

## I am in financial trouble... what are my options?

### What is insolvency?

Insolvency means either or both of the following:

- you cannot pay your debts when they are due (i.e. your outgoings are more than your income)
- you owe more than you own (your liabilities are more than your assets)

### Do you know how much you owe?

The insolvency options available to you depend on your total debts. You should gather together all documentation such as statements, invoices, and contracts so the Official Assignee can confirm your financial position and determine your eligibility.

If you do not have documentation the creditor is required by law, to send you copies.

To work out your total debts, [use the handy budget calculator](#) found on this website.

### What options do I have?

Which of these options are available to you depend on:

- The amount of debts
- The value of assets
- What the debts are for
- Whether you have been insolvent before and the options (if any) used then.



[Download the brochure: Personal Insolvency Information \[95 kB PDF\]](#)

To view or print this brochure you will need PDF viewing software such as [Adobe Acrobat Reader](#).

[Top](#)

### Compromise

This is an informal agreement with creditors that you will pay some (if not all) the money owed. It is not administered by the Official Assignee or Court but a budget advisor, lawyer or accountant would be able to help.

### Summary instalment orders (SIOs)

This is a formal agreement with creditors that you will pay some (if not all) the money owed. It lasts for 3 years (or 5 years in some circumstances) and means you have to pay agreed instalments. How much you pay is negotiated with the creditors who cannot take further action as long as you follow the agreement exactly. Application for entry is made to the Official Assignee. Management is by an Approved Supervisor.

### Granting an SIO

You or any of your creditors (with your consent) may apply for your entry into an SIO. The Official Assignee may grant an SIO if:

1. Your total unsecured debts (excluding student loans, fines, penalties, and reparation orders) are less than \$NZ40,000
2. You are unable to pay those debts immediately.

Before granting an SIO, the Official Assignee will allow you and your creditors to make representations about the making of the order.

### Bankruptcy

Bankruptcy is a legal proceeding which allows people who cannot pay their bills to get a fresh financial start. The right to file for bankruptcy is provided by law. Filing for bankruptcy immediately stops all of your creditors from seeking to collect debts from you.

In some cases a creditor will apply to the Court to have you adjudicated bankrupt. If you have not paid the outstanding amount by a specific date, you may have committed an 'act of bankruptcy' and the creditor can ask the judge to make you bankrupt. You will be served with a notice of hearings and can attend Court and make representations. You are entitled to have legal representation at the hearing. If you do not attend, the bankruptcy proceedings will proceed in your absence. Once you are bankrupt an Insolvency Officer from the Insolvency and Trustee Service will administer the estate.

[Top](#)

During bankruptcy you must:

- File an acceptable Statement of Affairs
- Cooperate fully with the Official Assignee at all times
- Comply with all requests for information
- Notify the Official Assignee whenever you change your name, address, employment or terms of employment; income and/or expenditure
- Fulfil all your legal obligations.

During bankruptcy if required you must:

- Make payments toward your debts
- Vacate land and/or buildings
- Attend interviews or examinations on oath.

During bankruptcy you may not:

- Withhold information or mislead
- Incur credit of \$NZ1,000 or more without disclosing you are bankrupt
- Conceal assets
- Stop, attempt to stop, or hamper the Official Assignee dealing with any property or assets.

During bankruptcy you may not without consent:

- Leave New Zealand
- Enter into, carry on, or take part in the management or control of any business
- Be employed by a relative or entity owned, managed, or controlled by a relative.

Failure to adhere to these responsibilities and restrictions can result in a fine, imprisonment, or both.

[Top](#)

## **No asset procedure (NAP)**

This is a new option available since December 2007 and is not formal bankruptcy. Application for entry is made to the Official Assignee who then administers the No Asset Procedure in much the same way as a bankruptcy. You can only use the No Asset Procedure ONCE – ever!

### **Applying for a No Asset Procedure**

Applications are made to the Official Assignee, either electronically or manually. An application and Statement of Affairs must be completed to a standard acceptable to the Official Assignee.

To qualify for entry you must:

- have no realisable assets (realisable assets exclude cash up to \$NZ1,000, a motor vehicle up to \$NZ5,000, tools of trade, and personal and household effects)
- not previously been admitted to the no asset procedure
- not previously have been adjudicated bankrupt
- have total debts (excluding student loan) not less than \$NZ1,000 and not more than \$NZ40,000
- complete a means test showing you have no means of repaying any amount towards your debts.

