

Responsibilities and restrictions during bankruptcy

What you need to know

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 interview 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.

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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.

FAQs

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

Discharge from bankruptcy releases you from all provable debts which existed at the date of bankruptcy. These debts no longer exist and you cannot be pursued by creditors for payment.

If a creditor seeks to recover money for a debt included in your bankruptcy contact the Insolvency and Trustee Service.

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What debts am I still liable for?

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

- Fines
- Reparation ordered by a Court
- Maintenance and child support
- Advances and overpayments from WINZ
- Debts incurred after date of bankruptcy.

Will my credit history be affected?

Your credit history will be affected for up to seven (7) years which is how long credit agencies keep records of your bankruptcy.

Credit agencies operate internationally and can be accessed in New Zealand and overseas.

What do I need consent to do while bankrupt?

While bankrupt you need the Official Assignee's consent to:

- Leave New Zealand
- Be in business (self employed), or in control of a business
- Be employed by a relative or entity controlled by a relative.

What constitutes leaving New Zealand?

You need the Official Assignee's consent to leave New Zealand which includes:

- Preparing to leave New Zealand temporarily or permanently
- Attempting to leave New Zealand temporarily or permanently
- Actually leaving New Zealand temporarily or permanently.

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What constitutes business/self employment?

You need the Official Assignee's consent to be in business, in control of a business, or self employed.

In business, in control of a business, or self employment includes a position where you are responsible for:

- Managing or controlling, directly or indirectly, any business or company
- Payment of GST or other taxes directly to Inland Revenue
- Payment of ACC levies or Work Place Insurance
- Regulatory requirements such as Occupational Health and Safety.

Business or self employment also includes where you:

- Employ any staff whether on wage or commission.

What constitutes a relative?

You need the Official Assignee's consent to be employed by a relative or an entity controlled by a relative.

- Entity includes a company, trust or incorporated society.
- Relative means your parent, spouse, child, brother, or sister; or the parent, child, brother, or sister of your spouse; or a nominee or trustee for any of them.
- Spouse includes your husband, wife, and de facto or civil union partner, whether the same or a different sex.

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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.

How do I apply for consent to be in business or employed by a relative?

All applications for consent must be made in writing to the Official Assignee and supported by an affidavit, which is a written statement of the relevant facts sworn on oath or affirmed (usually before a solicitor).

[Download a sample affidavit.](#)

You must submit your application before you begin employment.

Your application must include details (where applicable) of:

- Reason for application
- Current employment details
- Name and type of business
- Whether new or existing
- Details of expected income
- Name(s) and relationship to the business owner(s)
- Details of capital if a new business
- Who the capital is being paid by
- Full description of your duties and responsibilities
- List of any expenses incurred by you, including any initial outlay
- Schedule of the plant and equipment required
- Provisions made to pay income tax, PAYE, GST, etc
- 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 employment or business has to your creditors.

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 and the business community and will consider:

- Cause of your bankruptcy
- Conduct before and during bankruptcy
- Previous involvement with failed or family owned businesses or companies
- Viability of the proposed venture
- Potential benefits and risks to creditors and the community.

The Official Assignee will consider every application on a case by case basis.

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What happens when consent is given to leave New Zealand?

Where consent is given it may be subject to conditions. You must sign the consent to show that you have read, understood and agree to the conditions. The conditions cannot be altered without a further application to the Official Assignee.

A copy of the consent and conditions is given to you and must be carried with you while travelling. Customs and/or immigration may ask to see the consent.

What happens when consent is given to be in business or employed by a relative?

Where consent is given it may be subject to conditions. You must sign the consent to show that you have read, understood and agree to the conditions. The conditions cannot be altered without a further application to the Official Assignee.

A copy of the consent and conditions is given to all relevant parties, including the Inland Revenue.

Conditions may include:

- The right to review consent at any time
- Limiting consent to the particular business for which the application was made
- Confirmation that adequate insurance is obtained to cover equipment and public liability, if any
- A budget of income and expenses to be provided upon request
- Satisfactory arrangements made with the Inland Revenue in respect of Income Tax, GST, PAYE, ACC Levies etc
- Use of an accountant or financial advisor
- Separate business bank accounts.

- Using an accountant or financial advisor to oversee the running of the business
- All money to be banked into a separate business bank account.

What happens if consent is declined?

Where consent is declined, the Official Assignee will provide reasons. Decisions of the Official Assignee can be appealed to the High Court within 21 days of date of decision.