

Can someone else make me bankrupt?

If you owe someone money you are a debtor. If you owe someone $10,000 or more then the person who you owe money to (the creditor) can make you bankrupt.

Bankruptcy is a procedure taken by creditors generally as a last resort when they believe that you (the debtor) are avoiding paying the debt.

Recently we have had an increase in clients asking about their debt recovery options and bankruptcy is one of them. Likewise we also have clients who have received Bankruptcy Notices or Creditors Petitions and do not know what to do or what their next step should be.

The process to be made bankrupt by a creditor is outlined in the Bankruptcy Act 1966 (Cth). The creditor will usually have a court ordered judgment for the debt amount. The creditor or their solicitor will then need to apply to the Official Receiver for a Bankruptcy Notice which requires that the debtor pay the debt within 21 days of receiving the notice. If the debtor fails to pay the debt to the creditor within the time limit then they commit an ‘act of bankruptcy’.

What’s the process after an act of bankruptcy?

The creditor can, after the 21 days has elapsed, file a Creditor’s Petition at the Federal Circuit and Family Court. The court will then set a date for hearing the Creditor’s Petition. If the debtor does not agree to being made bankrupt (for example if you are solvent or do not owe the money) then you can file a notice of appearance and complete a notice stating the grounds of opposition and prepare an affidavit giving reasons. If you do not have a valid reason for not paying the debt, the court will take it that you are insolvent (have no money to pay your debts as and when they fall due) and the court will make a ‘Sequestration Order’.

After a Sequestration Order is made by the court, a Trustee in Bankruptcy will be appointed to manage your financial affairs. The trustee will notify you in writing of their appointment. Once the trustee is appointed if there are funds or assets available creditors will be paid according to their ranking; for example secured creditors first and then unsecured creditors.

The period of your bankruptcy runs for three years from the date that you file your statement of affairs with the Australian Financial Security Authority (“AFSA”).

A result of being made bankrupt the following consequences, amongst others may arise:

1. You will be released from responsibility for most existing debts;
2. The Trustee can sell your assets or property to pay creditors including your house or share of house;
3. Any assets you acquire while bankrupt may be sold by the trustee;
4. You cannot obtain credit or pay for goods or services by cheque over a specified amount without advising the person you are purchasing the goods or service from that you are bankrupt.
5. If you run a business you must keep proper accounts.

Bankruptcy has severe implications including your ability to obtain credit. Initiating bankruptcy proceedings against a debtor can be a way to prompt a tardy debtor to pay the debt owed.

How can Andersons help?

If you would like more information about bankruptcy and the process after the act of bankruptcy please contact today’s writer **Felix Hoelscher.**

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.