

# Altion Law

## FREQUENTLY ASKED QUESTIONS ON BANKRUPTCY

### **Have you been served with a Statutory Demand?**

In order to issue a Bankruptcy Petition against you, a creditor could serve you personally with a Statutory Demand. If a Statutory Demand is threatened or brought against you, you are strongly advised to seek immediate legal advice.

It is crucial that you act quickly when you receive a Statutory Demand if you are to avoid the creditor bankrupting you. You have only 18 days to apply to the Court once you have received a Statutory Demand. In today's testing economic climate, creditors are increasingly resorting to Statutory Demands more quickly than ever before.

Often the use of Statutory Demands are inappropriate and in many cases we can apply to the Court to set aside the Statutory Demand if you are able to show that there is a genuine dispute on substantial grounds and has a real prospect of a Defence. Alternatively, if you can show that you have a counterclaim, cross-demand or set-off that is equal to or exceeds the debt, this will prevent a creditor from taking any formal insolvency process against you.

**Top tip:** You should not ignore the Statutory Demand and seek legal advice about how bankruptcy would affect you immediately. Creditors may sometimes threaten you with bankruptcy where it's clearly inappropriate, for example, where you owe less than £5,000 or where sums due are disputed. This might be harassment and you can challenge it.

### **Can you defend against a Bankruptcy Petition?**

We can provide legal advice and assist you in defending a Bankruptcy Petition by preparing evidence as to why you are opposing the making of a Bankruptcy Order and demonstrating why the debt is substantially disputed. You may set out your reasons as to why you don't owe the money or the creditor may be out of time for taking legal action or even that you've already made a reasonable offer of repayment or an offer to secure the debt to the creditor which was unreasonably refused. We have experience in making representation at the hearing and entering into negotiations with creditors to achieve a settlement outside the Court.

### **What happens after the granting of a Bankruptcy Order?**

Once the Court has ordered a bankruptcy order against you, the Official Receiver will be notified of the details immediately. The Official Receiver may send you with a questionnaire asking for full details of your financial situation. You will be given an appointment for an interview to take place over the telephone or to attend their office to discuss your financial situation. The Official Receiver will take control of your property and financial affairs. The purpose is to establish whether you are in a position to contribute towards the bankruptcy costs and the debts via your assets and income.

### **Can you cancel or annul a Bankruptcy Order?**

We may apply to the Court on your behalf to cancel your bankruptcy:

1. Where the bankruptcy order should have not been made in the first place

2. Where all your debts and expenses of the bankruptcy have either been paid or secured to the satisfaction of the Court

3. Where you have made an individual voluntary arrangement with your creditors to pay your debts which has been approved. We can assist you in preparing an application to annul a Bankruptcy Order based on the above grounds and thereafter making representation at the hearing.

### **What happens to assets during bankruptcy?**

Your assets might be sold to pay your bankruptcy debts. The control of your assets will be passed on to the trustee. You will be allowed to keep possession of any assets that you need for your work such as any tools that you use for your job or vehicle. You will be entitled to keep your non-luxury household items such as clothing, bedding or furniture.

### **What happens to your bank account during bankruptcy?**

Once a Bankruptcy Order is issued, access to your bank accounts will be frozen with immediate effect. You must give the Official Receiver your bank cards, cheque books and credit cards.

**Top tip:** It is important that you withdraw enough money to cover outgoings before bank account is frozen, where possible. You will be allowed to open a new bank account provided you advise the bank that you have been declared bankrupt. Banks will usually be prepared to offer you basic banking facilities such as debit card but will not offer any credit for the term until you are discharged.

### **What happens to your home during bankruptcy?**

A trustee in bankruptcy will only be interested in your home if it is either owned completely or partly by you. If you live in a rented property, you should remain unaffected by your bankruptcy but do check your rental agreement.

The Trustee must do something to realise the bankrupt's interest in the family home within 3 years of the Bankruptcy Order. If the trustee does nothing, then the trustee will lose the right to do so. No order will be made forcing you and your family to move out of your home in less than 12 months from the date of bankruptcy.

If you are the sole homeowner and have no spouse, then neither the 12 months nor the 3 year period will apply, so possession could be sought immediately, or after a deferred period.

If you have beneficial interest or positive equity in the property or your partner could buy out your share before the bankruptcy order is made then we are happy to provide legal advice to you on how to stop or delay the sale of your home.

**Top tip:** If you have equity in your home, you may wish to consider whether you could re-mortgage or sell your property in order to avoid going bankrupt.

