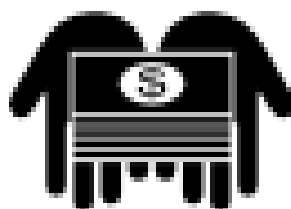




Type of law:
CIVIL LAW

A 2018 Alberta Guide to the Law

Debt, Collections, & Bankruptcy



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GENERAL

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BANKRUPTCY AND DEBT

FAQS

BANKRUPTCY

WHAT IS BANKRUPTCY?

TO BE BANKRUPT A PERSON MUST EITHER:
OWE AT LEAST OVER \$1000 AND BE UNABLE TO PAY THEIR BILLS AS THEY COME DUE OR;
HAVE LIABILITIES THAT EXCEED THEIR ASSETS

ALTERNATIVES TO BANKRUPTCY

TALK TO CREDITORS DIRECTLY TO WORK SOMETHING OUT
INFORMAL AGREEMENTS
CONTACT MONEY MENTORS
CONSUMER PROPOSALS

REMEMBER... A bankruptcy can stay on a person's credit bureau for 7 years

WHAT IS DEBT?

DEBT REFERS TO MONEY THAT A DEBTOR OWES TO ONE OR MORE CREDITORS

A DEBTOR IS A PERSON, GROUP, OR ORGANIZATION, WHO OWES MONEY

A CREDITOR CAN BE A PERSON, GROUP, OR ORGANIZATION, WHO IS OWED MONEY BY THE DEBTOR

REMEMBER... It can be difficult to get credit in the future if you do apply for bankruptcy

DEBT COLLECTION

Collection Agencies are companies that try to collect money for other people or companies

All collection agencies have to be licensed and are regulated by the Minister of Fair Trade.

There are a number of limitations on what a collection agent can do, these can be found in the Debt Repayment Practices Regulation

Remember....

Generally, a collection agency cannot threaten to sue you. *Unless the debt is assigned to them*

The police do not become involved in debt collection

Collection agencies can only take your property if it has been put up as security

If you think you have been mistreated you can contact the AB Government: Consumer Information Division

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NOTE: Examples provided in this pamphlet are only meant to illustrate general definitions and ideas but are simplified and do not encompass the full complexity of debts and the issues involved.

Debt

Debt refers to money that a debtor owes to one or more creditors. A **debtor** is a person, group, or organization, who owes money. A **creditor** can be a person, group, or organization, who is owed money by the debtor. There are some reasons a debtor owes money, such as:



- The debtor borrowed money from a creditor, who expects the money back.
 - **Example 1:** John Doe used a \$5,000 line of credit from the bank. John, the debtor, has a debt of \$5,000 that he owes the bank, the creditor.
 - **Example 2:** John Doe borrowed \$10,000 from his sister, Jane Doe. John, the debtor, has a debt of \$10,000 that he owes Jane, the creditor.
- The debtor borrowed or used something that the creditor expected to be returned or else be compensated for if the debtor lost, damaged, or did not return it.
 - **Example 1:** John Doe borrowed a book from the library. The book is worth \$20, and John does not return the book by the due date because he lost it and cannot find it. John, the debtor, now owes the library, the creditor, \$20 plus any late penalties.
 - **Example 2:** John Doe borrowed a \$1200 laptop from his friend, James Smith. When James lent the laptop, John agreed that he would return it in the same condition and would pay for any repairs or a replacement if something happened. John drops the laptop, and it is damaged beyond repair. John now owes James a new laptop or the value of a comparable replacement.
 - **Note:** Even if John and James did not make an explicit agreement regarding repairs or a replacement, James could potentially file a claim in court to sue John for the loss of the laptop.
- The debtor bought something but could not pay the full sale value right away, so the creditor agrees to be paid later or in installments.
 - **Example 1:** John Doe bought a new \$50,000 truck from Auto Car Sales. He does not have the full \$50,000, and he does not want to ask the bank for a loan, so Auto Car Sales agrees to let John make a down payment of \$14,000 first and then \$300/month for 10 years, with no interest (they were being very nice). Right after making the down

payment, John, the debtor, has a debt of \$36,000 owed to Auto Car Sales, the creditor. Every month after that, his debt goes down by \$300 unless he misses a payment.

- **Example 2:** John Doe wants to buy a \$3,000 car from his sister, Jane Doe. They agree that John can pay \$200 a month, with no interest and no down payment. John, the debtor, has a debt of \$3,000 owed to Jane, the creditor.



