

TAKING CONTROL OF YOUR FINANCIAL LIFE

A Guide to approaching and resolving
personal financial problems

by Frank S. Kisluk, BA, CA
Trustee in Bankruptcy



Read this Guide if you are:

- ▶ Avoiding calls from creditors
- ▶ Relying on payday loans
- ▶ Losing sleep worrying about your debts
- ▶ Stressed and under constant pressure



SPERGEL

Insolvency • Restructuring • Consulting

Caution To Reader

Filing of a Bankruptcy or Proposal is a legal process. How your Trustee and creditors respond to your particular circumstances is determined by both written law (statute) and court decisions (common law). The law and rules change as the courts issue new decisions and the government changes policy. Therefore this Guide can only reflect the situation as it presently exists. Since this Guide explains only the most commonly-encountered issues, it is very important that you review your situation in detail with a Trustee before deciding on a course of action. This Guide should not be considered as providing legal advice. In matters requiring such advice, for your own protection, your Trustee should refer you to an independent lawyer who can advise you.

TAKING CONTROL OF YOUR FINANCIAL LIFE

A Guide To Approaching and Resolving Personal Financial Problems

**Frank S. Kisluk, BA, CA
Trustee in Bankruptcy**

**Senior Vice President
msi Spergel inc.
Insolvency & Restructuring Specialists**

TAKING CONTROL OF YOUR FINANCIAL LIFE

A Guide To Approaching and Resolving Personal Financial Problems

CONTENTS

	<u>Page</u>
INTRODUCTION	1
(A) TAKING CONTROL OF YOUR PERSONAL FINANCES	2
1/ Financial Assessment	2
2/ The Consolidation Loan	3
3/ Credit Counselling	4
4/ Informal Arrangements with Creditors	5
5/ Formal Arrangements Under The Bankruptcy & Insolvency Act	6
(B) ALL ABOUT BANKRUPTCY	6
1/ Two Ways Into Bankruptcy	7
2/ Filing For Bankruptcy Protection	8
3/ After the Filing	9
4/ Your Life While in Bankruptcy	10
5/ The Final Steps	11
6/ Debts Not Released By Bankruptcy	12
7/ Who is a Trustee?	13
8/ How To Choose A Trustee	13
9/ What Does A Trustee Do?	14

		<u>Page</u>
(C)	WHAT HAPPENS TO MY ASSETS?	15
1/	Home	15
2/	Household Goods	16
3/	Clothing	16
4/	Automobile	17
5/	RRSP's, RRIF's and DPSP's	17
6/	Life Insurance	18
7/	Tool of the Trade	18
(D)	OTHER IMPORTANT MATTERS	19
1/	Credit Cards and Credit Ratings	19
2/	What Happens To My Income Taxes?	20
3/	What Happens To My Income & My Job?	21
4/	Payments from Income	21
4/	Period until Discharge	22
5/	Wage Garnishments	23
6/	What Happens To My Rented Home & Leased Car?	23
7/	Lawsuits	24
8/	How Much Does Bankruptcy Cost?	25
9/	The Credit Bureau & How It Works	26
10/	What Collection Agencies Can and Cannot Do	27
(E)	PROPOSALS	
1/	Introduction	29
2/	The Steps of a Consumer Proposal	29
3/	If Consumer Proposal is Accepted	31
4/	The Ordinary Proposal	32
5/	The Steps of an Ordinary Proposal	32
(F)	REBUILDING YOUR CREDIT	34
1/	The Credit Bureau	34
2/	Your Banker	35
3/	Credit Cards	37
(G)	CONCLUSION	38

TAKING CONTROL OF YOUR FINANCIAL LIFE

INTRODUCTION

Are you constantly struggling to keep up payments on your debt? Are you feeling that your life is being controlled by your creditors?

There are THREE STEPS necessary to break out and regain control. STEP ONE is to acknowledge that the problem exists and recognize that, if you don't take action soon, things will only get worse.

STEP TWO is getting information. The more information you have about your rights, and those of your creditors, the easier it will be to sort out real concerns from those that are imagined. This information will also help you to understand the options that are available to you. Yes! You do have options!

Once you are able to separate fact from fiction, once you understand the choices available, you can then make an informed decision and take control of your financial life. Remember - you can take control and you do have options.

The THIRD STEP to overcoming financial distress is your active decision to take action. That decision will hopefully come more easily once you understand your options and their consequences.

