

Section 3 - During bankruptcy



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What happens first after I become bankrupt?

You will deal with the Insolvency and Trustee Service

Shortly after you become bankrupt, you will be contacted by the Insolvency and Trustee Service (that acts on behalf of the Official Assignee) and you will be required to complete a Statement of Affairs form so that the Insolvency and Trustee Service can get an understanding of your financial position. If necessary, you may be required to attend an interview.

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Information you need to gather

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

- Details of any real estate either currently or previously owned by you either on your own or with any other person. Copies of any relevant documentation and details of any mortgages on the property.
- Details of any motor vehicles either currently or previously owned, copies of any registration papers and details of any money owing on the vehicles.
- Details of any assets either currently or previously owned by you, including information about any hire purchase arrangements and copies of any relevant papers.
- Details of all your bank accounts, shares you own, other investment details, life insurance policies and other financial assets.
- Details of any Trusts you are a trustee or a beneficiary of.

- Details of any Superannuation Scheme you belong to or any Life Insurance Policy you are a beneficiary of.
- Details of any money owed to you.
- The names and addresses of all of your creditors and the amounts owing to them.
- Details of your employment status.

You must comply with any reasonable request of the Insolvency and Trustee Service to complete a form or attend an interview.

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Who is the Official Assignee?

The Official Assignee is responsible for administering all bankruptcies in New Zealand. When you are declared bankrupt, the Insolvency & Trustee Service staff, acting on behalf of the Official Assignee, will administer your bankruptcy estate.

What responsibilities do I have when I am bankrupt?

At the start of your bankruptcy you will receive a formal Notice to Bankrupt which sets out in detail your obligations as a bankrupt person.

If you do not understand any parts of this Notice you can speak either to the Insolvency and Trustee Service toll free on 0508 467 658 or seek independent advice.

If you cannot afford to pay for a lawyer then contact the nearest Community Law Office. Visit www.communitylaw.org.nz for addresses of all Community Law Centres. Alternatively, the local Citizens Advice Bureau (call toll free 0800 367 222) will be able to put you in touch with the nearest Community Law Centre.

Your main responsibilities under bankruptcy are that you must:

- Co-operate fully with the Official Assignee.
- Comply fully and honestly with all requests for information and not wilfully mislead or withhold any information or conceal any assets.
- Notify the Official Assignee whenever you change your address, name, financial circumstances, employment or terms of employment.
- Attend interviews or examinations on oath if requested.
- Fulfil all duties imposed on you by the Insolvency Act 2006, in particular the provisions contained in your Notice to Bankrupt.

The responsibility to be open and honest

It is very important to be open and honest in your dealings with the Insolvency and Trustee Service. Bankruptcy is a legal process that enables people to get relief from debt burdens that they cannot possibly repay, despite their very best efforts.

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Important point

Bankruptcy does not offer an opportunity for you to hide your assets or possessions from creditors or the Official Assignee.

Remember, the Official Assignee is there to assist you, as well as your creditors, during your bankruptcy. In return for this protection you enter an obligation to be open and honest about your financial affairs.

Under the Insolvency Act 2006, you are legally obliged to provide information to the Insolvency and Trustee Service. There are penalties for dishonesty or concealing important information about your true financial position.

What if creditors continue to pursue me?

If the debt arose before the date of your bankruptcy, contact the Insolvency and Trustee Service and inform them of the creditor in case their claim has not been recorded with the Official Assignee.

Write the date of your bankruptcy on the bill, along with your insolvency number if you know it and the Insolvency & Trustee Service phone number (0508-467-658) and mail it back to the creditor.

The fact that you may continue to receive bills for these debts does not mean that the debts are not included in your bankruptcy.

Important point

Things you reasonably need to carry on daily life will not be taken from you, but it would also be unreasonable, for example, for you to expect to keep a luxury car when a more modest vehicle would suit your circumstances.

What about any money that is owed to me?

You must tell the Official Assignee about all your debtors (the people who owe you money).

Remember that it is your duty during your bankruptcy to forward any money you receive for debts owing to you to the Official Assignee.

The Official Assignee will try to recover any money owing to you and will use it to help pay off your debts.

