CREDIT COUNSELLORS
CONSUMER PROPOSAL ADMINISTRATORS
LICENSED INSOLVENCY TRUSTEES



LEAVE DEBT BEHIND

DEBT RELIEF GUIDE

BDO FIRSTCALL
Debt Solutions

Notes



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INTRODUCTION

Thank you for choosing BDO to offer you solutions to your financial problems. BDO Canada Limited's professionals are Licensed Insolvency Trustees (LITs), providing debt help solutions such as consumer proposals and bankruptcy. This booklet will help you gain a full understanding of these and other debt relief options.

Filing for bankruptcy or filing a consumer proposal can be a very difficult decision for most people. When discussing your financial challenges with an LIT, you are probably going through a range of emotions, and could also be confused as to how the process works. Your LIT is here for you to listen carefully and explain every available option.

We have prepared this booklet as a guide to the events and procedures for filing bankruptcy or filing a consumer proposal under *The Bankruptcy and Insolvency Act* (BIA). The booklet is meant to serve as an introduction to these procedures in a way that is not overwhelming or confusing.

We also answer some of the most frequently asked questions about consumer proposals and bankruptcy in this booklet. Please note that each individual proceeding is unique, and it's important to discuss and assess your circumstances with an LIT to help determine which solution might be best for you.

For over 60 years, we have helped Canadians by explaining all debt relief options, and filing a bankruptcy or a consumer proposal to resolve their financial problems. We recognize that people need simple, complete answers to their questions so they understand exactly what to expect and what is expected of them.

We hope that you will be able to use this booklet as a guide throughout the process of whichever debt relief solution you choose.





UNDERSTANDING YOUR DEBT RELIEF OPTIONS

When seeking debt relief, you have several options available, whether you decide to pay down debt on your own or seek assistance from a licensed professional. Below, we present some of the options that are available to you.

Budgeting and debt repayment strategies

Once you've made the decision to pay off debt, you'll want to create a budget, if you don't already have one. Budgeting allows you to set and track all of your expenses on a monthly basis, and helps you identify areas where you can reduce spending in order to pay down debt.

Two of the most popular debt repayment strategies are the debt snowball and the debt avalanche. With the debt snowball, you would focus on paying off your smallest debt first, while the debt avalanche shifts the focus to the debt with the highest interest rate. It's important to note that you would still continue to make minimum monthly payments toward all your other debts, while directing any extra income to either your smallest debt (debt snowball) or highest-interest-rate debt (debt avalanche).

While both of these strategies can be effective in paying off debt, some may prefer the debt snowball, as it allows them to pay off their first debt sooner. The debt avalanche might not produce such immediate results when it comes to paying off one debt at a time, but in the long run, you will pay less interest with this method by attacking the debt with the highest interest rate first.

Debt consolidation loan

A debt consolidation loan allows you to combine and repay multiple debts using one monthly payment, usually at a lower interest rate than your previous debts. To apply for a debt consolidation loan, you would need to qualify with a bank or lending company, which often require proof of income. Unfortunately, some people may not qualify for a debt consolidation loan due to the amount of credit they have already used, a history of only making minimum monthly payments or a low credit score.

A BDO LIT can help determine if a debt consolidation loan would work for your situation, and if so, refer you to local lenders.

Credit counselling

A credit counsellor can offer guidance and assistance when it comes to managing debt and your finances. There are many not-for-profit and for-profit credit counselling agencies, and it is important to understand what is offered by these various agencies and what costs are involved. If you choose to seek counselling, we would recommend that you deal with a recognized, not-for-profit credit counsellor, as there are minimal or no upfront costs when you meet with them.

One solution offered by a credit counselling company is a debt management plan (DMP). The credit counsellor will negotiate with your creditors to reduce the interest on your debt, but unlike a consumer proposal, you would have to repay the full amount that you owe, plus there will likely be additional fees.

Filing a consumer proposal or filing for bankruptcy

The next few chapters of this guide are dedicated to consumer proposals and bankruptcy. These are two of the debt solutions provided by licensed professionals at BDO. Although both solutions have their own unique characteristics, it's worth noting that these are the only debt relief solutions that can stop all legal action, wage garnishments and harassing phone calls from creditors. Only a Licensed Insolvency Trustee can file a consumer proposal or file for bankruptcy on your behalf.