Secured Debt

A debt is considered **secured** if the debtor agrees to give the creditor all or part of a property that the debtor already has, other than cash if the debtor does not pay off their debt properly. The property that the debtor uses as collateral and agrees to give the creditor if the debt is not paid off is called a **security**.

A brief example of a secured debt is when a debtor asks the bank for a loan and promises to make payments on time. However, if the debtor misses payments, the bank can repossess the home and sell it to pay out the loan. In this example, the bank is the creditor, and the debtor's house is the security used so that the debtor obtains a secured debt (the loan) to the bank.

Unsecured Debt

A debt is **unsecured** when no security is set up as collateral by the debtor to borrow from the creditor. Often, unsecured loans involve less paperwork but are smaller in sum than secured loans. However, unsecured debts can be riskier as, if the debtor declares bankruptcy, dies, or disappears, the order of repayment begins with secured debts first.

Collections

Collection Agencies

Creditors may use a collection agency to try and collect money from debtors who have not been repaying their debt properly. Collectors are the employees of these agencies and are a business and perform the collections from the debtors. A collection agency may also be used by debtors to manage debt repayment and the employees acting for debt repayment are called debt repayment agents.

If the collection agency is working for the creditor, they must have a collection agency licence and their employees will need a collector's licence. If a collection agency is helping with debt repayment, they must hold a debt repayment licence, and their employees will need a debt repayment agent's licence. To operate collection agencies must have a license. The license can be either for helping creditors in collecting debts owed or for helping debtors with debt repayment, but not for both. Similarly, their employees *cannot* hold both a collector's licence and a debt repayment agent's licence at the same time. A collector must renew their licence annually and present their licence to a debtor or creditor.



Limitations on Collection Agencies

Collection agencies and their employees can do many things to try and deal with collection or repayment of a debt; however, the *Collection and Debt Repayment Practices Regulation* does set out rules and limitations that prohibit certain practices, such as:

- To act for a creditor, an agency must have a reasonable belief that the debtor actually owes the creditor money and that the money is overdue.
- Agencies cannot charge their client fees beyond what they have discussed and approved.
 - Agencies acting for creditors cannot charge fees to a debtor other than the debt unless the debtor gives them a bounced cheque and the debtor knew it would not clear.
- Agencies and employees must give a contact number where messages can be left, as well as their full name and license information on all correspondences to debtors and creditors.
 - Agencies must also give enough information to a debtor to ensure that they know who the creditor is, what the debt is for, and how much the debt is.
- Agencies cannot make agreements or arrangements without their client's express consent.
- Agencies must give written reports of the status of the account to their clients.
- Agencies cannot contact debtors between 10pm and 7am in Alberta and must be reasonable in how they contact debtors as they cannot use misrepresentation, misleading information (even if they indirectly imply it), harassment, intimidation, or undue pressure tactics to get a debt repaid.
- Agencies can contact those linked to the debtor **only** to obtain the contact information of the debtor, and they cannot share information about the debt with anyone other than the debtor, the debtor's representative, a creditor, or someone approved by the debtor to receive information.
- Once an issue is going to court, agencies can contact the debtor's employer to confirm the employment status and information.

- If a debtor has shown that they do not want to be contacted at work and are reasonably willing to discuss the debt elsewhere, the agency has to respect that.
- Agencies cannot continue to collect or try to collect or communicate with people who have informed the agency that they are not the debtor unless agency/collector has taken reasonable steps to confirm that the person is actually the debtor.
 - Agencies also cannot continue to collect or try to collect or communicate with a debtor if they have informed them that the debt is in dispute and the matter will be going to court.
 - Agencies cannot continue to contact a debtor if the debtor has provided written information that they have a representative who will be handling the issue of the debt on the debtor's behalf, along with the representative's contact information.
- If a debt has been untouched and unacknowledged by the debtor for 2 years and there was no court order regarding the debt, an agency cannot pursue the debtor for this.
- Collection agencies for debt repayment must inform debtors within 30 days of a creditor informing them that they are not taking part in the debt repayment program.



Civil Enforcement Agencies

Civil enforcement agencies are not the same thing as collection agencies. Civil enforcement agencies are guided by different statutes, the *Civil Enforcement Act* and the *Civil Enforcement Regulation*. While collection agencies try to collect debts without having to bring a matter to court, a civil enforcement agency is often the last resort to collect on debts. As well, when a judgment from the Court is issued civil enforcement agencies will often help the creditor realize on the debt owed.

