

Bankruptcy Service

AT WHAT STAGE ARE BANKRUPTCY PROCEEDINGS COMMENCED?

To commence Bankruptcy proceedings against a debtor, the following must be established:

- Judgment is obtained against the debtor for not less than \$5,000, including costs and interest.
- 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.

In addition, there should be an expectation that the debtor is able to obtain monies to avoid going into Bankruptcy. If the debtor has equity in real estate, there will usually be funds available.

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 generally will.

The question to ask is – will I be better off by proceeding, as opposed to doing nothing.

WHAT IS BANKRUPTCY?

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

- The normal period of Bankruptcy is three years.
- Any assets held in the name of the Bankrupt automatically pass to the Trustee in Bankruptcy ("the Trustee") except for personal possessions, tools of trade valued at less than \$3,600.00 and a car valued at less than \$7,350.00
- The Bankrupt is subject to public examination about his financial affairs for the period leading up to Bankruptcy will be examined in great detail by the Trustee.
- The Bankrupt must surrender his passport to the Trustee and must obtain permission from the Trustee to leave Australia.
- The Bankrupt cannot effectively borrow money during the term of Bankruptcy or be a director of a Company.
- Half of any income earned by the Bankrupt in excess of a prescribed amount must be paid over to the Trustee.
- A Bankrupt cannot obtain or maintain credit cards or enter into many normal commercial arrangements.
- There is still a major "stigma" attached to Bankruptcy, which will affect the Bankrupt for the rest of his life.
- Bankruptcy might cause certain employment problems for company directors, people in managerial positions, lawyers, accountants, tax agents, licensed builders and some public servants.

THE MENDELSONS TWO-STAGE BANKRUPTCY PROCESS:

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

The preliminary step is to issue and serve a Bankruptcy Notice. **Most debtors will pay their debt at that stage** together with legal costs arising from judgment, for which they are liable in law. Accordingly, you can elect just to proceed to Stage 1 and then gauge the result. We will then advise you whether in our opinion it is worthwhile proceeding to Stage 2.

We work very hard to try to negotiate payment or a settlement.

STAGE 1: ISSUE OF BANKRUPTCY NOTICE

Mendelsons Lawyers will carry out the work detailed in the "What is Covered" section below.

After service of the Notice, the debtor has 21 days within which to pay the debt in full.

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

If the debtor pays the full amount specified (i.e. the amount of your claim plus the interest and costs awarded by the Court) within the 21 days, the debtor is not obliged to pay costs relating to the Bankruptcy Notice.

Accordingly, **you may not recover the costs relating to Stage 1.**

Should it be necessary to make an application for substituted service of the Notice, the standard cost, including disbursements is \$1,500.00.

<u>FIXED PRICE FULLY INCLUSIVE COSTS</u>		
	<u>COST</u>	<u>Inc. GST</u>
Fixed price fully inclusive cost	\$2,022.55	\$137.07

STAGE 2: BANKRUPTCY (CREDITORS PETITION)

Mendelsons Lawyers will carry out the work detailed in the "What is Covered" section below.

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

Should a substituted service application be necessary due to difficulties with personal service, then Mendelsons will quote professional fees in bringing such an application. The typical cost, including filing fees and disbursements is \$2,000.00.

<u>FIXED PRICE FULLY INCLUSIVE COSTS</u>		
	<u>COST</u>	<u>Including GST</u>
If creditor is an individual	\$4,302.00	\$242.00
If creditor is a company	\$6,277.00	\$242.00

Call us if your entity is a publicly listed company.

WHAT HAPPENS IF THE BANKRUPTCY NOTICE / PETITION IS OPPOSED?

The fixed price fee includes all negotiations and attendances which arise after service of a Bankruptcy Notice and/or Petition. However, if application is made to set aside the Bankruptcy Notice or the Petition is opposed, you will normally have the option to withdraw at that stage or oppose the application to set aside the Bankruptcy Notice or Petition. If you wish to proceed, Mendelsons Lawyers will discuss costs with you.

WHAT MONIES WILL I GET BACK?

Monies recovered from the debtor will be applied in the following order:

1. Refund to you of the legal costs and interest awarded in relation to the Judgment.
2. Refund to you of any costs recovered from the debtor or his Trustee for Stage 2. As a rule, the level of refund of costs recovered for a successful Stage 2 is likely to be about \$4,000.00. Any amount recovered in excess of the amount paid by you for Stages 1 and 2 will be retained by Mendelsons Lawyers.
3. Mendelsons is entitled to retain interest recovered but only after you have been paid any costs recovered from the debtor in relation to Stage 1 and Stage 2, any costs awarded on the Judgment and the original claim.

The fixed price fee is non-refundable in the event where Mendelsons Lawyers is unable to complete the procedure due to your non-co-operation or where it becomes impossible to effect personal service and there is insufficient information to obtain an order for substituted service. If the debtor becomes bankrupt prior to issue of the Notice or Petition, you will receive a partial refund, to reflect the actual costs and disbursements incurred.

RISK

No legal action is without risk. Although your claim will be handled professionally, debtors will occasionally bring applications to delay or overturn bankruptcy orders. The fixed price fee does not extend to any post-bankruptcy applications.

UNABLE TO SERVE DEBTOR?

- The fixed price fee covers 3 attempts at service for both Stage 1 and Stage 2.
- If we are unable to effect personal service of the Bankruptcy Notice or Petition on the debtor, you may be liable for an investigation fee, which we will discuss with you.
- If we recommend that an Application for Substituted Service is necessary to effect service of the Bankruptcy Notice or the Creditors Petition on the debtor and should you wish to proceed, you will be liable for the fixed fee including disbursements.

Substituted Service for Notice - \$1,500.00
Substituted Service for Petition - \$2,000.00

WHAT IS COVERED?

Stage 1

- Conducting bankruptcy search
- Requesting Certificate of Judgment
- Issuing Bankruptcy Notice
- Extending life of the Bankruptcy Notice (where required)
- Arranging for service
- Liaising with process server regarding service
- Preparing Affidavit of Service
- Report to you

Fees are inclusive of disbursements, i.e. filing fees and attempt & service fees.

Stage 2

- Conducting the necessary searches
- Preparing affidavits
- Liaising with the trustee for consent to act
- Preparing creditor's petition and arranging for issue and service
- Liaising with process server regarding service
- Preparing Affidavit of Service
- Liaising with the Court regarding filing of documents, extending hearing date, etc.
- Preparing payout letter to the debtor after service of the creditor's petition
- Briefing Counsel to appear at the hearing
- Attending the hearing on the first court date, but excluding any adjournments
- Reporting to the trustee when bankruptcy order made

WHAT IS NOT INCLUDED

- Negotiations
- Handling disputes about the debt
- Documenting a settlement
- Any works post the sequestration order, such as liaising with the bankruptcy trustee, filing the Proof of Debt, preparing the taxation of bankruptcy costs.

HOW DO I PROCEED?



Simply complete and sign the Action Form (which acknowledges that you have been provided with the Engagement Agreement) and send, with payment to Mendelsons Lawyers.

Contact: Sue Stevens
Post: Mendelsons Lawyers
Private Bag 6, Mitcham Vic 3132
Fax: (03) 9872 4757
www.mendelsons.com.au

Call the Legal Team for further details on (03) 9872 7289 or send an email to legal@mendelsons.com.au

Pursuant to Rule 29 of the Professional Conduct and Practice Rules 2005 (Victoria) Mendelsons Lawyers Pty Ltd ACN 125 099 701 discloses that it is associated with and shares common ownership with Prushka Fast Debt Recovery Pty Ltd ACN 005 962 854.