

BANKRUPTCY DUTIES RESTRICTIONS AND TERMINATION

Duties of Bankrupt

The bankrupt person has a number of duties and obligations. He must not obtain credit in excess of £500.00 without disclosing his bankrupt status. He may only trade in the bankruptcy name. He may be precluded from certain professions including solicitors, accountants, etc. A partnership in which a bankrupt was a member will automatically dissolve. The bankrupt is disqualified as a director.

There are a number of offences that a bankrupt can commit. This includes failure to disclose assets or a transaction that could be set aside to the Official Receiver. It can cover hiding property, non-disclosure of property, failure to account for property, failure to deliver up books and records, making of a false statement, making gifts or transfer of the property within 5 years of commencement of bankruptcy. Concealment or removal of property or attempt to leave England and Wales with property over £1,000.00.

It is also an offence under bankruptcy:

- to dispose of assets twelve months pre-petition which was obtained on credit where monies are still owing
- obtaining credit and engaging in business
- being involved directly or indirectly in the management of a limited company
- failure to keep proper accounts in the two years before bankruptcy.

Bankruptcy Restrictions

A bankrupt must not obtain credit in excess of £500.00 without disclosing his bankrupt status. He may only trade in his bankruptcy name. He may be precluded from certain professions including solicitors etc. A partnership in which a bankrupt was a member, will automatically dissolve. The bankrupt is disqualified as a company director.

Transfers of assets by the bankrupt are void. Transfers by the bankrupt include any payments in cash or other transfer of assets. Third parties receiving payments from the bankrupt must hold them as part of the bankrupt's estate. They are treated as creditors. Innocent third parties recovering payment before commencement of bankruptcy or through third parties, without knowledge of the bankruptcy are protected.

The Official Receiver can apply for a Bankruptcy Restriction Order. This extends the time for which the bankrupt is subject to restrictions. The purpose is to protect the public against reckless conduct. On application, the Court may make a Bankruptcy Restriction Order against a person who has been made bankrupt. The Insolvency Service can accept a bankruptcy restriction undertaking from the bankrupt instead, to avoid the cost of Court. This will have the same legal effect as a Restriction Order.

The application must be made within one year of the Bankruptcy Order. The Court may extend time. The Order lasts between two and fifteen years. During this period the disabilities resulting from bankruptcy such as disqualification as a director and restrictions on credit continue to apply. The bankruptcy will be discharged in the usual way after one year, but the bankruptcy restriction will continue to apply.

A Court in considering whether a Bankruptcy Restriction Order should be made include the following:-

- failure to keep records that account for the loss of property or business carried on;
- failure to produce records on demand;
- entering a transaction at under value;
- giving a preference to creditors, making excessive pension contributions;
- failure to supply goods or services which were wholly or partly paid for and which give rise to a claim;
- trading when the bankrupt knew or ought to have known that he was unable to pay his debts;

- incurring a debt before commencement of bankruptcy with no reasonable expectation of being able to pay it.
- failure to account to the Official Receiver for property;
- gambling or hazardous speculation between the petition and commencement of bankruptcy which contributed to the extent of bankruptcy;
- neglect of business affairs;
- fraud or breach of trust;
- failing to co-operate with the Official Receiver/trustee;
- undischarged bankrupt in previous six years.

A bankruptcy restriction register is kept.

Termination of bankruptcy

Annulment of bankruptcy restores the bankrupt to his pre bankruptcy status and he remains liable for his pre bankruptcy debts. A Court may annul bankruptcy on the grounds that when the Order was made, it ought not to have been made or that to the extent required, the bankruptcy debts and expenses have all been paid or secured to the satisfaction of the Court or where an IVA has been approved.

A trustee in bankruptcy (where the Official Receiver does not act) can leave office by resignation, annulment or removal by the creditors or the Courts.

The trustee must call a meeting of creditors to receive his resignation. The trustee must give an account of his administration of the bankrupt's assets and a summary of receipts and payments. There must be a statement that his accounts have been reconciled with those held by the Secretary of State. Notice of the meeting must be given to the Official Receiver at the same time creditors are notified.

The creditors may agree to accept a trustee's resignation but refuse to grant release from his obligations. The trustee may apply to the Secretary of State for release to be granted upon appropriate terms.



A trustee will cease to hold office if he dies, ceases to be an insolvency practitioner or if the bankruptcy is annulled.

The trustee may be removed by the creditors or by the Court. The creditors may remove where the trustee was appointed by the creditors or the trustee was the supervisor in relation to the bankrupt's IVA. If the trustee was appointed by the Secretary of State or by the Court or where the trustee is the Official Receiver, the trustee can only be removed if the Court directs, the trustee consents or a creditors meeting removes the trustee.

The creditors and OR must be given notice of a meeting to remove. The creditors may vote against removal, may vote for removal and refuse to give release or may vote for removal and grant release. If the creditors refuse to grant release the trustee must apply to the Secretary of State for release.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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