your new bank account and also your employer or WINZ if they are paying you directly into your bank account.

Do I have to keep paying my power and phone?

Any electricity or telephone accounts overdue at the date you become bankrupt will be Provable Debts and therefore covered by your bankruptcy. You will be responsible for any current or new accounts.

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Will I be allowed to keep my power and phone on?

This is a decision to be made by the power and phone companies you are dealing with. You should contact these companies after you become bankrupt to discuss this.

Can I still get credit?

Yes you can, if you can meet the conditions of the person or business offering you credit. If you are asking for more than \$1,000 credit for yourself or for someone else, you must make sure that you tell the creditor about your bankruptcy. Give this advice to the finance company in writing.



Important information

Failing to disclose your bankruptcy status is an offence under the Insolvency Act 2006 and you may be prosecuted.

Will I be able to keep items I am buying on Hire Purchase or on a Finance Agreement?

If you have any items on hire purchase, or if you have given security over any of your property (for example, your car or your household belongings), you will still be responsible to pay for these items if you wish to keep them. These creditors are called secured creditors.

If the asset is worth more than what is owed, the Official Assignee will make a decision about whether or not the asset will be taken and sold or left with you.

The Official Assignee will contact the creditor to advise them about your bankruptcy, but it is your responsibility to contact the creditor to discuss whether or not you can continue with the security agreement.

Some contracts allow a secured creditor to cancel the contract once you become bankrupt. You should check your finance agreement. Your local Citizens Advice Bureau or nearest Community Law Centre should be able to give you some advice about the contract you have signed.

How can I avoid goods being repossessed?

If you do not pay a secured creditor for goods bought on hire purchase or a finance agreement, they are still legally able to repossess the secured items. If you want to keep these items, you should advise the creditor that you want to continue with the agreement and keep paying for them.

If you cannot afford or do not want to keep paying, you should make an arrangement for the goods to be returned to the creditor. Once they have repossessed an item, the remaining debt you owe to them will be covered by your bankruptcy.

If the items have been sold or given away by you, you should let the creditor know this if you intend to stop making payments.

If you do stop making payments, the debt will be covered by your bankruptcy.

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Important information

Please check the Terms of your hire purchase agreement or credit contract before you sell or give away items on which you still owe money.

It may be illegal for you to sell or give the item away because you might be breaking the terms of the contract.

Can I travel overseas?

If you want to leave New Zealand during the term of your bankruptcy, you must apply in writing to the Official Assignee for consent in reasonable time before you leave. If you fail to obtain consent prior to leaving New Zealand, you will be committing an offence under the Insolvency Act 2006.

How do I apply for consent to leave New Zealand?

All applications for consent must be made in writing to the Official Assignee.

You must submit your application in time for it to be considered before you would like to leave.

Your application must include details of your:

Destination

Travel dates

Travel purpose

Contact address overseas

Cost of travel. If someone other than you is paying for the trip, written evidence from that person should be provided

Any other information the Official Assignee may need in order to make an informed decision.

You must also tell the Official Assignee what benefits (if any) your travel has to your creditors.

[Download an overseas travel application form.](#)

The onus is on you to show why consent should be granted. The Official Assignee will take into account your best interests and those of your creditors, on a case by case basis.

The Official Assignee will provide you with a response within ten (10) working days after receipt of your application. This timeframe will depend on whether you have provided all necessary information in your application.

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If I move overseas will I be bankrupt there as well?

The responsibilities and restrictions placed upon you by your New Zealand bankruptcy continue for the three-year term regardless of whether you remain in New Zealand or move overseas.

Overseas debts

If you owe money in an overseas country at the time of your New Zealand bankruptcy proceedings, your debt will be noted in your New Zealand bankruptcy proceedings and those creditors will be notified of your New Zealand bankruptcy by the Insolvency and Trustee Service.

However, this does not prevent an overseas creditor from continuing to pursue repayment through that overseas country's courts and making you bankrupt in that country as well.

For example, a person that has large debts in both New Zealand and Australia could be made bankrupt by creditors in both New Zealand and Australia.

