

## What happens to my assets?

### What you need to know

You have a legal obligation to disclose all assets to the Official Assignee. It is an offence to conceal, attempt to conceal, or dispose of them.

### FAQs

[What happens to my assets?](#)

[Will the Official Assignee take my income and control my expenditure?](#)

[What happens if I save to buy something during bankruptcy?](#)

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## What happens to my assets?

At the date of bankruptcy, all assets and property owned by the bankrupt automatically 'vest' in the Official Assignee i.e. they become the Official Assignee's assets and property.

All assets and property acquired by the bankrupt during bankruptcy up to discharge also automatically vest in the Official Assignee.

What this means is that you are no longer entitled to deal with any assets and/or property without the Official Assignee's permission.

### Car and furniture

The Official Assignee allows you to retain certain assets being:

- necessary tools of trade
- necessary household furniture and effects
- a motor vehicle (to a maximum \$NZ5,000 value)
- money up to a maximum of \$NZ1,000

The maximum value of tools and furniture and effects retained is at the discretion of the Official Assignee.

Where any of the assets you are allowed to retain are subject to Hire Purchase, you must keep making the payments for that asset.

[Top](#)

### Other assets

Whether any assets are taken to be sold is at the discretion of the Official Assignee. Consideration will be given to the costs of realisation, practicality of sale and the needs of the bankrupt, their family and dependants.

Motor vehicles worth more than \$NZ5,000 will likely be sold.

If you own a house and have equity in it (i.e. the amount you owe is less than market value) the Official Assignee may sell it for the benefit of your creditors. Where the Official Assignee elects not to sell a house the bankrupt must be able to continue to make mortgage repayments, rates, insurance and other expenses.

Houses registered under the Joint Family Homes Act 1964 have extra protection. Your Insolvency Officer can explain this to you.

Superannuation and life insurance policies that have value will be surrendered.

### Bank account

Banks must notify the Official Assignee of all your accounts. Business accounts will be closed. Whether you can retain a bank account is up to your particular bank.

### Tax refund

Inland Revenue will issue you a new IRD number to use after date of bankruptcy. All refunds due on your old IRD number are paid directly to the Official Assignee.

## **Your right to sue or bring court proceedings**

Upon adjudication, all of your assets and rights pass to the Official Assignee. This includes your right to sue and to start legal proceedings in most instances. Any rights to sue or claims that you may have against another person or entity, at adjudication and up to discharge, are likely to vest in the Official Assignee. You are required to inform the Official Assignee of any right or claim as soon as possible so that it can be dealt with/investigated.

The Official Assignee will obtain legal advice as to the merits of your claim, the costs of pursuing it and its likelihood of success. Based on this advice, the Official Assignee may decide to pursue the matter himself, sell or assign the right or claim to a third party, abandon it or provide consent for you to pursue the claim with the proviso that any funds you may be awarded be paid into your bankruptcy estate for the benefit of your creditors.

For example, if you wish to file a claim against your previous employer for unpaid wages, the Official Assignee will need to make a decision about pursuing that claim for the benefit of your creditors. The Official Assignee may consider a compromise whereby a portion of any successful recovery will go to creditors and you can retain the rest. If you have such a claim, then you are required to inform the Official Assignee as soon as possible. You are no longer able to pursue the claim personally.

Personal claims (such as claims for defamation or for personal injury) do not necessarily vest in the Official Assignee but it is suggested that you inform the Official Assignee as soon as you become aware of such a claim to confirm that you are entitled to start or continue with it.

## **Assets owned by your spouse or children**

The Official Assignee cannot take your spouse's income but will consider it in deciding whether you need to make contributions.

If the Official Assignee is satisfied that your spouse and/or children own an asset and you have no legal entitlement to any part of it, the asset will not form part of the bankruptcy.

[Top](#)

## **Jointly owned assets**

Where you own an asset with someone else, the Official Assignee will establish your share and its value. Where the Official Assignee is going to sell the asset to realise your share, the person who jointly owns it will always have the first option to purchase your share.

## **What if I get a windfall?**

A windfall is an 'unexpected gain' (e.g. winning a prize or receiving an inheritance). If you get a windfall it is an offence not to inform the Official Assignee and this may have serious consequences e.g. not being discharged from bankruptcy after three years and/or possible prosecution. The Official Assignee may take all or any of a windfall.

## **What if someone owes me money?**

Any money owed to you is an asset which vests in the Official Assignee. Any documentation confirming the debt must be provided to the Official Assignee who will attempt to recover the money. If the costs involved in collection outweigh the value, the debt may be written off.

Where money is paid to you directly it must be forwarded immediately to the Official Assignee.

## **Will the Official Assignee take my income and control my expenditure?**

You may earn while bankrupt but you must complete a budget form. The Official Assignee will decide if your income is sufficient to justify you making regular contributions to the bankruptcy for benefit of creditors. You must, by law, notify the Official Assignee if your income and/or expenditure changes during bankruptcy.

Day to day living costs (i.e. rent, power, telephone) are your responsibility.

## **What happens if I save to buy something during bankruptcy?**

All assets obtained after date of bankruptcy and before discharge are the properties of the Official Assignee. If you wish to save and buy something nominal the Official Assignee is not likely to take an interest. However, if the purchase is significant discuss this with your Insolvency Officer prior to purchase. You are not permitted to obtain credit over \$NZ1,000 without notifying the creditor of your bankruptcy.