

01

PAYING ALL DEBTS

The simplest but obviously not usually the easiest way to end your bankruptcy early is to pay all the debts of the estate in full. It is very rare for a bankrupt to have extra funds, however, sometimes with the help of family and friends, this might be a possible avenue to end the bankruptcy earlier. In this scenario "all the debts of the estate" include: -

✓ All provable debts, including any interest that has accrued on interest bearing debts since the date of bankruptcy.

✓ The Bankruptcy Trustee's fees and expenses. It is important to remember that the fees and expenses typically increase as the administration continues. So, if paying all of the debts is an option, it is better to act as soon as possible.

✓ The realisation charge of 7% on all realisations in bankruptcy. This is a statutory amount that is required to be paid to the Australian Financial Security Authority. For clarity the realisation charge is payable on any contribution to the estate to pay creditor claim and as such the amount paid will need to allow for the realisation charge as well.

When all of the debts have been paid in full, the bankrupt will be discharged from bankruptcy.



02

COMPOSITION PROPOSAL

This is essentially a variation to paying creditors in full whereby a bankrupt submits a proposal to the trustee and creditors asking creditors to accept an amount less than full repayment in satisfaction of their debts. The proposal must be accepted by the creditors of the bankrupt estate. If accepted the bankruptcy is annulled which effectively means that the bankruptcy comes to an end and is wiped from the record.

A proposal typically involves the payment to the estate via the trustee of a lump sum amount. This amount will be used to pay the Trustee's fees and costs, and the remainder, as a distribution to creditors. The proposal is more likely to be accepted by the creditors if the offer gives a better return than what creditors would be likely to receive if the bankruptcy continued.

The proposal is first submitted in writing to the Trustee, and the Trustee will conduct investigations to assess and determine the benefit, if any, to creditors of the proposal. The Trustee will then issue a report to creditors providing their opinion on whether creditors should accept or reject the proposal. The Trustee will also call a meeting of creditors to vote on the proposal.

At the meeting of creditors, the proposal will be put to a vote. If the majority in number, and at least 75% of the dollar value of the votes submitted by voice or proxy at the meeting, are in favour of the proposal, the composition is accepted. If the composition proposal is accepted, then, at the conclusion of the meeting, the person will be discharged from bankruptcy.



03

COURT ANNULMENT

This occurs when the Court rules that the bankruptcy should never have commenced. This frequently occurs when the legal process was not followed when initially bankrupting the individual, or if there was no debt outstanding at the time, or the bankrupt is proven to be solvent. If the Court annuls the bankruptcy, the Trustee who was appointed has the ability to use the assets in their possession to pay outstanding fees and costs, and if these do not cover the costs, the Trustee can also seek payment from the former bankrupt.

One might ask what is the benefit in getting out of bankruptcy early. This is a valid consideration as the options above typically involve the bankrupt contributing funds to the estate over and above what they could be expected to have to contribute if the bankruptcy ran its full course. Benefits for ending the bankruptcy term earlier include: -

- ⊕ Income will no longer be assessed by the Trustee.
- ⊕ They are no longer required to pay income contributions if assessed to be earning above the income threshold.
- ⊕ Some professions, have restrictions for undischarged bankrupts. By being discharged from bankruptcy sooner, they can re-enter the workforce.
- ⊕ They can be a company director again.
- ⊕ They can travel internationally without having to request written permission from their Trustee.
- ⊕ They can obtain finance and credit sooner.
- ⊕ The annulment effectively wipes the bankruptcy from the record as if it never happened

When considering the option of ending the bankruptcy earlier, it is always recommended the bankrupt individual contact their Trustee to discuss the options available and seek assistance where possible. For further information or advice please feel free to contact the team at Shaw Gidley to talk with an experienced, independent advisor for a confidential and informal discussion in relation to your individual circumstances.

