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Assets

Assets are anything of value you own when you become bankrupt plus anything you buy or receive before the end of your bankruptcy.

Some assets are exempt, which means you may keep them. Some assets are non-exempt or divisible, which means your trustee may sell them for the benefit of your creditors.

WHAT ASSETS MAY I KEEP?

- Most ordinary household or personal items.
- Tools used to earn an income, up to a *set limit**.
- Vehicles (cars or motorbikes), where the total value of the vehicles minus the sum owing under finance is less than a *set limit*.
- Most funds held in registered superannuation funds and payments from regulated superannuation funds received after you have become bankrupt (Note: Superannuation payments received prior to bankruptcy are not protected).
- Life assurance policies in respect of yourself or your spouse or proceeds from such policies received after your bankruptcy.
- Compensation for a personal injury, eg injury to you from a car accident or workers compensation.
- Assets to the extent that they were bought with your personal compensation money or certain government grants (protected monies).
- An asset held by you in trust for another person (eg a child's bank account).
- Awards of a sporting, cultural, military or academic nature made to you, such as medals or trophies and claimed as having sentimental value may be exempted by a vote of creditors.

WHAT ASSETS WILL MY TRUSTEE SELL?

Apart from the assets you can keep, your trustee will recover any assets even if they are overseas or in someone else's possession. Examples include:

- houses, apartments, land, farm and business
- premises (including leases)
- motor vehicles other than exempt ones
- shares and other investments (including shares held in your employer's business)
- tax refunds for income earned before you became bankrupt
- proceeds of a deceased estate where the person dies before or during your bankruptcy
- lottery winnings and other competition prizes.

Warning:

There are penalties if you fail to:

- disclose assets on your Statement of Affairs, or
- disclose to your trustee, in writing, within 14 days any assets you acquire during bankruptcy.

WHAT ABOUT ASSETS I OWN WITH ANOTHER PERSON?

If you have a share in an asset, for example a house, your trustee can sell your share. If the co-owner is not also bankrupt, the trustee may agree to sell your share to them, but it would have to be for at least as much as the trustee could get from selling it on the open market.

WHAT ASSETS ARE SECURED CREDITORS ENTITLED TO TAKE?

A secured creditor is one holding a security over your asset. Common examples of secured assets are:

- a house subject to a mortgage with a bank
- a motor vehicle subject to a bill of sale
- goods under hire purchase, chattel mortgage, lease or bill of sale with a finance company
- real estate subject to a charge by local councils for outstanding rates.

A secured creditor cannot take an asset back just because you are bankrupt. However, if you fall behind in payments they can take and sell it whether you are bankrupt or not. If you are in doubt about whether one of your creditors is secured, you should first ask the creditor. If you are still doubtful, ask a financial counsellor or your trustee.

WHAT ABOUT ASSETS I USED TO OWN?

Your trustee will investigate assets you owned in the five years before bankruptcy. If they find that you have given away or sold assets for less than their market value, they may either recover these assets or the difference between the true value of the asset and the amount you received for it. Your trustee may also recover any assets that have been transferred for the purpose of defeating your creditors (including assets transferred more than five years before bankruptcy).

WHAT ABOUT LEGAL CLAIMS I MAY HAVE AGAINST SOMEONE

If you have already started a legal action in a court, or if you believe you have a legal claim but have not yet started an action in the court, you cannot continue with that action or start a new action once you become bankrupt. It is up to your trustee to decide whether the claim should be pursued for the benefit of your creditors. However, should your claim be in relation to a personal injury or wrong done to you, your spouse, or a member of your family, or in respect of the death of your spouse or a member of your family, you may be entitled to pursue that claim even after you have become bankrupt. It is important to discuss these issues with your trustee who can provide you with further information in relation to such actions or claims.

WHAT HAPPENS TO THE ASSETS WHICH MY TRUSTEE CAN SELL WHEN I AM DISCHARGED FROM BANKRUPTCY?

Your trustee keeps any assets which have not been sold before your discharge (end of bankruptcy). Your trustee may have been unable to sell your assets straight away and it may take some years.

If all your creditors plus your trustee's fees and expenses have been paid, any remaining assets will be returned to you and your bankruptcy will be annulled.