However, if the costs involved in collecting the money outweigh the value for the creditors, the debt may be written off. Any funds you receive for debts owing to you should be forwarded to the Official Assignee.

It is important to supply the Official Assignee with evidence of the money owed such as a debtors' list, copies of invoices sent, or copies of contracts. These will be necessary to enable the Official Assignee to pursue the debt through the normal channels.

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Important point

If any creditor continually puts you under pressure to pay a bankruptcy debt, contact the Insolvency & Trustee Service immediately.

Can I work? What are the restrictions?

If you become bankrupt, retaining your job or finding work is obviously an important step to rebuilding your life. A job will help you pay for daily costs, such as rent, electricity and food, and it will also help you meet any on-going responsibilities such as maintenance and child support. Remember that you cannot avoid these obligations by becoming bankrupt.

Employment restrictions

However, there are some restrictions on the kinds of employment that you can take. While you are still bankrupt you must obtain the express written consent of the Official Assignee before you can:

- Be self employed, start a business or go into partnership
- Take part in the management or control of any business or company
- Be employed by a relative or a trust, company or other entity controlled, managed or owned by a relative.
- You may apply to work in any of these ways, but to do so without consent is an offence under the Insolvency Act 2006 and you may be prosecuted.

Taking on an extra job

If you take on an extra job to help pay off your debts, remember that you will have to pay secondary tax on your additional earnings. You should tell the Insolvency & Trustee Service if you take on an extra job.

Will my wages be taken off me if I become bankrupt?

There is no restriction on the amount you can earn but you will need to complete a budget form. This will allow the Official Assignee to assess if you can afford to make regular contributions to your bankruptcy estate for the benefit of your creditors.

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Will I still receive income tax refunds during my bankruptcy?

Any tax refunds due to you during your bankruptcy will be sent by Inland Revenue direct to the Insolvency and Trustee Service. The money will be used to help pay off your debts.

You will get a new IRD number

When you are declared bankrupt, Inland Revenue will issue you with a new IRD number.

They will send notification of your new number directly to you.

You should use the new number from the date of your bankruptcy onwards and let your bank, employer (or WINZ) know what your new IRD number is.

What will happen to my possessions?

Will I lose my possessions?

Normally household effects are not taken, but it depends upon the value and nature of the possessions. You must disclose all your assets (things you own) to the Official Assignee.

Your assets at the date of your bankruptcy become the property of the Official Assignee who will decide what assets (if any) will be seized and later sold by the Official Assignee for the benefit of your creditors.

Prior to selling such assets, the Official Assignee will take into account the costs and practicality of selling any goods and also your needs.

What can I keep?

Under the Insolvency Act 2006, a bankrupt person is entitled to retain the combined sum of \$400.00 held in bank accounts at the date of their bankruptcy, tools of trade to the value of \$500.00 and furniture and personal effects to the combined total of \$2,000.00. However, the Official Assignee has the discretion to consider your circumstances and may allow you to keep more than this.

Will they inspect my house?

A house inspection is not normally carried out. However, the Insolvency and Trustee Service may decide to inspect your home to assess what household effects or other possessions you reasonably need to carry on daily living.

Any luxury items owned may be seized and sold for the benefit of creditors. It is inherently unfair for a bankrupt person to retain luxury items when creditors are out of pocket.

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Will I be allowed to keep my car?

You should be aware that the Official Assignee may sell your motor vehicle for the benefit of your creditors. The decision will be made on a case-by-case basis, taking into account the value of the vehicle, any amount owing and whether the vehicle is jointly owned.

Please let the Official Assignee know immediately if your car is not insured.

Will I be allowed to keep my house?

The money you have invested in your house is an asset in your bankruptcy, even though there may still be money owing on your mortgage.

If you have paid off more money on the house than you owe, the Official Assignee may sell the house for the benefit of your creditors. Where there is more money owing on the house than you have paid off, the Official Assignee may not take any action.

The decision is made on a case-by-case basis, taking into account such variables as the market value of the house, the amount still owing on the mortgage, the cost of selling the house and other debts on the house (such as rates) that are outstanding.

