

# Will a Finance Company take my Car if I Declare Myself Bankrupt?

This is a question that we get asked quite a lot and the short answer is that provided you are not in default of the finance contract, they can't take your car off you.

The bigger issue, however, may be whether your equity in the car exceeds the indexed value of what is protected as a primary means of transport in your bankruptcy. Currently the indexed value is \$7,800.

## Protected Vehicles

Property used by a bankrupt as a primary means of transport with a value below the prescribed indexed amount is protected in your bankruptcy. As indicated above that value is currently \$7,800 but this changes quite often so it pays to check on the Australian Financial Security Authority website [www.afsa.gov.au](http://www.afsa.gov.au) under the tab of indexed amounts.

The value of a vehicle, or equity in a vehicle, that is subject to finance exceeding the indexed amount may be pursued by your trustee for the benefit of your creditors.

Typically the trustee would offer to sell the equity in the vehicle to a relative or friend so that you can retain the vehicle, however, if this is not a viable option the trustee may sell the vehicle and give you the indexed amount from the sale proceeds so that you can purchase an alternative vehicle.

## Finance Contracts

Provided you are not in default of your finance contract, (i.e. your payments and other obligations have been met) the finance provider can't use your bankruptcy as a reason to take possession of your vehicle.

The Bankruptcy Act 1966 at section 302 expressly provides that any provision in a finance contract taking security over your vehicle, enabling the finance provider to exercise any power or remedy if you become bankrupt or commit an act of bankruptcy, is void.

## Summary

Provided that you are not in default of your obligations under the vehicle finance contract and your equity in the vehicle is less than the indexed protected amount, currently \$7,800, the finance company can not take steps to take your vehicle in the event that you are declared bankrupt or commit an act of bankruptcy

## Disclaimer

Please note that this is by no means to be taken as legal advice but rather our interpretation as registered Bankruptcy Trustees of the relevant legislation and in particular the Bankruptcy Act.

## Further Assistance

We are more than happy to discuss any individual situations on a case by case no obligation basis. Should you have any queries please contact James Shaw or Paul Gidley on **1800 376 583** or via the chat line on our website at [www.esolvency.com.au](http://www.esolvency.com.au).

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