For years I have taught good, honest, hard-working people - just like you - that confronting and overcoming financial problems can be the beginning of a new and positive life. You can rebuild to be more successful than you've ever imagined. I've seen it happen for more than thirty years.

(A) TAKING CONTROL OF YOUR PERSONAL FINANCES

1/ FINANCIAL ASSESSMENT

If you feel that you're losing control of your financial situation, there are some basic, essential steps that should be taken immediately. First, you can "stop the bleeding" by stopping your use of credit, buying only what you must and paying for it by cash or cheque. Until you get your financial life back on track, only make purchases that are absolutely essential.

Second, you should prepare a Personal Financial Assessment. This begins with a personal balance sheet that compares the total real value of your assets with your total debt. You should also prepare a Statement of Monthly Income and Expenses. This will show all of your family income and all of your necessary living expenses (before debt payments). You can then compare the amount of your income left over after living expenses with the amount of required payments on your debt. Obviously, if the debt payment is greater than the money available, you have a problem that must be solved.

2/ THE CONSOLIDATION LOAN

If your Personal Financial Assessment shows a surplus available to pay some money to your creditors, the next step may be to try to arrange what is known as a "Consolidation Loan".

A Consolidation loan is simply a new loan from one creditor, perhaps your banker or some other lender, for an amount equal to all of your debts. You can then use this new loan to pay off your other creditors. This can make sense when the monthly payments on the new loan are less than the total payments which you were making to those old creditors, and the interest charged is reduced.

Sound too good to be true? No! In fact, the earlier that you identify the problem, the greater the chances that you can do this.

If you cannot obtain a consolidation loan, consider going to see your creditors - face to face - and share the information in your financial assessment. Ask that the payments be reduced to an amount you can afford. It is realistic for you to expect your creditors to deal with you in this way. They will certainly respect you more for this approach than if you were simply making promises to pay and were unable to fulfil them.

3/ CREDIT COUNSELLING

A credit counsellor is a person who can provide valuable assistance to you in resolving your financial problems. The types of assistance available could include:

- 1. Helping you obtain a consolidation loan**
- 2. Helping you prepare your Personal Financial Assessment**
- 3. Dealing directly with your creditors to restructure your payments to a more affordable amount**
- 4. Reviewing your monthly expenses and helping you manage your money more effectively**
- 5. In some circumstances, arranging to receive one payment monthly from you and then distributing those funds among all of your creditors.**
- 6. Advising you on other options that are available and which may be necessary in certain circumstances, such as a proposal to your creditors or possibly a bankruptcy filing**
- 7. If a proposal or bankruptcy is needed, helping you through the process**

It is critical that you choose a credit counsellor with whom you feel comfortable and on whom you can rely. Often a counsellor is chosen through a recommendation of a friend or acquaintance.

4/ INFORMAL ARRANGEMENTS WITH CREDITORS

If you only have one or two creditors but still, the amounts you owe are too large to repay, you may try speaking to those creditors directly or through your credit counsellor about reducing the debts to a level that you can handle. If you present this option to your creditors, and show them that you can handle the lower level of debt and lower payment, they will probably compare that outcome with their position if they did not accommodate you and you were forced to file for bankruptcy protection. If you do make them an offer, make sure it's more attractive than their expected position in a bankruptcy. You must also be able to show them that you can meet the payments on the reduced amount of debt.

If you do get the creditors to "bite" at your offer, make sure to formalize it in a written agreement stating the new reduced amount of the debt, the rate of interest as well as the new terms of repayment.

This method of restructuring your payments is much easier if there are only a couple of creditors. Remember though, all creditors, rightly so, expect to be treated equally, so if you can't get them all to agree to the proposal, you might not get a commitment from any of the creditors.

If there are too many creditors to deal with, if you are unable to get them to agree to a reduction in debt, you should consider a more formal approach to the creditors through filing a Consumer Proposal or, if necessary, even a bankruptcy under The Bankruptcy & Insolvency Act.

5/ FORMAL ARRANGEMENTS UNDER THE BANKRUPTCY & INSOLVENCY ACT

If you are unable to settle your debt problems in any other way, you have two options under bankruptcy legislation. The Bankruptcy & Insolvency Act allows you to present a plan of rearrangement, called a proposal. This proposal is then offered to your creditors. With the necessary majority in favour, all creditors will be forced to accept your deal and you will be able to carry on with your life.

Sometimes there are just too many debts and simply not enough money to cover your necessary living expenses. In these cases, filing for bankruptcy protection is a very real option. In fact, this year more than 150,000 people in Canada will follow this route to settle their debt problems. Bankruptcy allows you to close a difficult chapter in your financial life and start with a clean page.

