Australia

Bankruptcy or Debt Agreement?

There are many reasons why women arrive in a situation of debt they cannot pay. Whatever the reasons that this has occurred the important thing is to be doing something constructive about this situation. By far the worst thing anyone can do once the situation is beyond normal payments is to let this continue to slide out of control.

Having made a decision to tackle the problem of debt many people make the mistake of running headlong into another potentially damaging situation. Some women feel that because the situation is out of control, that they have little entitlement to support or fair management. This is not the case. You are entitled to be treated in accordance with the law regardless of your situation.

There are extensive laws that govern the collection of debt including the amount of contact considered reasonable and the manner this is carried out. In all cases of debt you should seek free financial advice from one of the registered bodies. This is one of the last things many people do but yet one of the most important.

Do not let your current situation override your common sense in this matter, debt is something that the vast majority of people experience and many struggle with at one time or another. All debt resources on Pink Investments are free.

Bankruptcy or Debt Agreement?

Debt Agreements were introduced in 1996 as a low cost alternative to bankruptcy for consumers on a low income with few assets or property of value. Initially very few consumers used Debt Agreements, perhaps due in part to being unaware of their existence.

The number of debt agreements in place has increased dramatically in the past few years. One of the overriding reasons that debt agreements are becoming so widely used, is due to the mass advertising and marketing of these by fee charging private businesses.

W**arning:** Always get independent advice from a financial counsellor before entering into a debt agreement. (See where to get help for details) Debt agreements are only one option for consumers to consider when having trouble paying debts. Accessing free advice is the best option for you in all circumstances.

A Free Alternative: Informal Agreements

If you are genuinely unable to pay your debts as they fall due, you may be able to come to an informal agreement with your creditors to pay a reduced amount, postpone some repayments, reduce the interest rate and/or reduce your repayments. If you are in financial hardship and cannot repay your loans you may also have rights under the Consumer Credit Code or the Code of Banking Practice (if your creditor is a bank).

An informal agreement has the advantages of a Debt Agreement, without the need to pay an administrator. An informal agreement will definitely affect your ability to get more credit from your existing credit providers, at least in the short term, but it will not appear on the NPII and it may not impact on your credit report (a small number of lenders do list schemes of arrangement on your credit report). However, if you have fallen behind in your repayments by 60 days or more, you may already have a default on your credit report, which will remain for five years.

Do not enter a debt agreement without first: trying to make an informal agreement with your creditors and seeing a **free**, independent, accredited financial counsellor, who can tell you about your options and possibly assist you to make an informal agreement with the creditors

What is a Debt Agreement?

A Debt Agreement is an agreement where the people and organisations you owe money to (your creditors) and you agree on a compromise, regarding how much you owe them. For example, your creditors might agree to accept 85% if it is apparent that you are unable to pay any more than that and have little property of value. **Once a Debt Agreement is made between you and your creditors it is binding on all of you.**

To be able to enter a Debt Agreement you must:

Be insolvent (unable to pay your debts as and when they fall due); and

In the past 10 years not have been bankrupt, entered a Debt Agreement, or given an authority under Part X of the Bankruptcy Act; and

Have total unsecured debts of less than about $77,021.00. Unsecured means: that there is no mortgage over your goods or home for a loan. For example a car loan would usually be excluded from a Debt Agreement as the car can be taken if you do not pay the loan; and

Have after tax income of less than around $57,765.75; and

Have property of value less than about $77,021.00. As a guide, property includes anything you own except household furniture, tools of trade, and a car worth less than $5650.

The current exact amounts for income, property and assets can be obtained by phoning the Insolvency and Trustee Service Australia (ITSA) or by visiting www.itsa.gov.au , as these amounts are indexed and change regularly.

Should I enter a formal Debt Agreement?

It is strongly recommended that you call the Credit & Debt Hotline on 1800 808 488 for a referral to a free financial counsellor before you consider entering a debt agreement.

Debt agreements are generally for consumers facing bankruptcy. Debt Agreements are an alternative to bankruptcy where you offer to pay some of the debts owing (as much as you can afford) to avoid going bankrupt. Some debtors really cannot afford a Debt Agreement and may need to consider voluntary bankruptcy.

The consequences of a Debt Agreement:

The debtor is not bankrupt (although proposing a Debt Agreement is an "act of bankruptcy"

All unsecured creditors are bound by the Debt Agreement and are paid in proportion to their debts

You are released from most unsecured debts when you finish making your payments

Your name will appear on the National Personal Insolvency Index (NPII) permanently

The Debt Agreement is listed on your credit report for 7 years

Secured creditors may seize and sell any assets (e.g. a house) which you have offered as security for credit if you default in making repayments

Unsecured creditors cannot take any action against you or your property to collect their debts.