INTRODUCTION TO CONSUMER PROPOSALS

Deciding between filing bankruptcy or a consumer proposal can be a daunting decision that can lead to many questions. The purpose of the following two sections is to explain the benefits of a consumer proposal, as well as the duties and responsibilities of someone who files a consumer proposal.

What is a consumer proposal?

A consumer proposal is an agreement between you and your creditors that allows you to repay multiple debts with one monthly payment over a period of up to five years. In most cases, you are able to repay less than the total amount you owe to your creditors with a consumer proposal, an advantage not available with other debt repayment plans. Filing a consumer proposal will prevent or stop all wage garnishments, legal action and interest charges against you. A Licensed Insolvency Trustee (LIT) will negotiate with creditors on your behalf, and can often extend the timeframe for repayment.

Who can file a consumer proposal?

To qualify for a consumer proposal, you would have between $1,000 and $250,000 in debt, excluding the mortgage on your home. If your debts exceed $250,000, there are other debt relief solutions available. Someone who has filed for bankruptcy could make a consumer proposal if their circumstances change.

A joint consumer proposal can be filed by two or more people, with a limit of $500,000 in combined debt, if their debts are similar and can be dealt with together due to their financial relationship (e.g. married couple, common-law partners).

Debts eliminated by a consumer proposal

A consumer proposal can be used to eliminate unsecured debts, which are not backed by any asset you own. These debts include:

- Credit cards
- Lines of credit
- Personal loans
- Payday loans
- Income taxes

UNDERSTANDING THE CONSUMER PROPOSAL PROCESS

If you decide to file a consumer proposal, here are the steps that you would follow during the process.

Make an appointment with a Licensed Insolvency Trustee (LIT)

The first step is to contact a Licensed Insolvency Trustee from your local BDO office, who is licensed by the government to file consumer proposals. The LIT will listen carefully as you describe your situation, and explain every option to help you find the best solution.

If you decide that a consumer proposal is your best option, the LIT will prepare the necessary documents to file the consumer proposal. Your proposal will include the amount of debt you are offering to repay, how much and when you will pay each month and the number of months you will make payments.



Filing the proposal

Your LIT will file your consumer proposal and send a notice to all of your creditors. Your creditors then have 45 days to consider the proposal. During this time, you do not have to make any payments on your unsecured debts (as listed on page 5), all interest charges will be frozen, and you will be protected from any legal action, including wage garnishments.

Meeting of creditors

Your creditors will be considered to have accepted the consumer proposal unless at least 25 per cent of them request a meeting within 45 days. If the creditors requesting a meeting are owed more than 25 per cent of your total unsecured debt, the LIT will arrange a meeting for creditors to vote on whether they accept or reject the consumer proposal or request additional payments to be made.

At the meeting, if one or multiple creditors, which collectively are owed more than 50 per cent of your unsecured debt, accept the consumer proposal, it will then become binding on all unsecured creditors. Note that most creditors do not attend the meeting; they participate by proxy or voting letter. Once a consumer proposal is accepted by your creditors, it is deemed approved by the court after 15 days, unless a court hearing to approve the consumer proposal is requested. Court hearings in this case are rare.

What happens if a consumer proposal is rejected?

The vast majority of consumer proposals do get approved. However, if your creditors or the court do not approve the consumer proposal, you will no longer be protected by the BIA and your creditors can take steps to recover their debts. If your consumer proposal is not approved, your LIT will help you explore all of your other options.

Monthly payments

After signing the documents, you will make payments to your LIT as part of the consumer proposal. This could be a lump-sum payment, regular monthly payments (for up to five years), payments based on your personal circumstances (i.e. seasonal work) or a combination of lump-sum and monthly payments. Payments will be made by the LIT to your creditors according to the terms of the consumer proposal. These payments are generally made annually.

The LIT's fee is determined by the federal government, set out in the BIA and is deducted from your monthly payments before any payments are made to creditors. There is no additional cost to you.

How long does a consumer proposal last?

A consumer proposal can be made for any period up to a maximum of five years.

