

Information Sheet 4 - General Information

The last couple of points that I'd like to tell you about relate to:

- company directors, secretary's etc
- gambling & bankruptcy
- compensation monies being exempt from a claim in bankruptcy
- your credit rating, and where do you go from here.
- being in business while bankrupt
- taxation
- your passport and overseas travel in bankruptcy
- the debt collectors (the second hand debt salesmen)
- buying your way out of bankruptcy, it's called annulment.
- Buying your way out of bankruptcy at a discount, it's called a Composition.
- objecting to the actions of your bankruptcy trustee
- bankruptcy, property, and Family Law
- The National Personal Insolvency Index.....(NPII).

The house

If you haven't already done so, please go to the separate website on this at www.bankruptcyandhouses.com.au if you are concerned about trying to save your house in the event of bankruptcy.

After you've read that website from there, contact Alan Nicholls of Nicholls and Co, Chartered Accountants and Bankruptcy Trustees.

I have had dealings with Alan over the years and am quite comfortable in referring enquiries about saving the house in bankruptcy on to him. As he pays me rent to have his name on my website, please mention my website as the source of your referral.

Alan says that he can handle bankruptcy and houses situations anywhere in Australia. In the subject line of your email please type "Saving the house, Fred Appleton" and you will be well looked after.

My office won't become involved until Alan and you have covered whatever can be done, and your decision is to go bankrupt. Alan will ask me or Helen Millward to contact you about getting the paperwork for your bankruptcy prepared. The fee for preparing the bankruptcy paperwork for a Bankruptcy and Houses matter is \$595.
Company Directors etc

This seems to be a bit of an interesting dilemma.

As a bankrupt you can't hold the position of company director, company secretary or something like that. If you still hold them when you go bankrupt, your bankruptcy trustee will send a form to ASIC saying that you're bankrupt, and your

name will be cancelled from being a holder of these offices. It doesn't personally cost you anything if it's done that way.

However, if you're the sole director and shareholder, the situation then is that the company has no director, and if nobody else will take on the position, then how can you, as the sole shareholder, advise ASIC of your replacement? Don't know.

On your bankruptcy any personal guarantees that you gave to company creditors gets cancelled. These personal guarantees become creditors of your bankruptcy and they're listed as such in the bankruptcy forms.

I think that the company is left sitting there with no director or secretary etc, and your company share, as an asset, is under the control of your bankruptcy trustee.

The company creditors can still take steps to wind the company up, but you're bankrupt so you won't owe the debt, and you're not a director. Unless there's assets that can be sold, it could be a lost cause for the creditors.

From feedback that I get it seems that after a while the company just gets struck off by ASIC. Whether it's because there are now no office holders, and ASIC fees aren't being paid, I don't know.

For larger type company liquidations you could contact Nick Crouch who I've mentioned in Information Note 3. Try Nick Crouch at:

Crouch Amirbeaggi

Level 28 St Martins Tower,

31 Market Street, Sydney 2000.

Telephone 02 8262 9333

Email: nick@crouch.net.au

Website: www.crouch.net.au

Mention my name as the referrer please. I've referred people on to Nick for years and I've had so many good reports back. I don't get a commission for any referrals but I charge him for advertising his name on this site.

One thing seems to stick out in practise though is that unless ASIC is properly informed of your resignation as a company director, they will continue to send you the bill for filing fees.

The ASIC website is www.asic.gov.au.

Gambling

Gambling matters associated with bankruptcy are generally not referred for prosecution where it appears that you had not engaged in any associated criminal activity to finance a gambling habit.

You will not be referred to the DPP unless it involves clear criminality or complex offences, or there seems to be repeat offending despite warnings to the contrary.

Ordinary problem gambling only does not have these characteristics.

An example of clear criminality would be where you had gambled so that your creditors could not get paid.

A complex offence would be for example, where your gambling was tied in with something else like obtaining money by deception or concealing an asset from your creditors.

