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bankruptcy information memorandum

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bankruptcy memorandum

1. How this Memorandum can help you

The purpose of this memorandum is to provide an overview of the bankruptcy processes in Australia, and some of the issues commonly encountered during bankruptcy. It contains a glossary of terms and a schedule showing the latest prescribed amounts (thresholds). For more detailed information, please refer to our website www.svpartners.com.au

2. The Effect of Bankruptcy and your Rights & Responsibilities

Effect of Bankruptcy

Bankruptcy may affect you in a number of ways, including, but not limited to, the following:

- All of your divisible assets come under our control. We are entitled to recover and realise these assets.
You are not to deal with your divisible assets, without our written permission. If you obtain or are given anything of value from prior to your date of discharge you should notify your Trustees immediately.
- Not all assets become available to the Trustee for the benefit of your creditors. Certain assets are exempt and cannot be dealt with by the Trustees. Some of these exemptions include:

Section 116(2)(b) Necessary household property and effects;

Section 116(2)(c) Tools of trade to the value of \$3,700;

Section 116(2)(ca) Property used primarily as a means of transport (e.g. motor vehicles, motor cycles, etc) to the value of \$7,600;

Section 116(2)(d) A regulated superannuation fund or an approved deposit fund or policies of life assurance or endowment assurance in respect of the life of the bankrupt or the bankrupt spouse.

- If you own any real estate, your Trustee has an obligation to sell your interest in that property. If you jointly own the property with other people, then the Trustee will seek the co-operation of the co-owner to do so. Whilst you continue to live at the property you should continue paying any mortgage instalments due, rates payments and ensure that the property is ensured and maintained in good order. You should send copies of the most recent mortgage statements and rates notices to your Trustees as soon as possible;

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- Your unsecured creditors are no longer able to pursue you for outstanding debts or enforce any remedies against you or your property, unless the permission of the Court is obtained. You may direct them to your Trustee;
- Your bankruptcy details are available to the public via a Government database known as the National Personal Insolvency Index (“NPII”) and usually on databases of credit reference agencies. Access to the Government database can be obtained by contacting AFSA or information brokers. Details of your name, address, date of birth, occupation and the number of the bankruptcy administration will remain on the NPII forever;
- Bankruptcy usually lasts for 3 years (except where the bankruptcy is annulled). The bankruptcy takes effect immediately; however the 3 year period begins from when a Statement of Affairs is filed. Therefore, it is important that if you have not filed a Statement of Affairs, then you should do so as soon as possible, as this will determine when you are due to be discharged from bankruptcy. If you do not file a Statement of Affairs, the bankruptcy will continue indefinitely.

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Responsibilities as a Bankrupt

In addition to the above, the Bankruptcy Act provides that you must:

- Complete and file with the Official Receiver (AFSA) a Statement of Affairs, providing details of your financial position (assets and liabilities) and some personal details. Once completed, you can lodge this with your SV office, we can file this with AFSA for you ;
- Provide details of your income to us and if your income exceeds the relevant threshold prescribed by the Act, pay income contributions to your estate;
- Provide us with your passport. If you wish to travel overseas, you must provide us with details of the proposed trip and obtain our written consent to travel.
- Disclose to us all assets and liabilities and, as soon as practicable, including any 'after acquired' divisible property;
- Not obtain credit exceeding \$5,496 (CPI adjusted) without disclosing the bankruptcy to the credit provider. You are still permitted to obtain credit whilst bankrupt, however, if the value of credit exceeds \$5,496 you must inform the person you are dealing with that you are an undischarged bankrupt;
- Not trade under a business name (other than in your own name) without disclosing to every person with whom you deal that you are an undischarged bankrupt, irrespective of the amount of credit involved;
- Advise us of your address and daytime telephone number. You are required to notify your Trustee of all changes of name and changes of address;
- Not to take part in the management of a corporation without the leave of the Court. If you are a director of a company you should resign immediately and notify the Australian Securities & Investments Commission;
- Ensure that you provide information about your affairs to the Trustees when requested and aid in the utmost in the administration of your bankrupt estate.

If you are unsure of your responsibilities, in the first instance you can seek further information from our website at www.svpartners.com.au. If you wish to discuss your responsibilities with one of our staff, please contact the office nearest you. All the contact details can be found at the end of this document or on our website.

