

## What is bankruptcy?

### ✓ What you need to know

Bankruptcy is a legal proceeding in which people who cannot pay their bills can get a fresh financial start. The right to file for bankruptcy is provided by law and normally lasts three years, however, in some cases this may be extended. Filing for bankruptcy immediately stops your creditors from seeking to collect debts from you.

People you owe money to (your creditors) can also apply to make you bankrupt if you do not pay them what they owed on time. This involves them making an application to the High Court asking that you be made bankrupt because you are not in a position to pay your debts as they fall due.

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:

- Be a director of a limited liability company;
- 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.

[Top](#)

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

[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?](#)

[What happens to my debts after I am discharged from bankruptcy?](#)

[What debts am I still liable for?](#)

[Will my credit history be affected?](#)

[What do I need consent to do while bankrupt?](#)

[How do I apply for consent to leave New Zealand?](#)

[How do I apply for consent to be in business or employed by a relative?](#)

[What happens when consent is given?](#)

[What happens if consent is declined?](#)

[What information do I need to file for bankruptcy?](#)

[Who is the Official Assignee?](#)

[How will I live?](#)

## 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.

[Top](#)

## 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.

## 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 (that is, 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 meet 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 account. Business accounts will be closed. Whether you can retain any bank accounts is a decision to be made by your particular bank.

## **Tax refund**

Inland Revenue will issue you a new IRD number to use after date of bankruptcy. All tax refunds due and payable in the period prior to bankruptcy and prior to discharge from bankruptcy are payable to the Official Assignee for the benefit of creditors.

These funds will be applied towards the bankruptcy filing fee of NZ\$204.44 and the cost of administering your estate. You can apply for any surplus that remains after these costs and all creditor claims are paid. The Official Assignee will consider your application for these funds on a case by case basis.

[Top](#)

## **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.

## **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.

[Top](#)

## **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 you should 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.

## **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.

Contingent debts are also provable in bankruptcy and you are also released from these upon your discharge. 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.

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

## 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
- 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.

[Top](#)

## 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.

## 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.

[Top](#)

## 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.

In some cases the Official Assignee may require the application to be supported by an affidavit, which is a written statement of the relevant facts sworn on oath or affirmed (usually before a solicitor). The Official Assignee will request this affidavit from you if required.

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, 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 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 and will consider every application 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.

## 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.

[Top](#)

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.

## What happens when consent is given?

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.

### Consent to leave New Zealand

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.

### Consent to be in business or employed by a relative

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.

[Top](#)

## 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 15 days of date of decision.

## What information do I need to file for bankruptcy?

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

- Details of all names you use, or used including proof of identity
- Details of any real estate including mortgages
- Details of any motor vehicle including copies of any registration papers and loan details
- Details of any other property including hire purchase contracts, valuations, etc
- Details of all bank accounts, shares, investments, policies and other financial assets
- Details of money owed to you
- Details of all people you owe money including their names, addresses, amount of debt and documentation to support the debt
- Details of employment and/or income including state benefits.

## Who is the Official Assignee?

The Official Assignees are public servants/officers of the court based in five regions throughout New Zealand. Their role is to administer insolvency for the Ministry of Economic Development's Insolvency and Trustee Service.

The Official Assignee does not work 'for' anyone and considers the best interests of the debtor, creditor, and wider community. All insolvencies are allocated to Insolvency staff for administration – these are the people you will usually deal with.

## **How will I live?**

The Official Assignee allows you to keep possessions which are necessary and not extravagant. These include furniture and personal effects, some cash, a car not valued at over \$NZ5,000 and tools of trade, etc.



## **Further information**

### **[Bankruptcy life cycle](#)**

All bankruptcies in New Zealand are administered by the Official Assignee. The following flow chart describes the life-cycle of a typical bankruptcy.

### **[Personal bankruptcy toolkit](#)**

This manual is based on the most frequently asked questions about bankruptcy and is a helpful resource if you want learn more about bankruptcy.