If you remain in the house, you should continue to make your mortgage payments and meet all other ongoing house expenses such as rates and insurance until the Official Assignee makes a decision on how to deal with the house.

If your house is registered under the Joint Family Homes Act 1964, there is extra protection from creditors to the value of \$103,000. You should discuss this with the Insolvency and Trustee Service.

If your property is uninsured you must advise the Official Assignee.

What about life insurance policies and superannuation schemes?

Any superannuation schemes or life insurance policies you own, or are entitled to benefit from, are assets in your bankruptcy and become the property of the Official Assignee. These may be surrendered for the benefit of your creditors.

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What happens to jointly owned possessions?

The Official Assignee will first calculate how much of the asset you own. The Assignee may then decide to sell or cash up your share in the asset if this will benefit your creditors. In this case your partner/spouse or any co-owner of the asset will have first option to purchase your share.

Example

If your property is worth \$300,000 and you have already contributed \$200,000 to your mortgage, it is likely that the Official Assignee will pursue a sale.

If this happens, the outstanding amount will be returned to the mortgagor and the remainder will be used to pay creditors.

The Official Assignee in this case will take into consideration how easy it would be to sell the property.

What happens to the assets owned by my partner/spouse or children?

If the Official Assignee is satisfied that a third party (not you) owns the assets and you have no legal or equitable entitlement to them, they are unlikely to form part of the bankruptcy estate.

If your partner or spouse has a separate income, the Official Assignee cannot touch this income but it will be taken into consideration when the Official Assignee assesses your ability to make contributions into your bankruptcy estate for the benefit of your creditors.

What happens if I have a windfall?

The Official Assignee may make a claim to all or any part of significant winnings or an inheritance you may receive during the term of the bankruptcy. As a bankrupt, you are obliged to inform the Official Assignee of any such change in circumstances. Failing to do so is an offence under the Insolvency Act 2006 and you may be prosecuted.

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What about items on hire purchase?

You must tell the Official Assignee

Any items that are on hire purchase or subject to a security will remain your responsibility during bankruptcy, but you must tell the Official Assignee about them.

If you do not pay a secured creditor for goods bought on Hire Purchase or a Finance Agreement, they are still legally able to repossess the secured items.

If you cannot afford or do not want to keep paying, you should make an arrangement for the goods to be returned to the creditor.

If a supplier repossesses an item, the remaining debt you owe to them after they sell the secured asset will be covered by your bankruptcy.

The item could be given back or sold

Depending on the item and the amount still owing, the Official Assignee may require you to voluntarily surrender the item back to the supplier. If the value of the secured asset is greater than what is owed to the secured creditor, the Official Assignee may decide to sell the item and use the proceeds from the sale to help pay your debts.

Keeping the item

If you wish to continue with the hire purchase you may be required to enter into a new contract. If you want to keep an item, you should advise the creditor that you want to continue with the agreement and keep paying for the item.

What happens if I have sold or given away the item?

If the items have been sold or given away by you and you intend to stop payments you should let the creditor know this. Any amount left outstanding is likely to be provable in your bankruptcy estate.

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Important tip

Please check the Terms of your hire purchase agreement or credit contract before you sell or give away items on which you still owe money.

It may be illegal for you to sell or give the item away because you might be breaking the terms of the contract.

How does bankruptcy affect my bank accounts and daily living?

Will I be allowed to keep my bank account?

The Official Assignee will allow you to keep a personal bank account, but not a business bank account. Business accounts will be closed by the Official Assignee.

However, once you become bankrupt, your bank may not wish to continue to have you as a customer and may close your account. It is their decision—they are not forced to accept or keep you as a customer.

Alternatively, they may choose to freeze your account (particularly if you owe them money) so you might find that any funds you put into your account after your bankruptcy will be frozen. This could take a while to sort out, so it is important that you contact your bank, preferably before you become bankrupt, to make banking arrangements.

Consider a new bank

If you owe your bank money at the time of your bankruptcy, it may be advisable to find a new bank.

This may not be easy after your bankruptcy, but you might want to approach Credit Unions, Building Societies, or some of the smaller banking institutions. Let them know about your bankruptcy when you open your new account.