The Official Assignee can refuse entry into the NAP if:

- your creditor(s) object to entry; or
- bankruptcy proceedings have been initiated and the likely outcome for the creditor would be materially better if the proceedings continued; or
- you have concealed assets; or
- you have committed an act that would be an offence under the Insolvency Act 2006 were you bankrupt; or
- you have incurred debts knowing you had no means to pay them.

## **Note**

The Official Assignee can only assess one application for you at a time, so please ensure only one application (No Asset Procedure, Bankruptcy or Summary Instalment Order) is completed and sent to the Insolvency and Trustee Service.

## **The information you need to collect before beginning**

You may complete Insolvency and Trustee applications, forms and statement of affairs on line, or in person with telephone assistance from ITS. Before you begin, it is suggested that you gather together all relevant documentation. We have provided for your guidance a list of information that you may find necessary to have at hand when completing a form or statement of affairs:

## Personal Details

- Full name and list of any other names used in the last 10 years or commonly known by
- Your address, the date you moved into this address, and if less than 2 years ago, your previous addresses
- Whether you own or rent (amount paid per week) and person to whom payment is made
- Passport number and country of issue
- Firearms licence details
- IRD number, period of last tax return
- Employment details
- Income – type, amount, and name and address of person providing income – a payslip must be included
- Spouse's details – their name, occupation, and income
- Dependant's details
- Court fine details – monthly payments
- Reparation order details – monthly payments
- Child support details – monthly payments and details of arrears
- Weekly or monthly budget

[Top](#)

## Background to Insolvency – Details of:

- Previous bankruptcies, No Asset Procedures or Summary Instalment orders - dates and numbers
- Reasons for insolvency
- Details of steps taken to resolve financial problems
- Solicitor's and accountant's details (past and present)
- Property which has been repossessed or seized
- Property given away in the last two (2) years
- Property given to you by other people
- Money or property owed to you
- Payments made to creditors in the last month
- Details of finance (loans and debts) raised in the last one (1) year
- Betting and gambling in the last one (1) year
- Current court cases you are involved with – nature of case, name of other party, solicitor(s) involved
- Relationship property settlements in the last five (5) years

[Top](#)

## Financial Circumstances – Details of:

- Bank, building society, credit union and TAB accounts, and overseas funds – Name of account, bank and branch, account type, current balance
- Inflation and bonus bonds, unit trusts and public company shares – Name of company, number of shares, location of share certificate or FIN number, approximate value
- Life insurance policies – Name of insured, policy number, insurance company, date paid up to, surrender value
- Superannuation funds – Name of fund, address of holder, policy number, date commenced, estimated value
- Trusts of which you are a trustee, settlor or beneficiary – Name of trust, trustee's names and addresses – Personal assets transferred to the trust – copy of the trust deeds are required
- Beneficiary of other trusts – date and value of benefit received
- Securities held – Type, name and address of property owner, value, description of property secured
- Deceased estate interests – Name of deceased and relationship, value of interest, name and address of executor
- Personal belongings and household effects – Description, location, value
- Real estate – Address, interest, mortgagee, market value, mortgage outstanding – whether insured, Joint Family Home, on market or rented out
- Asset disposals in the last two (2) years – Description of asset, amount received, where money went, name and address of agent involved
- Motor vehicles – Type, registration, make, model, year, location, registered owner, insurer, insured value, condition, odometer, estimated value, HPs and/or securities
- Other assets – Description, cost, approximate value
- Secured and HP debts – Creditor, address, type of security, description of goods, present value, amount owed
- Student loans – Reference number, tertiary qualification funded
- Credit cards – Name of lender, amount owed
- Other debts – Creditor, address, date incurred, goods received, amount owed [Top](#)

## Business details – Details of:

- Trading or company name – physical and postal address, phone and fax numbers

- Premises – Landlord, lease details, rent paid to, amount paid, arrears, lease agreement.
- Nature of business – date started, date ceased, uncompleted contracts
- Partnerships – partner’s names, addresses, phone numbers
- GST registration
- Accountant
- Location of records
- Business assets – Bank accounts, plant and equipment, stock – Motor vehicles
- Book debts – Name, address, goods/services provided, date, amount owed
- Goodwill
- Preferential business creditors – Name, address, goods/services provided, date, amount owed
- Secured business creditors – Name, address, goods/services provided, date, amount owed
- Unsecured business creditors – Name, address, goods/services provided, date, amount owed

If you do not have any of the information, contact the appropriate bodies for copies. Failure to provide any information may delay your application.