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3. Trustees' Duties and Powers

We are independent parties appointed to administer your bankrupt estate. The role of a bankruptcy Trustee is to investigate your financial affairs and where possible, recover funds to pay a dividend to your creditors.

We will be required to perform a number of functions as Trustees whilst administering your bankrupt estate – the most common of these are the following:

1. Notifying your creditors of the bankruptcy;
2. Taking steps to sell your property for the benefit of the estate – we are empowered to take possession of and sell your divisible property;
3. Determining whether you have made a transfer of property that is void against us as Trustees – we have powers to recover transactions that are preferential or void against us as Trustees;
4. Investigate your conduct and examinable affairs (extending to associated companies, trusts, partnerships and natural persons such as professional advisors and relatives) and obtain books and records relating to your affairs, including from you, your solicitor, accountant and any associated entities;
5. Assessing whether you are liable to pay income contributions to your bankrupt estate based on the level of your income;
6. Considering whether you have committed any offences under the Act; and
7. Administering the estate as efficiently as possible.

4. Statement of Affairs

Under the Act, you are required to complete and lodge a completed Statement of Affairs. The Statement of Affairs is an important document, providing details of your asset and liability position, your income and some personal details.

Your bankruptcy will last from the date you were declared bankrupt until three years from when your Statement of Affairs is filed. Therefore it is in your best interest that you provide your completed Statement of Affairs to our office as soon as possible. In addition, there are a number of penalties under the Act for failing to file a Statement of Affairs.

If you have not already lodged your Statement of Affairs, please complete both forms and return one form (an original) to our office. We will lodge it on your behalf with AFSA (the Federal Government body overseeing all personal insolvencies).

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5. Dealing with your Creditors

You are required to provide details of your creditors in your Statement of Affairs. Your Trustees will contact your creditors and advise them of the bankruptcy.

5.1 Dealing with Unsecured Creditors

An unsecured creditor is a creditor who does not have a hold over the chattels / assets / property purchased with the credit afforded to you.

As mentioned previously, one of the major effects of bankruptcy is that unsecured creditors cannot take further action to pursue you. Unsecured creditors are prevented from enforcing legal remedies (for example commence legal proceedings against you or issue a garnishee) against you or your property (except with leave of the Court).

If unsecured creditors attempt to recover money from you, you should advise them of the bankruptcy and provide to them the contact details of your Trustee. If you receive physical harassment from creditors, you should contact the police.

5.2 Debts not dealt with under Bankruptcy

Although for the most part, unsecured creditors are prevented from taking further action to pursue you, there are very important exceptions that are not dealt with under Bankruptcy:

- Fines imposed by a Court for breaches of the law;
- Debts arising from fraud or fraudulent breach of trust;
- Maintenance payments;
- Proceeds of Crime Orders
- Debts owed to Centrelink; and
- HELP debts.

The effect of this is that these debts remain with you even after the date of your bankruptcy. You should still however advise your Trustee of the amount of these debts in your Statement of Affairs.

5.3 Secured Creditors

Those creditors who hold security over your property (such as mortgages or bills of sale) are entitled to sell the goods in order to recover the amounts owing. The creditor can lodge a claim in the bankruptcy for any shortfall incurred.

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5.4 Vehicles subject to Finance Agreements

Where you own a motor vehicle that is subject to finance, the financier holding security over the vehicle is entitled to sell the vehicle in order to recover any amounts owing. Any shortfall incurred can be claimed in the bankrupt estate. The financier should be disclosed in the Statement of Affairs as a secured creditor.

Your Trustee may write to the financier and determine the amount owed. As mentioned previously, a bankrupt may keep vehicles used primarily as a means of transport to the value of \$7,600. Where the equity in the vehicle exceeds this amount, your Trustee may be required to sell the vehicle.

If you wish to continue using the vehicle, you can do the following:

- Purchase any equity in the vehicle (above the value of \$7,600) from your Trustee, either by way of lump sum payment or instalments; or
- Advise the financier that you wish to continue the lease.

If you do not wish to keep the vehicle, you should advise your Trustee so that they can determine whether the vehicle should be sold, or returned to the financier.