It has been recognised in a published Policy Statement on bankruptcy and rash and hazardous gambling that the public interest is not generally served by prosecuting minor excursions or by prosecuting persons who are suffering from a particular vulnerability or disadvantage.

If, when you realised that bankruptcy was inevitable, you deliberately gambled away any funds that you had so as to prevent creditors being paid, then you could be in trouble. Also, if you'd previously received a warning letter (from ITSA if you'd previously been bankrupt I think), and it was an issue again, well, that might cause a bit of trouble.

Compensation

On the question of compensation monies, if you've received any, certain monies received in this category, eg. a worker's comp settlement or an asset that can be identified as having been bought with compensation monies, are not counted as an asset that a bankruptcy trustee can sell. However, I don't think that this money and this asset are protected from the debt collection process in the ordinary course if you don't go bankrupt.

Your Credit Rating

If you'd like to know what your commercial credit rating looks like, go to Veda Advantage at www.vedaadvantage.com.au click Personal Information, and then click Order a copy of your own credit file.

Going bankrupt or entering into a Debt Agreement Proposal doesn't do you any favours as far as your credit rating is concerned.

You won't get a loan in the three years that you are bankrupt, and you must disclose that you are a bankrupt if you apply for credit, or when buying goods and services on credit or paying for them by cheque (presumably a c.o.d. type of arrangement) if the amount is more than \$4806 (indexed).

As I said earlier your credit rating will be badly damaged for 7 years and so you will find it hard, but not necessarily impossible, to get a loan from the banks and finance companies in that time. You've always got to be worth lending to.

I'd avoid the less reputable type lenders though.

By the time people make contact with me, their credit rating's probably already been damaged anyway by organisations like the banks and credit card and finance companies reporting payment lapses with them. It also reports where you've applied for a loan even though you've been knocked back, so that puts others on notice anyway.

Your credit rating does wipe the slate clean as far as the commercial credit rating agencies are concerned if you don't apply for any credit in the 7 years after you go bankrupt. I was able to get a new credit card after my 7 years was up. ITSA will also record your bankruptcy or Debt Agreement Proposal on a permanent database that is accessible by the public, called the National Personal Insolvency Index, known as the NPII. You'll read about the National Personal Insolvency Index shortly.

Being in business while bankrupt.

During the three years of your bankruptcy unless you just trade in your own name only, you must also tell everyone you deal with that you are an undischarged bankrupt if you are in business and trade under a name other than your own.

A practical way around this is imagine you've got a business card. On it, top line, goes your name, Fred Bloggs. On the second line, describe what you do, Coffs Harbour Lawn Mowing Service and Rubbish Removal. Now you're trading in your own name, and that's an advantage because people like to know who they are dealing with, and you then describe what you do.

Another suggestion is the second line of the card may advise who you previously were, so as to identify you to that business. In the Fred Bloggs case the second line would say, (previously Coffs Harbour etc etc etc). To any raised eyebrows or that type of enquiry, simply mutter "taxation reasons" or "divorce settlement" or "accountant suggested it" or something like that. That's generally sufficient, it generally gets an understanding nod.

As a bankrupt though you can't ask for credit of more than \$4,764 or so without disclosing that you are a bankrupt.

Taxation

Bankruptcy cancels your tax debt for income tax and GST, whether or not you've lodged all of your tax returns at the time of your bankruptcy or not.

The debt is cancelled but you still have to prepare and lodge any outstanding returns. Then, when you get the tax bill, attach a copy of your bankruptcy notice to the bill and send it back to the tax office as though it was a cheque. That should cancel the liability.

You won't get a refund during the period of your bankruptcy, as the tax office will keep any refund during that time to offset what you've owed them.

The other thing is that if you go bankrupt at any other date than the 30th June, then arrange your taxation and GST returns correctly, and show your taxable income pro rata so that it shows the income, or GST debt up to the date of your bankruptcy, and the balances after the date of your bankruptcy.