Credit counselling

The LIT will arrange for two counselling sessions during the consumer proposal. The counselling will help you understand the cause(s) of any financial difficulties you might have experienced. These sessions will also provide information to help you manage your finances in the future. Counselling sessions are one on one, and are tailored to your particular circumstances. You are welcome to bring someone else with you if you wish.

The government mandates that you must attend both of the counselling sessions in order to complete the consumer proposal. Additional counselling is available if needed.

Completion of payments and next steps

Once all payments under the consumer proposal have been made and you've attended both counselling sessions, the LIT will issue a Certificate of Full Performance, which shows that the terms of the consumer proposal have been completed. The debt you owed to your creditors, outside of what you agreed to repay in your consumer proposal (except for debts listed in Section 178 of the BIA – see ***Appendix Four***) is legally forgiven. You will have settled your debts with your creditors, in most cases, without having to pay back the full amount owed to them.

Missing payments

If you are unable to make payments on a consumer proposal and you fall behind by more than three months of payments, the proposal will be annulled. If this happens, your LIT will help you explore all of your options.

Please refer to Appendix One to find out more about annulled consumer proposals.



Rebuilding your credit

If you've been missing bill payments, have used up all or most of your available credit, and your debt has become unmanageable, your credit rating may have already been affected; filing a consumer proposal can be the first step in improving your credit. During a consumer proposal, your credit report will include an R9 rating, which shows you have made a settlement with your creditors. Upon completion of the proposal, your rating will be upgraded to an R7, which will remain on your report for up to three years after the proposal has been completed.

You can apply for a credit card after you have filed your consumer proposal, and will likely start with a secured credit card, on which you may have to pay a deposit to guarantee your credit limit. An LIT can explain credit rebuilding strategies and the programs available to you.

CONSUMER PROPOSAL FAQs

Here are some of the most frequently asked questions about consumer proposals. Should you have any further questions, your local BDO LIT will take the time you need to address any of your concerns.

What happens to my assets?

You will keep all your assets and belongings when you file a consumer proposal, since your unsecured creditors cannot make any claims on your property. This includes any assets acquired during the consumer proposal, such as gifts, inheritances or lottery winnings. Note that a consumer proposal does not include secured debt, like a mortgage or car loan, and you would have to deal with those creditors outside of the proposal. It's worth noting that by using a consumer proposal to reduce and consolidate other debt payments, many are able to keep their home and car.

What about secured assets?

If a creditor has a lien on any of your assets (a secured creditor, such as the bank that holds your mortgage), and you choose to file a consumer proposal, you could:

- Surrender the asset to the secured creditor. Any balance still owing after the asset has been sold may or may not be included in the consumer proposal, depending on provincial legislation.

OR

- Continue to pay the secured creditor in order to keep the asset.

What if I've co-signed a loan?

A consumer proposal does not cancel the liability of anyone who has guaranteed or co-signed any loans with you. This person will still be responsible for the rest of the co-signed debt, minus any payments the creditor receives from your consumer proposal.

What happens to my credit cards?

It is possible to keep your credit cards after filing a consumer proposal as long as there is no balance owing on them. However, when the credit card company learns about the consumer proposal, it could suspend your card. Once the consumer proposal has been filed, you will be able to apply for a new credit card, and you may need to use a secured credit card as you start rebuilding your credit.

What happens to my credit rating?

It's important to know that if you've been struggling to make your monthly payments, have reached or are close to your maximum credit limit and are seeking help with your debt, your credit rating is likely already impaired, even without you knowing it.

When you file a consumer proposal, you will generally receive an R9 rating (although it can sometimes be an R7). This indicates that you have made a settlement with your creditors. After your consumer proposal has been completed, the rating becomes an R7, which will remain on your credit report for up to three years.

Filing a consumer proposal offers you a fresh financial start, and can help you rebuild your credit sooner than some other solutions. Your BDO LIT can help you plan your credit rebuilding strategy to get you started on this new path.



INTRODUCTION TO BANKRUPTCY

For most people, the decision to file bankruptcy is a difficult, emotional one that comes with many questions. At BDO, we know the importance of fully explaining the bankruptcy process. We also understand that there are alternatives to bankruptcy, which may be more appropriate for your situation. The purpose of these next sections is to explain in simple terms the duties, restrictions and responsibilities of a person who declares bankruptcy.

