

This fact sheet covers:

- ✔ What is bankruptcy?
- ✔ The effect of bankruptcy on spouses
- ✔ Joint debts
- ✔ Joint assets

## 1. What is bankruptcy?

Bankruptcy is a legal process through which you are declared unable to pay your debts when they fall due. You may file for bankruptcy (voluntary bankruptcy), or alternatively, creditors can apply to have you declared bankrupt. If you are declared bankrupt by either of the above means, you will be removed from managing your own finances, and a trustee will be appointed to manage your money and assets.

To understand the ways in which bankruptcy may affect you, please read our [factsheets](#) on the 'Consequences of Bankruptcy' and 'Bankruptcy and the Family Home'.

The purpose of this fact sheet is to explain what will happen to your joint debts and assets when you, a co-owner or a joint debtor become bankrupt.

### 1.1 Trustee's actions in bankruptcy

Once a trustee has been appointed, they will take the following steps to repay your outstanding debts:

#### 1. Repay your secured debts

Secured debts are debts backed or secured by property or other assets, such as:

- a mortgage (secured by your home); and
- a car loan (secured by your vehicle).

The specific assets that secure your debts will be sold. The proceeds of sale will then be used to repay the respective debts. If there is money left over after your secured debts have been repaid, the trustee will use this money to pay your unsecured debts.

#### 2. Repay your unsecured debts

Unsecured debts are debts not secured by an underlying asset, such as:

- credit card debt;

- medical bills; and
- utility bills.

If you have unsecured debts which have not been paid, the trustee will sell other assets that you own to repay these debts (see section 4.2 on unprotected assets).

In addition, the proceeds of sale from your assets may be used to satisfy interest repayments on your loans and other fees (for example, those charged by your bank), including late payment or termination fees.

## 2. How can your bankruptcy affect your spouse?

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### COMMON MYTH

I'm married, so both my spouse and I have to file for bankruptcy.

False. You are not required to file for bankruptcy just because your spouse files for their own bankruptcy or is declared bankrupt.

Your bankruptcy may affect your spouse if:

- they use an asset that you own (see section 2.1);
- you sold or gave them an asset prior to declaring bankruptcy (see section 2.2);
- they share a debt with you (for example, a mortgage, a car loan or a utility bill) (see section 3);
- you and your spouse jointly own an asset (for example, a home, a car or other personal property) (see section 4).

### 2.1 Does your spouse use an asset that you own?

Before your assets can be sold, the trustee must determine whether you own the asset, or whether ownership lies with your spouse.

This is important because:

1. The trustee appointed to manage your assets cannot recover an asset owned by your spouse
2. If the trustee finds that you own certain assets, some assets are protected in bankruptcy and cannot be sold (see section 4.1).
3. All other assets that you own (that are not protected, see section 4.2) will form part of your assets which can be sold during your bankruptcy.

To determine whether you or your spouse owns the asset, the trustee will:

- ask you about contributions to purchase price of the asset;
- check the asset's use and history;
- look at whose name is on the loan documents (if applicable); and
- in the case of certain assets such as a car, check the the Personal Property Securities Register (PPSR) to determine whether a secured loan has been taken out against the asset.

Ultimately, the trustee will establish ownership depending on the facts of your case.

## 2.2 Did you dispose of an asset prior to your bankruptcy?

Before filing for bankruptcy, people may give away or sell an asset to their spouse for a price below the market value of the asset. For example, a person may sell the family home to their spouse for \$250,000 when the market value of the home may be \$500,000. If you find yourself in this situation, the trustee may investigate your dealings with your assets and, in the circumstances outlined below, may be able to reverse these transactions to recover the assets you disposed of.

If the trustee can show that you:

- gave away or sold assets for less than their market value within five years before you became bankrupt —→ the trustee can recover those assets. However, such assets cannot be recovered if the transfer was made to a relative or 'related entity' more than four years before your bankruptcy and you were solvent at the time.
- gave away or sold assets with the intention of preventing creditors from claiming them at any time before your bankruptcy —→ the trustee can recover those assets.

## 2.3 What if your spouse is also entering into bankruptcy?

Bankruptcy is a legal status attributed to individuals. However, if couples have substantial **joint debts**, it may make sense for both partners to file for their individual bankruptcy at the same time (see section 3) if neither can service the joint debts alone.

This will involve submitting separate bankruptcy documentation for each person, and all joint debts and joint assets must be listed in full in the relevant documents.

## 3. Joint debts

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### DEFINITION

A **joint debt** is a debt that you share with other people. Each person that shares the debt is a joint debtor. Joint debts may be understood as meaning joint responsibility. This means that all joint debtors are responsible for repayment of the entirety of the debt.

### 3.1 What happens to joint debts when one individual is made bankrupt?

If one joint debtor enters bankruptcy, the other joint debtors will become responsible for repaying the entirety of the debt. For example, if two people share a mortgage, and one becomes bankrupt, the non-bankrupt debtor will become responsible for repaying the mortgage.

However, if the debt is guaranteed by another person (known as a **guarantor**), they will become responsible for that part of the debt which they have agreed to guarantee.