5.5 Joint and Guaranteed Debts

Generally where another party has incurred a debt jointly with you, they will still have a liability for the total amount outstanding in joint names.

Bankruptcy does not affect the rights of a creditor to claim under a guarantee. The creditor is entitled to recover payment from the guarantor.

5.6 What about Debts incurred after Bankruptcy?

You are responsible for any debts incurred on or after the date of bankruptcy.

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6. Income Contributions

If you earn income over a prescribed threshold amount, you will be required to make income contributions into your bankrupt estate. The threshold amounts are determined by the number of your dependants and are set out at page 17 of this memorandum.

Every 12 months, on the anniversary of your bankruptcy you will be assessed to determine the amount (if any) of contribution payable. It is important that you provide your Trustees with full details of your income, if requested. Failure to do so may extend the period of your bankruptcy.

If you have earned more than the threshold amount, then you must come to an agreement with your Trustees to pay the required contribution. Commonly this is done by way of monthly or fortnightly instalments.

In the majority of cases, your employer will not need to know about the bankruptcy. You should be aware that it is an offence for an employer to dismiss a bankrupt because the trustee has issued the employer with a notice to forward payment.

You may apply for a review of any contribution assessment on hardship grounds. An application, in writing and supported by evidence, can be made on the following grounds:

- Illness, disability or ongoing medical treatment of you or a dependant.
- Child-care costs to enable you to continue employment.
- High rental costs.
- Substantial expenses of travelling to and from work.
- Inability of a person (including a spouse) to continue contributing to household maintenance due to unemployment, illness or injury.

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7. Passport and Overseas Travel

Please provide us with your passport, including any expired passports or passports of different nationalities. We are required under the Act to take control of your passport.

Whilst bankrupt, you must obtain the written consent of your Trustee(s) to leave Australia. However, provided that there are no outstanding issues in the bankruptcy, there should be no reason to prevent you from travelling overseas. Bankruptcy is not designed to prevent you from travelling overseas.

It is an offence to leave Australia, without the consent in writing of the Trustee and is punishable, on conviction, by imprisonment for a period not exceeding 3 years.

If you wish to travel overseas during your bankruptcy, you must complete a travel application form which is available from our office upon request. We usually ask that you provide the following information:

- A copy of your itinerary;
- Dates of your departure and return;
- The reason for your trip;
- Details of who is paying for the trip; and
- Contact details for you whilst overseas.

Further information may be requested by the Trustees, where they believe necessary.

The Trustee may impose written conditions on your travel request. Any contravention of these conditions is punishable on conviction, by imprisonment for a period not exceeding 12 months.

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8. Getting out of Bankruptcy

There are a number of ways your bankruptcy may be brought at an end:

1. Discharge: After three years from the receipt and lodgement of your Statement of Affairs, and assuming that there are no objections (refer to Section 9), then you will be automatically discharged from your bankruptcy;
2. If you are declared bankrupt by the Courts, by making an application to Court pursuant to Section 153B of the Act to have the bankruptcy overturned;
3. Annulment under Section 153A of the Act by paying out your creditors in full; and
4. Annulment under Sections 73 and 74 of the Act by making an offer to your creditors. This can be by way of an offer of a sum of money, or by instalments over a period of time. It must be accepted by your creditors at a meeting of creditors and you must satisfy the terms of the offer.

The effect of an annulment is that the restrictions of bankruptcy are lifted from you. Any divisible property will revert in you. Creditors will not be able to pursue you further for unsecured debts and will receive an orderly distribution from the estate.

You may wish to pay out the debts and costs of your bankruptcy, or make an offer under Section 73 of the Act to obtain an annulment of your bankruptcy.

Your bankruptcy can be annulled by the Trustee issuing a certificate of annulment when:

- all the debts and costs of administration of your bankruptcy have been paid in full; or
- you make an offer under section 73 of the Act which is accepted by your creditors. Under this section you can make an offer of a sum of money in full and final payment of your debts. It may be payable as a lump sum or by instalments over a period of time. It must be accepted by your creditors at a meeting and you must satisfy the terms of the offer.

For more information about annulling your bankruptcy, please contact our office.

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9. Objections to the discharge of your Bankruptcy

An objection to discharge extends the period of bankruptcy.

