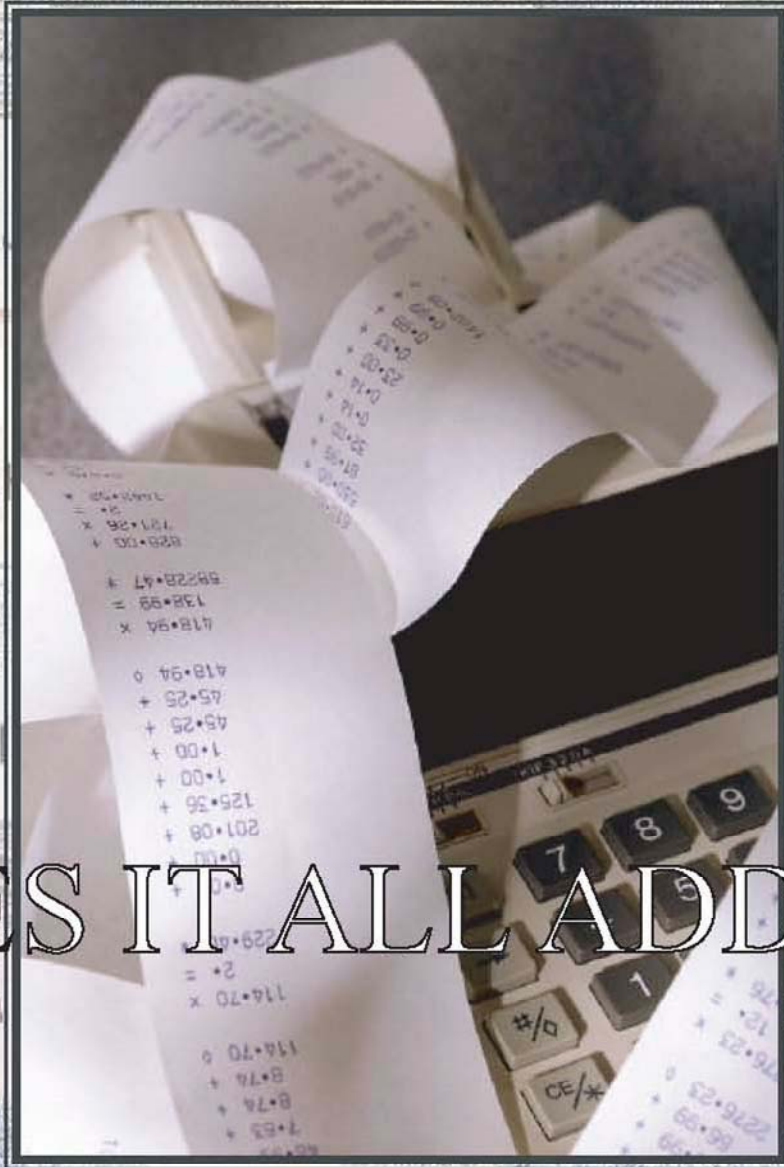


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# CONSUMER PROPOSAL



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## DOES IT ALL ADD UP?

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## **WHAT IS A CONSUMER PROPOSAL?**

A consumer proposal is a contract made between you and your creditors to extend the time for payments or to settle your debts for less than the total amount owing. The terms of the contract made with your creditors will be based on your financial circumstances. You may for example ask the creditors to accept a certain number of cents on the dollar over a period of 2-3 years. A proposal is made to all of the creditors but does not affect the rights of secured creditors (i.e. if you own a home with a mortgage and wish to keep the home you will have to continue to pay the mortgage). The proposal can take no longer than 5 years to complete.

## **WHAT WILL HAPPEN TO MY ASSETS?**

In a consumer proposal your assets remain yours unless otherwise specified in the proposal. You can use assets to help fund your consumer proposal if you wish. For instance, you may be able to re-finance the mortgage on your home to provide funding for the proposal. Although the assets remain yours, the value of the assets will be considered in determining the amount to be offered to your creditors.

## **AM I ELIGIBLE TO FILE A CONSUMER PROPOSAL?**

A person who is bankrupt or “insolvent” and who owes \$250,000 or less, *excluding* mortgages on their principal residence, may file a consumer proposal.

The term insolvent is used to describe someone who:

- is unable to pay debts as they become due;
- has ceased paying their current obligations;
- whose property, if sold at fair market value, would not cover all the debts they owe;
- who owes at least \$1000; and
- who is not bankrupt and resides, carries on business, or has property in Canada

## **HOW DO I FILE A CONSUMER PROPOSAL?**

We will meet with you and ask that you provide us with the following:

- A list of all of your creditors, including account details, balances, and security;
- A list of all your assets;
- Details of your net monthly income and household expenses

We will use all the information you provide to help determine a reasonable proposal to make to your creditors given your particular circumstances. The size, number and frequency of payment will depend on your ability to fund the proposal.