The effect of that is that because you owe the pre bankruptcy amount but perhaps don't know the amount of the debt as at the date of your bankruptcy, then that amount of the debt just becomes a bankruptcy debt, and you don't have to pay it.

Show the tax office as an unsecured creditor and guess the amount that you may owe them. Show your tax file number or GST number as the reference.

If you're in business then I think that it's best to go bankrupt at the end of a month so that it is easier to sort out the accounting for this.

For the financial year that you go bankrupt, in this way you only owe the tax on your after the date of your bankruptcy income, or GST matters.

I've just come across an interesting, but sad, matter though. Mrs had some shares when she went bankrupt. The trustee sold them, and now Mrs, who of course has no money, has been told that she personally has to pay capital gains tax on the profit. It looks as though Mrs might have to go bankrupt again on the capital gains tax debt, even though she didn't get any money from the share sale proceeds, because they were sold by her bankruptcy trustee. Isn't that wrong, just plain crazy.

Surely the government can change the law to make the bankruptcy trustee pay something, say a flat 10% of the sale price or something. In that way Australia would get something out of this, which we won't if Mrs goes bankrupt again over it. Looks like we bankrupts have been duded again.
Your Passport, and Overseas Travel.

You don't automatically lose your passport when you go bankrupt. If you wish to go overseas (and before you go of course) whilst you are bankrupt, you do have to get your trustee's written consent before you leave. To my knowledge none of my clients have ever had this permission refused.

You must apply for permission in writing, and give your trustee enough time to consider your application.

The trustee of course will want to know the reason for your travel, where you are going, your departure and return dates, who paid for the trip, an overseas contact address, and they'll want to check that you don't owe your bankruptcy any money by way of income contributions etc.

You may be refused permission if you have not been co-operative in your bankruptcy matters.

If you don't return when you are supposed to then the period of your bankruptcy may be extended.

I've known of people being stopped at the airport when they tried to leave Australia without this permission. They were able to go a few days later once the permission matter had been sorted out.
The debt collectors.

How would you like to wake up next to one of them every morning, or to have to look at them across the dinner table at night? I can't imagine that they don't take their attitudes from home to work every morning, and bring them home again at night, can you?

I expect that by the time you've read this far into the information on this web site that you can see that what you've been told by some of them at times can now best be seen as somewhat out of context.

The next 7 paragraphs are also in Bankruptcy Information Note 3, the one about Debt Agreement Proposals. I've included them here again in case you didn't read all of that Information Note.

It seems to me that in many cases the so called debt collectors can be viewed as salesmen selling second hand debts. Have you found that the person harassing you isn't from the place where you thought that you owed the money to, but they're from a somewhere that has bought the debt off the organisation that you originally owed the money to?

If this is the case, and sometimes you don't even know it because they may not have told you, (next time they call, seek this information out) then the person calling you is from an organisation that specialises in buying debts off the original place that you owed the money to. In the industry, your debt is often on-sold on for a very low % of what you owed, say 10 cents in the dollar, maybe a bit more, maybe a bit less.

Now, think about it this way, the person calling you isn't collecting the debt that you owe, because that's been paid by the above 10 or 20 cents in the dollar. The place that you owed the money to has been paid. They decided to take less than what you owed, in full and final payment (they wouldn't take that from you though).

If it was a bank etc who on-sold the debt, and they had previously reported you to a credit rating agency for defaulting, I think that they should now update that record to say that the debt has been "Settled" That might be worth checking. If they are getting away with this then surely the government are a bit remiss here.

The person now ringing you now has a second hand item to sell, not your debt to the bank or whoever, because as far as the bank or whoever is concerned, they accepted something less as full and final payment. The person ringing you now has a second hand item to sell, and their difficulty is that there's only going to be one possible buyer, you.

It's like as if the person ringing you was trying to sell a second hand car, and he could only sell it to one person, you. It's pretty much the same thing, except the government would probably crack down on second hand car salesmen if they treated people that they were trying to sell something to, the way that you know that you are being verbally assaulted and harassed to death.

