

# TERMS FOR FIXED-PRICE FULLY-INCLUSIVE BANKRUPTCY SERVICE

## AT WHAT STAGE ARE BANKRUPTCY PROCEEDINGS COMMENCED?

To commence bankruptcy proceedings against a debtor, the following should be established:

- There must be a Judgment (Court Order) against the debtor **for at least \$5,000**.
- It must be possible to personally serve documents on the debtor. Accordingly, the debtor's residence or place of business must be known and he must be identifiable.
- There should be an expectation that the debtor is able to obtain monies to avoid going into bankruptcy.

## ARE BANKRUPTCY PROCEEDINGS EFFECTIVE?

After obtaining Judgment, bankruptcy proceedings are **the most effective enforcement step** which can be taken out against a debtor.

People who are experienced in avoiding paying debts will normally not be too concerned about other enforcement steps being taken out against them. However, bankruptcy is something which even experienced non-payers would normally wish to avoid and if there is any possibility of finding money to pay their way out of it, they will.

## WHAT IS BANKRUPTCY?

Bankruptcy involves a genuine curtailment of the debtor's rights:

- The bankrupt, while bankrupt, has his or her status changed.
- The normal period of bankruptcy is three years but this period can be extended in some circumstances, e.g. where the bankrupt fails to co-operate with his or her trustee.
- All divisible assets held in the name of the bankrupt automatically pass to the Trustee in Bankruptcy except for a car valued at less than approximately \$6,000.
- The bankrupt is subject to public examination and his or her financial affairs for the period leading up to Bankruptcy will be examined in great detail.
- The bankrupt must surrender his or her passport.
- The bankrupt cannot effectively borrow money during the term of his or her bankruptcy or be a Director of a company or be involved (if not a Director) in the management of a company.
- The bankrupt may be requested to make contributions from his or her income from the date of bankruptcy.
- A bankrupt cannot obtain or maintain credit cards or enter into many normal commercial arrangements without first disclosing that he or she is an undischarged bankrupt.
- Real estate agents, solicitors, accountants and some other professions who become bankrupt will have strict working restrictions imposed.
- There is still a major stigma attached to bankruptcy, which will effect the bankrupt for the rest of his or her life.

## THE MENDELSONS TWO-STAGE BANKRUPTCY PROCESS:

It is not necessary for you to decide at this stage to proceed right through to a Bankruptcy Petition (i.e. Stage 2)

The **preliminary step** is to issue and serve a **Bankruptcy Notice** (i.e. Stage 1). The position can be assessed again once this initial step has been taken against the debtor. Some debtors will pay their debt at this stage, or put in place an acceptable arrangement to pay the debt.. Accordingly, you can elect just to proceed to Stage 1 and then gauge the result. Mendelsons Lawyers will then advise you whether in their opinion it is worthwhile proceeding to Stage 2.

### STAGE 1: ISSUE OF BANKRUPTCY NOTICE

Fixed-price fully-inclusive cost is **\$1,375.00** (including GST).

Mendelsons Lawyers will conduct a bankruptcy search, obtain a certified extract of the Judgment, prepare the Bankruptcy Notice, pay all necessary disbursements, lodge the necessary documentation with the Insolvency and Trustee Service of Australia (ITSA) and engage agents to effect personal service on the debtor for the totally inclusive fee of \$1,375.00.

After service of the Notice, the debtor has 21 days within which to pay the debt in full or to come to an arrangement acceptable to you for payment of the amount due.

If full payment is not made within that time or an arrangement acceptable to you is not entered into, the debtor commits **an act of bankruptcy**. You then have the option to proceed to Stage 2.

If the debtor pays the full amount specified in the Bankruptcy Notice (i.e. the amount of the Judgment and any interest claimed thereon) within the 21 days, the debtor is not obliged to pay the costs relating to the Bankruptcy Notice.

- Should the debtor skip or be unlocatable, an investigation fee will apply.
- Should a substituted service application be necessary, then Mendelsons will cover all professional fees in bringing such an application (and you will be responsible for payment of disbursements only).