A bankruptcy may be extended to 5 years from the date the Statement of Affairs is filed, if a bankrupt:

- fails to disclose all debts, whether intentionally or not;
- fails to disclose all property;
- fails to attend an interview or examination;
- fails to notify of a change of name or address;
- fails to attend a meeting of creditors;
- fails to notify any material change in his or her Statement of Affairs;
- continues to manage a corporation without permission;
- incurs credit of the prescribed amount or more (refer to point 3 on the attached Schedule) without disclosing his or her bankruptcy;
- leaves Australia and does not return;
- has transferred property at undervalue prior to the date of bankruptcy;
- has given an undue preference to a creditor or creditors prior to the date of bankruptcy.

A bankruptcy may be extended to 8 years from the date the Statement of Affairs is filed, if a bankrupt:

- fails to pay compulsory contributions;
- fails to provide details of property and income when requested;
- fails to adequately explain how money was spent or assets were disposed of;
- fails to disclose particulars of income;
- fails to return to Australia when requested to do so by the trustee;
- fails to sign documents when required to do so by the trustee;
- transfers property prior to the date of bankruptcy to defeat creditors;
- provides false or misleading information to the trustee after the date of bankruptcy;
- intentionally fails to disclose to the trustee a liability that existed at the date of bankruptcy.
- intentionally fails to disclose any beneficial interest in property;

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10. Other Items to Consider

10.2 If you have an Australian Business Number (ABN)

If you have an existing ABN when you become bankrupt, the trustee will advise the Australian Taxation Office (“the Tax Office”) of your bankruptcy. The Tax Office will note the date of your bankruptcy against the ABN.

If you wish to continue to use the ABN you will need to contact the Tax Office and arrange to have your ABN reactivated. Regardless of Bankruptcy you will still be responsible for lodging your BAS Statements. There is no restriction on applying for an ABN after becoming a bankrupt.

10.2 Tax Returns

You will need to continue to lodge your tax returns. It is still your responsibility to ensure that tax returns are lodged.

10.3 Tax Refunds

When you receive a tax refund during the period of your bankruptcy, you may need to pay the refund to your Trustees.

- For tax on income earned **before** the date of bankruptcy – you will need to forward the refunds to us when they are received by you or on your behalf.
- For tax on income earned **after** the date of bankruptcy – you will not need to pay any amounts to us.

If the Tax Office is a creditor of your bankruptcy, any refund you are entitled to during the period of bankruptcy may be retained by the Tax Office to offset any pre bankruptcy income debt.

After discharge, any debt still outstanding to the Tax Office which formed part of the bankruptcy cannot be recovered by the Tax Office.

10.4 Trustee’s Remuneration

Your Trustees are paid for the work performed from your bankrupt estate. The Trustee’s remuneration is usually approved by the creditors on a time basis at an hourly rate. In the absence of any such approval by creditors, the Trustee is, pursuant to Section 161B of the Act, not required to obtain creditor approval if the claim is less than the statutory minimum of \$5,000. In the case of joint and separate

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estates, this means that claims of less than \$5,000 in each separate estate and less than \$5,000 in the joint estate may be taken without creditor approval.

The level of staffing will vary according to the complexity of the individual assignment. While the overall administration is overseen by the Trustee / Director, the day to day administration of the estate will be conducted by a Manager / Supervisor as well as an accountant. We include an example of our schedule of hourly rates and disbursement charges at the back of this document. While the cost of the administration will depend on the level of staff involved, it is also dependent on the level of co-operation received from the various stakeholders including the Bankrupt.

The total of these costs must be approved by creditors or a court before they can be paid. The most common method for fee approval is by a circular or report to creditors. The costs are paid out of the assets of the estate. Where either the bankrupt or a creditor is dissatisfied with the amount of remuneration taken by Trustees, that party may request a review of the Trustees' remuneration. A request for a review should be made in writing within 28 days after the applicant receives a Remuneration Claim Notice from the Trustees under Regulation 8.12C.

The Inspector-General will consider whether the application for review should proceed or be refused.

The Inspector-General may:

- i) Affirm the amount claimed by the Trustee; or
- ii) Disallow all or part of the Trustees' claim for remuneration and substitute another amount for the amount claimed; or
- iii) Disallow all or part of the third party's bill of costs and substitute another amount for the amount claimed; or
- iv) Dismiss the application.