### DEFINITION

A **guarantor** is a person that has agreed, in writing, to pay your debts if you become bankrupt and/or are unable to repay your loan.

### TIP

If you are dealing with joint debts and only one debtor is declaring bankruptcy, the best thing to do is to let the trustee know which debts are joint. If you are not sure which debts are joint, you should check with each of your creditors to confirm the position.



## 4. Joint assets

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### DEFINITION

**Joint assets** are assets that you own with another person. This is known as co-ownership.

Co-ownership means that more than one person has contributed money to purchase an asset. For example, if two people contribute money to buy a car, the car is a joint asset. However, if only one person contributes their money to the purchase of the car, the car is not a joint asset.

### 4.1 Protected assets

Not all assets that you own or co-own with another person will be affected in bankruptcy. Certain assets are protected and cannot be sold by a trustee to satisfy your debts. This means that if you are made bankrupt, you will be able to keep these assets.

Protected assets can include:

<p>Necessary household items including</p>	<ul style="list-style-type: none"> <li>● oven;</li> <li>● fridge;</li> <li>● freezer;</li> <li>● washing machine;</li> <li>● clothes dryer;</li> <li>● television;</li> <li>● radio;</li> <li>● landline telephone;</li> <li>● beds;</li> <li>● Furniture; and</li> <li>● Educational or recreational items used by children in the home.</li> </ul>
<p>Tools of trade</p>	<ul style="list-style-type: none"> <li>● Tools that a person uses to earn an income, for example, plumbing equipment used by a plumber in their course of business.</li> <li>● You are entitled to keep tools of trade where your share in the tools is valued up to \$3,700<sup>1</sup></li> </ul>
<p>Vehicles</p>	<ul style="list-style-type: none"> <li>● Includes cars and motorcycles amongst others, which are used by you as a primary means of transport.</li> <li>● You are entitled to keep vehicle(s) used as your primary means of transport where: <ul style="list-style-type: none"> <li>your share (or equity) in the market value of the vehicle</li> <li style="text-align: center;"><i>minus</i></li> <li>the amount owing under finance (if the vehicle is financed),</li> </ul> is up to \$7,800<sup>2</sup> ( <ul style="list-style-type: none"> <li>● If you have taken out a loan to purchase your vehicle(s) you must continue to repay this loan. If you are unable to make these repayments, then the secured creditor (for example, the bank or car financier) will be able to sell your vehicle(s) to satisfy your debt.</li> <li>● After your secured creditor has sold your vehicle you may still owe them money if the sale proceeds do not cover your debt. This is called a 'shortfall' which can be listed in your bankruptcy documents. Once listed, the creditor will be unable to seek repayment of the shortfall amount.</li> </ul> </li> </ul>
<p>Superannuation</p>	<ul style="list-style-type: none"> <li>● Your interest in a regulated superannuation fund.</li> </ul>
<p>Life insurance</p>	<ul style="list-style-type: none"> <li>● Policies of life insurance in respect of you or your spouse.</li> </ul>

<sup>1</sup> As at 21 September 2017 – this will change according to the CPI/base pension rate – see [AFSA](#)

<sup>2</sup> See 1.

## 4.2 Unprotected Assets

All other assets not listed in section 4.1 are unprotected assets which can be used by the trustee to satisfy your debts. On bankruptcy, these assets may be sold by the trustee.

If an unprotected asset is also a joint asset, part of the sale proceeds from the sale of that asset by the trustee must be given to the non-bankrupt co-owner in accordance with the proportion of their share in the asset. For example, if there are two co-owners of an asset, and each contributed 50% of the purchase price, then the non-bankrupt co-owner will be given 50% of the proceeds of sale of that asset.

Unprotected assets include:

- tools of trade where your share has a value exceeding \$3700<sup>3</sup>
- vehicle(s) where your share in accordance with the calculation in section 4.1 above has a value exceeding \$7,800<sup>4</sup>
- money held in shared bank accounts;
- shares; and
- valuable items, for example, jewellery and handbags (wedding/engagement rings may be protected).

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<sup>3</sup> See 1.

<sup>4</sup> See 1.

# Resources

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## For further information on bankruptcy

- ✔ Australian Financial Security Authority, I am currently bankrupt.  
<https://www.afsa.gov.au/insolvency/i-am-currently-bankrupt>
- ✔ Australian Financial Security Authority, What can be taken or sold in bankruptcy?  
<https://www.afsa.gov.au/insolvency/i-cant-pay-my-debts/what-can-be-taken-or-sold-bankruptcy>
- ✔ Australian Financial Security Authority, Indexed Amounts.  
<https://www.afsa.gov.au/insolvency/how-we-can-help/indexed-amounts-0>
- ✔ Bankruptcy notices, creditors petitions, sequestration orders, consequences of bankruptcy.  
<https://www.justiceconnect.org.au/get-help/self-representation-service/resources-and-fact-sheets/bankruptcy-factsheets>

## Legislation

- ✔ *Bankruptcy Act 1966 (Cth)*
  - *Section 116*
  - *Section 120*
- ✔ *Bankruptcy Regulations 1996 (Cth)*
  - *Regulation 6*