Credit agencies operate internationally

Note also that credit agencies such as Veda Advantage (www.vedaadvantage.com) and Dun & Bradstreet (www.dnb.co.nz) operate internationally and their websites, as this website, can be accessed by anyone here or overseas wishing to view your credit history.

Information about your bankruptcy will remain indefinitely on the Insolvency and Trustee Service website.

How long am I bankrupt?

If you applied to make yourself bankrupt, then you are usually automatically discharged from bankruptcy on your third year anniversary.

If you have been made bankrupt on the application of a creditor, then you will usually automatically discharged three years from the date that you provide the Official Assignee with a satisfactory Statement of Affairs.

In some circumstances the Official Assignee or a creditor may object to your automatic discharge, or they may request that your discharge be conditional.

A conditional discharge means that you will have some restrictions placed on you after your discharge (for example, some limitations for a period of time on your future involvement in business).

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Can I shorten my bankruptcy period?

Most bankruptcies run for the full three-year period and it is rare for bankruptcies to be shortened. There are two possible ways of shortening your bankruptcy but in both instances you will need to apply to the High Court and the costs of doing so can be considerable.

You should seek independent advice regarding this and you may require the assistance of a solicitor.

1. Early discharge

You can apply to the High Court at any time during your bankruptcy to be discharged from bankruptcy earlier than the normal three-year term. To apply for an early discharge you must:

File an application in the High Court. This is usually done by a solicitor on your behalf;

Give reasons supporting your application in an affidavit. An affidavit is a written statement of the relevant facts, sworn

on oath or affirmed before a solicitor, Justice of the Peace or a Registrar of the High Court;

Advise the Official Assignee of the hearing date, time and location at least 15 days prior to the hearing to enable him to provide a report to the High Court and attend the hearing;

Forward a copy of your application to the Official Assignee and each creditor who has filed a proof of debt; and

Arrange with the Official Assignee to advertise your application in the local newspaper at least 21 days before the hearing date

Any of your creditors can oppose your early discharge application.

Where an early discharge is granted, the High Court may impose conditions on you, such as restrictions on your future involvement in business.

2. An annulment (cancellation) of the bankruptcy

If you were made bankrupt on the application of a creditor, you can apply to the High Court for an annulment (cancellation) of your bankruptcy at any time. If however, you were made bankrupt on your own application, you can apply to the Official Assignee for an annulment (cancellation) of your bankruptcy at any time after being made bankrupt. The Court or Official Assignee can grant an annulment (cancellation) if:

the bankruptcy order should not have been made, because, for example, the proper processes involved in making the order were not followed; or

all of your bankruptcy debts and the fees and expenses of the bankruptcy proceedings have either been paid in full or secured to the satisfaction of the High Court; or

there has been a substantial change in your financial circumstances since the date of adjudication (for example, you have received a windfall or come into an inheritance), which means that your liability to pay your debts should be revived; or

you have reached an agreement (called a 'composition') with your creditors to repay all or part of your debts.

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What if I am not happy with a decision made by the Official Assignee?

If you encounter a problem, please tell the Insolvency and Trustee Service so that they can try to resolve it, and (if appropriate), review their procedures to prevent the problem from occurring again.

You can lodge your complaint directly with the Insolvency and Trustee Service in writing or by calling toll free on 0508 467 658. The person you speak to will forward your complaint to the appropriate manager. You will be asked to put your complaint in writing.

Please make sure your written complaint includes:

your name and address

details of your complaint

what you would like to happen to fix the problem.

Please also supply copies of any documents that support your complaint.

What will be done?

The Insolvency and Trustee Service undertake to get back to you within ten (10) working days of receiving your complaint. If they are not able to resolve your complaint within that time frame they will give you an estimate of how long a full response will take.

Their response will include:

1. A summary of the investigation into your complaint
2. One or more of the following, as appropriate:

An explanation

Steps they can take to fix the problem

Steps they can take to ensure a problem does not reoccur.

If, after contacting the Insolvency and Trustee Service you are still dissatisfied, these steps are open to you:

You can appeal the Official Assignee's decision in court. Section 86 of the Insolvency Act 2006 allows you to make such an appeal within twenty one days from the date of the decision or 'within such further period as the court allows'.

You can appeal to the Ombudsman through the Office of the Ombudsman (phone toll free 0800 802 602).