If you now can see the picture in a different light, don't you think that that now puts you in a different position, a better negotiating position? The second hand debt salesman might now find that he's flogging a dead horse. Whilst you still want to pay your debts, but at a rate and over a time frame that you can afford, your repayment offer may now be considered in a different perspective.

In July 2010 the ACCC had this to say:

Make sure that you actually owe the debt. Ask for proof (e.g. documents, account statements) if you think that a debt is not yours or if you disagree with the amount demanded. If you are contacted about a debt, be cooperative, and expect to

be treated professionally. (let the ACCC know if you're not) Make a formal complaint if a creditor or debt collector misleads you, threatens you, or is abusive. (Oh for a perfect world, can you identify with this?)

ACCC goes on to say that debt collectors must not use or threaten force of any kind towards you, any member of your family or any other person connected with you, damage or threaten to damage your property, block access to your property, or block your way, enter your property when you have refused permission, or fail to leave when you ask them.

A debt collector should only contact you when it is necessary to do so. As a guide, if contact is necessary, it should be limited (unless you request or agree otherwise) to a maximum of 3 phone calls or letters per week (or 10 per month), and only between the hours of 7.30 am and 9.00 pm on weekdays and 9.00am and 9.00 pm on weekends, with no contact on national public holidays.

Generally, visits to your home (or another agreed location) should only occur if there is no other way the debt collector can make effective contact with you, or if you ask for or agree to a visit.

As a guide, any personal visits should be limited to once per fortnight and take place between 9.00 am and 9.00 pm (unless you ask for a different time)

A debt collector should not visit you at your workplace unless you request them to, or if you haven't given them any other effective way to contact you. If a debt collector does contact you at work they must not reveal information about your financial situation to others. Etc etc etc From the experiences that most of us have had in these matters, it's reassuring to know that declaring yourself bankrupt or entering into Debt Agreement Proposal will quickly stop the debt collectors' calls and harassment dead in their tracks.

The ACCC website is at www.accc.gov.au
Buying your way out of bankruptcy - Annulment

Officially this is called Annulment. You've got to do it through your bankruptcy trustee. It works like this. In most cases, once you've gone bankrupt, the creditors hardly ever get anything, due to the fact that there is generally little to be distributed to them from your income in the three years after your bankruptcy, and most bankrupts have nothing for their bankruptcy trustee to sell.

So, if grandma or somebody, not you, is able to come up with an offer to pay them say \$10,000 (for example) in full and final settlement of your bankruptcy debt, and enough of the creditors say yes, then your bankruptcy will be annulled, cancelled.

Let me know if this scenario is of interest and we'll discuss a scenario applicable to you. As a mud map work on say \$5,000 as your bankruptcy trustee's fees, plus say 10c to 20c to your unsecured creditors.

I've come across an interesting matter concerning an annulment. When questioned about it, somebody at ITSA told the person to ring their major creditor who had the majority of the debt and therefore voting power, to see if they would agree to the so much in the dollar offer being contemplated.

When called, the major creditor said that the debt had been on-sold, so to ring somebody else at so and so.

The person at so and so said that the debt had been on-sold again, so to ring somebody else again at the new place.

The last person said that they couldn't find any reference to the debt.

So, in the annulment offer, what will happen? If there's a creditor there owed say \$100 and they're the only one to vote and say yes, then the bankruptcy could be annulled for about \$5,100 with ITSA getting \$5,000 of it.

Interesting.
Buying your way out of bankruptcy – a Composition

This is known as a Section 73 Composition.

Generally somebody can provide external funds, which may not amount to 100 cents in the \$\$\$\$\$, in an effort to pay the creditors an amount which would be in excess of what they would not otherwise get, if the creditors will accept it in full and final payment, and the bankruptcy is then annulled, ie, discharged.

However, details of the bankrupt and the proposal and the meeting must be first be published in both a national (The Australian) and a local newspaper.