What is bankruptcy?

Bankruptcy is a legal process that provides immediate relief to financial problems by eliminating debts and stopping legal action by creditors. Bankruptcy releases a debtor from most, if not all, of their debts, meaning you no longer have to repay these debts.

Bankruptcy is intended to give you a fresh start financially. If you are considering bankruptcy, the following pages provide a summary of the steps involved and answer many of the questions you may have.

Who can file for bankruptcy?

In order to declare bankruptcy, you must:

- Owe at least $1,000;
- Be unable to make regular payments as they become due or
- Carry debts greater than the value of your assets.

Which debts cannot be eliminated in bankruptcy?

Filing for bankruptcy will release you from all your debts, except the debts listed under Section 178 in Appendix IV of this booklet, which include:

- Fines or penalties imposed by a court (including damages awarded to victims)
- Alimony or child support
- Debts stemming from fraud

Student loans can be included in a bankruptcy, but if it's been less than seven years since you stopped being a student, these debts may not be released and additional steps may be required for them to be eliminated. You should discuss your student loans with your local LIT, as these loans are treated differently depending on which province you're in, and the rules change frequently.

Similarly, any loans received under the Apprentice Loans Act cannot be included in bankruptcy until it's been at least seven years since you were last an apprentice.

UNDERSTANDING THE BANKRUPTCY PROCESS

If you choose to file for bankruptcy, here are the steps you would follow during the bankruptcy process.

Make an appointment/fill out an application

The first step in the bankruptcy process is to make an appointment with a Licensed Insolvency Trustee (LIT) in your local BDO office. An LIT is licensed by the federal government to file and administer bankruptcies. The LIT will explain all of your options to find the best solution available to you. Our LITs will often identify other debt solutions, such as a consumer proposal, that can help you pay off debt and avoid filing for bankruptcy.

If you decide that bankruptcy is the best solution for your specific situation, you will need to fill out an application to begin the process.

Filing for bankruptcy

After you fill out and sign the required paperwork, your LIT will file the documents with the federal government. Once the bankruptcy documents are filed, your creditors can no longer make harassing phone calls or take any legal action against you. You will have immediate protection and a plan in place to pay off your debts.

Potential meeting of creditors

Once your LIT notifies your creditors that you've filed for bankruptcy, they may request a meeting if they have any questions about your financial situation. This usually doesn't happen for most personal bankruptcies. However, a meeting will be arranged if 25 per cent or more of your creditors request it, and you would have to attend this meeting.

Assets are transferred to the LIT

Although you might have heard otherwise, the fact is that you will not "lose everything" if you file for bankruptcy. There are provincial exemptions that allow you to keep some of your belongings, the rest of your assets will be transferred to the LIT and ultimately sold to repay your creditors. You would normally be able to keep a vehicle, most of your RRSPs and household furniture and clothing. If you have any secured debts, like a mortgage, you may be able to keep these assets if you continue to pay these secured creditors.

A Licensed Insolvency Trustee in your local BDO office will be able to further explain the exemptions in your province and help determine which assets you will be able to keep should you choose to file for bankruptcy.

Monthly payments and surplus income

When you file for bankruptcy, you will be required to make minimum monthly payments to compensate the LIT for their services. You may also need to make surplus income payments, according to guidelines set by the federal government, if your income exceeds a certain threshold by at least $200.

For example, the OSB's monthly threshold for a single person in 2017 is $2,121. If you made $2,500 (net income) in a given month, and do not share your household with anybody, you would have to make a surplus income payment of $189.50, although there are other factors such as daycare and child support payments to take into consideration. Your LIT will be able to explain and calculate surplus income for your individual situation.

You can also find the latest OSB thresholds online:
https://tinyurl.com/OSBthresholds

During your bankruptcy, the amount of surplus income you would pay is based on your actual monthly income. You will be required to report your income and expenses to the LIT every month, providing proof of income and any other requested documentation. If you do not provide income and expense information or make the required payments, this could prevent you from being automatically discharged from bankruptcy.