You can contact the Privacy Commissioner (0800 803 909) if your complaint concerns a breach of your privacy.

If you are concerned about a decision reached by the Official Assignee, please contact the Insolvency and Trustee Service immediately toll free on 0508 467 658 for information about the appeal process.

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Section 4 - After bankruptcy



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Will my credit history be affected?

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Resist pressure from your family

If you run a business

Organising your tax and financial affairs

Tax management tips

Responsibilities and restrictions

What happens to my debts after I am discharged from bankruptcy?

Discharge from bankruptcy releases you from all Provable Debts in bankruptcy. All such debts no longer exist and you cannot be pursued by creditors for payment.

If a creditor does seek to recover money from you for a debt incurred prior to the date of your bankruptcy and which was included in your bankruptcy as a provable debt, please contact the Insolvency and Trustee Service immediately.

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What debts am I still liable for?

Bankruptcy does not cover all your debts. You will remain personally responsible for:

Court and traffic fines and Court ordered reparation (compensation) payments.

Maintenance and child support payments administered by Inland Revenue (IRD).

Advances and overpayments that you may have received from Work and Income New Zealand.

All debts incurred after the date of your bankruptcy, including tax.

You will of course have to continue paying your normal living costs, including rent or mortgage payments, rates, electricity and other household expenses.

Will my credit history be affected?

Your credit history is likely to be affected for up to seven years (this is the length of time that credit agencies keep records of your bankruptcy).

However, if you have successfully applied for an annulment (cancellation) of your bankruptcy, you can request that credit agencies reflect this annulment in their records.

Note also that credit agencies (such as Veda Advantage and Dun & Bradsreer) operate internationally and their websites (www.vedaadvantage.com or www.dnb.co.nz) as well as the Insolvency and Trustee Service website (www.insolvency.govt.nz) can be accessed by anyone here or overseas wishing to view your credit history.

As soon as you have been discharged from bankruptcy it is in your best interest to start rebuilding a more positive credit history. You will find tips on how to do this in the rest of this section.

Steps to avoid bankruptcy happening again

This section offers a brief overview of steps you can take to improve your financial and budgeting skills. It is not meant to replace the kind of services provided by a Budget Advisory Service. Instead its purpose is to give you some brief tips to get you started on the path to rebuilding your life.

Bankruptcy may not be a pleasant experience but it does provide you with an opportunity to go back to the drawing board and to make a fresh start after three years. The period of your bankruptcy is a time to take stock of where you are in life and seek to improve that position.

You should strive to put yourself in a better position at the end of your bankruptcy than you were at the beginning.

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Why did it happen?

As already noted, bankruptcy is not a pleasant experience during which you are no longer in full control of your life. This makes it all the more important for you to make sure it does not happen again. If you can identify the cause, you can take steps to make sure it does not happen again.

Looking back

It can be useful to think about the reasons you became bankrupt. Thinking about these may help you to come up with strategies to avoid something similar happening to you in the future.

You may have been forced into bankruptcy through all sorts of reasons. The most common reason is taking on excessive debt. Here are some other common examples:

Signing a personal guarantee to help a friend or child get credit for a business venture that turned sour.

Losing a job, and with it the capacity to pay for debts you entered into.

Not having appropriate insurances in place to cover some catastrophe, such as fire or flood or public liability for damage caused.

A major debtor (person or business that owed you money) failed to pay.

Borrowing funds for a business venture that did not pay off.

Developing a compulsive gambling habit.

Suffering from an alcohol or drug addiction

For each of these causes there is a solution or an issue you can start addressing.



Important information

Do not wait until after bankruptcy to tackle the issues that led to your bankruptcy. Think about how you can avoid them as soon as you become bankrupt.

Credit card abuse

Excessive use of credit cards is a common problem. Remember that credit card money is very expensive money. Acquiring a new credit card to pay off other credit cards is a signal that your debt situation is getting seriously out of hand.

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Draw up a budget

The next step is to complete your budget. It is a good idea to get some help from a Budget Advisor the first time you do this.

You can also visit the www.sorted.org.nz website and click on the online Budget calculator (right hand column). The Managing Debt section of this website also offers much useful information.

