CHA-02 Charges under the Health or Bankruptcy Act

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1 Overview

The documents dealt with in the following paragraphs, when noted in the Register, have the effect of delaying or preventing registration of instruments dealing with the land affected or forcing an acknowledgment of a statutory interest in the land. In every case the memorandum is not noted on the duplicate certificate of title (if any).

2 Bankruptcy Act 1966 (Commonwealth Legislation)

The Bankruptcy Act 1966 (the Act) provides that the remaining assets, including real property, of bankrupt persons, be vested in a trustee. The trustee chosen may be either a public official, known as The Official Trustee in Bankruptcy, or a private (although professionally qualified) person registered with Insolvency and Trustee Service Australia as a Trustee in Bankruptcy. Either trustee must apply under s.234 of the TLA, on an e-form Change Ownership - Bankruptcy Application, to be registered as the proprietor of the property. The method of application is set out in policy and procedure guide BAN-01 Application by a Trustee in Bankruptcy (Section 234 of the TLA).

Section 139ZN of the Act authorises the creation of a charge on the property of any person who owes the bankrupt person a debt for personal services. Section 139ZR of the Act authorises the creation of a charge on any property sold by the bankrupt to a person by a transaction later declared void.

Both charges have effect from the time lodged and may have priority over any previous charge or encumbrance in favour of an associated entity of the bankrupt. Both charges create a power for the trustee to sell the property. Registration of the charge is achieved when a certificate signed by the Official Receiver containing all the relevant information, such as property details, registered
The charge does not prevent the registration of any other instrument creating an interest in or disposing of the land, but it must be shown in the Limitations, Interests, Encumbrances and Notifications panel, where there is one. By acknowledging the charge as an encumbrance any subsequent transferee or mortgagee is bound by its provisions.

The charge may be removed on the application of the registered proprietor on an e-form Change Ownership - General Application, supported by evidence proving that the debt has been paid or set aside.

If the debt is not paid the Official Trustee or the Trustee in Bankruptcy may sell the land and register a transfer on a modified, supported by evidence that sufficient notice has been given to the registered proprietor to repay the debt.

Section 249A of the Act creates a charge on land where a (deceased) bankrupt has spent money on property improvements. The charge takes effect from the time of lodgement, but may be postponed by the lodgement of a bona fide charge for value or a bona fide sale for value in favour of any person who had notice of the bankruptcy charge. The charge is in other respects similar to a charge created under s.139ZN and 139ZR of the Act.

The normal fees are levied for the lodgement and withdrawal of these charges.

3 The Health Act 1911

Where a Local Government has expended money on behalf of an owner of land, either by agreement with or on the default of the owner, the money so expended is a charge upon the land until repaid.

A charge prepared in the manner prescribed by the Registration, Enforcement and Discharge of Local Authority Charges on Land, Regulations and pursuant to the Health Act 1911 (s.372(4)), is presented for registration.

Forms C and D of the above regulations and the statutory declaration of the Clerk of the Local Government annexing form A, comprise the complete charge.

A memorandum of the charge is entered on the title and the charge remains an encumbrance against the land until withdrawn. It is similar in effect to a subject to claim caveat and may be noted in the Limitations, Interests, Encumbrances and Notifications panel of an instrument, where there is one, provided that such regulations shall not authorise any land to be sold except pursuant to an order of the Magistrates Court. The registered proprietor is notified by the Registrar of Titles of the charge by a notice as prescribed in form E of the above regulations.

The duplicate certificate of title is not required.

Note: The Form A is not required to be an original statutory declaration; however, Forms C & D must be originals.

4 Removal

On the application of the registered proprietor made in the form prescribed by the above regulations (form I), accompanied by a memorandum of satisfaction of the charge (form H), signed
by the Clerk of the Local Government, an entry is made in the Register removing the charge as an encumbrance.

The normal fees are levied on both lodging and removing a charge.

5 Also See

- CHA-01 Charges and removals
- MEM-01 Memorials