Remember to advise the Official Assignee of your new bank account and also your employer or WINZ if they are paying you directly into your bank account.

Do I have to keep paying my power and phone?

Any electricity or telephone accounts overdue at the date you become bankrupt will be Provable Debts and therefore covered by your bankruptcy. You will be responsible for any current or new accounts.

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Will I be allowed to keep my power and phone on?

This is a decision to be made by the power and phone companies you are dealing with. You should contact these companies after you become bankrupt to discuss this.

Can I still get credit?

Yes you can, if you can meet the conditions of the person or business offering you credit. If you are asking for more than \$100 credit for yourself or for someone else, you must make sure that you tell the creditor about your bankruptcy. Give this advice to the finance company in writing.

Important information

Failing to disclose your bankruptcy status is an offence under the Insolvency Act 2006 and you may be prosecuted.

Will I be able to keep items I am buying on Hire Purchase or on a Finance Agreement?

If you have any items on hire purchase, or if you have given security over any of your property (for example, your car or your household belongings), you will still be responsible to pay for these items if you wish to keep them. These creditors are called secured creditors.

If the asset is worth more than what is owed, the Official Assignee will make a decision about whether or not the asset will be taken and sold or left with you.

The Official Assignee will contact the creditor to advise them about your bankruptcy, but it is your responsibility to contact the creditor to discuss whether or not you can continue with the security agreement.

Some contracts allow a secured creditor to cancel the contract once you become bankrupt. You should check your finance agreement. Your local Citizens Advice Bureau or nearest Community Law Centre should be able to give you some advice about the contract you have signed.

How can I avoid goods being repossessed?

If you do not pay a secured creditor for goods bought on hire purchase or a finance agreement, they are still legally able to repossess the secured items. If you want to keep these items, you should advise the creditor that you want to continue with the agreement and keep paying for them.

If you cannot afford or do not want to keep paying, you should make an arrangement for the goods to be returned to the creditor. Once they have repossessed an item, the remaining debt you owe to them will be covered by your bankruptcy.

If the items have been sold or given away by you, you should let the creditor know this if you intend to stop making payments.

If you do stop making payments, the debt will be covered by your bankruptcy.

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Important information

Please check the Terms of your hire purchase agreement or credit contract before you sell or give away items on which you still owe money.

It may be illegal for you to sell or give the item away because you might be breaking the terms of the contract.

Can I travel overseas?

If you want to leave New Zealand during the term of your bankruptcy, you must apply in writing to the Official Assignee for consent in reasonable time before you leave. If you fail to do so, you will be committing an offence under the Insolvency Act 2006.

How to apply for overseas travel

You apply for consent to travel overseas through an Affidavit, which is a written statement of relevant facts, that you swear on oath or affirm is true before a solicitor, Justice of the Peace or Registrar of the High Court.

Your Affidavit must include details of:

- Your destination
- Dates of travel
- Purpose of travel
- Contact address overseas
- Cost of travel and name of the person paying for the travel (you will need to supply evidence from this person that they are paying your travel costs)

- Any benefit to your creditors from the travel.

Each application to the Official Assignee will be considered on its merits and will take into account your interests and your creditors' interests. You will be notified in writing of the decision.

If your application is declined, the Official Assignee will provide you with reasons for the decision. If you are not satisfied with the decision, you may appeal to the High Court.

[Download an overseas travel form.](#)

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If I move overseas will I be bankrupt there as well?

The responsibilities and restrictions placed upon you by your New Zealand bankruptcy continue for the three-year term regardless of whether you remain in New Zealand or move overseas.

Overseas debts

If you owe money in an overseas country at the time of your New Zealand bankruptcy proceedings, your debt will be noted in your New Zealand bankruptcy proceedings and those creditors will be notified of your New Zealand bankruptcy by the Insolvency and Trustee Service.

However, this does not prevent an overseas creditor from continuing to pursue repayment through that overseas country's courts and making you bankrupt in that country as well.

For example, a person that has large debts in both New Zealand and Australia could be made bankrupt by creditors in both New Zealand and Australia.