Once you have completed a budget you can track and direct your spending far more efficiently and also fine-tune the budget.



Important information

If you make the budget too strict you are less likely to stick to it, so include some 'fun money' for yourself and the children in the budget.

The best way is to reward yourself and your family for sticking to the budget by setting aside a small amount each week that will enable you to eat out or go to the movies once in a while.

Develop your money skills

Shops and business try all sorts of tactics to get us to buy their goods. We are all constantly bombarded by buying messages.

You are encouraged to 'buy it now' and pay it off later.

Faced with these pressures, many people simply do not realise they are getting too far into debt.

Here are some simple money rules:

Avoid taking on more debt than you can handle. Always work out the true cost of an item (not just what you will pay weekly).

Very often the true cost is far more than the advertised price.

If you have difficulty in stopping yourself from buying more than you can afford, get help from one of the many Budget Advisory Services throughout New Zealand and learn budgeting skills.

Pay cash if you can. That way, you know exactly how much you are spending. Having to open your purse or wallet makes you think twice about what you are about to buy.

Think about the difference between what you want and what you need. There is a difference. Of course we all want as much as possible. In particular we want all the bright shiny things that the neighbours have. But what do we really need? Our actual needs are always far smaller than our wants. Focus on your real needs.

The credit you get on your credit card is very expensive money. Most credit cards charge around 18% to 21% for the money they offer you. That is a very high rate of interest. Credit card

companies may try to entice you to use their card by offering a much lower interest rate for a period (such as the first 6 months), but they will put their rate up to the average of 18% to 21% as soon as the introductory period ends.

Hire purchase can also be a very expensive way of financing what you want. Most people do not even bother to work out the final amount. Instead they just look at the weekly amount they have to pay.

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Get advice first

Make sure you work out the true cost of what you are buying. Try to get a cheaper finance rate or better still, wait until you can pay cash. Get advice first from a Budget Advisor about a deal you are considering.

For example, Sam saw a car advertised for \$8,000, or no deposit and \$445 per month for 36 months.

He thought he could afford \$445 a month, so he did not bother to work out that \$445 multiplied by 36 payments came to \$16,020!

So Sam will end up paying \$16,020 for a car worth only \$8,000. In three years time when Sam has finished paying for the car, Sam will be lucky to get \$2,000 for the car if he were to sell it.

This means Sam ends up paying \$16,000 for a car that was only ever worth \$8,000 and is in fact worth only \$2,000 when he has finished paying for it.

\$14,000 of Sam's money has disappeared in three years.

Resist buying pressures

Tempting credit offers

We all get constantly bombarded with sales messages. Many businesses offer very 'generous' credit terms, or 'pay nothing until next year' type deals. Some even go so far as to offer you money to sign up for a purchase.

Pressure to keep up

Many people want the same goods and luxury items that they see their neighbours using, such as smart cars or giant TV screens. The temptation to keep up with the neighbours (or the neighbours' children) can easily lure you into overspending.

Resist pressure from your family

It is only natural for you to want your children to have the same advantages as other children they mix with at school.

Your children may also come under pressure from their schoolmates if they do not have the right things and they can put considerable pressure on you to buy them 'cool' clothes, electronic games or mobile phones.

Some tactics:

It is important to explain to your children that the whole family has to live within a budget.

Encourage each child to work out their own budgets and stick to it. Try to make it fun.

Give them a set amount of pocket money each week and resist any top-ups.

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Teaching children budgeting skills

One single mother offers these tips for teaching children good money skills:

Lead by example. If children see that you are ill disciplined with money then they are likely to follow in your path.

If you commit to paying them pocket money, then be consistent and pay on time. They know where they stand and this teaches them that they too must pay people on time.

Include children in your budgeting process so they are aware the household has only a limited amount each week for food and expenses.

If they ask for things that you cannot afford (such as electronic games or expensive clothes), then rather than saying 'No' outright, acknowledge what they want and then ask them "How do you think we can afford it?" This encourages children to be aware that you do have limited resources and they may even suggest creative ways of trimming household expenses.

Encourage your children to be creative about raising their own money. You might consider paying them small amounts to complete chores, or encourage them to wash a neighbour's car or mow lawns.