If the Trustees' remuneration is reduced upon review, the Trustees may be required to repay an amount to the estate.

If you are unhappy with the amount of remuneration drawn by the Trustees, please contact us in the first instance. If you are not satisfied and wish to have our remuneration reviewed, you should contact the Australian Financial and Security Authority (AFSA), telephone 1300 364 785.

further information

QUEENSLAND

Brisbane 07 3310 2000

Gold Coast 07 5503 4960

Sunshine Coast 07 5479 6199

Toowoomba 07 4639 6140

Mackay 07 4953 4060

NEW SOUTH WALES

Sydney 02 8986 8986

Western Sydney 02 8986 8986

Caringbah 02 9531 8365

Newcastle 02 4023 0847

Wollongong 02 4227 4086

Dubbo 02 6882 8995

Tamworth 02 6768 3399

VICTORIA

Melbourne/
Hobart 03 9669 1100

terms & definitions

Act of Bankruptcy

An action or declaration which, if not carried through, can be used by a Creditor to apply to the Court to make a person Bankrupt.

Australian Financial Security Authority (AFSA, previously known as ITSA)

The Government Authority that is responsible for the administration and regulation of the personal insolvency system in Australia. It is part of the Attorney General's Department. AFSA's role includes acting as an information and registry service; administering bankruptcies and Debt Agreements and regulating the industry and enforcing legislation. The website is www.afsa.gov.au.

Antecedent Transaction

A transaction that has taken place prior to a Personal Insolvency Agreement or bankruptcy that can be recovered or clawed back by the Trustee. They include transactions where less than market value has been paid for an asset in consideration of a transfer in ownership or a transfer has been made to defeat right of access by creditors or preferential payments are made to specific Creditor. A Trustee has the ability to recover the asset or difference in purchase price paid. Certain time limits apply to these transactions.

Asset

Anything a person owns before going bankrupt, or buys or receives during bankruptcy. Assets can be divided into two types – Divisible Assets and Exempt Assets.

Bankrupt

Means a person against whose estate a sequestration order has been made or who has become a bankrupt by virtue of the presentation of a debtor's petition.

Bankruptcy Notice

A formal, final demand for payment of a debt by a creditor owed at least \$5,000 on one or more final judgments or final orders. This notice is issued by the Official Receiver through the office of AFSA. Failure to pay within 21 days is an act of bankruptcy.

Bankruptcy Act 1966

The Commonwealth legislation which covers bankruptcy, Part IX (Debts Agreements), and Part X (Personal Insolvency Agreements) arrangements. It

terms & definitions

deals with individuals not corporate entities, which are covered by the Corporations Act administered by the Australian Securities and Investments Commission.

Bankruptcy

A process where people, who cannot pay their debts become bankrupt to receive the protection of the Bankruptcy Act and their estate is administered by a Trustee. It allows for the fair distribution of property among creditors and the prosecution of dishonest debtors.

Creditors

An entity (person, corporation) to whom money is owed.

Creditor's Petition

Is a means by which a creditor makes an application to the Court to make a Debtor bankrupt.

Controlling Trustee

Is a person who is a private bankruptcy Trustee, AFSA or an eligible Solicitor who investigates a debtor's financial affairs and calls a meeting of the Debtor's Creditors under Part X of the *Bankruptcy Act*.

Court

In the context of bankruptcy, the Court usually refers to the Federal Court of Australia or the Federal Magistrates Court of Australia. Both of these Courts can hear matters associated with personal insolvency.

Current Amounts

Amounts periodically adjusted in accordance with the Consumer Price Index. Some are adjusted every quarter, others every six months. As an example they identify the value of assets that can be retained by a Bankrupt or the income a Bankrupt can retain before they are required by law to contribute towards their bankruptcy. The current amounts can be found at www.afsa.gov.au.

Debtor

A person who owes money to a Creditor.

Debtor's Petition

A petition presented by a Debtor against himself or herself and includes a petition presented against a partnership pursuant to section 56A and a petition presented by Debtors against themselves pursuant to Section 57.

terms & definitions

Divisible Assets

Assets/property which vest in the Trustee and can be legally sold by the Trustee.

