

No asset procedure

April 2016

If a person gets into financial difficulty and can't pay their debts, an option that may be available to them is to enter into a NAP ("No Asset Procedure"). The NAP is an insolvency procedure designed to assist a person who has total debts of \$1,000 to \$47,000, has no assets and has no financial means to pay the debts. It is an alternative to bankruptcy under the Insolvency Act 2006. The NAP gives a person an opportunity to sort out their financial position.

A NAP does not apply automatically. Any person, who decides to use this option, has to make an application to enter into a NAP. Also, a debtor can only enter into NAP once. If the debtor has financial trouble again, the debtor will face bankruptcy.

Entry

To enter into a NAP, a person must:

- Have no realisable assets. In determining this they can exclude household and personal effects, tools of trade, motor vehicles worth up to \$5,000 and cash up to \$1,000; and
- Not be an adjudicated bankrupt in New Zealand. Overseas bankruptcies are excluded; and
- Not have not been admitted to a NAP before; and
- Have debts above \$1,000 but below \$47,000. This includes their contingent liabilities, but excludes their student loan balance. The calculation of the debt level includes both unsecured and secured debts.

They must also complete a "means test" to demonstrate that they have no means to pay any amount towards the debts. A person in paid employment may still qualify depending on their income and expenditure levels.

Application

To enter into a NAP, a person must complete and file, either electronically or manually, with the Official Assignee:

- A NAP application form; and
- A Statement of Affairs form (this is 30 pages long); and/or
- A declaration with respect to a trust (this needs to be filled if requested by the Official Assignee).

There are no fees or charges for filing the forms.

The Official Assignee will notify each of the creditors of the person's inability to pay the debts and send a summary of the person's assets and liabilities to each creditor. This gives the creditors an opportunity to object to the debtor's entry. Where there are no successful objections, the person is given a fresh start after a 12 month period, as the debts will be written off.

Restrictions from entry into a NAP

The Official Assignee will not admit a person to the NAP if they have:

- Concealed assets;
- Engaged in conduct that could be considered an offence under the Insolvency Act 2006;
- Incurred debts with no intention to pay; or
- Bankruptcy proceedings have begun.

Effect of a NAP on a debtor

After filing an application for a NAP, the debtor may not obtain further credit (including hire purchase), by themselves or jointly for more than \$100, without telling the credit provider that they have applied for a NAP. When the NAP is accepted by the Official Assignee:

- the debtor may not apply for credit of more than \$1,000;
- the unsecured creditors cannot begin or continue any steps to recover or enforce a debt, included in the NAP. The debtor's secured creditors are not affected by the NAP in that they continue to have security over the relevant assets that provide the security.
- the debtor's entry to a NAP will be published in the New Zealand Gazette and will be available in the NZ Gazette database on the website of the Department of Internal Affairs;
- the debtor's name will be entered on the Insolvency Register on the Insolvency and Trustee Service website and will remain on it during the life of the NAP and for 4 years after the automatic discharge from NAP.

While being admitted to a NAP, the debtor must continue to pay certain debts - maintenance orders under the Family Proceedings Act 1980, child support under the Child Support Act 1991, student loan, court fines, reparations and loans obtained by fraud.

Discharge

The debtor is automatically discharged from the NAP 12 months from the date of admission and all the debts that are covered by the NAP are also discharged, except those that were obtained fraudulently.

Early termination of a NAP

The Official Assignee has the power to terminate a debtor's NAP early if:

- the debtor was wrongly admitted (example the debtor had concealed assets); or
- the circumstances of the debtor have changed and the debtor is able to pay some or all of their debts; or
- a creditor applied for the debtor's bankruptcy and the application was granted.

The effect of an early termination of a NAP is that, all the debtor's debts that became unenforceable on the debtor's entry to the NAP become enforceable again.