

Sequestration Orders

Fact Sheet



This fact sheet covers:

- ✔ What is a Sequestration Order?
- ✔ Consequences of a Sequestration Order
- ✔ Reviewing a Sequestration Order

1. What is a Sequestration Order?

A sequestration order is an order handed down by the court which makes you bankrupt. It is an order that your assets be managed by a trustee. Before deciding whether to challenge a sequestration order by seeking a review, you should consider the consequences of bankruptcy (see our fact sheet titled 'Consequences of Bankruptcy').

2. Consequences of a Sequestration Order

When a sequestration order is made against you, a trustee will be appointed to manage your financial affairs. If the creditor has not obtained the consent of a registered private trustee to manage your financial affairs, the Official Trustee automatically becomes the trustee. The Official Trustee in Bankruptcy is part of the Australian Financial Security Authority (AFSA).

After the making of the sequestration order by the court, your trustee will notify you of your bankruptcy in writing. When the trustee writes to you, the trustee will explain their role and your obligations as a bankrupt. The trustee will also give you a statement of affairs which you must complete and file with the Official Receiver.

RELATED RESOURCES

An instruction sheet for completing the statement of affairs is located on the AFSA website at: <https://www.afsa.gov.au/insolvency/how-we-can-help/forms/bankruptcy-sequestration-order-forms>

2.1 Consequences of bankruptcy

Some of the consequences of your bankruptcy (which usually lasts for 3 years from the date you file your statement of affairs with AFSA) include the following:

- The trustee can sell your assets or property to pay your creditors. However, beyond that, you will not have to pay most of your existing debts and demands from creditors should generally stop.

- If you obtain assets while you are bankrupt, these assets may be sold by the trustee.
- If you own property (such as a house or apartment), the property or your share of the property may be sold to pay your creditors. The trustee may also reclaim property you sold prior to becoming bankrupt.
- If you seek to get credit from another person, or pay for goods or services by cheque, over a certain specified amount, you must advise the person that you are bankrupt. As the limit changes regularly, it is best to contact AFSA for a current figure (see AFSA's contact details below).
- You have to give your passport to your trustee and get your trustee's permission in writing before travelling.

See our fact sheet titled 'Consequences of Bankruptcy' for more detailed information.

As your bankruptcy usually lasts for 3 years from the date you file your statement of affairs with AFSA, you should file it as soon as possible after the sequestration order is made.

USEFUL INFORMATION

For information regarding other consequences of becoming bankrupt, and the responsibilities a bankrupt has, please see our fact sheet titled 'Consequences of Bankruptcy'. You can also contact AFSA for further information at <https://www.afsa.gov.au/> or by calling 1300 364 785.

3. Reviewing a Sequestration Order

Most sequestration orders are made in the Federal Circuit Court. You can apply for a review of a sequestration order made by a registrar of the Federal Circuit Court by making an application to a judge of the Federal Circuit Court. An application for review is heard by way of a hearing de novo, this means that the judge will hear the matter anew and decide whether all the requirements for the making of a sequestration order are met. If you are successful, the Judge may set aside the sequestration order (undo the bankruptcy altogether) or alternatively annul the bankruptcy (end the bankruptcy but not make it as if it never happened).

3.1 Grounds to review the making of a Sequestration Order

Common grounds upon which a sequestration order may be reviewed include:

- you did not commit an act of bankruptcy. For example, you may not have been served with the bankruptcy notice;
- you do not owe the money claimed by the creditor;
- you have your own claim against the creditor for money the creditor owes you;
- you are able to pay your debts when they fall due (that is, you are not "insolvent"); or

! TIME LIMIT

If you want to apply for a review of a sequestration order made by a registrar, you must make an application to the court within **21 days** from the date of the sequestration order.

📖 FURTHER READING

See our fact sheet titled 'Creditor's Petitions' for details of the grounds you can rely on to oppose a creditor's petition. You can rely on the same grounds to review a sequestration order.

- any "other sufficient cause".

COSTS

Even if you are successful in your application for review of the sequestration order, you may still be required to pay the legal costs of the other side. In particular, you may be required to pay the legal costs of the other side if the creditor can prove that the reasons you opposed the creditor's petition during the application for review could have been raised when the creditor's petition was originally in court. For this reason it is always best to oppose a creditor's petition early on, rather than to wait for a sequestration order to be made and then apply for it to be reviewed.