Credit counselling

The LIT will arrange for two counselling sessions during the bankruptcy, which will help you to understand and discuss the financial and non-financial cause(s) of your bankruptcy. These sessions will also provide information to assist you in managing your future financial affairs.

The government mandates that you must attend both of the counselling sessions in order to be discharged from bankruptcy.

Being discharged from bankruptcy

If this is your first time declaring bankruptcy, an automatic discharge is available after nine months if you do not have surplus income and you have performed all of your duties as required. This determination is usually made after considering your income during the first seven to eight months of bankruptcy.

If you have surplus income, an automatic discharge is available after 21 months, provided that you have performed all of your duties and paid your surplus income.

For more information about the conditions of being discharged from bankruptcy, and the implications if you are declaring bankruptcy for a second time (or more), please see Appendix Two.

BANKRUPTCY FAQs

Here are some of the most frequently asked questions about bankruptcy. Should you have any further questions, a Licensed Insolvency Trustee (LIT) would be pleased to take the time you need to address any of your concerns.

What happens to my assets?

When you file for bankruptcy, you will not lose everything. Each province and territory has its own exemptions to the bankruptcy law that clearly describe which possessions and belongings you can keep. Your local LIT is familiar with the processes and procedures in your province and will fully explain them to you if you decide to file for bankruptcy.

Can I still be sued?

As soon as you file for bankruptcy, you get immediate protections from all legal action against you, including wage garnishments, seizures or lawsuits. Anyone wishing to continue with a lawsuit against you must apply to the bankruptcy court for permission. However, please note that child support or alimony claims may be dealt with outside of bankruptcy and these actions are often allowed to continue after you file bankruptcy, if the creditor obtains permission from the court.

What happens to my credit rating?

It's important to know that if you've been struggling to make your monthly payments, have reached or are close to your maximum credit limit and are seeking help with your debt, your credit rating is likely already impaired, even without you knowing it. When you file for bankruptcy the first time, the bankruptcy is reported as a "R9" on your credit report for six years after you've been discharged. This period is determined by provincial laws and the credit reporting agencies, and might vary by province or territory.

Filing for bankruptcy can help you improve your credit over time, as it provides you with a fresh financial start by eliminating your outstanding debts. Since you can often complete the bankruptcy process sooner than other debt relief solutions, bankruptcy allows you to start rebuilding credit sooner, helping you get back to a good credit score.

What if someone has co-signed a loan for me?

Bankruptcy will not cancel the liability of anyone who has guaranteed or co-signed a loan. If you file for bankruptcy, your co-signer will be held responsible for the outstanding debt on any loans they have co-signed.

Will people know that I've filed for bankruptcy?

While an individual's bankruptcy is public record, a notice of personal bankruptcy is not usually advertised in the newspaper and your employer is not normally notified. In most cases, people will not know you've filed for bankruptcy unless you choose to tell them.





DEBT SOLUTIONS FOR BUSINESS OWNERS

Self-employed business owners may seek debt relief, whether you're a sole proprietor or an owner of a corporation. We are providing some basic information for you in this booklet, but we suggest that any business-related debt situations be fully discussed with a local BDO Licensed Insolvency Trustee (LIT) before proceeding. Often, our LITs are able to work with business owners, managers, and creditors to restructure the financial affairs of their business and prevent more serious financial problems.

Sole proprietors

If a sole proprietor wishes to file a consumer proposal, but their total debts exceed $250,000 (or $500,000 in the case of a joint proposal), not including mortgages on a principal residence, a more rigorous proposal process will apply. If your assets exceed the limits set under the consumer bankruptcy rules, a different type of bankruptcy proceeding is possible. Your LIT will be able to explain these differences and implications.

As a sole proprietor, your personal assets and liabilities cannot be considered separately from your business. A separate proceeding for the business from the business owner's personal affairs is not possible when the business is a sole proprietorship.

Owners of corporations

Individuals who own corporations should discuss their business affairs in full with their LIT. A bankrupt individual cannot serve as a director of a corporation.

An individual may have liabilities under provincial or federal legislation, either as a director or as a guarantor of corporate debts. *The Income Tax Act, The Excise Tax Act* and other federal and provincial statutes impose direct obligations on company directors for deductions and withholdings not remitted. These obligations can be significant and should be fully discussed with an LIT.