Discharge from Bankruptcy

The date that the Bankrupt is discharged from bankruptcy.

Dividend

A distribution that is made to Creditors from funds recovered in an administration under the Bankruptcy Act.

Duration of Bankruptcy

The period of the bankruptcy, which ends three years from when a person files their Statement of Affairs with AFSA. The duration of bankruptcy can be longer if a Bankrupt does not lodge a Statement of Affairs or if an objection is lodged to extend the bankruptcy.

Exempt Assets

Assets/property which cannot be sold in bankruptcy by the Trustee. These are identified in s116 of the Bankruptcy Act.

Extension of Bankruptcy

If a Bankrupt fails to co-operate with their Trustee, or fails to meet the requirements of the Bankruptcy Act, their bankruptcy can be extended (generally by an additional 2 or 5 years, depending upon the circumstances).

Household Property

Items that a bankrupt is able to retain when they become bankrupt. A list of items can be found in Bankruptcy Regulation 6.03.

Income Contribution

A sum of money that a Bankrupt is required to pay to their Trustee from their income. It is normally called a compulsory income contribution and is based on a statute based formula.

Interest Charge

A charge to be remitted to the Commonwealth (through AFSA) as the governing bankruptcy body. It is all net interest received on funds held in financial institutions for the bankruptcy, that is, interest received less bank charges.

terms & definitions

ITSA (now known as AFSA)

Insolvency and Trustee Service Australia. The Government Authority that is responsible for the administration and regulation of the personal insolvency system in Australia. It is part of the Attorney General's Department. ITSA role includes acting as an information and registry service; administering bankruptcies and Debt Agreements and regulating the industry and enforcing legislation. The website is www.afsa.gov.au.

IPA

The Insolvency Practitioners Association of Australia - the leading professional organisation in Australia for external administrators/insolvency practitioners. The website is www.ipa.com.au.

Motor Vehicle Limit

A bankrupt may retain vehicles (cars, motorbikes, etc) used primarily as a means transport up to this limit. The amount refers to the equity in the vehicle/s (the value of the vehicles less the sum owing under finance). The current limit is set out at www.afsa.gov.au.

NPII

National Personal Insolvency Index. It is a computerised database of all personal insolvencies in Australia, both past and present.

Objection to Discharge

The period of bankruptcy can be extended by a Trustee in certain circumstances, which are set out in the Bankruptcy Act. When this occurs, the Trustee lodges an Objection with the Official Receiver at AFSA. Once it is registered on the NPII, it is a valid objection. A Trustee can lodge an objection on a number of grounds, including if a bankrupt fails to co-operate, or fails to meet the requirements of the Bankruptcy Act. In this instance, a bankruptcy can be extended to a 5 or 8 year period from the date the bankrupt files their Statement of Affairs with AFSA. An objection is not a punitive measure and is only to be used to assist in making a Bankrupt comply with their duties. A Bankrupt has the right to appeal the lodgment of an objection to discharge.

Official Receiver

Is a person who administers statutory functions under the Bankruptcy Act for the government/AFSA. The functions performed are different to a Trustee.

terms & definitions

Proof of Debt

A prescribed form to be completed by Creditors at the Trustee's request, setting out details of their claim against the Bankrupt, including how the debt arose and the amount claimed.

Proxy

A person appointed by another person to represent them at a meeting. A proxy is usually entitled to attend and vote on behalf of the person who appointed them. In an external administration, the appointer is usually a Creditor or Shareholder

Proxy Form

A prescribed form that must be completed by Creditors to appoint a proxy for a meeting of creditors.

Realisations Charge

A charge to be remitted to the Commonwealth (through AFSA) as the governing bankruptcy body. This is calculated at 4.7% (currently) of gross funds received by the Trustees, less certain payments (secured creditor payments, trading payments).

Secured Creditor

A creditor who has a security (e.g. charge or mortgage) over some or all of a Bankrupt's property.

Statement of Affairs

A document that must be filed in Bankruptcy, which sets forth answers to questions concerning the debtor's past and present financial situation.

Provable Debts

A debt or liability that is provable in the bankruptcy. This includes all debts and liabilities, present or future, certain or contingent, to which a Bankrupt was subject at the date of the bankruptcy, or to which he or she may become subject before his or her discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his or her bankruptcy.