### STAGE 2: BANKRUPTCY PETITION (CREDITORS PETITION)

Fixed price -fully inclusive costs are:\* If the creditor is an individual - **\$3,411.00 (including GST)**

\* If the creditor is a company - **\$4,539.70 (including GST)**

Mendelsons Lawyers will conduct a bankruptcy search, prepare the Bankruptcy Petition and supporting affidavit material, obtain a Consent to Act from a private bankruptcy trustee, engage agents to effect personal service of all documentation on the debtor, conduct all negotiations with the debtor or the debtor's solicitor, brief and pay a Barrister to appear at the Federal Magistrates' Court Hearing or engage its own in-house counsel to appear, and do all things required to obtain a Bankruptcy Order (Sequestration Order) for the fixed price fully inclusive fee.

In most cases, if the debtor has any possibility of paying, he or she will either pay or enter into an arrangement at that stage which would include the additional costs involved in proceeding to Stage 2.

- Should the debtor skip or be unlocatable, an investigation fee will apply.
- Should a substituted service application be necessary, then Mendelsons will cover all professional fees in bringing such an application (and you will be responsible for payment of disbursements only).

## WHAT HAPPENS IF THE DEBTOR ENTERS INTO AN AGREEMENT TO PAY OFF THE DEBT BY INSTALMENTS?

- The debtor may propose to pay off the outstanding debt by instalments after service of either the Bankruptcy Notice or Creditor's Petition. If you accept the debtor's proposal and **the debtor is the owner of real estate**, it may be possible for Mendelsons Lawyers to prepare a Deed of Charge with a view to lodging a Caveat over the debtor's property. This prevents a sale of property taking place whilst payments are made. In due course, (upon receipt of full payment from the debtor), the Caveat can then be withdrawn.
- Should you require such a Deed of Charge, lodgement of Caveat and subsequent Withdrawal of Caveat to be prepared, Mendelsons Lawyers will charge a separate **fixed price cost of \$850.00 (inclusive of GST and disbursements for this service)**. This additional fee would be included in the amount that the debtor would be required to pay.

## WHAT HAPPENS IF THE BANKRUPTCY PETITION IS DEFENDED?

The fixed price fee includes all negotiations and attendances which arise after service of a Petition. However, if the Petition does become defended, you will normally have the option to withdraw at that stage or to proceed with a defended petition. If you wish to proceed, you will have the option of continuing with Mendelsons Lawyers or alternatively engaging a separate legal firm, Mendelsons Lawyers will discuss fees with you prior to you making a decision in such circumstances.

## WHAT MONIES WILL I GET BACK?

Monies recovered from the debtor will be applied as follows:

1. You will receive all funds paid by the debtor less our professional fees (**if any**) associated with the following:
    - (a) any application for substituted service that may be required\*;
    - (b) any adjournment appearance where a reserved costs order is obtained.
- \* Remember that you are not required to pay for the professional fees of any substituted service application at the outset (only the disbursements associated therewith). We will cover these professional fees and only charge you for these fees where monies are recovered from the debtor.
2. In summary, in addition to the fixed price fees for stage 1 and stage 2, the only other potential cost to you is in relation to:
    - (a) disbursements for any substituted service application that becomes necessary;
    - (b) any investigation/locate costs that become necessary;
    - (c) any professional fees and disbursements associated with pursuing a defended Petition; and
    - (d) a fixed price fee of \$850.00 should a Deed of Charge/Caveat/Withdrawal of Caveat be required.

## HOW DO I PROCEED?

Simply complete the attached “Authority to Proceed” form and send it into Mendelsons together with payment for the amount of the **Total Inclusive Cost**.

**Please ensure** that you **attach a copy of the Judgment** and **provide the debtor’s current residential or business address** for service purposes.

**Post to:**  
**Insolvency Division**  
**Mendelsons Lawyers**  
**Private Bag 6, Mitcham VIC 3132**  
**DX 13208, Mitcham VIC**  
**Fax: (03) 9872 7250**

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Please call Mr Anthony Hanlon of our office for further details on (03) 9872 7219 or send an email to [ajh@mendelsons.com.au](mailto:ajh@mendelsons.com.au)