### **Which debts are included in bankruptcy?**

Most debts that you have when a Bankruptcy Order was made will be covered by your bankruptcy. This means they will automatically be written off at the end of the bankruptcy period.

**Top tip:** Beware that not all types of debt are written off (see below). The people you owe

At Altion Law we provide clear, no-nonsense, expert legal advice and representation to help you get the best result.

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice.

If you need more details or information please seek independent formal legal advice.

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these debts that can still take action to get their money back. This means that before you apply for bankruptcy you should work out how you'll deal with any debts that aren't covered.

Debts that are not automatically written off:

- magistrates court fines
- any payments a court has ordered you to make under a confiscation order, for example, for drug trafficking
- maintenance payments and child support payments, including any lump sum orders and costs that have arisen from family proceedings, although you may be able to ask the court to order that you don't have to pay this debt
- student loans
- secured loans and other secured debts, such as debts secured with a charging order
- debts you owe because of the personal injury or death of another person, although you may be able to ask the court to order that you don't have to pay this debt
- social fund loans
- some benefits and tax credits overpayments.
- debts taken out by fraud – you are still liable for paying debts obtained by fraud after you have been discharged from bankruptcy

## How long does bankruptcy last?

Bankruptcy normally runs for 12 months until discharged. You may be required to pay some monthly income as required by the Court under Income Payment Order (IPO) or by consent under Income Payment Agreement (IPA) where you have surplus/spare income. You will be expected to contribute towards the above arrangement if you can afford the costs for 24 or 36 months.

## How does a bankruptcy affect credit rating?

Credit reference agencies such as Experian, Call Credit and Equifax maintain records regarding credit accounts. Bankruptcy will be recorded on your credit file. This record will remain on your file for a period of six years.

## How will bankruptcy affect my pension?

If your pension scheme or funds has been approved by HM Revenue and Customs it will not be counted as an asset in the bankruptcy. Pensions are a complex area, however if you are receiving a pension this will be classified as an income and taken into account by the Trustee. Once we are working with you, we will discuss your pension entitlement in relation to the bankruptcy and provide the appropriate advice.

## Will you lose your job during bankruptcy?

Some jobs may be affected by a bankruptcy such as financial organisation (eg banks) and if you are a member of a regulated professional body that requires you to be licensed or registered (eg solicitors and accountants.) You would need to check directly with your professional body. You should check the terms of your contract of employment to see if there is any requirement about you having to tell your employer if you go bankrupt. You may find it difficult to get a job in certain industries in the future such as the police, civil service and armed forces.

**Top tip:** Your employer will be advised of changes in your tax coding because of your bankruptcy.

**Top tip:** If you are bankrupt and have been unfairly dismissed from your job for any

reason, including the fact you are bankrupt, you would need to take legal advice. For example, if your employer dismisses you unreasonably or without following a reasonable procedure.

## Can you carry on running a business or company/ implications of bankruptcy?

If you own a business as sole director of the company and are made bankrupt, the bankruptcy trustee will take over the rights to your business or company. This means that the business will be closed down or company will be wound up, any employees will be dismissed and the assets of your business will be sold.

**Top tip:** Many company owners try very hard to avoid bankruptcy for this very reason. It is possible to appoint another director before bankruptcy proceedings starts if you wish for the company to continue.

If the company has multiple directors, you should inform them immediately and resign your position. You can do this by completing Form 288a and returning it to Companies House.

If you're self-employed and been declared bankrupt then you can still operate as a sole trader (not as director of a limited company) which means that you can start trading again. You will find it very difficult to get credit, which may make it difficult for you to carry on trading.

## Restrictions

Going bankrupt will also place certain restrictions on the involvement you can have in running a business. It means that you cannot:

1. Act as a company director without permission from the court;
2. You cannot be involved in creating, promoting or managing a limited company without permission from the court;
3. You can be self-employed or trade in a partnership but must operate under the name you used when your bankruptcy was declared so that relevant parties are made aware of your bankruptcy.
4. You cannot borrow more than £500 without telling the lender that you are bankrupt.
5. Work as an insolvency practitioner or authorised debt specialist

If you break any of the above restrictions you will be committing a criminal offence and you might be prosecuted if you do.

Once your bankruptcy has been discharged, you are free to become a director again.

## About Altion Law

Altion Law Ltd are specialist in disputes with HMRC as well providing day to day commercial legal advice and assistance with disputes or issues that occur in general business trading. For expert legal advice call us on 01908 414990 or contact us online at [www.Altion-law.co.uk](http://www.Altion-law.co.uk) and we'll be happy to help you.

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