We will draft the following for your review and comment:

- Proposal;
- Statement of affairs (assets, liabilities, pertinent information, and a summary of income and expenses);

- Schedule of projected cash flow in proposal

Once you are satisfied with the terms of the proposal, final copies are signed and filed with the Superintendent of Bankruptcy.

The Superintendent of Bankruptcy will appoint the Administrator and notices of the proposal, the proposal, the statement of affairs, proof of claim and a voting letter will be mailed to all of your creditors. The creditors then have 45 days in which to review the proposal and cast their vote. Each unsecured creditor is allowed one vote for every dollar of claim.

### **WILL THE CREDITORS CONTINUE TO CONTACT ME DURING THIS TIME?**

Your creditors may continue to contact you until they realize that you have filed a proposal. If you are contacted, tell your creditors what you have done and direct them to our office if they have questions. Notices of the proposal are to be mailed to creditors within five business days following the start of the proposal. As well, once the proposal has been filed with the Superintendent a stay of proceedings comes into effect. This stay of proceedings prevents your unsecured creditors from initiating or continuing legal action against you to enforce collection of a pre-proposal debt.

### **HOW DO CREDITORS VOTE ON THE PROPOSAL?**

During the 45 day period after the proposal has been filed creditors may vote on the proposal by completing a voting letter indicating their support and returning it to the Administrator. If at the end of the 45 day period the creditors have voted in favour of the proposal and there is no obligation to call a meeting of creditors then the proposal is deemed to be accepted by the creditors.

### **WHAT IF SOMEONE VOTES “NO”?**

At the end of the 45 day period if the Superintendent of Bankruptcy has requested it or if creditors having 25% in dollar value or more of the total claims proven to that date have voted no or requested it then the administrator is required to call a meeting of the creditors. The purpose of the meeting is to vote on the acceptance of the proposal. Amendments to the proposal may be introduced at this time. At the meeting any concerns of creditors can be addressed and any amendments to the proposal can be made. You will be required to attend the meeting.

At the end of the meeting a vote will be taken. If the majority of creditors vote to accept the proposal then the proposal moves onto the next stage of Court approval.

### **HOW DO WE GET COURT APPROVAL?**

In most cases when a proposal is accepted by the creditors there is no requirement for active Court approval. If after 15 days following approval of the proposal by creditors, no one has asked for court review and approval of the proposal, it is deemed approved by the Court. An application to the Court will only be necessary if the Superintendent or any other interested party requests so within the 15 day period.

## **WHEN DO I BEGIN MAKING PAYMENTS?**

The payment schedule should be outlined in the proposal. In most cases a payment is required when the proposal is signed and then once a month thereafter until a portion of the administrator's fees and disbursements are paid. Beyond that, payments may be required on a monthly basis, or at the time of sale of an asset. The frequency and size of payments will be defined in the terms of the proposal.

## **WHAT HAPPENS IF I MISS A PAYMENT?**

Section 66.31(1) of the *Bankruptcy and Insolvency Act* states that if the proposal provides for payments to be made monthly and you miss 3 months payments, the proposal is deemed to be annulled. This deemed annulment has two effects:

- The stay of proceedings is lifted. This allows your creditors to begin collection proceedings
- You may not make another consumer proposal until the claims of all those creditors involved in the annulled proposal are satisfied.

## **HOW WILL A PROPOSAL EFFECT MY CREDIT RATING?**

Credit ratings range from R-1 (best) to R-9 (worst). Filing a consumer proposal will result in an R-9 rating. It will improve to an R-7 rating when you complete the terms and continue as such for 3 years.

## **WHAT ABOUT COUNSELLING?**

You will be **required** to attend two counselling sessions. These sessions will cover a variety of topics concentrating on money management and other financial matters. The first of the sessions must be completed before 60 days of the proposal passes and the second counselling session must occur before 210 days pass.

## **WHEN DOES ALL THIS END?**

Once the terms of your proposal are completed the Administrator will issue a Certificate of Full Performance of Consumer Proposal. This certificate discharges you from liability from all debts except those outlined in Section 178 of the *Bankruptcy and Insolvency Act*. You should have your credit report updated to include this certificate.

## **ARE ALL OF MY DEBTS RELEASED ?**

In most cases all of the debts brought with you into a proposal are released. However, there are some outlined in Section 178 of the BIA which are not released, as follows:

- Fines, penalties, restitution orders
- A debt or liability for alimony, family support or maintenance
- A debt or liability arising from fraud, embezzlement, or misappropriation of funds

- A debt or liability for obtaining property by false pretense
- Liability for the dividend payable to a creditor who should have been included in the proposal.
- Student Loans if the bankruptcy occurs within seven years from the time which the debtor ceases to be a full or part-time student.
- An award of damages in a civil proceeding from intentionally inflicted bodily harm or wrongful death.
- Overpayments of Employment Insurance Benefits, less penalties.

The preceding information is provided simply as a guide to the personal bankruptcy process. We do not intend that this information is exhaustive in its coverage of the foregoing topics. For further information as to how bankruptcy may affect your personal circumstances, please contact:

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