Most banks, and many other suppliers, require that a business owner give a personal guarantee to support the obligations of the corporation. Upon the closure of the business, these debts could also apply to the business owner's personal finances, and should be discussed with your local BDO LIT.

To discuss options for dealing with the financial problems of the corporate entity itself, please contact a local BDO office. Each situation is unique and will require a full analysis since bankruptcy, proposal or receivership proceedings for corporations are more complex.





APPENDIX I

Defaulting on a consumer proposal, reviving an annulled proposal and changes in circumstances

A consumer proposal will be in default if:

- You are required to make monthly payments and there is an outstanding amount owing equal to three monthly payments.

OR

- You are required to make the payments less often than monthly and you miss any payment for more than three months.

Under these circumstances, the consumer proposal will be annulled and your creditors can take steps to recover their debts, minus any payments made to them during the consumer proposal. If you were bankrupt at the time of filing the consumer proposal, you would again become bankrupt.

Reviving an annulled consumer proposal

If a consumer proposal has been annulled (other than a consumer proposal filed by a bankrupt person), it may be possible for the proposal to be revived, if the debtor has made up their missed payments and the LIT considers it appropriate to revive the proposal.

To revive a consumer proposal, the LIT would need to notify creditors within 30 days of the annulment. If there is an objection by any creditor to the revival, the proposal will not be automatically revived. If there are no objections, the revival is effective sixty days after notice is sent.

If there is an objection to a revival or the revival request is beyond the limit of 30 days, it is possible to apply to the court to have the consumer proposal revived.

What happens if my circumstances change?

Until the consumer proposal is accepted by your creditors, you're required to advise your LIT of any changes in your circumstances.

If your circumstances change after the consumer proposal has been accepted by your creditors, it may be possible to amend the consumer proposal. In this case, you should speak to your LIT before defaulting on payments.

APPENDIX II

Bankruptcy discharge conditions, tax debt and mediation

If you file for bankruptcy, you can be discharged under the following conditions:

First bankruptcy:

- If it's your first time filing for bankruptcy, and you have no surplus income, you will be automatically discharged from bankruptcy nine months from the date of filing, provided that neither the Superintendent, the Licensed Insolvency Trustee (LIT), nor any creditor has opposed the discharge.
- If you have surplus income, you will be automatically discharged from bankruptcy 21 months from the date of filing, provided that neither the Superintendent, the LIT, nor any creditor has opposed the discharge.

Second bankruptcy:

- If it's your second time filing bankruptcy, and you have no surplus income, you will be automatically discharged from bankruptcy 24 months after the date of filing, provided that you have completed your duties in bankruptcy and neither the Superintendent, the LIT, nor any creditor has opposed the discharge.
- If you have surplus income, you will be automatically discharged from bankruptcy 36 months from the date of filing, provided that you have completed your duties in bankruptcy, made all your surplus income payments and neither the Superintendent, the LIT, nor any creditor has opposed the discharge.

Automatic discharge and court orders

If you are eligible for an automatic discharge, it is possible to be discharged from bankruptcy early. This is an unusual step, but may be considered by the court in certain circumstances. You can discuss the possibility of applying for an early discharge with your LIT.

If you do not qualify for an automatic discharge, the LIT will apply to the Bankruptcy Court for a discharge hearing within one year of filing the bankruptcy. The LIT will prepare a report that is considered by the court at the hearing.

The Bankruptcy Court may issue one of the following orders:

- **Absolute:** Effective immediately, you are no longer responsible for any debts that existed at the date of filing bankruptcy, except for any non-dischargeable debts described in the *Introduction to Bankruptcy* section or in *Appendix Four.*
- **Suspended:** Same as an Absolute order, but there will be a delay before the discharge comes into effect.
- **Conditional:** Certain conditions may be imposed by the court that must be met before the discharge becomes absolute. For example, you may have to pay a certain sum of money to the LIT to be distributed to your creditors.
- **Adjourned:** Any objection to the granting of a discharge order will usually cause the hearing to be postponed, either to a later date or indefinitely, in which case it would be ordered Adjourned.
- **Refused:** The court has the right to refuse a discharge, although it would only do so in very rare, exceptional cases.

