

## What is Bankruptcy?

Written by Administrator

Saturday, 21 August 2010 13:38 - Last Updated Tuesday, 21 February 2012 08:07

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Once thought of as something that happened only to businesses, bankruptcy is an option that has become increasingly popular for individuals. Bankruptcy is a form of debt eradication and is probably the most effective and efficient debt solution currently available. More and more people are using bankruptcy as a way of eliminating unmanageable debt, which is why the number of individuals filing for bankruptcy has grown considerably in the last few years.

Bankruptcy in South Africa can be obtained in more ways than one, depending whether the debtor is a natural person or a legal entity. The term 'Natural Person' includes a single male or female, a couple married in community of property, a person married out of community of property, a sole proprietor and a partnership, while the term Legal Entity includes Close Corporations, Private Companies, Public Companies, etc.

Bankruptcy should be considered if you are insolvent and creditors have either threatened or already started to institute legal proceedings against you in order to:

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- Attach a portion of your salary in terms of a court order, subject to legal fees, collection commissions and interest;
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- Attach your assets to have it sold on a sheriff's auction. Assets usually fetch very poor prices on these auctions, due to the fact that there's no reserve price and the auctions are poorly advertised. The proceeds of such an auction is then diminished even further by the deduction of various fees and commissions, such as removal and storage fees, sheriff's fees or auctioneer's commission, the legal fees of the relevant creditor and the collection commissions charged by attorneys or collection agencies.
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- Attach debts due to you or your business (accounts still payable by your clients) in terms of a court order, subject to legal fees, collection commission and interest.

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-Creditors will usually keep instituting legal proceedings against you until the debt has been settled in full, including the interest on the capital amount, legal fees, collection commissions and disbursements. The legal fees are usually charged on attorney - client scale, which could easily result in exuberant legal fees being charged.

The main purpose of bankruptcy is to give an honest debtor a "fresh start" in life by relieving them of their debts, subject to certain terms and conditions. If a debtor becomes insolvent, they might consider filing for bankruptcy as a debt solution in order:

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-To stay legal proceedings and end the harassment by creditors, their attorneys and debt collectors;

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-To stop paying creditors for years to come, as these payments are first utilized for payment of the creditors' attorneys' legal fees, collection commission and interest, before finally effecting a set-off against the capital debt;

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-To solve a debt problem where creditors are uncompromising or unwilling to accept alternative options, in order to restructure the debt repayment in affordable instalments;

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-To have an impartial person liquidate assets and distribute the proceeds amongst creditors in an orderly fashion, without undue preference occurring to anyone;

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-To avoid paying unjustifiable amounts for bad business decisions, mistakes or unforeseeable economical changes over which the debtor had no control, ultimately resulting in a state of insolvency;

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-To enable an insolvent person to make a clean break and to afford them the opportunity to start rebuilding their financial life anew.

Bankruptcy should only be considered once you have obtained enough information on the subject to make an informed decision.

If you need more information on this subject matter, please contact:



## Bankruptcy Applications & Insolvency Law Specialists

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