



## Bankruptcy

If you have no money left over in your budget, or you have so little that it will take many years for you to re-pay your debts, you may want to look at bankruptcy as an option. In Scotland bankruptcy is often called **sequestration**. Both terms mean the same thing.

Being made bankrupt is a very serious matter. It can lead to loss of your family home and can have other consequences. It may impact on your job and your bank account could be frozen. Your credit rating will be affected and you could also find that access to future credit is not available or is only available at a very high rate of interest.

When you are declared bankrupt you have to hand over a lot of the things that you own that can be sold. You are usually allowed to keep items that you need for day-to-day life, for example, clothes, furniture, household linens, floor covering, cooking and cleaning equipment, and children's toys. You can also keep any tools that you need for your trade, up to a value of £1,000. You may be able to keep a vehicle up to a value of £3,000. What happens to your home depends on a number of issues, such as whether you live on your own or with family and friends. Control of your home, if owned wholly or jointly, will pass to your trustee. It is possible that it will be sold.

### How someone is sequestrated (made bankrupt)

Subject to certain conditions, a creditor or a group of creditors that you owe £3,000 to can apply to the court to make you bankrupt or you can apply to a Scottish Government agency called the Accountant in Bankruptcy to make yourself bankrupt if you owe £1,500 or more. You will need to meet a number of conditions to apply for this lower amount of debt, and have a very low income and few assets. If you don't meet these conditions, you can only apply to make yourself bankrupt if you have debts of £3,000 or more. You will have to get advice from a money adviser about your financial situation before you apply for bankruptcy.

Bankruptcy starts when you are declared bankrupt by the sheriff or by the Accountant in Bankruptcy. A trustee will be appointed to administer your bankruptcy. Sequestration may be an option for you if any one or more of the following factors apply:

- the size of your total debts is large (more than £1,500 for the Minimal Asset Process bankruptcy or more than £3,000 for standard bankruptcy) and it will take you a long time to repay the debt
- you cannot keep to negotiated repayments
- your creditors refuse to negotiate
- you are under excessive stress because of your debts
- you are unlikely to have an increased income in the near future
- you do not have enough money to pay interest charges on your debts
- one or more of your creditors has taken legal action to arrest your wages or bank account.



You will normally be discharged from bankruptcy after one year if you have cooperated with your trustee. If you have to pay a contribution towards your debts during your bankruptcy, you will have to pay this for 4 years, even after you are discharged. After discharge, your trustee still has a duty to sell the assets that transferred to them. If you acquire any new assets within 4 years of being made bankrupt, for example if you inherit some money or win the lottery, this money will transfer to your trustee to be used to pay your creditors.

## **What does the trustee do**

It is the duty of your trustee to sell your assets or property, to use the money to pay your creditors as much as possible of what you owe them and to pay the costs of managing your sequestration. You will be able to keep some things that are essential for everyday living such as beds, your cooker, your television, etc.

If you are in employment, you may also be required to make regular payments from your income to your trustee. This is known as a 'debtor contribution order'. The trustee will work out whether you are able to make payments towards your debts by looking at your income and your expenditure and seeing if you have any surplus income left after you have paid for necessities like food, rent or mortgage payments and utilities. You will not be required to make any payments towards your debts if your only income is from benefits and tax credits.

While you are sequestrated most of your creditors cannot take further action to pursue you for the money you owed them at the start of the sequestration. However, if you have a mortgage or other loan secured on your home, the lender can take action against you if you stop your mortgage payments to them.

Interest will still build up on your debts during the period in which you are sequestrated but most outstanding debts will be written off at the end of the period. You will still be responsible for any new debts built up after the date you became sequestrated.

## **Sale of the family home**

When deciding whether a family home should be sold the court may delay the sale for a period but in making its decision it:

- must consider whether there are exceptional circumstances, for example, a child in your family has a disability, and
- must allow, if possible, time before the property is sold, and
- must allow, if possible; time for you to fully investigate the value of your property, and
- may take into account the circumstances of any joint owners or partners and what they knew about the debt.



If you are thinking about sequestration, you should get advice from an experienced adviser. Your local Citizens Advice Bureau can give advice about sequestration. The Accountant in Bankruptcy provides more information about bankruptcy on their website at [www.aib.gov.uk](http://www.aib.gov.uk).

## Further help

### **Citizens Advice Bureau**

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. Find your nearest CAB at [www.cas.org.uk](http://www.cas.org.uk) or check in your phone book.

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The law changes frequently. To confirm you are looking at the most up-to-date version, download the fact sheet from [www.citizensadvice.org.uk/scotland](http://www.citizensadvice.org.uk/scotland) or contact your local Citizens Advice Bureau.

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