Simple tips on better money management

Most expenses are predictable. If you find that unexpected expenses turn up too regularly, it is a sign that you are not budgeting effectively. For example, tyres on a car will wear out and the battery may not last beyond three years (it is most likely to die in the middle of winter). These things are predictable, and by setting money aside regularly you will avoid stress.

Avoid signing personal guarantees, especially for debts others will be responsible for. Think of what you might lose if the deal goes sour. Can you really afford the loss?

Take out appropriate insurance on your house and large ticket items (such as a car you may owe money on) to cover accidents, loss of income (your job), loss through fire, earthquake, floods or public liability.

Save today for choices tomorrow

If you save today, you reduce the choices you have today, but you increase the choices you will have in the future.

Bargains

One single mother furnished her whole house through garage sales:

"I made a point of finding out where all the garage sales were going to be and getting there as early as possible. I have been able to pick up some excellent pieces for a fraction of their value."

Get more for your money

Here are some commonsense tips on getting more for your budget:

Cook rather than buy take-aways. It is cheaper and healthier.

Stick to your budget no matter what the temptation.

Keep money aside for emergencies and unexpected costs—they will always crop up.

Regularly check used clothing shops for bargains. Many people get bored very quickly with their clothes so it is possible to pick up quality garments for just a few dollars.

You do not need to buy everything brand new. Websites such as TradeMe or publications such as Buy Sell and Exchange are sources of good bargains that can save you money. It is also possible to earn some extra money by selling things you no longer need, such as music CDs, books and DVDs.

Keep in touch with your Budget Advisor. They will have many useful tips to share with you.

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If you run a business...

If you are in business, continue to build your financial skills. There is always more to learn.

Contact the nearest Economic Development Agency (www.edanz.org.nz) or visit the New

Zealand Trade and Enterprise website (www.nzte.govt.nz) or Biz website (www.biz.org.nz) for details of free business skills workshops being run in your area.

Many businesses fail because they lack clear systems and the owner does not understand how to monitor the business 'hot buttons' or control the flow of cash in and out of the business.

Get help from an accountant or financial advisor on how to monitor the progress of your business through measuring tools. Regularly monitoring your business through key performance indicators will help you detect any deteriorating trends early enough to take action.

Take this a step further by putting together a team of advisors to help you build your business. The team might typically include an accountant or reputable financial advisor, a lawyer, your bank manager and perhaps a marketing consultant if you lack marketing skills.

Take out appropriate insurance to cover accidents, loss of income (your job), or loss through fire, earthquake, floods or public liability.

Be wary of extending credit too easily. If you go to a bank and ask for a loan, they will make you fill in a credit application form and ask you to supply appropriate details about yourself and your business. Do the same for businesses that want credit from you.

Follow consistent and systematic debt collection policies. The sooner you take action on overdue payments, the more likely you are to get paid.

Maintain good communications with your creditors. If you make a point of paying them on time they will be more likely to help you out when you experience tough times.

Ensure you keep up your compliance obligations (for example, tax obligations, ACC and OSH requirements).



Note

It is safer to have many smaller customers or clients rather than rely on a few bigger customers or clients.

Organising your tax and financial affairs

It is very important to take care of your tax payments because there are late filing penalties as well as interest charges that can quickly mount up.

You have four basic tax obligations:

1. Register for the right tax types depending on your situation (for example GST, PAYE, FBT)

2. File tax returns by the due date
3. Pay the amount required by the due date
4. Make sure what is stated on the returns is accurate.

If you work for someone else, then PAYE should take care of most or all of your income tax obligations. However, if you work for yourself, then you need to be more disciplined about setting money aside for:

Income tax

Possible Provisional tax payments

Payroll taxes on wages and salaries

GST payments

Fringe Benefit Tax (FBT)

Student loan repayments

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Getting free help

Inland Revenue offers a free business tax information service to businesses. Their advisors will tell you:

which taxes you need to know about

what records you need to keep

how to complete your tax returns (for example, GST and employer returns)

when to file returns and make payments.

To find out more about these services or to arrange an appointment, visit www.ird.govt.nz or phone Inland Revenue toll free 0800 377 774.



