

FINANCIAL *Freedom*

HOW LONG DOES THE PROCESS TAKE?

There is no set timeframe to complete the administration of an estate. This is wholly dependent on the amount of indebtedness and the assets available to service the debt. There is an automatic discharge for first time bankrupts one (1) year after they have been declared bankrupt but creditors, the Supervisor or the trustee may oppose the automatic discharge.

Generally, when all debts have been settled, a bankrupt will be discharged.

WHAT ARE THE IMPLICATIONS OF FILING FOR BANKRUPTCY?

When a person is declared bankrupt, all creditors, except secured creditors, are prevented from commencing or continuing claims against the debtor or enforcing judgments already obtained. Secured creditors, however, can realize their security if they already gave notice of their intention to do so. Interests on debts also cease to accrue.

The debtor has a duty to assist the trustee in every way possible in the realization of his estate to the benefit of his creditors.

Bankrupts are prohibited from:

- being a Director in a company
- holding certain licenses, e.g.. A real estate license
- Obtaining further credit without declaring the bankruptcy
- using or getting a credit card



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The New Insolvency Regime



Act



OFFICE OF THE
SUPERVISOR OF INSOLVENCY



JAMPRO
Jamaica Accredited
Trade & Investment Promotion Agency



FIC
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COSTA RICA

CAN BANKRUPTCY RELEASE ME FROM PAYMENT OF MY STUDENT LOAN?

Generally, **NO**, but bankruptcy does give you more time to pay and prevents the Student Loan Bureau from initiating legal proceedings against you.

Pursuant to section 150 of the Insolvency Act (the Act), a student loan is a non-dischargeable debt.

HOWEVER, if the bankruptcy takes place ten (10) years after you completed your studies, the Court may grant an order releasing you from the student loan provided you acted in good faith and will face financial difficulty if the loan persists.

WHO CAN FILE FOR BANKRUPTCY?

Either a debtor or creditor can file for bankruptcy. The only requirement to proceed under ANY of the regimes in the Act is that the debtor owes not less than Three Hundred Thousand Dollars (\$300,000.00) in indebtedness.

A creditor who is unable to recover his debt that is over the prescribed threshold can apply to Court for a Receiving Order against the debtor in an effort to declare the debtor a bankrupt.

A debtor who is unable to service the debt may make an application for assignment so as to get the protection offered by the Act.

Once the person is declared a bankrupt, his property vests in the trustee appointed to his estate.

A debtor can either be an individual or a corporate entity.

IS THERE ANY OTHER WAY IN WHICH I CAN RESOLVE MY INDEBTEDNESS WITHOUT BEING DECLARED A BANKRUPT?

YES. Under the Act, you can reorganize your financial affairs by way of the proposal mechanism. Under this mechanism the trustee acting on your behalf will assist in negotiating with the creditors and put forth your proposal outlining the manner in which you propose to service the debts. In doing so, you will not have the status of a bankrupt.

HOWEVER, any default in the proposal mechanism of the act will result in bankruptcy.

DO I NEED A LAWYER?

NO. You do not need a lawyer. Under the Act, a trustee is in charge of administering the estate of an insolvent person. Therefore, you need only to obtain the services of a licensed trustee, who may or may not be a lawyer.

If a lawyer is at any time needed in the administration of the estate, the trustee will retain the services of an Attorney-at-Law on behalf of the estate.

DO I NEED TO GO TO COURT?

NO. Under the proposal and assignment mechanism, there is generally no need to go to Court unless exceptional circumstances exist or arise.

If the matter is commenced by way of the Receivership mechanism, then it will be necessary for you to attend Court throughout the application process.

WHAT IF I CANNOT AFFORD THE SERVICES OF A LICENSED TRUSTEE?

In the event you cannot afford the services of a licensed trustee the Supervisor of Insolvency will review your case, and if found suitable, appoint the Government Trustee to act on your behalf.

WHAT HAPPENS AFTER I AM DECLARED BANKRUPT?

After being declared bankrupt all your property vests in your trustee. The trustee has the right to dispose of or deal with the property as necessary in order to accumulate sufficient funds to pay your creditors. The Act prescribes certain property which are exempt from execution and seizure.

In the event you are only in receipt of a salary, the trustee will set aside an amount from your surplus income to be paid to the trustee who will in turn distribute the amount to your unsecured creditors. **ONLY** claims proven by creditors will be paid by the Trustee.

WILL EVERYTHING I HAVE BE SOLD?

NO. Although the assets of the bankrupt vests in the trustee, the trustee will not sell the items the bankrupt needs to live a reasonably comfortable life. Usually, only the assets that are of sufficient value to reduce the overall liability will be sold, for example, houses, vehicles and shares in company.