How income tax debt can affect a discharge from bankruptcy

If you owe more than $200,000 in personal income taxes, and this amount is more than 75 per cent of your total unsecured debt, you will not be eligible for an automatic discharge.

For a first bankruptcy, the discharge hearing will take place at least nine months after the date of bankruptcy if no surplus income payments are required, and after 21 months if surplus income payments are required.

For a second bankruptcy, the discharge hearing will take place at least 24 months after the date of bankruptcy if no surplus income payments are required, and after 36 months if surplus income payments are required.

For a third time or subsequent bankruptcy, the discharge hearing may take place anywhere between 12 to 36 months afterwards, depending on where you filed bankruptcy.

Bankruptcy mediation

There are some scenarios where an independent mediator can help resolve disputes related to bankruptcy. Mediation can be less costly than a court hearing and allows all parties to be directly involved. The mediator would either be an employee of the Office of the Superintendent of Bankruptcy or a trained, experienced mediator approved by the Superintendent.

Mediation can be used in two types of disputes related to bankruptcy:

Surplus income mediation

At the beginning of the bankruptcy, the LIT determines whether you have any surplus income, based on standards from the government, your total income and your family situation. If you disagree with the amount of surplus income you are required to pay, the LIT must request mediation. If any of your creditors disagree with this amount, they can submit a written request for mediation to the LIT.

Discharge mediation

If your discharge from bankruptcy is opposed by either the LIT or a creditor because you have not made all the required surplus income payments, or because you could have made a consumer proposal instead of filing for bankruptcy, the LIT must request mediation.

APPENDIX III

How to deal with tax returns, benefits and rebates, gifts and inheritance after filing for bankruptcy

How do I handle income tax returns after filing for bankruptcy?

Your Licensed Insolvency Trustee (LIT) will prepare a pre-bankruptcy tax return for the year from January 1 to the date of bankruptcy and any tax refund for that period, as well as refunds from previous years that you have not yet received, will be sent to the LIT and paid to your creditors. A post-bankruptcy tax return from the date of the bankruptcy to December 31 may be completed by the LIT. Any refund resulting from this tax return will also be distributed by to the LIT to your creditors, and you must pay any taxes owed on this return whether or not you've been discharged from bankruptcy.

HST and GST refunds

All GST/HST refunds will be sent to the LIT until you are discharged. If the funds collected by the LIT are sufficient to pay for the costs of the bankruptcy, the LIT will return your GST/ HST refund cheques to you.

Child tax benefit

You will continue to receive the child tax benefit if you were already receiving it prior to bankruptcy. While this benefit is included in calculating your surplus income, it is not seized by the LIT. If there is a delay in providing the LIT with your income tax information, there may be an interruption in receiving the child tax benefit.

Gifts, transfers of property and special treatment

Gifts or transfers of property to others up to five years prior to the date of bankruptcy are subject to review by the LIT and may be reversed by the court.

If a creditor or someone related to you received special treatment in the past 12 months, such as being paid while others were not, the LIT may demand repayment from them.

You must disclose to your LIT any such payments made during the past 12 months, and mention any transfers or sale of assets in the five years prior to the date of bankruptcy.

What happens if I win the lottery or receive an inheritance after filing for bankruptcy?

If you receive assets, such as lottery winnings or an inheritance, after filing and before being discharged from bankruptcy, these assets must be turned over to the LIT and will be shared among creditors. However, if the amount you have won or inherited is greater than the debts you owe, the LIT will return any surplus to you after your debts have been repaid.

APPENDIX IV:

Excerpts from the Bankruptcy and Insolvency Act (including bankruptcy duties, bankruptcy offences)

You are hereby notified of the duties imposed upon you by the *Bankruptcy and Insolvency Act* and other features of this Act that affect you in your capacity as a bankrupt. You are expected to study carefully the following **EXCERPTS FROM THE BANKRUPTCY AND INSOLVENCY ACT** - Sections 67, 158, 159, 178, 198, 199 and 200 of the *Bankruptcy and Insolvency Act*. Any breach of your duties could make you liable to prosecution.

