

RSM! Bird Cameron Partners

Turnaround & Insolvency **NEWS**

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General Overview of Property, Employment and Income in Bankruptcy

We initially prepared a newsletter on these issues in June 2009, however due to recent requests by our clients we have reviewed and amended it.

The following table is an overview, in general terms, of the common examples of non divisible and divisible property encountered by a bankruptcy trustee based on the provisions of the Bankruptcy Act, 1966 and the various currently prescribed statutory limits, which are subject to change.

The table is not intended to be an exhaustive list as the law in this area is vast and can be affected by other laws including those pertaining to matrimonial/family law disputes.

Common Examples of Non Divisible and Divisible Property in Bankruptcy

NON DIVISIBLE PROPERTY - RETAINED BY THE BANKRUPT	DIVISIBLE PROPERTY - AVAILABLE TO THE TRUSTEE
<p>Vehicles - Used by the bankrupt primarily as a means of transport to a statutory value / limit of \$7,050.</p>	<p>The value of a vehicle owned by the bankrupt in excess of the statutory limit.</p>
<p>Tools of Trade - Property that is used by a bankrupt to earn income by personal exertion to a statutory value / limit of \$3,500.</p>	<p>Real Property - The bankrupt's share of equity in land and real estate.</p>
<p>The Bankrupt's Household Property - This refers to property that is reasonably necessary for the domestic use of the bankrupt's household, having regard to current social standards and, subject to certain exclusions, includes furniture, kitchen equipment, sporting equipment, garden equipment, a television etc.</p>	<p>After Acquired Property - This refers to property that is acquired after the commencement of the bankruptcy and before the bankrupt is discharged. It can include windfall gains, gambling / lottery wins and inheritances.</p>
<p>Property held In trust for another person and policies of Life Assurance/Endowment Assurance in Respect of the Life of the Bankrupt and/or their Spouse.</p>	<p>Cash and Employment Termination Payments - However, it is common for a trustee to allow a bankrupt to retain sufficient cash to meet reasonable immediate living expenses.</p>
<p>Superannuation - Held by the bankrupt in a complying / regulated superannuation fund.</p>	<p>Business Assets - This may include debtors, stock, plant, equipment, business goodwill etc.</p>
<p>Sentimental Personal Property Subject to Approval by Creditors.</p>	<p>Shares, Bonds, Debentures etc.</p>

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Employment in Bankruptcy

Whilst the Bankruptcy Act does not impose any specific restrictions on employment in trades or professions for a bankrupt, we are aware that industry specific licensing or registration authorities and associations may do so in the event of bankruptcy or entering into a formal bankruptcy alternative such as a Personal Insolvency Agreement.

Potential Impact of Bankruptcy on Trades and Professions

Some common examples of trades and professions that may have rules and regulations applying to insolvency include: Builders, Accountants, Real Estate Agents, Solicitors, Travel Agents, Company Directors / Managers and Gaming Room Employees.

This does not necessarily mean that a bankrupt cannot work in such trades or professions, however it is noted as a guide to those contemplating bankruptcy or a formal bankruptcy alternative that restrictions or conditions may apply.

It is imperative that any person considering bankruptcy or a formal bankruptcy alternative reviews the relevant codes, guidelines or registration rules and eligibility requirements pertaining to their trade or profession before proceeding.

Termination of Employment during Bankruptcy

If a bankrupt's employment is terminated during the period of bankruptcy (normally three years), any lump sum termination payments due will ordinarily be considered by the trustee as income.

Income in Bankruptcy

If a bankrupt's after-tax income exceeds a statutory prescribed limit, a contribution will generally be payable to the trustee during the bankruptcy term. If the bankrupt's income does not exceed the statutory threshold no income contribution is payable unless the bankrupt wishes to make a voluntary contribution to their bankrupt estate. The income that may be derived by a bankrupt before being required to contribute to their estate is affected by a number of factors including the number of their dependants.

The following table summarises the estimated income contribution payable by a bankrupt based on current statutory thresholds. It is subject to other personal factors that may affect the calculation of an income contribution liability including income tax payable, hardship claims, child support payments and income tax refunds.

Gross Annual Income	Number of Dependants (Estimated Annual Income Contribution Payable)					
	0	1	2	3	4	More than 4
\$55,000	\$0	\$0	\$0	\$0	\$0	\$0
\$60,000	\$292.30	\$0	\$0	\$0	\$0	\$0
\$65,000	\$1,904.80	\$0	\$0	\$0	\$0	\$0
\$70,000	\$3,567.30	\$0	\$0	\$0	\$0	\$0
\$80,000	\$6,992.30	\$2,738.41	\$611.47	\$0	\$0	\$0
\$90,000	\$10,067.30	\$5,813.41	\$3,686.47	\$2,504.84	\$2,032.18	\$1,559.53
\$100,000	\$13,142.30	\$8,888.41	\$6,761.47	\$5,579.84	\$5,107.18	\$4,634.53

The above table is intended to be a guide only and is based on information regarding the statutory income thresholds disclosed on ITSA's website, www.itsa.gov.au. Please contact our office if you require a calculation of the income contribution payable in a specific set of circumstances or for a gross annual income greater than \$100,000.

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