(B) ALL ABOUT BANKRUPTCY

If you can't pay your debts when they come due, you are technically "insolvent". In Canada today, there are hundreds of thousands of people who are having difficulty paying their bills when they are due.

An insolvent person becomes "bankrupt" when he or she starts a legal process through a trustee in bankruptcy.

The Bankruptcy & Insolvency Act is the federal statute that allows you to settle your debts through personal bankruptcy. It applies equally to all parts of Canada.

Bankruptcy protection is available to any individual who is insolvent and owes more than \$1,000. The legislation is there to allow the honest but unfortunate debtor an opportunity to come to a final settlement with creditors. After obtaining bankruptcy protection and settling with your creditors, you will be able to continue on with your life, unburdened by the debts of the past.

The Bankruptcy & Insolvency Act places a strong emphasis on your financial rehabilitation. Many features of the system are there to help you regain control of your financial life. If you're an honest debtor who has fallen on hard times, bankruptcy provides you with a positive and helpful route to recovery.

1/ TWO WAYS INTO BANKRUPTCY

An insolvent person usually becomes bankrupt in one of two ways:

The FIRST way into bankruptcy is to file an ASSIGNMENT; that is, you voluntarily file the necessary papers with a trustee and give, or assign, your assets (with some important exceptions) to the trustee to sell and distribute the proceeds (dividends) to your creditors. This is the most common route, and therefore, you usually only become "bankrupt" when you decide to file for bankruptcy protection.

The SECOND route to bankruptcy can be commenced by your creditors. You may have heard of someone being "PETITIONED" into bankruptcy. This means that one or more creditors asked or petitioned the court to have a person declared bankrupt. If the creditors can satisfy the court that a person owes at least \$1,000 and cannot generally pay debts

when due, the court can declare the person to be bankrupt and will appoint a trustee. In these situations, the petitioning creditor must guarantee the costs of the trustee and a solicitor. Because these costs will amount to several thousand dollars, this process is only used in extreme situations. If there are no assets which the trustee can sell to at least recover its costs, all the professional fees and costs will have to be paid by the creditor.

To summarize, unless a creditor petitions you into bankruptcy, usually you will be bankrupt only if you decide to do so.

2/ FILING FOR BANKRUPTCY PROTECTION

Once you have decided to confront your financial problems, you will have an initial assessment at the trustee's office. At that time, you will meet with your trustee who will answer your questions as well as get an understanding of your financial situation. The trustee will explain the differences between filing a proposal and bankruptcy. Of course, the decision to file for bankruptcy or not is yours.

Assuming that you have decided to file for bankruptcy protection, the next step is filing the assignment. When you sign this document, you assign, or give the trustee your possessions. The trustee will sell these assets and collect the money for future distribution to your creditors. However, not all assets are necessarily subject to seizure by the trustee. Every province has specific legislation that protects, within certain limits, your basic possessions such as your home, clothing, furniture, car and personal items. Be sure to refer to the section "WHAT HAPPENS TO MY ASSETS?" for specific answers.

You will also prepare a statement of affairs. This is really a net worth statement showing all your assets and liabilities, similar to the Personal Financial Assessment previously referred to.

All of this information is organized and prepared in the form of a “questionnaire” that you must complete before meeting with the Trustee.

After signing all the required documents, your trustee will file them with the local office of the Superintendent of Bankruptcy. It is at this time that you will be officially "bankrupt".

3/ AFTER THE FILING

After the filing, the trustee will mail a notice to your creditors advising them of your bankruptcy. Creditors must file a proof of claim with the trustee to be eligible to receive dividends and to participate in any proceedings. A proof of claim is a document which states the amount owed, with supporting papers to prove that claim. If a stated percentage of the filed claims request a meeting, a meeting of creditors will be held to consider the affairs of the bankrupt. Otherwise there is no requirement for a creditors' meeting.

If a creditor's meeting is held, its purpose is usually to give your creditors an opportunity to ask you questions and get a better idea of your financial situation. After all, they do have a right to know what's going on. Usually the meeting is held at the trustee's office and takes less than an hour. Don't worry, your trustee will oversee the meeting and make sure that everyone is proper and civil to one another.

Unless your non-exempt assets given to the trustee are worth more than \$15,000, the bankruptcy is not announced in the newspaper.

