WITH 38 YEARS OF EXPERIENCE
AND 1,000+ CASES

THE 9 QUESTIONS I'M ASKED MOST ABOUT BANKRUPTCY

STRAIGHT ANSWERS FROM 38 YEARS AT THE COAL FACE

THE RESOLVENCY EGUIDE SERIES · NO. 22

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The Resolvency eGUIDE Series

GUIDE No. 22

This eGUIDE is part of the Resolvency series — practical, plain-English guides designed to help people navigate financial pressure with clarity and confidence. Each guide gives you straightforward answers, practical steps, and strategies to reset, rebuild, and move forward.

This one answers the nine questions I'm asked most about bankruptcy. After 38 years working with people in financial trouble — and having been through a business collapse myself — the same questions come up again and again. Some of them are questions I once had to ask. Here are the straight answers, without the jargon.

> **Before anything else, the best advice I can give you:** work with your trustee. Don't hide things. Don't try to manipulate the system. When a trustee investigates something that doesn't look right and finds it, they start looking at what else isn't right — and that never ends well. Regardless of what's technically legal, every decision you make should pass the smell test.

Written by Doug Constable

Business Advisor, Crisis Coach & Restructuring Specialist. I lost my own business in 1988, so I know exactly what this kind of pressure feels like. With 38 years at it since, I work **for you** — not the creditors, not the trustee. I'm not a liquidator or trustee myself. My job is to look at your whole position, set a plan, and point you to the right people at the right time.

The nine questions:

- **Can I be a signatory on a company bank account?**
- **Can I travel overseas?**
- **What value car can I own?**
- **How much can I earn?**
- **What happens to my bank accounts — personal and joint?**
- **If I earn extra income, when does the trustee take it — and how?**
- **Divorce — do I negotiate with my spouse, or the trustee?**
- **Can the bankruptcy trustee take over our family trust?**
- **What's the best type of trust to protect family assets?**

QUESTION 1

Can I be a signatory on a company bank account?

Yes — bankruptcy itself doesn't ban you from holding signing authority on a company account. But it sits close to a line that matters: an undischarged bankrupt is automatically disqualified from **managing a corporation**. You can't be a director or secretary, and you can't make the decisions that run the business. Breaching that is a criminal offence.

- **Generally fine:** limited signing authority under someone else's direction, within set limits — for example, as an employee.
- **Dangerous:** sole signatory with no real oversight, deciding who gets paid and when. Courts have treated control of the bank account as evidence you're managing the company.

If the authority is documented as clearly subordinate — dual signatories, clear instructions from the directors — you're on safe ground.

QUESTION 2

Can I travel overseas?

Yes — but only with your trustee's written permission first. Travelling without it is a criminal offence, and it can stretch your bankruptcy from 3 years out to as long as 8.

- Apply **before you book anything**. The trustee will want the reason, destination, dates, who's paying, and your return date.
- Permission is usually granted for genuine work, family or compassionate travel. Holidays funded from your own pocket get more scrutiny.
- Keeping your income contribution payments up to date is virtually always a condition.

Trustees aren't trying to keep you prisoner. **Ask first, travel after** — never the other way around.

QUESTION 3

What value car can I own?

You can keep a vehicle with **equity up to $9,400** (the current indexed amount — it moves each financial year).

- **It's equity, not sticker price.** Market value minus what's owing on the loan. A $40,000 car with $33,000 owing is fine — your equity is only $7,000.
- The vehicle must be used mainly as transport — car or motorbike.
- Multiple vehicles share the one cap: it's the combined equity that counts.
- Over the limit? You (or a family member) can usually pay the trustee the difference and keep the car.

If the car is financed and you keep up the repayments, the lender will generally let the arrangement continue.

QUESTION 4

How much can I earn?

There's no cap on what you can earn. The threshold only decides when you start sharing it. With no dependants, the threshold is around **$75,500 after tax** (indexed every March and September — check afsa.gov.au for the current figure).

