



June 2008

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 creditor’s debt to be paid.

This notice is issued by the Official Receiver and attracts a fee.

For 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 \$2000 which is less than six years old. A bankruptcy notice can be based on more than 1 judgment or order so long as the total amount at issue is at least \$2000.

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?

Prior to the issue of the notice, a search of the National Personal Insolvency Index (NPII) should be obtained. 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.

The bankruptcy notice must be in the **exact** form prescribed by the Bankruptcy Regulations. The form can be downloaded from www.itsa.gov.au. The original judgment or certified extract must accompany the bankruptcy notice.

At least three copies of the bankruptcy notice must be given to the Official Receiver.

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

One of the copies of the bankruptcy notice returned to the creditor must be given to the debtor (referred to as “service” of the bankruptcy notice) within six months of it being signed 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 serve. The application must be in writing and provide reasons for the extension supported by a description of the attempts at service. The request must also be accompanied by the required fee.

A notice is usually extended for a period of six months.

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 original bankruptcy notice and judgment are not available for public inspection until an application is made in the Federal Court or Federal Magistrates Court to make the debtor named in the notice bankrupt. However, the debtor and creditor named in the notice can inspect the notice at any time.