The notice to creditors also tells them that, unless someone objects to your discharge, you will automatically be discharged from bankruptcy in either nine or 21 months from the date of filing (for a first-time bankrupt). In fact, because all of your financial information has already been shared with your creditors, usually no creditors will request a meeting. The timing of your discharge is further explained under “Payments from Income & Period to Discharge” on page 21 -22.

4/ YOUR LIFE WHILE IN BANKRUPTCY

Once in bankruptcy, you must make monthly payments to the trustee based upon your income and family circumstances, provide the information needed to prepare your personal tax returns, and assist the trustee if any assets are to be sold. You will also attend two counselling sessions. Otherwise, if you do your best, you'll find your life will usually begin to run smoothly again. You must attend the counselling sessions to be eligible for automatic discharge from bankruptcy. This counselling is very helpful. Your trustee will give you information and advice on money management and other topics which can help your situation now and, more importantly, in the future while you're starting over! This is a good time to learn useful money management skills and identify the factors that contributed to your financial problems.

Finally, the time will come for your discharge from bankruptcy. You have made your monthly payments and have attended the counselling sessions. If the discharge is unopposed, the trustee will sign and provide you with a certificate of discharge. With that certificate of discharge, you're no longer bankrupt and you can go on with your life and build a strong, sound future.

Occasionally, a discharge will be opposed. Although opposition is infrequent, you are assured of a fair hearing before a judge. Your trustee will advise you as to the chances of an opposition and alert you to any possible problems when you first meet.

5/ THE FINAL STEPS

For your file to be completed, even if you've already been discharged, you must gather the information needed for your trustee to prepare your tax returns for the year of bankruptcy.

During your bankruptcy, the trustee maintained a separate bank account in your name. Your monthly payments, tax refunds, and other monies collected have been kept in this account. After the trustee's fees are paid, the balance of money is distributed and shared by your creditors (as dividends) according to the amount which you owed them.

After making payment to your creditors, your trustee will prepare a final report and be discharged. You and your trustee will then be finished with the matter of your bankruptcy ... who said "Breaking up is hard to do"?

6/ DEBTS NOT RELEASED BY BANKRUPTCY

Generally speaking, all of your personal unsecured debts - that is: credit cards, personal loans, income taxes and that sort of thing, are ended by bankruptcy. One important exception to this rule is a secured debt. The liability on a house mortgage or secured car loan, for example, will continue through and after bankruptcy. However, if those secured assets are returned to the secured creditor at the time that you file bankruptcy, your liability for any shortfall is an unsecured debt which is discharged in a bankruptcy.

Remember, bankruptcy helps honest debtors who are in unfortunate financial distress, so debts obtained through fraud are obviously not released simply by going through bankruptcy. Fraud can also be proved in situations where false information was given in order to receive a loan. For example, if you applied for a loan and gave a net worth statement that overstated your assets or did not list all of your debts, that creditor could object to your discharge by claiming that the loan was based on false information. If that fraud is proved, the debt will not be eliminated by bankruptcy and you would still be responsible for it afterwards.

Also, any debts imposed by a court order, including penalties and fines such as parking tickets, will not be discharged. And if you "forgot" to list a creditor when you filed, and that creditor learns of your bankruptcy after you've been discharged, you're still responsible but only for the payment that the creditor would have received from the trustee had that creditor been included in the bankruptcy.

And any liability for arrears and ongoing payments of alimony and support will also continue after bankruptcy. As well, the law does not permit you to compromise a student loan if the bankruptcy is filed within 7 years of graduating from school. Special rules apply to this situation and your Trustee will explain them.

So, with these exceptions, as long as your bankruptcy is an honest but unfortunate experience, all of your debts will be cleared up.

7/ WHO IS A TRUSTEE?

Trustees are licensed by the federal government and, in most cases, are Chartered Accountants who have specialized in the area of bankruptcy, met certain experience requirements, and have passed both written and oral exams to obtain their licences. Trustees are actually officers of the court. Once your bankruptcy is filed, the trustee's role is to represent all of your creditors and to make sure that the administration of your bankruptcy is carried out in accordance with the law. This means ensuring that both your creditors' rights and your rights are respected in the process. Your trustee will explain your rights as well as those of your creditors before you file bankruptcy to make sure that you have a thorough understanding of just what you're getting into!

8/ HOW TO CHOOSE A TRUSTEE

The actual mechanical bankruptcy procedure is going to be the same with whomever you have selected as your trustee. Because this is a difficult and stressful time for you, you should try to find someone who helps you feel comfortable and shows

an understanding of your emotional, as well as your financial, situation. Ask questions! Find out anything you can to ease your mind before choosing a trustee. Don't be intimidated when you meet ... remember, this is your financial life we're talking about.

