

What is Bankruptcy and what are its repercussions

by Chris Iacovides

Bankruptcy is one's inability to discharge personal debts as and when these become due for payment. Bankruptcy can be initiated either by the debtor or by one or more creditors, following an application to the court.

Although there is bad stigma associated with bankruptcy, this alone, should not contribute adversely in one's mind with regard to the way forward. In cases where the debtor has no assets, bankruptcy may be the best option.

Be that as it may, bankruptcy **must always** be avoided where the debtor has sufficient assets to cover his/her liabilities, or to compromise the same.

Consequences of a bankruptcy

When one is made bankrupt, all his/her assets, including his own home, vest with his Trustee. The same applies for any assets which the bankrupt may share with either his spouse or a third party. Nevertheless, the co-owner may approach the Trustee with a view to buying the bankrupt's share in the asset.

Failing this, the Trustee will proceed with an application to the court for a possession order so as to enable him to dispose of the jointly owned property and appropriate one half of the net proceeds for the benefit of the Estate in Bankruptcy.

Other disadvantages of bankruptcy are restrictions with regard to:-

1. Acquisition of property;
2. Ability to continue to run a business;
3. Inability to obtain credit;
4. In the event of surplus disposable income, part of it may have to be paid to the Trustee for the benefit of creditors.

Is it possible to void a bankruptcy order?

Yes, a debtor may apply to the court to overturn his/her bankruptcy provided that:-

1. There is a flaw in the bankruptcy petition (e.g. there has been an irregularity with regard to the issuing/servicing of the same);
2. All debts including fees and expenses with regard to the bankruptcy have been paid in full or, sufficient security has been pledged to the satisfaction of the court;
3. A settlement has been reached with creditors for part or full discharge of the debts;

What is Annulment of bankruptcy and when and how such an application can be made?

Annulment of bankruptcy amounts to a complete wipeout of any record referring to one's bankruptcy. Annulment is a court-initiated process and it can only be facilitated provided that all debts have either

been paid or secured to the satisfaction of creditors and the official receiver or Trustee, have submitted an appropriate report to the court, in support of the annulment application.

Directly the bankruptcy order is annulled, the debtor will be in the same position as if the bankruptcy order has never been made.

What is Discharge from bankruptcy and what is the difference to Annulment.

Discharge is the procedure which alleviates the debtor from the restrictions of bankruptcy and enables him/her to carry on with his life without hindrance from the consequences of bankruptcy. Discharge does not have the same effect as annulment; discharge does not remove the record of bankruptcy.

Can a debtor propose a scheme of arrangement to his creditors following the making of the bankruptcy order?

Yes he can, with appropriate professional guidance in compliance with current legislation a debtor may propose a scheme of arrangement to his creditors and if this is accepted, then it will almost certainly lead to the annulment of the bankruptcy order.

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