Registration of Debt Agreement Administrators

All debt agreement administrators must be registered. Debt Agreement administrators can be persons or companies, and must be able to satisfactorily perform the duties of an administrator. If the administrator is a person, that person must also possess any relevant qualifications, knowledge and experience.

There are various requirements that must be fulfilled before an administrator can be registered. For instance, in the past 10 years the administrator must not have been insolvent, party to a debt agreement, or convicted of any offence involving fraud or dishonesty.

An administrator's registration can be cancelled if they have failed to properly carry out their duties, if they no longer have the ability to satisfactorily perform their duties or if they contravened some condition of their registration.

Some examples of unsatisfactory or inappropriate conduct include:

If your Debt Agreement administrator fails to properly manage you debt agreement;

If your Debt Agreement administrator demands that you pay the fees for the ongoing administration of the Debt Agreement before it has been accepted by your creditors;

If your Debt Agreement administrator proposed, or encourages you to propose, a Debt Agreement that you clearly cannot afford;

If your Debt Agreement administrator encourages you not to fully disclose your financial position;

If your Debt Agreement administrator is not dealing with your inquiries or does not respond to any disputes you have raised; or

If your Debt Agreement, administrator engages in illegal conduct.

If you feel that your Debt Agreement administrator has acted inappropriately, you should complain to you administrator first. If they do not respond satisfactorily to your complaint, you should make a complaint to 'Bankruptcy Regulation' at the Insolvency and Trustee Service Australia (ITSA). The ITSA website (www.itsa.gov.au) contains contact details of people if you would like to make a complaint.

Fees

Debt Agreements can be quite expensive. Administrators charge fees upfront to prepare the proposal for a Debt Agreement and fees to administer the Debt Agreement if it is accepted. So it is often better to negotiate a repayment arrangement directly with your creditors rather than pay fees to an administrator.

The upfront fees charged by administrators can vary enormously (from around $200 to over $2,000!). So shop around! A list of administrators can be obtained by phoning ITSA.

The Administrator also charges a fee for administering the Debt Agreement which includes:

a) Receiving your payments and distributing this money to creditors
b) All required paperwork

How is a Debt Agreement arranged?

Step 1

Information

You will be given a Prescribed Information sheet to read about the alternatives and consequences of bankruptcy and Debt Agreements. This is available from ITSA.

Step 2

Proposal is Lodged

You complete and lodge three forms with ITSA: a Debt Agreement proposal, an Explanatory Statement and a Statement of Affairs. They must be received by ITSA within 14 days of being signed.

ITSA checks that

You are eligible to lodge a Debt Agreement proposal;

The Debt Agreement Administrator is eligible to administer Debt Agreements; and

Every question on each of the three forms is answered.

Step 3

Proposal is sent to creditors to assess and vote on

ITSA sends the proposal and Explanatory Statement to your creditors, asking them to detail their debts and to vote on the proposal.

Creditors assess the proposal and vote. Any questions are referred to the Debt Agreement Administrator.

A secured creditor (e.g. a car or home loan) is entitled to vote and receive dividends on the unsecured part of their debt (e.g. if you owe more on your car or home loan than the car or house is worth).

During the voting period, creditors cannot demand payment of the debt against you or your property but can commence or continue legal action to get a judgment. The judgment cannot be enforced without the leave of the Court.

Step 4

ITSA checks and counts the votes

For a proposal to be accepted, ITSA must receive 'yes' votes from a majority of your creditors who are owed at least 50% of your total debt between them. Even creditors who vote against the Debt Agreement are bound by it, provided the required majority has voted 'yes'.

If the proposal is accepted by the creditors, the Debt Agreement Administrator is responsible for:

Collecting payments from the debtor

Keeping creditors and debtors informed

Paying dividends to creditors

Telling ITSA when the Debt Agreement is completed.

If the proposal is not accepted by the creditors

It remains on the NPII and on the records of credit reference agencies

Creditors are able to commence recovery action including further interest accrued, since repayments were last made (that includes the period while the Debt Agreement was being prepared and considered).

What if I want to get out of or change a Debt Agreement?

You can change or end a Debt Agreement if the majority in value of your creditors agrees to this. It is possible to obtain a court order to get out of the Debt Agreement but you should seek legal advice before considering this option.

What if I default on a Debt Agreement?

The Debt Agreement is automatically terminated if:

You have arrears which have not been repaid within 6 months

You do not complete making your payments within 6 months of the completion date of the agreement.

The effects of terminating a Debt Agreement include:

Creditors can commence or recommence recovery action against you for the whole amount owed

The termination of the Debt Agreement is registered on the NPII.

Important Note

Do not enter a Debt Agreement if you are solvent (able to pay your debts). Debt Agreements have serious consequences for your credit rating and should not be seen as just an easy way out of debt.