Property

Means real or personal property of any description.

terms & definitions

Public Examination

A Trustee or a Creditor can apply to the Court to question a Bankrupt or any other person who may be able to give information about the affairs of the Bankrupt.

Registered Trustee

A person who is registered with AFSA to be a trustee of bankrupt estates and Part X arrangements.

Released from Debt

At the date of discharge a Bankrupt is released from most debts (there are some exceptions). This means the Bankrupt is no longer responsible for or have to pay those debts. A Debtor subject to a Part X agreement is also released from their debts when they meet certain conditions within their agreement with Creditors.

Resolution

A resolution passed by a majority in value of the Creditors present personally, by telephone, by attorney or by proxy at a meeting of Creditors and voting on the resolution.

Sequestration Order

An order made by the Court making a person bankrupt based on a Creditor's Petition or other application as outlined under the Act.

Special Resolution

A resolution passed by a majority in number and at least three-fourths in value of the Creditors present personally, by telephone, by attorney or by proxy at a meeting of Creditors and voting on the resolution.

Unsecured Creditor

A Creditor who does not hold a security over a Bankrupt's property.

Trustee

This is a person who administers a bankruptcy or Part X administration. It is either a private bankruptcy Trustee or the Official Trustee in Bankruptcy (AFSA)

For a complete definition of relevant bankruptcy related terms, please refer to the appropriate provisions of the Act.

Indexed amounts

The Bankruptcy Act and Regulations contain a number of thresholds, limits and other amounts that are regularly indexed (changed in line with the Consumer Price Index or the base pension rate).

Please visit the Australian Financial Security Authority website for the current indexed amounts.

<https://www.afsa.gov.au/resources/indexed-amounts>

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BOOKS AND RECORDS REQUIRED BY TRUSTEES

All books and records of a bankrupt and any associated entities, as defined by the *Bankruptcy Act 1966*, including but not limited to:

1. Bank Statements for the previous 3 years.
2. Documentation that evidences ownership of assets owned by the bankrupt
3. Cheque Butts for the previous 2 years.
4. Particulars of guarantees given by the bankrupt.
5. Any computer records held either on the hard drive or on backup disks in relation to the financial affairs of the bankrupt and associated entities, for the previous 3 years.
6. Financial Statements for previous the 3 years.
7. Taxation Returns for the previous 3 years (including Income Taxation Returns, Business Activity Statements).
8. Insurance Policies.
9. Motor Vehicles:
 - Vehicle Registration Certificates
 - Insurance Policies
 - Hire Purchase or Lease Agreements
 - Loan and security Documentation
 - Contracts for the Sale and/or Purchase
10. Any documents of Title, such as Certificates of Title, Mortgages, Leases, Bills of Sale, Licences, etc.
11. Details of arrangements and loans with Banks or other lending institutions, including details of any securities provided.
12. Copies of all documents in relation to legal proceedings that the bankrupt has been involved in (such as Judgements, Executions and Orders of the Court).
13. A list of all assets owned by the bankrupt and any associated entities.
14. All documents in relation to the bankrupt's superannuation policies, including a list of all deposits and withdrawals to the superannuation funds, for the 3 years prior to the date of bankruptcy.
15. A copy of any wills that the bankrupt is a beneficiary of.
16. Wages records for the bankrupt for the previous 3 years.
17. If the bankrupt has employed or currently employs staff, documentation in relation to all current employees and outstanding employee entitlements.

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18. Any agreements for the transfer and/or disposal of any property/assets of the bankrupt in the last 5 years.
19. All documents in relation to any real property owned or formerly by the bankrupt or any associated entities, including but not limited to the following:
 - Documents regarding the acquisition of the property;
 - Copies of all contracts for the sale and/or purchase of the property and all settlement statements for the sale and/or purchase of the property;
 - Copies of all finance applications and documents in relation to borrowings to finance the purchase, maintenance or capital improvements to the property and in relation to any borrowings secured against the property;
 - Full details (name, address and contact phone numbers) of the current owner(s) of the property;
 - Documents providing evidence of the terms of the bankrupt's tenancy of the property, including full details of any rent paid; and
 - All documents in relation to any loans secured against the property.

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