Important tax information

Always file returns by their due date even if you cannot pay or are getting a credit. Late filing penalties can range between \$50 and \$500. Late tax payments can attract interest charges as well that can quickly mount up.

Useful Guide

A useful introductory guide to your taxation responsibilities is the Smart Business Guide (IR320), which can be downloaded from www.ird.govt.nz (search for "IR320").

Tax management tips

Here are some further tips to manage your taxes more effectively:

Get advice from an accountant, qualified bookkeeper or financial advisor on how to predict the tax you will have to pay.

Start a separate bank account to save for tax payments. Set aside regular amounts in this account to cover your tax obligations.

Remember that if you are registered for GST you are collecting GST amounts on every invoice you send out. This money is not yours; it belongs to IRD.

Never think of the tax money as 'yours'. Resist the temptation to use tax money (especially GST) to provide working capital for your business.

PAYE and deductions from employees' wages are also not 'yours'. These are trust monies and belong to another party, so don't be tempted to use these funds for propping up your business.

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Important tax information

If you know you will be unable to pay a large tax bill, get help fast before the bill is due.

Make an approach to Inland Revenue with the help of a third party, such as a budget advisor, an accountant or other financial advisor. You may be able to come to terms with Inland Revenue about paying off the tax owed and avoid further penalties.

This could make a real difference to your ability to work through your debts!

Section 5 - Helpful resources



What you need to know

[Helpful organisations](#)

[Useful websites](#)

[Glossary: Our words and their meanings](#)

Helpful organisations

Insolvency and Trustee Service

www.insolvency.govt.nz

Use our website for a range of resources to help you use the Insolvency Service online services or simply to answer questions you might have about bankruptcies or liquidations. You will find answers to common questions, forms and fact sheets, and training guides that step you through the online services.

You also can call the Insolvency and Trustee Service office during business hours (8.30am-5pm weekdays) toll free on 0508 INSOLVENCY (0508 467 658).

Citizens Advice Bureau

Phone toll free 0800 367 222 or visit www.cab.org.nz for details of your nearest Citizens Advice Bureau.

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Budgeting Services

If your financial affairs are in a muddle, the nearest Budgeting Service is an excellent place to start sorting yourself out.

You will get free and confidential help with working out a budget, plus other useful advice. Remember that a budget is the first key step towards getting control of your finances.

Ask the nearest Citizens Advice Bureau for details of local Budget

Advisory Services, or look under Budgeting Services in the White Pages (www.whitepages.co.nz).

Business Skills Training

If you are in business, continue to build your financial skills. There is always more to learn. Contact the nearest Economic Development Agency (www.edanz.org.nz) or visit the New Zealand Trade and

Enterprise website (www.nzte.govt.nz) or Biz website (www.biz.org.nz) for details of free business skills workshops being run in your area.

Community Law Centre

If you cannot afford to pay for legal services, visit www.communitylaw.org.nz for addresses of all Community Law Centres. Alternatively, your local Citizens Advice Bureau (toll free 0800 367 222) will be able to put you in touch with the nearest Community Law Centre where you can get free legal advice.

Credit History

You are entitled to view your credit history information and to request changes if the information is not correctly recorded. For example, visit www.vedaadvantage.com or www.dnb.co.nz

Gambling Problem

If your bankruptcy was caused by a gambling problem, get help from the New Zealand Gambling Helpline (free phone 0800 654 655).

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Alcohol and Drug Helpline

If you require any assistance phone toll free 0800 787 797 for confidential information, advice and assistance. The lines are open 10am to 10pm every day and you can also browse the website www.druginfo.org.nz

Public Library

Public libraries are very useful resources for putting you in touch with aid organisations. Librarians can also help you find worthwhile reading material on such topics as budgeting and money skills.

Tax Help

Inland Revenue offers a free business tax information service to businesses. Their advisors will tell you:

which taxes you need to know about

what records you need to keep

how to complete your tax returns (for example, GST and employer returns)

when to file returns and make payments.

To find out more about these services or to arrange an appointment, visit www.ird.govt.nz or phone toll free 0800 377 774.

A useful introductory guide to your taxation responsibilities is the Smart Business Guide (IR320), which can be downloaded from www.ird.govt.nz (search for "IR320").