9/ WHAT DOES A TRUSTEE DO?

When you first approach a trustee for advice and help, you will begin with an initial assessment. By reviewing your financial affairs, the trustee will be able to explain the options of a proposal and a bankruptcy and the implications of each. The trustee will also explain what will happen to your assets and your income if you do decide to file a proposal or bankruptcy.

After filing, the trustee represents your creditors in the legal process. You should therefore be frank and up front in disclosing all matters relating to your finances as well as your previous dealings with creditors. Only in that way can your trustee explain all the implications of filing to you.

If creditors want to ask any questions of you, they will have to do so through your trustee. Your trustee will, if applicable, liquidate your assets and eventually distribute the proceeds to your creditors. In general, the full administration of your bankruptcy is handled in the trustee's office, and even your final discharge papers will usually come from there.

(C) WHAT HAPPENS TO MY ASSETS?

When you file for bankruptcy, you must list all of your assets as well as all of your liabilities. In Canada there are provincial laws that protect certain assets from seizure, whether by your trustee, your creditors or even a sheriff.

The following reviews the assets that most people want to know about in case of bankruptcy and how a trustee deals with them. The laws of protection from seizure vary from province to province, but we'll look at them from an Ontario perspective.

1/ HOME

Your home is your castle. A trustee's interest in your home is usually limited to the amount of equity in your home at the time of your bankruptcy. Equity is the amount of money left over if you were to sell your home, after payment of any existing mortgages and tax arrears. If your home is owned jointly with your spouse and only you are filing for bankruptcy, the trustee's interest is limited to your one-half of the equity. Usually the trustee will be happy to sell its half-interest in the home to your friend or relative for the amount of equity. Otherwise, the Trustee will usually register on title, retain a one-half interest in the equity in the house and receive the equity at a later date when the mortgage is renewed or the house is sold. Remember that the Trustee's registered interest in your home is valued when the house is sold or when you are re-mortgaging to pay off the Trustee's registered interest, and that amount could increase or decrease, depending on the current state of the housing market.

If the real market value of your home is approximately equal to or even less than the existing mortgages, a trustee may have no interest in it and you can continue paying your mortgage and retain ownership with no other problems. Remember though, your mortgage is held by a secured creditor whose rights are spelled out in the mortgage document. If you fail to make payments as required, the mortgagee has all the rights outlined in the mortgage, including the power of sale.

2/ HOUSEHOLD GOODS

The Ontario Executions Act automatically exempts household goods from being seized in a bankruptcy to the extent of \$11,300 value per person. Let's face it, furniture seldom retains any real value once it leaves the store. If you have children or a dog perhaps, you can confirm that. Therefore, this exemption is pretty much accepted by creditors in personal bankruptcies. However, if you have furniture that is valuable, such as antiques, the trustee may expect to sell them on behalf of your creditors.

3/ CLOTHING

You'll be pleased to know that, despite the clichés you've heard, just because you've filed for bankruptcy, "they" are still not allowed to "get the shirt off your back!". Clothing is protected from being seized during bankruptcy by provincial legislation. For example, the Ontario Executions Act does not allow anyone to take one's clothing which has a resale value of less than \$5,650 dollars. So your creditors are not likely going to try to get your clothing. Unfortunately, or perhaps in this case fortunately, it seems that our personal possessions seldom, if ever, have a very significant resale value.

4/ AUTOMOBILE

In Ontario a person is allowed to keep his or her debt-free automobile if the resale value is less than \$5,650. If the resale value is greater than \$5,650, the Trustee will require you (or a friend or relative) to pay the excess value to the Trustee for the benefit of your creditors.

If there is debt secured against the car, such as from a bank or finance company, the trustee's interest only relates to the amount of the car's value that is above the amount owing on the car. Here again, if the value of the net equity in the automobile is less than \$5,650, the vehicle is exempt from seizure. The Trustee, though, is required to receive payment for any value in excess of the \$5,650 exemption amount.

5/ RRSP's, RRIF's and DPSP's

(Registered Retirement Savings Plans, Registered Retirement Investment Funds, Deferred profit Sharing Plans)

These investments are protected from seizure in a bankruptcy. In Ontario, the exception is that any contribution made to an RRSP within one year before the date of the bankruptcy filing must be paid to the Trustee for your creditors. Otherwise, all funds in these investment vehicles, no matter how much, are protected from seizure by the Trustee or your creditors in a bankruptcy.

