



July 2010

Bankruptcy Notices

WHAT IS A BANKRUPTCY NOTICE?

To apply to make a person bankrupt, a creditor must prove the debtor has committed an "act of bankruptcy". These acts are set out in Section 40 of the *Bankruptcy Act 1966*. The most common "act of bankruptcy" relied upon is non-compliance with a bankruptcy notice.

A bankruptcy notice is a formal notice of demand requiring a debtor to pay a debt.

This notice is issued by the Official Receiver for a fee. For the current fees refer to ITSA Fees and Charges page at www.itsa.gov.au or contact ITSA.

A bankruptcy notice must be based on a final judgment or order for at least \$5,000 which is less than six years old. A bankruptcy notice can be based on more than one judgment or order so long as the total of all the judgment amounts is at least \$5,000.

Interest on the judgment can only be claimed in the notice if:

- it is allowed by the terms of the judgment or the rules of the court in which the judgment was given;
- the amount of interest is specified;
- and a schedule is attached to the notice showing how the interest claimed was calculated and the relevant sections of the legislation on which the creditor relies to claim post judgment interest

HOW DOES A CREDITOR APPLY FOR A BANKRUPTCY NOTICE?

The bankruptcy notice application must be in the approved form. The form can be downloaded from www.itsa.gov.au. A copy of the sealed or certified judgment or order must accompany the bankruptcy notice.

Two copies of the application must be given to the Official Receiver. One of the copies is retained by the Official Receiver and the other is endorsed and returned to the applicant.

Prior to an application, a search of the National Personal Insolvency Index (NPII) is recommended. The NPII is a permanent electronic register of personal insolvency proceedings in Australia maintained and updated by ITSA.

A NPII search will tell the creditor if the debtor named in the notice is already bankrupt or party to a debt agreement or personal insolvency agreement. The creditor's debt may already be provable in that other proceeding.

For more information on the NPII refer to Searching the Public Record fact sheet at www.itsa.gov.au or contact ITSA.

HOW DOES THE DEBTOR GET A COPY OF THE BANKRUPTCY NOTICE?

One of the copies of the bankruptcy notice application is endorsed and returned to the applicant creditor to be given to the debtor (referred to as "service" of the bankruptcy notice) within six months of it being issued by the Official Receiver.

ITSA does not provide advice on what constitutes effective service of the notice.

CAN A CREDITOR SEEK AN EXTENSION OF TIME TO SERVE THE BANKRUPTCY NOTICE?

A creditor can apply to the Official Receiver to extend the time in which to give the Bankruptcy Notice to the debtor. The application must be in writing and provide reasons for the extension supported by a description of the attempts at service. There is a fee for extending the Bankruptcy Notice.

WHAT HAPPENS IF THE DEBTOR DOES NOT COMPLY WITH THE BANKRUPTCY NOTICE?

If a debtor does not comply with the notice within 21 days of being served, an “act of bankruptcy” has been committed.

Non-compliance with the notice gives the creditor grounds to initiate bankruptcy proceedings in the Federal Court or Federal Magistrates Court.

CAN THE DEBTOR APPLY FOR AN EXTENSION OF TIME?

A debtor can make an application to either the Federal Court or Federal Magistrates Court to extend the time for compliance (i.e. more than 21 days).

CAN THE BANKRUPTCY NOTICE BE SET ASIDE?

A debtor can make an application to either the Federal Court or Federal Magistrates Court to have the bankruptcy notice set aside.

ITSA does not provide advice on the grounds available to a debtor to set aside a bankruptcy notice. You can find out more about Court procedures from the Federal Magistrates Court website (www.fmc.gov.au).

CAN THE BANKRUPTCY NOTICE BE INSPECTED?

The bankruptcy notice and supporting judgment/s are not available for public inspection until the creditor makes an application to the Federal Court or Federal Magistrates Court for the debtor named in the Notice to be made bankrupt. However, the debtor and creditor named in the notice can inspect the notice at any time.