



A GUIDE TO SEQUESTRATION



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Sequestration is the Scottish equivalent of personal bankruptcy. It has 2 main functions;

1. To protect you from further action by your creditors (the lenders you owe money to).
2. To ingather any value in the assets you own and ensure any money available is distributed appropriately between your creditors.

How can I be sequestrated?

If you owe at least £1,500, live in Scotland and it can be demonstrated to the Court that you are unable to pay your debts as they fall due a qualifying creditor, can ask the Court to sequestrate of your Estate. Alternatively you can ask the Court or the Accountant in Bankruptcy to sequestrate your Estate. This procedure is simple and we can assist with it. You do not have to appear in Court.

How does sequestration work?

The principal effect of sequestration is that a Trustee is appointed and takes control of any assets you own. The Trustee is appointed to realise any value in your estate for the benefit of your creditors. You should note that the Trustee will only have an interest in realising value where this is significant and cost effective to realise. Most household items are excluded from the estate.

If, after paying your normal living expenses, you have a surplus income available to contribute to your estate, you will be expected to make payments for the three years following the sequestration. When the Trustee has realised your estate, and provided that you have complied with any request to contribute surplus income, your Trustee will settle the fees and expenses of the sequestration process, pay any surplus funds to your creditors and close the sequestration.

Provided that you comply with your Trustee's requests, you will be automatically discharged from your debts 12 months after the start of the sequestration. This should not be confused with the requirement to make payments to your estate. If you are making payments to your estate this will be for three years.

Can I apply for my own sequestration?

To apply for your own sequestration you must meet one of the following conditions.

Either:

- One of your creditors is willing to agree to you making yourself bankrupt - this is called creditor concurrence. Your creditor has to sign a form to confirm their agreement; or
- You are apparently insolvent - apparent insolvency is a legal term that shows you cannot pay your debts as they become due. A creditor must have gone to court and obtained a ruling that you owe the debt.

Or;

- You have a Certificate for Sequestration - WRI have Practitioners who can provide you with this Certificate. No charge is made for this service.



Low Income Low Asset route to bankruptcy

LILA is the route into bankruptcy for people who have low income and low assets.

Low income means gross weekly income of no more than the standard national minimum wage for a forty hour working week.

When calculating your income no account will be taken of other social security benefits or tax credits you receive or any income paid to another member of your family. However, your income, pensions, maintenance payments, benefits, tax credits and the income of other family members may be taken into account when considering whether you should pay a contribution whilst you are bankrupt.

Low assets means that you have no single asset worth more than £1,000 and your total assets are not worth more than £10,000. In addition, it means that you must not own or jointly own a house or any other property or land.

Solutions that work

Whilst sequestration, or bankruptcy, may seem an extreme measure it can often be the best solution to someone's debt problems. No debt solution should be entered into lightly and we at WRI Associates are focussed on providing solutions to your financial problems that work for you. Before recommending any solution, our highly experienced staff will analyse your financial position and discuss with you the options available. We will explain the advantages and disadvantages of the solutions available, discuss how any assets you own will be realised and what your obligations are.

If sequestration is the right solution for you, we can also assist you in completing the appropriate form, and in having it presented to Court.

Your home

The only interest the Trustee is likely to take in your home is in respect of your share of any available equity. A valuation of the property will be carried out and the level of any outstanding mortgage and secured loans established. Equity is the difference between the property valuation and the outstanding debts secured on the property. Once the value of your share of the equity has been calculated, arrangements will need to be made for this sum to be paid to your Trustee. There are a variety of ways that this can be done, but you should note that if agreement cannot be reached voluntarily, your Trustee has power to raise a Court action to compel the property to be sold.

Your car

The Trustee's interest will only be in any equity, which exists in the car. If the car is subject to hire purchase, this will be taken into consideration when determining any available equity. If your car is required to travel to and from work and you make a monthly contribution to your Estate from your income, you may be allowed to retain the car. If your car is not required for this purpose, or if significant value could be realised from its sale, your Trustee may require the car to be sold. He may, however, allow you sufficient funds to buy a car of lower value for your continued use.

Any other assets

You will normally be able to retain household goods required for every-day use. If applicable, you will be able to retain any tools that you need for your trade (up to the value of £1,000). Other assets will be looked at individually, and may be sold depending on their value and purpose.



Protection from creditors

Following sequestration your creditors cannot take any recovery action in respect of debts owed prior to the commencement of sequestration. Subject to a few exceptions, you will not be required to make any further payments in respect of these debts once you the sequestration has closed.

Fees and costs

If you are petitioning for sequestration of your own estate, you will only have to pay the Court's filing fee for your sequestration petition. If you apply to the Accountant in Bankruptcy for your sequestration there is a fee of £200 payable to the Accountant. Asset realisations from your estate, together with any contributions from income, will fund the Trustee's fees and expenses, and will be deducted prior to any payment being made to creditors.

Advantages of sequestration are:

- Your creditors will no longer be able to pursue you or take action against you to recover what you owe
- You will not have to make further payments to your creditors
- Depending on your circumstances you may expect to be discharged from your debts 12 months after your sequestration starts and will then be free of debt

There are, however, some disadvantages:

- If you own any valuable assets, these will usually have to be realised
- The sequestration process is less flexible than other solutions and alternative ways to make payment to your estate may be restricted
- If you are in paid employment you may have to make a regular contribution to your Trustee
- If you receive any windfall money or acquire property after the date of your sequestration and before the date of your discharge, you will have to surrender these to your Trustee
- It is unlawful to incur credit of more than £500 whilst sequestered, unless you tell the lender that you are an undischarged bankrupt.
- You are not allowed to start up or be involved in the day-to-day management of a limited company
- You are not allowed to act as a member of parliament, and there are certain other restrictions, such as acting as a member of any local council or school boards, etc
- You may have difficulties in obtaining credit after your discharge

Why WRI Associates?

Lead by our highly experienced managing director, Ian Wright, our focus is to deliver sustainable solutions that solve your financial difficulties once and for all, allowing you to regulate your finances and plan for the future. Ian has over 20 years experience in dealing with individuals who are experiencing financial difficulties. He has acted a Trustee for many clients and is focussed on providing solutions which work. Our highly experienced team have helped deliver successful solutions for many years.

We'd be delighted to help you. Please contact us at:

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