6/ LIFE INSURANCE

There are 3 major categories of life insurance. The first category, "term insurance", only has value if you die. Therefore the trustee will have no interest in this type of insurance.

The other two types of insurance, whole life and universal life, can contain an element of savings. Again, depending on the beneficiary designation, a trustee may have the right to borrow against the savings portion of the policy. Even if this happens, you will still be able to keep the insurance in place, but the loan will remain payable when you die and will be paid from the proceeds of the insurance payout.

This is a very complicated matter. Do not make any decision regarding these assets without first checking with your insurance agent and your lawyer.

7/ TOOLS OF THE TRADE

This category is intended to protect an individual from losing the tools which are necessary to perform his or her job. An exemption of \$11,300 resale value applies to those items which are used to earn an income. Examples include a professional photographer's camera and equipment, a plumber's or carpenter's tools or a cab driver's car.

(D) OTHER IMPORTANT MATTERS

1/ CREDIT CARDS AND CREDIT RATINGS

No matter what your situation, financially speaking, when it comes to credit cards...well, I'm afraid it's out of your hands. Literally! The Bankruptcy and Insolvency Act requires people who file bankruptcy to turn in all of their credit cards. This has nothing to do with whether or not your card has any outstanding balance or is fully paid. That is not the issue. Regardless of the card's balance, when you file for bankruptcy, you must turn in your credit cards. Your trustee is required to collect all cards from you at the time of filing bankruptcy.

As for how bankruptcy will affect your personal credit rating, well that's by far one of the most commonly asked questions. Unfortunately, this is usually also a misplaced concern. Generally, by the time a person does decide to file, his or her credit rating has already been negatively affected, and that poor credit information is already in the credit bureau's files. In most cases, the reality is that the unfortunate financial problems that have brought you to this point have already created their own string of poor credit reports. Filing bankruptcy confirms and acknowledges what is already on your credit record but with an important benefit -- it also ends the bad credit information being added to your record.

2/ WHAT HAPPENS TO MY INCOME TAXES?

If you owe Canada Revenue Agency (“CRA”) money on account of your personal income taxes, this debt will be included in your personal bankruptcy. CRA is treated in the same manner as any other unsecured creditor.

On the other hand, if you are awaiting a tax refund at the time of filing bankruptcy, that refund will be one of the assets included in your bankruptcy, and will go to the trustee for your creditors. However, if you owe CRA taxes, they will keep the refund and apply it to the outstanding balance. In your bankruptcy, your trustee will file an income tax return for you for the current year up to the date of filing bankruptcy. If you owe money to the government on this return, it is included as a debt in the bankruptcy. If there is a refund, it will be paid to the trustee for distribution to your creditors, or kept by CRA if there is an outstanding balance.

After bankruptcy, and often after you have already been discharged, the trustee will still have to file a tax return for you for the period from the date of bankruptcy to December 31. Any refund resulting from this second return will be paid to your trustee for your creditors, but you will have to pay any balance owing.

After bankruptcy, you will file your own tax returns for the next calendar year, and if it results in a refund, that comes to you.

3/ WHAT HAPPENS TO MY INCOME AND MY JOB?

Bankruptcy does not affect your job. Your employer will not be notified of your bankruptcy unless that is necessary.

4/ PAYMENTS FROM INCOME AND PERIOD UNTIL DISCHARGE

(A) PAYMENTS FROM INCOME

As a result of filing bankruptcy, you will be in the position of having the same income as before but not having any payments to make to most creditors. Often, this will result in your having a surplus of income after paying your living expenses. It is therefore only fair that the Bankruptcy and Insolvency Act requires you to make monthly payments to the trustee out of this new "surplus" income. These payments must be made for the period that you are in bankruptcy.

The amount of these payments is determined from a schedule produced annually by the government. These payments will not put you back into financial trouble again. As an example, using 2011 guidelines, a person who has a spouse and two dependent children, and a net family take-home income of \$4,000 a month, would be expected to pay \$210 a month while in bankruptcy.

On the other hand, if your net take-home income is below \$3,779, for the same family, there is no requirement to make monthly payments.

(B) PERIOD UNTIL DISCHARGE

The length of your bankruptcy period (i.e. from filing until eligibility for discharge from bankruptcy) will be determined by the length of time that you are required to make monthly payments from your income to the Trustee. The rules are:

First-time bankruptcy

- 1. if no monthly payments required – automatic discharge available after 9 months**
- 2. if monthly payments required – automatic discharge available after 21 months of payments**

Second-time bankruptcy

- 1. if no monthly payments required – apply to court for discharge after 24 months**
- 2. if monthly payments required – apply to court for discharge after payments for 36 months**

Usually once the monthly payments have been set, no one will disturb your personal finances. You can carry on with your bank account and be assured that nothing will happen to your money beyond what you decide will happen.

