

Understanding the Consumer Proposal Process

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Financial difficulties can arise at any time. For most people, the decision between filing a bankruptcy or a Consumer Proposal is a serious and confusing one. For information on the bankruptcy process please refer to our publication titled *Understanding the Bankruptcy Process*.

We at BDO recognize the need to understand the Consumer Proposal process and its associated risks. The purpose of this booklet is to explain in simple terms the duties, the restrictions and the responsibilities imposed on a person who files a Consumer Proposal.

The provisions of the Bankruptcy and Insolvency Act ("the Act") dealing with Consumer Proposals are intended to help reduce the number of bankruptcy filings by allowing the consumers who owe less than \$75,000 (excluding mortgages on their principal residences), to negotiate with their creditors for the reduction of their debt and/or for an extension of the time for payments of their debts. The procedure to be followed for Consumer Proposals is very streamlined.

What is a Consumer Proposal?

A Consumer Proposal is a legal process which provides a debtor or a bankrupt with an opportunity to modify his/her payments to creditors by extending the time for payment or reducing the amount to be paid, usually over a period of time.

What is the purpose of a Consumer Proposal?

The purpose of a Consumer Proposal is to give a debtor or a bankrupt an opportunity to make a settlement with his/her creditors while avoiding bankruptcy. Executions, garnishees, and other actions by creditors will be stopped once the Consumer Proposal is filed.



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Who can make a Consumer Proposal?

To qualify to make a Consumer Proposal a debtor must owe between \$1,000 and \$75,000 (excluding the mortgages on a personal residence). If the debts exceed \$75,000, there are other provisions of the Act to deal with these debts.

An individual who has filed an assignment in bankruptcy may make a Consumer Proposal, if the Inspectors, if any, have given their approval.

A joint Consumer Proposal may be filed by two or more individuals, if the Consumer Proposals can be reasonably dealt with together because of the financial relationship of the consumer debtors involved (e.g. married couple, common-law partners).

Major Steps in a Consumer Proposal

Contact a Trustee

The first step in the process is to contact a Trustee in your local BDO office. A Trustee is an individual or corporation who is licensed by the Government to administer bankruptcies and Proposals.

The Trustee will inform you of the effects of a Consumer Proposal and will prepare the necessary documents to file the Consumer Proposal with the Office of the Superintendent of Bankruptcy.

Notification

Upon filing of the Consumer Proposal with the Superintendent, the Trustee will send a notice of the Proposal, together with a copy of the Consumer Proposal and some financially relevant personal information of the debtor, to all known creditors. At the time of filing a Consumer Proposal, a creditor is prohibited from instituting or continuing any legal action unless they obtain permission (leave) from the Bankruptcy Court. Interest on the amounts owing to the creditors stops accruing at the time of filing the Consumer Proposal.

Voting

The unsecured creditors will have up to forty-five days to request a meeting to vote on the Consumer Proposal. If creditors do not respond, they will be considered to have accepted the Consumer Proposal.

Unsecured creditors may request a meeting. If the unsecured creditors requesting a meeting are owed more than 25% of the total value of creditors who have responded to the Consumer Proposal, the Trustee will arrange a meeting to vote on whether to accept or reject the Consumer Proposal. At the meeting, if the majority in value of the unsecured creditors, who are voting, accept the Consumer Proposal, it will become binding on the debtor and all creditors.

When a Consumer Proposal is accepted by the creditors, it is deemed approved by the Court after fifteen days have expired, unless a court hearing to approve the Consumer Proposal is requested.

What happens if the Consumer Proposal is rejected?

If the creditors reject the Consumer Proposal, the debtor will no longer be protected by the Act and the creditors will again be able to take steps to recover their debts. The debtor cannot file another Consumer Proposal. At that time, the debtor may wish to consider other alternatives, with the assistance of the Trustee.

Counselling

The Trustee will arrange for two counselling sessions during the Consumer Proposal. The counselling will help you understand the cause(s) of your financial difficulty, which sometimes is non-budgetary. These sessions will also provide information to assist you in managing your financial affairs in the future. You must attend both of the counselling sessions. Additional counselling is available if you need more assistance.

Payments

Once the Consumer Proposal is accepted, the debtor will make the payments to the Trustee, as provided for in the Consumer Proposal. This may involve a one-time lump sum payment or monthly payments for a period of no more than five years or a combination of both.

Dividend payments will be made by the Trustee to the creditors in accordance with the terms of the Consumer Proposal.

Once all payments under the Consumer Proposal have been made, the Trustee will issue a certificate which shows that the terms of the Consumer Proposal have been completed. **Any balance still owing to the unsecured creditors, with the exception of debts listed in Section 178 (see page 7), is legally forgiven.**

What happens if the debtor stops making the payments?

The Consumer Proposal will be in default:

- ◆ If you are required to make monthly payments and three of the monthly payments under the Consumer Proposal are missed, or
- ◆ If you are required to make the payments less frequently than monthly and you miss any payment for more than three months,

The creditors will again be able to take steps to recover their debts, less any payments paid to them during the Consumer Proposal.

What happens if the debtor's circumstances change?

The debtor is required to advise the Trustee of any changes in his/her circumstances that could jeopardize his/her ability to make the payments required under the Consumer Proposal. However, this will not change the amounts to be paid as agreed to in the Consumer Proposal.

How long will the Consumer Proposal last?

A Consumer Proposal can be made for any period up to a maximum of five years.

Does the debtor require a lawyer?

Generally, a lawyer is not required. However, if the debtor feels the need for legal advice, he/she may retain a lawyer.

How are secured creditors dealt with?

