What happens when you go bankrupt?

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In today's volatile economy, where increasing financial pressures are being faced by Australian businesses, personal bankruptcy appointments continue to rise. Often, the financial struggle in ensuring that all debts are paid to creditors can be a tough and gruelling process with unsuccessful results. What follows is usually the appointment of a bankruptcy trustee to the debtor whether voluntarily or as sought by a creditor. If you find yourself in this predicament, then it is important that you understand the implications of being bankrupt including some of the limitations that will be placed on you whilst bankrupt.

Upon becoming bankrupt a trustee in bankruptcy is appointed to administer your estate and realise assets so that the proceeds can be distributed amongst your creditors.

1. **INCOME**

When you are bankrupt there is a limit on how much income you can earn before you will have to contribute some of that income to your bankruptcy trustee, who will in turn distribute it amongst your creditors.

The amount you can earn before mandatory contributions are made, will vary according to the number of dependants relying on you.

Currently you can earn the following amounts per year (after tax) before contributions are to be made to your bankruptcy trustee:

Number of Dependants	Income Limit
0	$54,736.50
1	$64,589.07
2	$69,515.36

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3	$72,252.18
4	$73,346.91
Over 4	$74,441.64

You are not prohibited from earning more than the amounts set out above, however anything over the above amounts earned in a year while you are bankrupt are required to be paid to your trustee for distribution.

2. **PROPERTY**

Whilst bankrupt there is a limit on the assets that you can own. Of significant note is that if you are bankrupt you cannot own real property (i.e - your home) and if you do own real property before becoming bankrupt, your trustee will either take steps to sell the property and take what would have been your share of any sale proceeds (after payment to any mortgagee) for the benefit of your creditors or alternatively, your trustee will liaise with any mortgagee on the property so that the mortgagee takes steps to sell the property.

If you owned real property with another person before going bankrupt your trustee is only entitled to your share of the property and often the trustee in the first instance will liaise with the other owner to enquire as to whether he or she can purchase your share of the property from the trustee. If the other owner of the property can't raise enough funds to buy your share of the property, then your bankruptcy trustee is entitled to take steps to have the property sold.

A common misconception is that real property can be transferred out of an impending bankrupt's name prior to bankruptcy as a means for the property to be protected. This is incorrect and a bankruptcy trustee has powers to set aside transactions whereby assets were transferred or sold prior to bankruptcy under value or without any value at all.

Turning to personal property such as motor vehicles, equipment, furniture and other personal items, the bankruptcy legislation outlines a limit on the type of personal property that can be owned and the value of such items. For example you cannot own a motor vehicle with more than $7,700.00 in equity in the vehicle, otherwise the trustee can sell the vehicle. You can keep tools and equipment up to the value of $3,750.00 used to earn income. You are entitled to keep most ordinary household items.

We do highlight that under the bankruptcy legislation there is protected property which a trustee is not able to realise some examples of this are monies held in a superannuation fund and the right to recover damages for personal injury suffered by you.

3. **OBTAINING CREDIT and RUNNING A BUSINESS**

If you are seeking to purchase goods or services on credit, then if the value of the credit is more than $5,574.00 you will have to disclose to the credit provider your status as a bankrupt. Further, whilst you are bankrupt, it will be very difficult for you to run a business as a sole trader as the trustee will be entitled to the assets of that business. If involved in a partnership before becoming bankrupt, then once bankrupt that partnership will dissolve. Finally, you will not be able to be a director of a company while you are bankrupt.

Another important consideration is that once you are bankrupt it will be very difficult to obtain finance or credit from a financial institution in the future without the assistance of others, such as a guarantor. This is on the basis that the bankruptcy will have a significant negative impact on your credit rating being an indication of the risks in your ability to repay a debt. As a bankrupt your name will permanently appear on the National Personal Insolvency Index, which can searched by third parties.

4. **DEBTS**

The driving force behind becoming bankrupt is not being able to repay your creditors. As such on the discharge of your bankruptcy you will be released from the majority of your debts. We highlight that secured creditors can still take steps to realise the assets that they are secured over despite your bankruptcy, such as mortgagee over your house or a motor vehicle financier. We also highlight that bankruptcy does not provide a release to some debts such as any child support or maintenance, court imposed fines and penalties and any HECS or HELP debt owed for student loans.

We also note that if you incur any further debts after you have been declared bankrupt, then you will still be liable for these debts on the expiry of your bankruptcy.

5. **TERM OF BANKRUPTCY**

If you become bankrupt, then the duration of your bankruptcy will be 3 years from when you lodge with your trustee a statement of affairs, which sets out all your assets and liabilities. There are ways to have your bankruptcy terminated earlier than the 3 year period which includes creditors agreeing to compromise their debts for a lesser amount or alternatively you can pay out all creditors in full including any costs of the trustee.

It is important that if you enter bankruptcy you work with your trustee in bankruptcy and assist with any queries he or she may have about your estate. If a bankrupt fails to take steps requested by the trustee, then the trustee could lodge an objection to the discharge of the bankruptcy which means that your bankruptcy will be extended.

We do highlight that later in 2017, new bankruptcy legislation amendments are set to take effect which will lead to significant changes across the insolvency landscape. One major change that will be introduced is reducing the term of a bankruptcy from 3 years to 1 year.

6. **TRAVEL**

When you are bankrupt, you will need the approval of your trustee to travel outside of Australia. Usually your trustee will query who is funding any trips outside of Australia, the intended return dates and assessing whether you are a flight risk before approving the travel.

7. **VOIDABLE TRANSACTIONS**

As highlighted earlier a trustee can investigate transactions that took place before you entered bankruptcy to ascertain whether proper consideration was paid in any transaction and whether any creditors have been preferred over other creditors when receiving payments from you. Under these transactions there are a number of conditions that need to be evident in order for the trustee to have a claim.

We understand that entering bankruptcy can be a daunting concept for anyone and can be a really hard decision to make. We have highlighted some of the important issues for you to think about before commencing bankruptcy and so that you can be properly prepared and to assist in the overall bankruptcy process. In the event that you or someone you know is struggling to pay their debts when they fall due and are considering bankruptcy options then one of our lawyers will be more than happy to sit down with you and provide legal assistance where necessary and assist you with process.