In order to enlist a civil enforcement agent a person must have a judgment obtained in court against the debtor. Or a person must have entered into a security agreement against a debtor that has a provision for a civil enforcement.

If someone owes you money through a judgment from the courts, it can be helpful for you to get a **‘financial statement of debtor form’** from the person who owes you money. You can serve the debtor with the form, and they must respond within 15 days with correct and full information. This form requires the debtor to list where they work, any hobbies that make them income, and their assets. This allows a creditor to know when and/or where a debtor is receiving money from.

Bankruptcy and Insolvency



Bankruptcy

Filing for bankruptcy is a process outlined by the *Bankruptcy and Insolvency Act*. By filing for bankruptcy a person signs over all of their assets (with some exclusions) to a bankruptcy trustee, sometimes just referred to as a trustee. Actions from an unsecured creditor stop once a person declares bankruptcy.

For a person to apply for bankruptcy, they must be considered **insolvent**. To be insolvent, a person must owe at least over \$1,000 and be unable to make payments on their debt as they become due or have liabilities that exceed their assets. An example of having liabilities exceeding assets would be if a person has lots of equity tied up in their home, but are unable to make their credit card or debt payments because they cannot access that money.

If the property is security for a loan, then the creditors could take that property. If a creditor did not receive any property from a person as security, then that creditor is an unsecured creditor. An unsecured creditor can only commence legal action against an individual if there is permission from the Court to lift the pause on proceedings which usually occurs where fraud is involved.

There are certain types of property that creditors cannot take including:

- Food required for persons and their dependents for the next 12 months after declaring bankruptcy;
- Necessary clothing for a person and their dependents up to a value of \$4000;
- Household furniture and appliances up to a value of \$4000;
- One motor vehicle not worth more than a value of \$5000;
- Medical and dental aides required by a person and their dependents;
- If a person is a farmer, and their sole source of income is farming, creditors must leave the farmer with at least 160 acres of land;
 - Also, a farmer can keep any personal property for performing the farming work for 12 months after filing for bankruptcy.
- The equity in a principal home, including a mobile home, up to \$40,000;
 - If the person filing for bankruptcy is a co-owner, the amount taken is reduced to the proportion of what they own.
- The personal property required for earning income can be retained by the person filing for bankruptcy up to \$10,000 in value (i.e., tools, equipment, and books).

Applying for Bankruptcy

To file for bankruptcy, a person may want first to contact a bankruptcy trustee to determine if they are eligible for bankruptcy. A trustee usually charges for service fees depending on how long they spend on a case. As well, if a person chooses to file for bankruptcy, a bankruptcy trustee will assist them in filing the necessary document with the court.

In Alberta, an individual can voluntarily seek a **Consolidation Order**. The Provincial Court would combine all of the person's debt and chooses how much a person must pay back to each creditor. The person would pay the determined amount to the court, and the court would make the payments on the individual's behalf.



When a person files for bankruptcy they are allowed a base amount for living expenses. If a person earns more than this base amount, then the trustee takes that money to pay the creditors. Including any money received from tax returns and any money earned from selling assets. The trustee will also take their fee from the proceeds.

After a person declares bankruptcy, they must provide a monthly accounting of income and expenditures to their trustee. As well, they must inform existing creditors and any future creditors or business partners that they have declared bankruptcy. If a person does not do this, they could be guilty of an offense and be liable to serve up to a year of imprisonment.

After a person declares bankruptcy, they may receive a discharge within 9 months, depending on their conduct in the bankruptcy and whether any creditors oppose the discharge. However, if a person has declared bankruptcy more than once, then this period could be longer. During the bankruptcy period, a person must pay a certain amount of money (depending on what they discuss with the trustee) each month to their various creditors. If a creditor can prove a claim then they will be part of the bankruptcy.

Once the bankruptcy period is over, the trustee can file for a discharge, which ends the period of bankruptcy. All remaining debt owed to creditors is wiped out, subject to certain exceptions (some examples would be spousal and child support and student loans etc.). However, a creditor can oppose a discharge and attempt to get further payment.



A person's Credit Bureau will reflect the bankruptcy for 7 years.

Court fines, child and spousal support, debts incurred by fraud and debts incurred during bankruptcy are not discharged through bankruptcy.

