

Section 1 - Before bankruptcy

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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.

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 an officer of the Court responsible for managing your bankruptcy).

Although you will not be stripped of what you need for daily living, the Official Assignee has the power to sell your assets to help repay creditors.

Important information

Explore all your options first! If you are facing bankruptcy it is well worth exploring your options and alternatives.

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I cannot pay my bills. What are my options?

Take some action NOW.

If you are facing bankruptcy 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 pressure and stress on you.

Taking action will help your situation because:

- 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 be a relief 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. If your problems have arisen from spending more than you earn, making contact with a budget advisor will tell creditors that you have taken the first steps to getting 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

It is important to get as much help and advice as you can. The good news is that there are 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
- Have you contacted your nearest Citizens Advice Bureau? This 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. Or contact your local library, city or town council and ask them for details of the nearest Citizens Advice Bureau.
- Have you spoken to your accountant (if you have one)? If not, then get in touch as soon as possible. Accountants are trained to sort out financial problems, so they may be able to give you useful advice on your financial options.
- If you do not have an accountant, have you contacted 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. Get contact details for your nearest Budget Advisory Service from your local Citizens Advice Bureau or search under Budgeting Services in the White Pages (www.whitepages.co.nz).
- Have you spoken to a lawyer? 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. 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. They may be able to help.
- 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 that avoids you going into bankruptcy.

Get refinancing advice

Ask the budget advisor, your accountant (if you have one) or lawyer for suggestions on how you could refinance your debts. (For example by consolidating them, or by paying a lower rate of interest on your borrowings). 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 your accountant or 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.

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 debts come to less than \$NZ12,000 you may be able to apply to the District Court for a Summary Instalment Order. A Summary Instalment Order is a formal procedure (similar to the informal Creditors' Pool or compromise options above) where a District Court Judge

makes an Order that is binding on creditors. The Summary Instalment Order will allow you to pay back your debts in regular instalments 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.

To find out more about a Summary Instalment Order, contact your accountant, budget advisor, financial advisor or the District Court.



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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Changes under the Insolvency Act 2006

Under the Insolvency Act 2006 Summary Instalment Orders will be administered by the Official Assignee rather than the District Court. The maximum level of debt has been increased from \$NZ12,000 to \$NZ40,000, and the maximum period of an order can be extended in special circumstances from three years to five (5) years. Fines and student loans are excluded from Summary Instalment Orders.

See Section 2 of this Toolkit for more details of the changes under the Insolvency Act 2006. The Insolvency Act 2006 is likely to come into force from the end of 2007 or early 2008.

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. At present to do this you need to file a Debtor's Petition for Bankruptcy at the nearest High Court. There is a \$40.00 fee for filing this petition, but you can apply to have the fee waived if you cannot afford the cost.

However, when the Insolvency Act 2006 comes into effect (at the end of 2007 or early 2008) you will be able to file a Debtor's Petition with 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).

To find out exactly when the Insolvency Act 2006 comes into effect, check the website www.insolvency.govt.nz or contact the Insolvency and Trustee Service toll free on 0508 467 658.

Discharge and annulment

Discharge from bankruptcy will be three 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 will no longer have to go through 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 Insolvency and Trustee Service by post, in person or electronically. The Official Assignee will then decide if you should be made bankrupt, based on the evidence supplied by your creditors and by you or your representatives. The Court will not be involved.

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.

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 \$100 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.
- In the newspaper closest to the Court in which your bankruptcy is filed and possibly also in newspapers in areas where most of your creditors are based, you have carried on business or have resided in over the last two years.
- 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.

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.

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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 1 - Before bankruptcy

Steps to avoid bankruptcy and information about what will happen during your bankruptcy

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[Section 2 - Insolvency Act 2006](#)

An overview of the Act.

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[Section 3 - During bankruptcy](#)

Understanding your responsibilities and what happens during your bankruptcy

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[Section 4 - After bankruptcy](#)

Steps you can take to rehabilitate yourself and prevent bankruptcy happening again

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[Section 5 - Helpful resources](#)

Organisations and web links that might be useful before, during, and after bankruptcy.

[Read more...](#)