- Above the threshold you pay the trustee **50 cents of every after-tax dollar** over it. You always keep everything up to the threshold, plus half the rest.
- **Dependants lift the threshold** — with a couple of kids you're near $96,000 after tax before paying anything.
- “Income” is broad: salary, business drawings, fringe benefits, extra super, fees paid to others on your behalf.

A wage earner on an ordinary income with a family often pays nothing at all. It's the people who try to route income through a spouse or company who end up in trouble.

QUESTION 5

What happens to my bank accounts — personal and joint?

Sole accounts

Whatever is in the account on the day of bankruptcy goes to the trustee, and the bank will usually freeze it once notified. Income you earn after that date is yours to keep (subject to contributions) — you can and should keep a normal everyday account running. There's no law against a bankrupt having a bank account.

Joint accounts

Only your share goes to the trustee — presumed 50/50 unless proven otherwise. The problem is practical: banks usually freeze the **whole account**, so the other holder loses access to their own money until it's sorted out. Whose money it actually is gets argued on contributions, and the paper trail decides it.

Three things to do before filing

- **Separate accounts early.** Your partner's wages should be going into an account in their sole name well before the bankruptcy date.
- **Bank where you don't owe.** A bank can take money from your account to cover its own credit card or loan. Move your everyday banking to an institution you owe nothing to — otherwise your savings can vanish before the trustee even arrives.
- **Re-point direct debits** and mortgage payments running through a joint account — a freeze will bounce them.

> Every account, joint included, must be disclosed in your Statement of Affairs. “I forgot the joint account” is a classic way to extend your bankruptcy.

QUESTION 6

If I earn extra income, when does the trustee take it — and how?

Not from each pay packet. Bankruptcy runs in 12-month assessment periods. At the start of each one, the trustee assesses your expected after-tax income, and you pay the contribution by **instalments** — usually a fortnightly or monthly arrangement.

- You must **tell the trustee when your income changes** — new job, pay rise, overtime, a bonus. They reassess and adjust the instalments. Trustees cross-check against tax returns.
- At the end of each period there's a reconciliation: earned more than assessed and you pay the shortfall; earned less and you get a credit.
- Don't pay, and the trustee can have it taken straight from your wages or bank account — and unpaid contributions can extend the bankruptcy to 5 or 8 years. The debt survives discharge regardless.

> **The trap most people miss:** a lottery win, inheritance or gifted asset is not income — it's after-acquired property, and it goes **100% to the trustee**. Extra earnings are shared 50/50 above the threshold; windfalls are gone entirely.

If real costs bite — medical, childcare, high rent — you can apply for a **hardship variation** to lift your threshold. Trustees grant these more often than people expect, but only when asked, with evidence.

QUESTION 7

I'm going through a divorce. Do I keep negotiating with my spouse, or does the trustee take over?

Both — on different pieces. Your property went to the trustee the day bankruptcy started, so the trustee stands in your shoes for the property settlement and is joined as a party to the Family Court proceedings. The fight over the house and the assets becomes trustee versus spouse.

What you still handle personally

- Parenting arrangements — completely untouched by bankruptcy.
- Spousal and child maintenance.
- Your super, exempt assets, and anything acquired after discharge.

How the contest plays out

Your ex isn't really negotiating with you anymore — they're competing with your creditors. The court weighs their contributions and needs against what creditors are owed, and non-bankrupt spouses often do better than people expect, especially where there are kids in the picture.

> **Timing matters.** A genuine, properly documented settlement finalised before bankruptcy has real protection. A rushed deal on the eve of bankruptcy that hands everything to the spouse will be attacked — and the trustee usually wins those.

If both events are on the horizon, the family lawyer and the insolvency side need to be talking to each other before anything is signed.

QUESTION 8

I'm the appointor of our family trust. Can the bankruptcy trustee replace the trust's trustee?

No. The appointor power is personal — it isn't “property”, so it doesn't pass to your bankruptcy trustee, and they can't use it to sack the trust's trustee and install their own. A genuine family trust's assets stay outside the bankrupt estate.