Credit agencies operate internationally

Note also that credit agencies such as Veda Advantage (www.vedadvantage.com) and Dun & Bradstreet (www.dnb.co.nz) operate internationally and their websites, as this website, can be accessed by anyone here or overseas wishing to view your credit history.

Information about your bankruptcy will remain indefinitely on the Insolvency and Trustee Service website.

How long am I bankrupt?

You are usually automatically discharged from bankruptcy on your third year anniversary. In some circumstances the Official Assignee or a creditor may object to your automatic discharge, or they may request that your discharge be conditional.

A conditional discharge means that you will have some restrictions placed on you after your discharge (for example, some limitations for a period of time on your future involvement in business).

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Can I shorten my bankruptcy period?

Most bankruptcies run for the full three-year period and it is rare for bankruptcies to be shortened. There are two possible ways of shortening your bankruptcy but in both instances you will need to apply to the High Court and the costs of doing so are considerable.

You should seek independent advice regarding this and you may require the assistance of a solicitor.

1. Early discharge

You can apply to the High Court at any time during your bankruptcy to be discharged from bankruptcy earlier than the normal three-year term. To apply for an early discharge you must:

- File an application in the High Court. This is usually done by a solicitor on your behalf;
- Give reasons supporting your application in an affidavit. An affidavit is a written statement of the relevant facts, sworn on oath or affirmed before a solicitor, Justice of the Peace or a Registrar of the High Court;
- Advise the Official Assignee of the hearing date, time and location at least 15 days prior to the hearing to enable him to provide a report to the High Court and attend the hearing;

- Forward a copy of your application to the Official Assignee and each creditor who has filed a proof of debt; and
 - Arrange with the Official Assignee to advertise your application in the local newspaper at least 21 days before the hearing date
- Any of your creditors can oppose your early discharge application.

Where an early discharge is granted, the High Court may impose conditions on you, such as restrictions on your future involvement in business.

2. An annulment (cancellation) of the bankruptcy

You can apply to the High Court for an annulment (cancellation) of your bankruptcy at any time if:

- the bankruptcy order should not have been made, because, for example, the proper processes involved in making the order were not followed; or
- all of your bankruptcy debts and the fees and expenses of the bankruptcy proceedings have either been paid in full or secured to the satisfaction of the High Court; or
- there has been a substantial change in your financial circumstances since the date of adjudication (for example, you have received a windfall or come into an inheritance), which means that your liability to pay your debts should be revived; or
- you have reached an agreement (called a 'composition') with your creditors to repay all or part of your debts.

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What if I am not happy with a decision made by the Official Assignee?

If you encounter a problem, please tell the Insolvency and Trustee Service so that they can try to resolve it, and (if appropriate), review their procedures to prevent the problem from occurring again.

You can lodge your complaint directly with the Insolvency and Trustee Service in writing or by calling toll free on 0508 467 658. The person you speak to will forward your complaint to the appropriate manager. You will be asked to put your complaint in writing.

Please make sure your written complaint includes:

- your name and address
- details of your complaint
- what you would like to happen to fix the problem.

Please also supply copies of any documents that support your complaint.

What will be done?

The Insolvency and Trustee Service undertake to get back to you within ten working days of receiving your complaint. If they are not able to resolve your complaint within that time frame they will give you an estimate of how long a full response will take.

Their response will include:

1. A summary of the investigation into your complaint
2. One or more of the following, as appropriate:
 - An explanation
 - Steps they can take to fix the problem
 - Steps they can take to ensure a problem does not reoccur.

If, after contacting the Insolvency and Trustee Service you are still dissatisfied, these steps are open to you:

- You can appeal the Official Assignee's decision in court. Section 86 of the Insolvency Act 2006 allows you to make such an appeal within twenty one days from the date of the decision or 'within such further period as the court allows'.
- You can appeal to the Ombudsman through the Office of the Ombudsman (phone toll free 0800 802 602).
- You can contact the Privacy Commissioner (0800 803 909) if your complaint concerns a breach of your privacy.

If you are concerned about a decision reached by the Official Assignee, please contact the Insolvency and Trustee Service immediately toll free on 0508 467 658 for information about the appeal process.

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