

Bankruptcy and the Examiner's Office



COURTS SERVICE
An tSeirbhís Chúirteanna

High Court



This is an information leaflet about the work of the Examiner's Office of the High Court. It focuses on the role of the Examiners Office in bankruptcy and features some common questions asked about bankruptcy.

This leaflet does not provide legal advice. If you need legal advice please consult a solicitor.

Examiner's Office of the High Court

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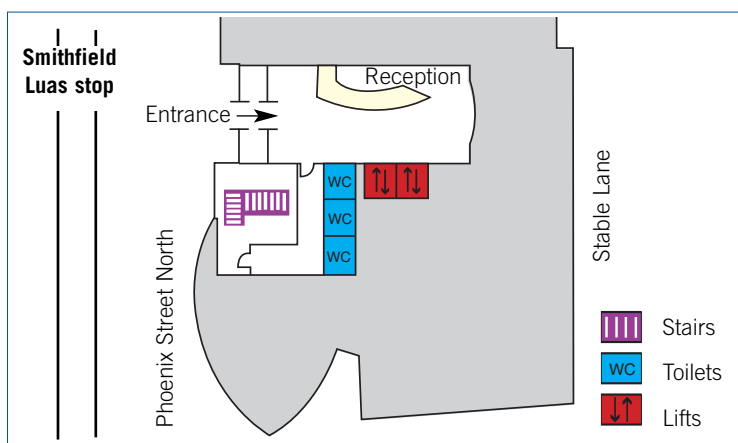
Website: www.courts.ie

Opening hours

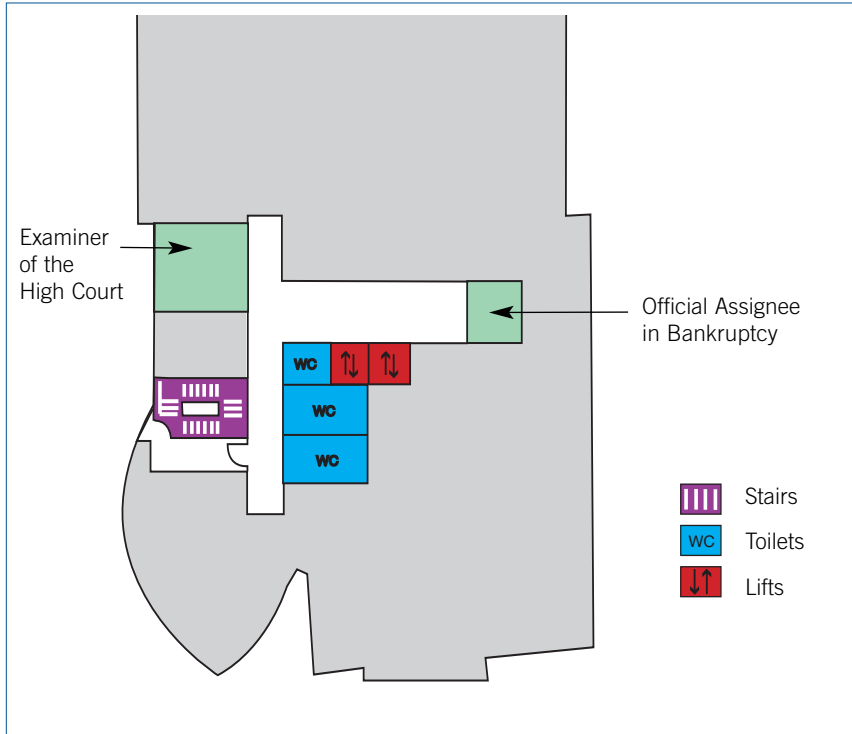
Public Office: Monday to Friday 10.00 am to 4.30 pm with the following exceptions:

- (a) Christmas Day and the next seven days
- (b) St. Patrick's Day
- (c) Good Friday
- (d) Monday and Tuesday in Easter Week
- (e) Public holidays.

Phoenix House - ground floor Access to 2nd floor



Phoenix House - 2nd floor



Business of the office:

- ▶ Company Law
- ▶ Bankruptcy
- ▶ Administration Suits
- ▶ Mortgage Suits

General Information:

All bankruptcy cases begin in the High Court. We are the office which looks after the Bankruptcy Court*. The Bankruptcy Court sits every Monday during term. All original documents used in bankruptcy cases must be brought to the Examiner's Office, 2nd Floor, Phoenix House, 15-24 Phoenix Street North, Dublin 7.

Bankruptcy Searches: People buying or selling property sometimes check the Bankruptcy Register (A book which has a list of names of people who are bankrupt). At present you can only make this search by attending in person at the Examiner's Office. Searches **cannot** be made over the telephone. There is a fee charged for each search made against the Bankruptcy Register. See **Rules and Fees Section** on the Courts Service website www.courts.ie

The Official Assignee in Bankruptcy: This is the person who deals with people who have been made a bankrupt by the Court. The Official Assignee's Office is a completely separate office to the Examiner's Office although we are both located on the 2nd floor of Phoenix House. Remember if you want to put any bankruptcy matter to the High Court you must bring your papers to the Examiner's Office.