But check three things before you relax:

- **The deed may remove you anyway.** Most well-drafted deeds automatically disqualify a bankrupt appointor, with a named successor. Read the deed first — everything turns on it.
- **The trustee role is different.** A bankrupt can't be a director of the corporate trustee at all, so control of the trust must land somewhere else regardless.
- **The money history is the real battleground.** Unpaid distributions owed to you and loans you made to the trust go to your bankruptcy trustee; assets you moved into the trust in recent years can be clawed back; and anything the trust pays you during bankruptcy counts as income.

> The structure usually survives. It's the history of money moving between you and the trust where the real fight happens — and that's exactly where a trustee starts digging if something doesn't smell right.

QUESTION 9

What's the best type of trust to protect family assets?

The honest answer: it's less about the type of trust and more about **when it's set up and who holds what roles**. A perfectly drafted trust created six months before trouble is nearly worthless. An ordinary family trust set up ten years ago, done properly, is close to bulletproof.

- **Discretionary family trust, done right:** assets bought by the trust from day one (not transferred in later); the at-risk person a mere beneficiary — not trustee, not appointor; the appointor role with the low-risk spouse; no loan accounts from the at-risk person to the trust.
- **Superannuation** is the strongest protection in the system — regular, consistent contributions over years are safe. A big dump into super the month before filing comes straight back out.
- **Testamentary trusts** in your parents' wills mean an inheritance lands protected instead of in your hands. Costs nothing now, almost always overlooked.

> **What doesn't work:** anything done after the writing is on the wall. Transfers to defeat creditors can be unwound with **no time limit**, and paper shuffles like gift-and-loan-back schemes are increasingly being pulled apart by the courts. Asset protection is something you do while solvent — at start-up or a refinance — not when the ATO is circling.

This is structuring work for a lawyer to document properly. The timing call — and pulling the right people together — is where we come in.

The Biggest Enemy Isn't Bankruptcy — It's Procrastination

After 38 years at this, the biggest thing I've found is that the bankruptcy itself is rarely the problem. **Procrastination is.**

Facing bankruptcy can be awkward — nobody puts their hand up for it. But the short-term pain is a lot better than years of worry. And while you wait, things invariably get worse, not better.

I've watched people who knew they were going bankrupt borrow against family assets, take out personal loans and max out credit cards to hold it off a little longer. All of it is kicking the can down the road — and it drags the family into a hole that was survivable before.

What waiting actually costs

- **The debt keeps growing** — interest, penalties and desperation borrowing all pile onto a number that was already unpayable.
- **Family assets get dragged in.** The home that was safe becomes security for a debt that bankruptcy would have cleared.
- **New debt can follow you out.** Running up loans and credit cards when you already know you can't repay them can be challenged by the trustee — and in some cases those debts survive the bankruptcy.
- **The worry compounds.** Years of sleepless nights, strained relationships and health you don't get back — for an outcome that usually ends up in the same place anyway.

> **My rule is simple: the sooner the better.** Deal with it, get it behind you, and free yourself — and your family — from the worry.

In all these years I've never once heard someone say they went bankrupt too early. I've heard “I wish I'd done it sooner” more times than I can count.

The Bottom Line

Bankruptcy has rules, and the rules are workable — people keep their income, a car, their super and their household goods, and most are discharged in three years. The people who come out worst are the ones who hide assets, forget accounts, or get clever with structures at the last minute.

Work with your trustee, keep everything above board, and make every decision pass the smell test.

Answers to these and many other questions are available on the AFSA website — **afsa.gov.au** — including the current indexed amounts for vehicles and income, which change during the year.

Doug Constable

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"I've been on the wrong side of a business collapse myself, back in 1988. I know the worry that comes with it. These days I help people get out in front of it — and I work for you, full stop."

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You don't have to face this alone — help is only a conversation away.

THANK YOU

Important Notice

We hope you find this eGUIDE helpful, but please note the limitations of this publication.

This guide is general in nature. It can't cover every situation, and everyone's circumstances are different — so the right plan depends on your full position and should be worked through properly before you act on it. The dollar figures quoted are current at June 2026 and are indexed — always confirm the current amounts at afsa.gov.au.

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