I'm aware that these publication requirements have killed off any enthusiasm to proceed, and so in these cases creditors have missed out.

If you're interested in a Composition, contact your bankruptcy trustee.
Objecting to actions of your bankruptcy trustee.

If you are in dispute with your bankruptcy trustee there is a procedure under the Bankruptcy Act by which you may ask for a review of certain decisions of your trustee.

I think that this review procedure could be worked overtime if a bankrupt's income is directed to one of the bank accounts that I referred to in Bankruptcy Information Note 2 under the Supervised Account Regime for the Collection of Income Contributions.

ITSA Regulation can also review the filing of a notice of objection to discharge, an income contribution assessment, and rejecting a hardship application.

Decisions which cannot be reviewed by ITSA Regulation are in relation to the admitting or rejection of a proof of debt, or one relating to selling an asset (house etc).

The review is first carried out by Bankruptcy Regulation, an independent branch of Insolvency and Trustee Service Australia, known as ITSA. Bankruptcy Regulation is responsible for monitoring the standards of bankruptcy trustees and debt agreement administrators.

You have 60 days in which to lodge a request for a review of a decision of your trustee or administrator.
Bankruptcy, property, and Family Law

In March 2005 new laws were passed so that previously conflicting bankruptcy law and family law matters relating to property, and I think income, could be sorted out.

In a a nutshell, it gives the bankruptcy trustee the right to put his hand up and claim an interest in a bankrupt's property, or previous property, on behalf of the bankrupt's creditors, where family law previously seemed to have the upper hand and the creditors missed out.

The National Personal Insolvency Index (NPPI)

I've mentioned throughout this website that once you go bankrupt, or enter into a Debt Agreement Proposal or a Personal Insolvency Agreement, you are automatically listed in what is known as the National Personal Insolvency Index, the NPPI.

It's stated officially that the purpose of the NPII is to provide publicly available information regarding the insolvency status of individuals.

How misleading. For example, I went bankrupt in 1995. Now, 15 years later, how accurate is that information if it's supposed to give the public information concerning my current (and for quite a few years) insolvency status. Is it just a bit more of the punishment mentality?

The personal information recorded is your name, date of birth (if known), aliases (if known) your residential address at the date of lodgement of documents (if known) and your occupation (if known).

All personal information is listed exactly as it is written on the source document (if John was written as Jon, then it's Jon on the NPII for life). Any correction is listed as an alias.

Personal information including your address and occupation is not changed once it is registered on the NPII.

If a person going bankrupt believes that publishing their address on the NPII may jeopardise their safety they may apply to have their address suppressed.

To have your information suppressed your application must be in writing to the Official Receiver, together with documents to support the application.

A person's name, date of birth and details of the administration or proceedings cannot be suppressed.

If this is you, you'll need to produce evidence like a Domestic Violence Order, a Police Report regarding threats of personal violence, or a report from a social worker, medical practitioner, psychiatrist or other relevant practitioner.

Decisions of this nature are usually made within 1 day of receipt of the necessary information by the Official Receiver. Should the person be unhappy with the decision they have the right of appeal to the Administrative Appeals Tribunal.

Details will only be suppressed from the date of the decision and into the future.

Where a person who could be affected by these matters is placed on a witness protection programme (at the request of the relevant police department) then any name or change of name, alias or address which could identify the person will not be published on the NPII on the acceptance of a request made by the Inspector General.

Conclusion

I hope that the information that I've given you has been of some help, that you now understand your situation a lot better, and that you can now see a way to get out of debt, get back on your feet and so get on with your life.

When you decide what you will do to overcome the problem that you've got, if you'd like some help with the paperwork then the next Bankruptcy Information Note 5, About This Service sets out more about me and how this is all done over the internet all over Australia, and the costs involved.

Also, read the testimonials in Bankruptcy Information Note 6. They're real, and they're a representative sample of the sort of things that our clients say. I'd really appreciate it if you'd keep in touch too please, as your feedback could easily be helpful to somebody else.

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