

# Guide to Bankruptcy

O'Hanlon Tax Limited, 6 City Gate, Lower Bridge Street, Dublin 8 Tel: 01 604 0280 Fax: 01 604 0281 Eml: info@ohanlontax.ie

## How does a debtor become Bankrupt?

If a debtor is insolvent the High Court can issue an order making him bankrupt at his own request or a creditor can petition for bankruptcy against a debtor if the debtor has committed an "act of bankruptcy" within the previous three months, such as :

- failure by the debtor to comply with a bankruptcy summons requesting payment of a specific sum due, within 14 days, or
- the making of a return of no goods in respect of the debtor, by the sheriff or county registrar.

The petition must be presented within 3 months of the act of bankruptcy, the amount of debt owed must be set out in an affidavit and must be at least €20,000.

The debtor must be either resident in the State or within a year prior to presentation of the petition, have ordinarily resided, had a dwelling house or place of business, or carried on business within the State.

The creditor's petition must state whether any security (e.g. a mortgage or a charge) is held, and whether the creditor intends to rely on the security.

When the petition is filed the petitioner undertakes to advertise notice of the bankruptcy in the newspapers, and must lodge €650.00 towards the costs and outlays of the bankruptcy and give an undertaking re other costs and outlays.

## What happens when a debtor become Bankrupt?

All property and assets vest in the Official Assignee in Bankruptcy who will realise them for the benefit of the creditors. The only assets that do not vest in the Official Assignee are essentials up to a value of €3,100.00, (or more if the High Court allows) such as any property acquired after a person becomes bankrupt (e.g. an inheritance) transfers to the Official Assignee, if and when the Official Assignee claims it. Property transfers entered into within 3 –5 years of the bankruptcy may be set aside.

The bankrupt person must attend an interview with

the Official Assignee, and file a Statement of Affairs in the Office of the Examiner of the High Court showing all assets and liabilities. Title deeds to property and any other possessions should be passed on to the Official Assignee and any further accounts or papers requested by the Official Assignee should be provided.

The Official Assignee may apply to court for the appropriation of part of the bankrupt's salary, income or pension. The High Court will have regard to the bankrupt's family responsibilities and personal situation. Social welfare and unemployment payments are not liable to appropriation.

## What happens to salary and pension or trades?

The Official Assignee may apply to court for the appropriation of part of the bankrupt's salary, income or pension. If the High Court directs any deduction to be made, it may have regard to the bankrupt's family responsibilities and personal situation. Social welfare and unemployment payments are not liable to appropriation. Approved Retirement Funds (ARFs), will vest in the Official Assignee (but post Personal Insolvency Act 2012 other pensions will not).

If a bankrupt trades in his own name he can continue. If the trade is in another name it must be disclosed to the Official Assignee, and can continue.

## What restrictions apply?

Under the Companies Acts it is an offence for a bankrupt to act as director, auditor, manager, liquidator or receiver of a company. In addition bankrupt persons are not entitled to hold elected representative office.

## Can a bankrupt operate a bank account?

A bankrupt can have a bank account but it is an offence to obtain credit of €650.00 or more without disclosing the bankruptcy

## What if property is owned jointly?

Where a person owns property jointly with a bankrupt, the bankruptcy splits the joint ownership, so the co-owner and the Official Assignee then hold separate interests in the property which may be sold. If the property is the family home it cannot be sold without the permission of the High Court. The High Court may postpone the sale of the family home having considered the interests of the spouse, family and creditors.

## How long does bankruptcy last?

Anyone who is made a bankrupt remains a bankrupt for 3 years (12 years pre Personal Insolvency Act 2012). An application can be made for an earlier discharge if certain conditions are met, e.g. the debts are paid in full or with creditors' consent.

© O'Hanlon Tax Limited 2013



**Caveat:** These notes are intended as a preliminary guide to some provisions of the Personal Insolvency Act 2012. Formal advice should be obtained before any steps are taken to effect a personal insolvency arrangement.