## **Further information**

### [Comparison tool](#)

A comparison of the features of Summary Instalment Orders, No Asset Procedures, Creditors Petitions, and Proposals.

### [Budget tool](#)

To assist in determining where your income is going and to assist in compiling a budget, you can use our budget calculator.

### [Interactive guide](#)

This guide allows you to select Yes and No answers to set question assisting you in your decision making process

## **Case studies**

Kimberly was 18 and at university. She had a part time job and got a student overdraft just to get her through the tough weeks. The part time job let her save up so her student loan didn’t get too big, and she was able to pay for some of the fees herself each year. In her second year she got a bank loan to allow her to get a cheap car. The overdraft was interest free so she used that to help pay back the loan. In her third year she got a credit card to help pay for books, and when she moved flat after university ended she used it to get some new appliances and furniture.

She got a job at the end of her Honours degree but by this time needed a new car and a new wardrobe for the corporate world. The bank came through with a \$NZ10,000 loan. There was no problem getting that now she was working. However the combined loans were now about \$NZ21,000 with really big monthly repayments. Her student loan was about \$NZ7,000 and came out of her pay regularly. Unfortunately, Kimberly lost her job after a few months and was no longer able to make any payments towards her loans. What option is best for Kimberly?

### **No Asset Procedure**

As the debt was less than \$NZ40,000 and she had no realisable assets or surplus income, she would be eligible for No Asset Procedure.

Rick saw an advertisement for self-employed courier drivers. The income sounded good, and there would be no-one looking over his shoulder, unlike his current job.

The income was great. He was able to make the payments on his new van, meet the household bills and share occasional treats with his wife. He always intended to put aside money for the tax, as he wasn’t on PAYE anymore, and at the initial meeting he’d had with the company they showed him how to set up GST so he could claim his expenses. He wasn’t quite sure when this was due, but he figured he’d get a letter and then he’d find an accountant. He saw an accountant in April of the following year, gave him everything, and got back a bill and details of how much he owed the IRD. He paid what he could weekly, but couldn’t afford the full amount. He kept working and he and his wife had a baby.

The following April the accountant did his books again. The bill was a lot bigger because last year’s amount was still there. The next August he got a great offer of a job. He was over being a courier anyway so he took the job, sold the van and paid off what was left on the loan to buy it. He was on PAYE now so he figured he didn’t need to see his accountant again. A few years later he got a letter from the IRD with default assessments on unfiled returns. They were assessed on the full year he had worked as a courier and the bill was over \$NZ200,000. The letter said the next step was court. He got an accountant to file the unfiled returns. This reduced the debt to \$NZ60,000. However the stress gave him a heart attack and he had to have 4 months off work. In the meantime the IRD got a judgement for the outstanding \$NZ60,000. He went back to work part time, but now the tax payment was due in 3 months. What option is best for Rick?

### **Rick should consider filing his debtor’s petition for bankruptcy**

Rick is not eligible for a Summary Instalment order or No Asset Procedure as he owes more than \$NZ40,000.

John and Marianne's two kids had grown up and moved out. They were living comfortably with two modest incomes, a nest egg, superannuation funds and a shrinking mortgage. They had talked for years about starting a small business together. Marianne was a qualified therapist and John would manage the business and keep on his job part time. They had worked out everything, the business plan was immaculate and the bank gave them a second mortgage to get started. They set up a limited company. They had to sign lots of contracts, such as property leases, and equipment leases. These had personal guarantees attached to them, but that was just par for the course. The business started well, the plan was in place and the clientele was coming in.

Two years later they signed all the leases again, the business was almost running itself and John was happy working his old job still part time. A month later a rival business moved in, then the council changed all the local street parking to a half hour limit and strongly enforced it. Their clientele dried up rapidly. The business closed 4 months later, after they had used all their savings, cashed in their superannuation and sold their car. The company went into liquidation, but there were still the personal guarantees totalling \$NZ128,000. The equity in the property was used to pay creditors and left \$NZ39,000 owing that they were both liable for. The stress took its toll, Marianne went on the sickness benefit, John managed to pick up some good paying work full time but could not meet all the debts as they fell due. What could they do?

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