5/ WAGE GARNISHMENTS

If you have been sued by a creditor and the court has issued a judgment against you, your creditor then has the right to ask the sheriff's office to collect the debt from you. The sheriff can take the money you have in your bank account and force a certain amount of your wages to be deducted and paid on behalf of your creditor. This is called a wage garnishment and, once issued, will continue until the debt is completely paid off. In most cases, these garnishments from your pay cheque amount to a whopping 20% or more. The sheriff is required to hold onto this money for 30 days before paying it to your judgement creditor. Now then, the question here is how this procedure is affected by bankruptcy.

If you file bankruptcy, FIRST the filing will immediately stop this garnishment. Your trustee will notify the sheriff's office as well as your employer's payroll department that you are now bankrupt and that the garnishment is to be stopped at once. SECOND, the trustee will be paid any money that the sheriff collected in the past 30 days. This money will then become an asset in your bankruptcy. After filing for bankruptcy protection, you will again receive your full wages.

6/ WHAT HAPPENS TO MY RENTED HOME & LEASED CAR?

A rental agreement or a lease is a contract between you and your creditor. It has its own terms and provides that, if you fulfil your side of the deal and make payments when due, your creditor will not interfere with your use of the home or car.

Since this agreement does not involve the trustee or your other creditors, they also will usually have no interest in these contracts.

7/ LAWSUITS

A lawsuit starts with a statement of claim being served on you. This document says that your creditor is demanding payment of a debt and, if you don't disagree, that is, if you don't file a statement of defence explaining why the creditor is wrong, then the court will be asked to issue judgement against you. That means that your creditor then has an order from court that can be enforced for collection.

The judgement allows the creditor to have the sheriff execute by seizing your personal assets, such as a bank account or a garnishment of a part of your wages. If you did not defend the creditor's claim, you can assume that judgement was issued against you. Don't be surprised if you hear from the sheriff's office.

On the other hand, if you did file a defence, you might be required to attend an examination for discovery. That is an examination under oath by the creditor's lawyer at which you must answer any questions related to the debt in question and disclose your assets. Even after judgement, a creditor will sometimes examine you in aid of execution. This examination would be to find out what assets you have available from which your creditor can be paid. All of these examinations are done under oath, as if in a court.

Bankruptcy will stop all of these activities, at whatever stage they are at. Even if money was seized by the sheriff on behalf of your creditor, that must be held for 30 days and must be given to the trustee for the benefit of all creditors. At the time of filing, your trustee will advise the court and your creditor's lawyers of the bankruptcy. That will stop all proceedings against you.

8/ HOW MUCH DOES BANKRUPTCY COST?

The amount that a trustee charges for handling your personal bankruptcy is set by law. The minimum statutory fee or tariff for a personal consumer bankruptcy is presently about \$1,800.00. Since the Trustee's fees are the first charge against the funds in the bankruptcy estate account, your monthly payments will be available to fund these fees. In the event that there will not be sufficient funds from this source (for example, you may not be required to make monthly payments under the Superintendent's Guidelines), the Trustee will usually make arrangements with you to ensure that there will be sufficient funds available to cover its fees. In more complicated personal bankruptcies, a trustee might have to charge a higher fee.

There is no legal aid for bankruptcy fees. If you cannot pay the fee, most trustees will allow you to arrange for a friend or relative to pay the costs of the bankruptcy.

9/ THE CREDIT BUREAU AND HOW IT WORKS

A credit bureau is an organization that keeps track of how individuals pay their bills - whether on time or not! They record information is sent to them by the credit-grantors, who are members of the credit bureau.

When you apply for credit, the credit-grantor will usually check with the bureau. Your credit record will contain your personal payment history as reported by your creditors. This information is maintained on your personal record and all credit applications and payment histories are kept on file for a period of 7 years.

It's important to know that, as a consumer, you do not have to belong to the credit bureau to have access to your own personal credit information! Simply write to the bureau's office or visit their site on the internet, provide proof of identification and ask for your file. You should be given a printout of whatever information they have on you, or you can download it from the internet for a fee. The printout will show your name, address, place of employment, position there, and paying habits. You should definitely check your file information if you have ever been refused credit, been told that your credit report was unsatisfactory, if you've changed your marital status, or if you intend to apply for a major line of credit.

