



# Prescribed information

## Appointing a Controlling Trustee

### Setting up a Personal Insolvency Agreement

Appointing a controlling trustee is the first step towards setting up a Personal Insolvency Agreement. There are consequences to appointing a controlling trustee and entering into a Personal Insolvency Agreement.

If you appoint a controlling trustee and your creditors do not agree to a Personal Insolvency Agreement:

- you cannot appoint another controlling trustee for 6 months without permission from a Court
- you cannot make a proposal to enter into a Debt Agreement under the *Bankruptcy Act* for 10 years, and
- a creditor can use the fact that you have signed a *Controlling Trustee Authority* to apply to the Court to make you bankrupt.

If you appoint a controlling trustee or enter into a Personal Insolvency Agreement, your details will be recorded on the National Personal Insolvency Index forever and on a record held by a commercial credit reference organisation for 7 years.

You can ask for advice about Personal Insolvency Agreements from a financial counselling service, community legal centre, a registered trustee, a lawyer, an accountant or ITSA. They may be able to talk to you about the alternatives to a Personal Insolvency Agreement.

### Putting forward a Personal Insolvency Agreement proposal

The controlling trustee you appoint will

- take control of your property
- put your proposal for a Personal Insolvency Agreement to your creditors
- make enquiries into your affairs
- make a recommendation to creditors as to whether it is in their interest to accept your proposal
- charge a fee for undertaking this work.

If the controlling trustee has any connection with you, they must also disclose this to creditors. You must also disclose any relationship between you and any of your creditors.

The controlling trustee will hold a meeting of your creditors within 25 days of their appointment (30 days if appointed in December). Notice of the meeting is given to each of your creditors and

published in both a national and a daily newspaper in the state or territory where you live.

A creditor can use the fact that the controlling trustee has called a meeting of your creditors to apply to a Court to make you bankrupt but they cannot apply to the Court before the creditors vote on your proposal.

You must attend the meeting unless excused by the trustee. The creditors may ask you questions before deciding how to vote. If you do not attend the meeting, a creditor can use that fact to apply to a Court to make you bankrupt.

At the meeting, your creditors will consider your proposal and decide by special resolution (a 'yes' vote from a majority of creditors who represent at least 75% of the dollar value of the debts) whether to accept or reject it.

### What happens if your proposal is accepted?

The creditors will vote to appoint a trustee who will administer your Personal Insolvency Agreement. The trustee may be different to the controlling trustee. The trustee of your personal insolvency agreement must be a registered trustee or the Official Trustee (ITSA).

The trustee of your Personal Insolvency Agreement will charge a fee to administer the Agreement. You can find the Official Trustee's fees on ITSA's website ([www.itsa.gov.au](http://www.itsa.gov.au)) or in the fact sheet *ITSA Fees and Charges*.

You and your trustee must sign the agreement within 21 days of the special resolution being passed. If you do not sign the Personal Insolvency Agreement, a creditor can use that fact to apply to a Court to make you bankrupt.

You must assist the trustee and do everything you have promised to do according to the terms of the Personal Insolvency Agreement.

### What happens if your proposal is rejected?

If the proposal is rejected, creditors may vote in favour of you becoming bankrupt. If you do not comply with the creditors' vote, a creditor can use that fact to apply to a Court to make you bankrupt.

## Prescribed Information – Appointing a Controlling Trustee – continued

### Terminating or setting aside a Personal Insolvency Agreement

A Court can set aside an agreement if it finds that the agreement is unreasonable, does not comply with the *Bankruptcy Act* or Regulations, or was based on false or misleading information.

Your Personal Insolvency Agreement can be terminated:

- by creditors if you fail to comply with its terms, or
- if something happens that is specified in the Personal Insolvency Agreement as being a reason for terminating it, or
- by a Court in certain circumstances (for example if there is a likely injustice or delay to creditors).

If your Personal Insolvency Agreement is terminated or set aside, a creditor can use that fact to apply to a Court to make you bankrupt.

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**I have read and understood this information.**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### Interpreter's Statement

**I declare that I read and interpreted this information to the person named above.**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