If a creditor has a lien on any assets (known as a secured creditor), the debtor may wish to do one of the following:

- ◆ surrender the asset to the secured creditor and obtain a receipt. Any balance left due after the asset has been sold by the creditor may or may not be a claim in the Consumer Proposal, depending on Provincial legislation, or
- ◆ make arrangements to pay the secured creditor in order to keep the asset.

How does a Consumer Proposal affect co-signers?

Consumer Proposals will not cancel the liability of anyone who has guaranteed or co-signed any loans. These guarantors will still be responsible for the debts less any payments the creditor receives from the Consumer Proposal.

What happens to the debtor's assets?

The assets generally remain with the debtor. This includes any assets acquired during the term of the Consumer Proposal such as gifts, inheritance or winnings.

What happens to the credit cards in the possession of the debtor?

The credit cards generally remain with the debtor. However, one should recognize that the granting of the credit cards is a privilege provided at the option of the credit company. When the credit card company learns about the Consumer Proposal they may suspend this privilege.

What happens to the debtor's credit rating?

Once the level of debt has become so great that a Consumer Proposal is required, the credit rating is usually at its lowest. The ability to obtain and use credit after completion of the Consumer Proposal will depend upon the debtor's ability to convince a potential lender of his/her future personal financial maturity.

Who pays the Trustee?

The Trustee's fee is based on a tariff set by the Government. It is deducted from the amounts paid by the debtor and before payments are made to the creditors.

A summary of the steps in the Consumer Proposal process

- ◆ Contact the Trustee and file the Consumer Proposal.
- ◆ The creditors vote on the acceptance of the Consumer Proposal.
- ◆ Once the Consumer Proposal is accepted, the debtor makes payments to the Trustee, who in turn makes payments to the creditors according to the terms of the Consumer Proposal.
- ◆ If the Consumer Proposal is not accepted, the debtor will have to consider other alternatives.
- ◆ If the debtor defaults in his/her payments, the Consumer Proposal will be annulled.
- ◆ Attend counselling sessions as required.
- ◆ Once the payments are completed, the Trustee issues a Certificate of Full Performance of Consumer Proposal.

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 offense, 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;
 - (c) any debt or liability under a support, maintenance or affiliation order 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;
 - (e) any debt or liability for obtaining property by false pretenses or fraudulent misrepresentation;
 - (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 ten years after the date on which the bankrupt ceased to be a full- or part-time student, or
 - (h) any debt for interest owed in relation to an amount referred to in any of paragraph (a) to (g).
- (1.1) At any time after ten years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, 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 loan; 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 liabilities under the loan.
- (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 the debts described above are not affected by a proposal and that the debtor will still be liable for any balance still owing on these debts.

Notes:

BDO Insolvency Offices across Canada

Alexandria	613-235-5225	Medicine Hat	403-328-5292
Alliston	705-435-5585	Milton	905-864-6512
Arnprior	613-235-5225	Mississauga	905-615-8787
Barrie	705-726-6331	Newmarket	905-898-5950
Belleville	613-966-8052	Niagara Falls	905-358-7335
Bracebridge	705-645-7412	North Bay	705-495-2000
Brampton	905-457-2042	North York	416-221-3873
Brandon	204-727-0671	Oakville	905-844-3206
Brantford	519-751-0499	Orangeville	519-938-8630
Burlington	905-637-8554	Orillia	705-325-7964
Calgary	403-266-4292	Orleans	613-235-5225
Calgary NE	403-266-4292	Oshawa	905-436-9100
Cambridge	519-624-2147	Ottawa	613-235-5225
Capilano	780-428-1671	Owen Sound	519-372-0188
Chatham	519-354-1560	Parry Sound	705-774-9184
Cobourg	705-742-7560	Penticton	250-492-6020
Collingwood	705-446-0503	Peterborough	705-742-7560
Cornwall	613-235-5225	Port Coquitlam	604-340-7772
Cranbrook	250-426-4285	Revelstoke	250-837-5225
Edmonton	780-428-1671	Rockland	613-235-5225
Edmonton (West-end)	780-428-1671	Salmon Arm	250-832-7171
Embrun	613-235-5225	Sarnia	519-336-9900
Essex	519-776-6488	Sault Ste Marie	705-945-0990
Etobicoke	416-741-9150	Smith Falls	613-235-5225
Exeter	519-235-4776	Squamish	604-892-9424
Fort Erie	905-991-0000	St. Catharines	905-984-5424
Grande Prairie	780-539-3810	Stoney Creek	905-664-6370
Guelph	519-824-9899	Strathroy	519-245-1919
Hamilton	905-524-1008	Sudbury	705-671-3336
Hamilton Mtn.	905-388-2253	Surrey	604-584-2121
Hanover	519-372-0188	Thunder Bay	807-623-1555
Huntsville	705-789-0673	Toronto	416-865-0210
Kamloops	250-372-9505	Trenton	613-966-8052
Kanata	613-235-5225	Uxbridge	905-852-9714
Kelowna	250-763-6700	Vancouver	604-688-5421
Keswick	905-898-5950	Vernon	250-545-2136
Kitchener/Waterloo	519-570-4000	Welland	905-735-6433
Langley	604-534-8691	Whistler	604-932-3799
Lethbridge	403-328-5292	Windsor	519-944-6900
Lindsay	705-324-7559	Winnipeg	204-956-7200
London	519-660-6540	Woodstock	519-539-0500
Markham	905-946-1066		

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Understanding the Consumer Proposal Process is a publication of BDO Dunwoody Limited, and is prepared as a guide to Consumer Proposals under the *Bankruptcy and Insolvency Act*.

This edition is based on legislation in place as of January 1998, however, certain material may be affected by provincial laws. Copies of this booklet and additional information can be obtained from your nearest BDO office. For information on the office nearest you, please contact:

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