3.2 Application for Review

An application for review is heard by a judge by way of a hearing de novo. This means that the judge will listen to the matter again from the beginning, and can hear new evidence that was not used at the first hearing. In hearing the matter afresh, the judge will decide whether all of the requirements for the making of a sequestration order have been met, and will substitute his or her own decision for that of the registrar who made the original sequestration order.

To be successful in a review application, you will need to have grounds to oppose the creditor's petition. This means that you must be able to prove that the requirements for the making of a sequestration order have not been met.

3.2.1 How to apply

An application for review of a sequestration order made by a registrar can be made by taking the following steps:

1. Prepare an B3A: Application for Review

This is available at the Federal Circuit Court [website](#). In the form, you need to set out the orders that you would like the judge to make, namely that you want the court to cancel the sequestration order so that you are no longer a bankrupt.

An example of the types of order you may want to seek is set out below:

1. *The orders made by Registrar Jones on 20 October 2014 in proceeding SYG00/2014 be set aside, pursuant to s104(3) of the Federal Circuit Court of Australia Act 1999 (Cth).*
2. *The creditor's petition filed by the creditor be dismissed.*
3. *The Court make no order as to costs.*

You may also need to file an **affidavit** in support of your application. An affidavit is a document prepared by a person involved in a court case as written evidence for the case. In the affidavit in support of your application, you need to include the facts of the case to the court. When you have completed the affidavit, you must swear or affirm that its contents are true in front of a person authorised to witness your signature (such as a police officer, Justice of the Peace or lawyer).

! LODGE YOUR STATEMENT OF AFFAIRS

You should still lodge your statement of affairs once the sequestration order is made even if you are considering a review application, as you have 14 days from when you are notified of the bankruptcy to lodge your statement of affairs with the Australian Financial Security Authority. Failure to do this may result in a civil penalty.

FEES

You will have to pay a fee when lodging the application with court unless you qualify for a fee waiver, such as on the basis of financial hardship. The current fee for lodging an interim application is \$360.

Further details regarding fees for the court can be found on the Federal Circuit Court website at: www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/fees-and-costs/fees-gfl/.

2. Prepare a Notice to Creditors (Form B12)

This notifies creditors that you are applying for a review of the decision of the registrar to make a sequestration order. The Notice to Creditors must be given to every person/organisation to whom you owe money – not just the creditor who brought the creditor's petition.

3. File the Application for Review and Notice to Creditors (Form B12) with the court

The forms will be stamped by the staff at the registry office of the court with a hearing date when you lodge the documents with the court.

4. Serve the Application for Review on the Trustee and the Notice to Creditors to all creditors known to you

You can serve the documents by:

- Sending it by post to the person/organisation or leaving it at their address;
- Personally delivering it to the person/organisation; or
- Sending it by fax or email if you are sure of the correct email address.

You must serve both documents at least 7 days before the hearing of your application for review.

5. Review your documents

If you lodged documents to oppose the creditor's petition when the matter first went to court you should review these to make sure they are sufficient to show that a sequestration order should not have been made.

If you *did not file* any documents to oppose the creditor's petition in the first court case, or if you did file documents but would like to provide the court with more information, you should do so before the application for review goes to court. You will need permission from the Court to file new evidence in your application for review. You should prepare a comprehensive affidavit setting out your evidence and take it to court at the first hearing. At the first hearing you should ask the judge for permission to 'read and file' your affidavit during the hearing.

3.3 Review in the Federal Court

The process is similar for the Federal Court, but the forms will be slightly different. An application for review of an order made by a Registrar of the Federal Court must be made by filing an application within 21 days of the Registrar's decision. The application is made by completing and filing Form B3. You will have to pay a fee when filing the application unless you qualify for a fee waiver.

RELATED RESOURCES

Form B12 can be found on the Federal Court's website at:

www.fedcourt.gov.au/forms-and-fees/forms/federal-court-rules but applies to both courts

RELATED RESOURCES

Form B3 can be found on the Federal Court website at:

<http://www.fedcourt.gov.au/forms-and-fees/forms/bankruptcy-rules>.

Further details regarding filing fees for Federal Court forms can be found on the Federal Court website at:

<http://www.fedcourt.gov.au/forms-and-fees/court-fees/fees>.