

BANKRUPTCY – The Effects Of Bankruptcy

Property

Pursuant to Sections 58 and 116 of the Bankruptcy Act 1966, your divisible property will now vest with the Trustee and is available for division amongst your creditors. The Trustee will notify you of the property that they intend to divide.

You are not permitted to sell or deal with any of your property or assets. Property is anything of value you own when you become bankrupt, excluding the certain assets protected by the Bankruptcy Act. These include your household items, furniture and personal effects, life insurance and superannuation policies, as well as potentially a vehicle used mainly for transport etc. Failure to disclose details of assets or property you own is considered an offence.

Books & Records

You are required to forward any books, records and documentation regarding any business (if any) operated by you to your Trustee. You are also required to advise your Trustee of the details of any documents relating to:

- Bank accounts
- Income Tax Returns and any other financial statements
- Bank Passbooks
- Three previous tax returns.

Travelling Overseas

Your passport(s) must be surrendered to the Trustee. You are not permitted to travel overseas without their written consent.

Creditors Rights

Creditors can take no further action against you to recover pre-bankruptcy debts – except for fines imposed by a court for a breach of law. Creditors who hold security over your property have a right to see the property if you do not continue to meet payments as they fall due. If such property is worth more than the amount owing against it, it will be sold in order to add to the amount available in your Bankrupt Estate for distribution. All documents, demands etc from Creditors must be passed to your Trustee in Bankruptcy and the Creditors advised of your Bankruptcy.

Future Books & Records

You must keep a record/explanation of any income, employment and any other dealings or transactions during the period of your bankruptcy.

Co-operation & Disclosure

You must disclose any necessary information regarding your conduct, trade dealings and property as required, including potentially at meetings of Creditors (if convened). You are also required to execute instruments and assist in realising property, as well as aid to the utmost the administration of the estate.



Length of Bankruptcy

The period of Bankruptcy begins at the date of the filing of your Statement of Affairs and lasts for three years and one day. This may be extended by objection from the Trustee.

Obtaining Credit

As an “Undischarged Bankrupt” you are restricted from obtaining credit or carrying on a business. All borrowing or incurring of credit over a certain limit must be disclosed to the Trustee.

Credit Rating

Defaults are listed for 5 years on a commercial credit reference record. Bankruptcies (and other serious credit infringements) are recorded for 7 years, even if your bankruptcy has been discharged.

Employment

Bankruptcy does not generally prevent you from working. There may be certain restrictions imposed by professional associations or licensing authorities in particular trades or professions.

Offences

The following are considered offences under bankruptcy:

- Disposing of property before bankruptcy with intent to defeat your creditors.
- Failure to disclose assets.
- Failure to inform the Trustee of any necessary or required information.
- Deliberately obtaining credit you know you cannot repay.
- Gambling and speculation that results in bankruptcy.
- Incurring debts during bankruptcy over a set limit.
- Operating a business under an assumed name, without advising your bankruptcy.
- Leaving Australia without the Trustee’s permission
- Failure to notify trustee of changes to name, address or contact phone number.

The team of lawyers and accountants at The Quinn Group are available to offer advice on a range of credit and debt situations from negotiating with creditors and debtors to administering the bankruptcy if that is required. For more information and advice contact us on 1300 QUINNS or visit our website www.quinns.com.au and submit an enquiry.