Creditor Bankruptcy Notices: How to serve them correctly as a creditor

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What is a Bankruptcy Notice?

Under the Bankruptcy Act 1966 (Cth), a bankruptcy notice serves as a formal warning to a debtor who owes a judgment debt of at least $10,000. This amount was permanently raised from $5,000 in January 2021.

I am a Creditor who is owed money by a Debtor, how do I serve a bankruptcy notice?

A creditor must hold a judgment against the debtor for more than $10,000, and which was made within the previous 6 year period in an Australian Court. Foreign judgments may be able to be registered in Australia. Judgment debts older than 6 years may still be enforced but not using a Bankruptcy Notice. An application for a Bankruptcy Notice is made to the Official Receiver, through the Australian Financial Security Authority.

Once issued, the Bankruptcy Notice must be served on the debtor within 6 months. An application can be made to court to seek an extension of time to serve the Bankruptcy Notice, if required.

The Bankruptcy Notice requires a debtor to pay the specified amount within 21 days from the date it has been served. Alternatively, the debtor must reach an agreement or apply to Court within this period to set aside the Bankruptcy Notice. If none of these steps are taken within that 21 day period, the debtor has committed an ‘act of bankruptcy’, which is an important term under the Bankruptcy Act, and which the applicant creditor can rely upon to apply to the court for a sequestration order against the debtor’s estate.

Dangers for Creditors with Bankruptcy Notices

A Bankruptcy Notice is required to contain certain information. Due to the technical requirements of the information required in a Bankruptcy Notice and the various grounds of challenge which may be made by a debtor to set aside a Bankruptcy Notice, it is recommended that legal assistance be obtained prior to proceeding with bankruptcy action.

Matthews Folbigg Lawyers are specialists in insolvency, including issuing Bankruptcy Notices and commencing or defending bankruptcy proceedings.

If you would like more information or advice in relation to Insolvency, Restructuring or Debt Recovery law, please contact a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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