Common questions about bankruptcy:

1. What is bankruptcy?

Bankruptcy is a process where the property or assets of an individual, who is unable or unwilling to pay their debts (called a 'debtor'), is transferred to a trustee (a

* Bankruptcy Court in this context means the bankruptcy list of the High Court

person given charge of the property by the court) to be sold. The proceeds of the sale of the property are then distributed to those owed money (the 'creditors') after costs, expenses, fees and certain priority debts are paid. A priority debt is one that will be paid first out of any money raised through selling the bankrupt's assets. In nearly all cases, the trustee to whom this property is transferred is the Official Assignee in Bankruptcy. This is the person who administers the estate of bankrupt persons. Before you can be made a bankrupt it must be shown that you have at least €1,900 in realisable assets (which means you must have either cash or some items which if put up for sale would return at least this amount).

2. How long does bankruptcy last?

In Ireland, anyone who is made a bankrupt remains a bankrupt (even after death) unless or until they are discharged by the court. This can happen in a variety of ways but in all cases, this can only happen after enough money has been raised through the sale of the bankrupt's assets to cover the costs, fees, expenses and certain priority debts that have arisen in the bankruptcy.

3. I owe a lot of money to creditors. If I have myself made a bankrupt will this cost me any money?

Yes. You must pay court fees on your court application documents in addition to paying €650 up front to the Official Assignee to cover his basic costs. You will also have to pay the costs of newspaper advertisements in relation to the court sitting.

4. How do I have myself made a bankrupt? Where should I go to make an application?

You must apply to the High Court to have yourself made a bankrupt by lodging a document called a *Petition*. This is a sworn document that sets out the nature of your debts, and promises that you will do various things such as attend the court hearing, advertise the court sitting in newspapers, and pay any fees or expenses of the Official Assignee that the court tells you to. You will also have to swear a *Statement of Affairs* which lists in detail any property, cash or items of value you own, as well as listing the names of the people you owe money to.

Bankruptcy proceedings may only be brought in the High Court and all paperwork is filed in the Examiner's Office.

5. Where can I find the relevant legislation and forms I need to make my application for bankruptcy?

Most of the law covering bankruptcy is contained in the Bankruptcy Act, 1988. The practices and procedures are contained in the Rules of the Superior Courts Statutory Instrument No. 79 of 1989, which also contains the forms used in bankruptcy applications. Bankruptcy applications should be filed in the Examiner's Office. See **Rules and Fees Section** on the Courts Service website www.courts.ie

6. What happens if I am made a bankrupt?

All of your property/assets at the date of the bankruptcy order (called the 'Order of Adjudication') transfers to the Official Assignee, with the exception of 'necessaries' up to a value of €3100 or more if the court allows. An example of necessities include tools you need to practise your trade.

Note. Any assets you have, including possibly your family home, could be sold in order to pay your creditors.

The name and address of every bankrupt is entered into the Bankruptcy Register along with the date they were made bankrupt. This Register is maintained at the Examiner's Office. Searches against the Bankruptcy Register can be made upon payment of a small fee. Anyone involved in buying or selling property normally conducts a search against this Register.

The bankrupt must identify himself as a bankrupt if applying for credit for €650 or more. Failure to do this is an offence under the Bankruptcy Act, 1988. A bankrupt cannot be a director in a company without the permission of the court nor can a bankrupt hold elected office. Sometimes the court may order part of the bankrupt's salary or pension to be deducted for the benefit of the creditors. More information on the consequences of bankruptcy is available from the Office of the Official Assignee.

7. I have been discharged from bankruptcy, will my name be removed from the Bankruptcy Register?

No. The Bankruptcy Register is a record of all bankruptcies, including those that have been discharged. However, a person conducting a search against the Bankruptcy Register is told only the status of the bankruptcy and the date it was discharged. No information is given about the address of the former bankrupt.

8. I'm owed money by someone who is a bankrupt. Is there any way I can get my money back?

You should send details of the debt to the Official Assignee to register your claim as a creditor of the bankrupt. However, even if your claim is admitted by the Official Assignee as a valid one, there is no guarantee there will be enough money to pay all claims either in part or in full, as there may be other claims that take priority over yours.

9. Someone owes me money and is refusing to pay. Can I apply to have them made a bankrupt?

Yes. In the same way an individual can lodge a *Petition* to have himself declared bankrupt, a creditor can lodge a *Petition of Bankruptcy by a Creditor*. You (the creditor) must file an *affidavit* setting out the nature of the debt and attempts made to have the money paid. You must provide proof that the debtor owes the money and has committed an act of bankruptcy. Acts of bankruptcy include failing to respond to a *Bankruptcy Summons* or having a return of 'No Goods' on an *Execution Order*. As with a petition by a debtor, the creditor promises to advertise the court sitting and cover the costs and expenses of the Official Assignee.

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