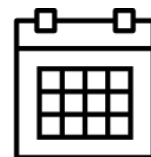
Alternatives to Bankruptcy

There may be other ways to solve a financial problem. Including talking to creditors directly to see if they will accept less for the debt owed. Also, an individual may speak to the loans manager at a bank to consolidate their debt. However, these are informal agreements, and may not necessarily be legally binding.



A person may also be able to contact **Money Mentors** (Ph: 1-888-294-0076). This program has counselors who help in finding others ways instead of declaring bankruptcy to pay off debt. This program offers the **Orderly Payment of Debts Program** which assists individuals in making payments schedules that satisfy the creditors. The program schedules are based on a person's cash flow and will have a fixed interest rate. With this program, a person is able to pay their debt in full with the assistance of a debt counselor. If a person is part of this program, they are protected from certain legal actions (i.e., garnishes).

If the creditor refuses the payment schedule, then the counselors can apply for a Consolidation Order through the Court. The creditor will have 30 days to object to the Order. After the Order is approved, an individual begins monthly payments to the Credit Counselling Services of Alberta who then makes the payments to the creditors on behalf of the individual.



Alternatives to Bankruptcy: Consumer Proposals

A common alternative to filing for bankruptcy for people with total debts that do not exceed \$250,000 is a consumer proposal. The benefits of this program are that actions against a person from unsecured creditors are stopped, and a person can keep their assets.

A consumer proposal is a binding legally process outlined in the *Bankruptcy and Insolvency Act* that started with the assistance of a Licensed Insolvency Trustee. For this process, the trustee will create a 'proposal' which offers creditors a lower payment overall. The term of payments for a consumer proposal cannot exceed five years. A trustee accepts the payments and in turn, pays the creditors.

When a person files a consumer proposal they must:

- Give the trustee a complete list of all of their assets (property) and liability (debts)
- Attend a meeting with the creditors (only if a meeting is requested)
- Commit to attend two financial counseling sessions
- Let the trustee know in writing of any address change
- Assist the trustee in creating the proposal

If a person wishes to file a consumer proposal, they must contact a trustee. The trustee will file the consumer proposal. At this point, the individual no longer has to make payments to the unsecured creditors. As well, any garnishments of wages are stopped. The trustee will also submit the proposal to creditors. The creditors have 45 days to accept or reject the proposal, this can happen either before or during the meeting of the creditors. The meeting of the creditors includes anyone who owns at least 25% of the debt. At the meeting creditors vote to either accept or refuse the proposal.

Once a person's consumer proposal is accepted, they are:

- Responsible for making payments to the trustee according to the agreement;
- Responsible for following the terms of the proposal;
- Able to retain their assets; and
- Required to attend two financial counseling sessions.



If a person's proposal is not accepted, they may:

- Change their proposal, and resubmit it;
- Research other ways to solve their financial problems; or
- Declare bankruptcy.

When a person files for a consumer proposal, they are automatically assigned the lowest possible credit score. The person may be able to qualify for credit at their financial institution, but it is unlikely.

Once a person meets all of the conditions of the proposal (including all payments), they will be legally released from the debts in the proposal. However, if a person missed more than three payments, the proposal can be annulled. This means that creditors would be able to request the entire debt remaining. Under certain conditions, a proposal may be revived.

A Division I proposal is similar to a consumer proposal. However, there is no limit on what can be owed.

WHO CAN I CALL FOR MORE HELP OR INFORMATION?

Legal Resources

Money Mentors

Edmonton:

Quikcard Centre

Suite 175, 17010 – 103 Avenue

Edmonton, AB T5S 1K7

Calgary:

Suite 150, 1200 – 59 Avenue SE

Calgary, AB, T2H 2M4

Red Deer:

United Way Building

4811 48 Street

Red Deer, AB, T4N 1S6

Lethbridge:

Idea Building

Suite 101, 1221 – 2nd Ave South

Lethbridge, AB T1J 0E4

Medicine Hat:

Suite 114, 640 – 3 Street SE

Medicine Hat, AB T1A 0H5

Grande Prairie:

Aberdeen Centre

#219, 9278 101 Ave

Grande Prairie, AB, T8V 5B6

Fort McMurray:

Suite 15B 10019 MacDonald Avenue

Fort McMurray, AB, T9H 1S9

Ph: 1-888-294-0076

Money Mentors is a not-for-profit organization in Alberta that helps people dealing with financial issues or who want to get better at managing their finances.