

BAN-01 Application by a Trustee in Bankruptcy (Section 234 of the TLA)

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1 Overview

The Bankruptcy Act 1966 as amended (in this section called the Act) is a Commonwealth Act that (inter alia) provides for the appointment of Government officials to the statutory position of Official Trustee in Bankruptcy. The Act also authorises the appointment of suitably qualified persons in private practice as registered trustees to deal with bankrupt estates (Trustees in Bankruptcy).

Every person who, as trustee, assignee, or by any other name is the representative of a bankrupt or insolvent estate is entitled to be registered as proprietor of any land under the Transfer of Land Act 1893 (TLA), in the place of the bankrupt or insolvent proprietor. Under the Act the trustees of a particular estate may be appointed or removed in a variety of circumstances, so the Registrar of Titles has an interest in ensuring that a bankrupt registered proprietor is only displaced by a trustee whose appointment is current.

Although the interest of the bankrupt person is taken from him or her at the instance of bankruptcy, the legal interest in the land does not vest in the trustee until lodgement of the application. Bona fide dealings (dealings not intended to defeat creditors) by a bankrupt proprietor registered before an application (or caveat) by a trustee in bankruptcy is lodged, are valid.

The application is made on an [Application Form](#), describing the land involved, the name of the Trustee, and showing on the operative part of the form the words:

"to be registered as the proprietor of the above land as the Trustee in Bankruptcy/Official Trustee in Bankruptcy (whichever is appropriate) of (name of the registered proprietor) and pursuant to section 234 of the Transfer of Land Act 1893."

A computer register of insolvent or bankrupt persons, and the trustees appointed to administer those estates is maintained by the Commonwealth Government, in the offices named the Insolvency and Trustee Service Australia. The computer register is called the National Personal Insolvency Index (NPII).

The application must be lodged and the trustee registered on the certificate of title before the trustee can dispose of the land. Once registered the land vests into the name of the trustee.

2 Evidence supporting an Application by the Official Trustee or Trustee in Bankruptcy

2.1 Duplicate Title

The duplicate certificate of title should be produced with this Application.

Where the title is encumbered by a Mortgage, the Mortgagee should produce the title to enable the vesting of the land into the Trustee. Alternatively, where the title is Non-Issue the Mortgagee should provide consent to a subsequent dealing (see [COT-02 Duplicate title](#)).

2.2 Statutory declaration

The application must be supported by a statutory declaration by the trustee who identifies:

- the applicant as the trustee
- the land the subject of the application
- the registered proprietor (or at least one of them, if more than one) as the bankrupt, and
- state that the appointment of the trustee is still current.

2.3 Certificate of Appointment

An application by a Trustee in Bankruptcy must also be supported by an extract of the National Personal Insolvency Index (NPII).

3 Appointment of a Trustee under Part X of the Bankruptcy Act 1966

If the Trustee has been appointed under Part X of the Act, evidence that the proprietor is entered in the National Personal Insolvency Index (NPII) must be filed with the application, together with a statutory declaration that the appointment is still current, and if necessary, identifying the registered proprietor as one and the same person as the bankrupt.

4 Execution of documents by a Trustee

Once registered, the trustee may deal with the property as the registered proprietor and must sign the document as such proprietor using the normal clause. It is not necessary to show in the attestation clause the trustee as (Name) the trustee in bankruptcy of the bankrupt estate of (Name of Bankrupt).

5 Transfer of Assets back to Discharged Bankrupt

The assets of a Bankrupt person vest into the Trustee. Where the bankrupt person(s) has satisfied/discharged the debt the Trustee should transfer the remaining asset(s) back to the bankrupt person.