EXCERPTS FROM THE BANKRUPTCY AND INSOLVENCY ACT

Section 67 - Property of the Bankrupt

(1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or



(b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the Income Tax Act, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy, but it shall comprise

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the Income Tax Act in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

(i) is not subject to the operation of this Act, or

(ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the Family Orders and Agreements Enforcement Assistance Act, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

According to the section above, unless specific assets are exempt from seizure under provincial laws, the LIT would be entitled to take possession of all other assets belonging to the bankrupt.

Section 158 - Duties of Bankrupt

A bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;

(i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;

(j) submit to such other examinations under oath with respect to his property or affairs as required;

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;

(m) examine the correctness of all proofs of claims filed, if required by the trustee;

(n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(n.1) inform the trustee of any material change in the bankrupt's financial situation;

(o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

(p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

The above duties require you to attend various meetings as described by the LIT and to provide the LIT with specific information and documentation. You will be required to provide the LIT with documentation related to assets, insurance and recent income tax records. If you were self-employed or involved in a business, you will be required to provide records for the business. Many of the duties described above will be completed before the LIT files the bankruptcy paperwork.

Section 178 - Debts not Released by Order of Discharge

(1) An order of discharge does not release the bankrupt from

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;

(a.1) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting therefrom;

(b) any debt or liability for alimony or alimentary pension;

(c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

(g) any debt or obligation in respect of a loan made under the Canada Student Loans Act, the Canada Student Financial Assistance Act or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred

(i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or

(ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student;

(g.1) any debt or obligation in respect of a loan made under the Apprentice Loans Act where the date of bankruptcy of the bankrupt occurred

(i) before the date on which the bankrupt ceased, under that Act, to be an eligible apprentice within the meaning of that Act, or

(ii) within seven years after the date on which the bankrupt ceased to be an eligible apprentice; or

(h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g.1).

Court may order non-application of subsection (1)

(1.1) At any time after five years after the day on which a bankrupt who has a debt referred to in paragraph (1)(g) or (g.1) ceases to be a full- or part-time student or an eligible apprentice, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

Claims released

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

It is very important to understand that these debts described above are not eliminated by bankruptcy and you will still have to repay these debts after you've been discharged from bankruptcy.

Section 198 - Bankruptcy Offences

(1) Any bankrupt who

(a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,

(b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,

(c) makes a false entry or knowingly makes a material omission in a statement or accounting,

(d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,

(e) after or within one year immediately preceding the date of the initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,

(f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or

(g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Failure to comply with duties

(2) A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable

(a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

The above offenses include fraudulently disposing of or concealing assets and knowingly providing false information to creditors and to the LIT.

If you believe that any of your actions relate to any of the above categories, you should discuss the matter with your LIT immediately.

Section 199 - Failure to Disclose Fact of Being Undischarged

An undischarged bankrupt who

(a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or

(b) obtains credit to a total of $1,000 or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offense punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

This section means that if you enter into any financial obligation during your bankruptcy, you must first advise the other party that you are bankrupt.

Some examples of this would be:

- You have a business and accept deposits for work to be done by that business;
- You obtain credit for $1,000 or more;
- You wish to lease a car during bankruptcy.

Section 200 - Bankrupt Failing to Keep Proper Books of Account

(1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if

(a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or

(b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.



Proper books of account defined

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stock-takings.

This section emphasizes the need for anyone who is or has been bankrupt to keep proper books and records for any business venture they are involved in and to ensure that all information provided to the LIT is accurate and truthful.

Section 159 - Where Bankrupt is a Corporation

Where a bankrupt is a corporation, the officer executing the assignment, or such

(a) officer of the corporation, or

(b) person who has, or has had, directly or indirectly, control in fact of the corporation as the official receiver may specify, shall attend before the official receiver for examination and shall perform all of the duties imposed on a bankrupt by section 158, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

This section only applies to situations where the bankrupt is a corporation or limited company. In such cases, one or more of the officers of the company would be required to perform the duties set out in Section 158.

NOTE: You are also notified that, under the Canada Corporations Act and the Companies Act of your local province, you may not be the director of a limited company if you are undergoing bankruptcy proceedings and have yet to be discharged from bankruptcy.



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