Work and Income New Zealand (WINZ)

If you have any dealings with WINZ you should let them know you're thinking about bankruptcy.

Your Community

Remember that your church group or community organisation or club you may belong to may be able to help, or have Welfare Officers that could assist you. Also speak to friends and family about your situation. They may be able to help.

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Useful websites

www.insolvency.govt.nz

Visit us for a range of resources to help you use the Insolvency Service online services or simply to answer questions you might have about bankruptcies or liquidations. You will find answers to common questions, forms and fact sheets, and training guides that step you through the online services.

www.cab.org.nz

Provides details of the nearest Citizens Advice Bureau (or phone toll free 0800 367 222). Your local Citizens Advice Bureau is a useful first contact point if you are facing bankruptcy. The staff will be able to give you details of other helpful organisations.

www.sorted.org.nz

This website is not simply about retirement planning. It also offers advice on setting goals, saving, managing debt and investment. The website offers you useful calculators and advice on completing a budget.

<http://www.familybudgeting.org.nz/>

Website of the New Zealand Federation of Family Budgeting Services:

PO Box 24382, Wellington 6142

Phone: 0508 283 438

www.communitylaw.org.nz

Find the nearest Community Law Centre. Alternatively, the local Citizens Advice Bureau (phone toll free 0800 367 222) will be able to put you in touch with the nearest Community Law Centre where you can get free legal advice.

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www.ird.govt.nz

A helpful website with advice on managing your tax obligations. Check out the Individuals and Family section for advice on Family Assistance and Managing financial difficulty and debt.

www.vedaadvantage.com and www.dnb.co.nz

Access your credit history through these websites. If the information is not correct then you can ask Veda Advantage or Dun & Bradstreet to make the necessary changes.

www.druginfo.org.nz

Information on alcohol and drug dependency problems. If you require any assistance you can call 0800 787 797 for confidential information, advice and assistance. The lines are open 10am to 10pm every day. Business information and skill building

www.biz.org.nz

A great resource for information about free business training and workshops, plus many useful articles and online training. See also the New Zealand Trade and Enterprise website www.nzte.govt.nz for details of training and possible government grants.

Glossary - Our words and their meanings

Bankruptcy (Individuals)

Bankruptcy is a legal process that enables you to get relief from debts that you cannot repay, despite your best efforts. There are two ways of becoming bankrupt: if you cannot pay your bills you can apply to the Official Assignee to make yourself bankrupt or wait for your creditors to apply to the High Court to have you declared bankrupt.

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Consumer

Someone who buys goods or services.

Creditor

Any person or business you owe money to is a creditor.

Debtor

Someone who owes money to another person or business.

Default

You are in default when you miss a repayment or in some way break the terms of a loan agreement.

General Security Agreement

A finance agreement where you grant a creditor security over most or all of your assets.

Guarantor

A person who signs a form guaranteeing to repay a debt in case the borrower is unable to. If the borrower cannot pay the debt owed, the guarantor becomes responsible for paying the debt.

Insolvency

You are insolvent when you are unable your bills as they fall due. The state of insolvency may then lead to bankruptcy unless you can make suitable arrangements with your creditors.

Liquidation (Companies)

An insolvent company is put into liquidation by court order or special resolution. A liquidator is appointed to identify, secure and sell all of the company's assets for the benefit of the company's creditors. All funds recovered are distributed equally amongst creditors by the liquidator.

Official Assignee

The Official Assignee is responsible for administering all bankruptcies and some court-appointed liquidations in New Zealand.

Preferential Creditors

Creditors who get paid before other creditors, for example, Inland Revenue and employees.

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Principal

The amount of money that you borrow to pay for something (for example a car or house). Interest is added to the principal amount borrowed.

Security

When assets such as a house, car or personal belongings are offered as collateral to a person or company that lends you money. If you fail to pay what is owed, the creditor can repossess and sell the asset to get their money.

Secured Creditors

Creditors that have some security over the money you owe them, for example, a mortgage over your house. They have the option to sell the secured asset if you fall behind in your payments. Any amount left outstanding after the asset is sold is a provable debt in your bankruptcy.

Unsecured Creditors

Creditors with no security over any of your assets. These creditors rank last in getting any payment out of your bankruptcy.