The credit bureau rates your pay habits from R1 which is excellent through to R9 which designates a bad debt or bankruptcy. A bureau representative will be pleased to explain this rating to you...do not be intimidated!

Ask questions, as this is your credit and you should know all you can!

If you spot some incorrect information on your record, no matter how insignificant it may appear, correct it at once! No error is too small when it comes to your financial life! Provide the bureau with written proof to show that the information is incorrect and your file will be corrected.

Here's an important tip about your personal credit rating. If you are married, you and your spouse should both maintain separate credit files. This can be quite important in case of separation or if one partner has a bad credit rating which could reflect on the other partner's credit-worthiness!

10/ WHAT COLLECTION AGENCIES CAN AND CANNOT DO

A collection agency collects debts for creditors.

While most collectors are respectful of you and your rights, some collectors have been known to intimidate or scare people into paying. Some may even call you at home at all hours of day or night, or threaten you with jail for non-payment. Sometimes, in error, a collector may mistakenly try to collect a debt that you've already paid, or worse yet, wasn't even yours!

Once a creditor gets a collection agency involved in your affairs, that agency is required, by law, to advise you, in writing, that your account has been given to them for collection. This notice must include the name of that firm, the

amount of the debt, and the person to be contacted at the agency. After you receive this notice, your best bet is to contact the agency immediately and make arrangements to pay your debt. Never send cash! Always get proof of payment.

If people do not return phone calls from a collector, they create the impression that they are refusing to deal with the debt. You can often get a collector's sympathetic response and willingness to work with you if you do respond and cooperate.

In Ontario, the law restricts what a collection agency can do. For example, a collector cannot make telephone calls so often that it constitutes harassment, cannot call on a Sunday, statutory holiday, or before 7 a.m. or after 9 p.m. A collector does not have the right to put you in jail for non-payment. Only a judge can do that and only if fraud is proved. So relax. A collector cannot have you deported. A collector cannot use foul and abusive language. If this is done, contact and advise the collector's supervisor, and send a written complaint as well.

If you feel you're being mistreated, you can file a complaint with the Provincial government's Consumer Services Bureau in your area. Just as your creditors and the collection agencies have rights, you also have rights and you should know what they are.

(E) PROPOSALS

1/ INTRODUCTION

The other option available to you is filing a proposal. This has become a very common procedure since it allows you to avoid filing bankruptcy.

A Proposal is a formal offer to your creditors to settle your debts, usually for an amount less than what is owing, but for a greater amount than the creditors would receive if you filed bankruptcy. Basically, you offer to pay a trustee, on behalf of all of your creditors, an amount that you can realistically afford, for a fixed period of time – often for up to 5 years. If a required majority of your creditors agree, all other creditors will be forced to accept the offer. You will then have, effectively, a binding contract. Pay as agreed and you will have no further obligations to your creditors.

There are two different types of proposals available to you. If your debts, without including your home mortgage, are less than \$250,000, you are eligible to file a consumer proposal. Otherwise, you must file a Division I Proposal (what I call an ordinary proposal.)

2/ THE STEPS OF A CONSUMER PROPOSAL

A Consumer Proposal must be filed through an authorized administrator. All Trustees in Bankruptcy are administrators and, in some Provinces, other individuals are allowed to act as such. The administrator will review your financial situation and decide whether it's even possible to present a worthwhile offer to your creditors. This initial assessment is critical

because you only get one shot at a consumer proposal.

After you've prepared your proposal - usually an offer to pay a percentage of your debts through fixed monthly payments over a period up to 5 years - your administrator will file this proposal with the Superintendent of Bankruptcy, at which time all actions against you will be frozen...just as they are in bankruptcy. This is called a stay of proceedings. Your administrator will then mail the proposal along with your Statement of Affairs (your personal net worth statement) and budget to your creditors and request that they accept the offer. With the consumer proposal, remember, there are 3 possible outcomes:

First, if no creditor votes against the proposal within 45 days, this proposal will then be considered to have been approved by your creditors and you'll begin to make the agreed payments to the administrator.

Second, a creditor votes against your proposal, requests a meeting and that vote represents more than 25% of the filed claims. A meeting is then called and a vote taken. If, at that time, your proposal is approved by a majority in dollars of the creditors who vote, you'll begin to make your payments.

And finally, the third possibility is that a creditor objects to your proposal, a meeting is called, a vote taken, and the proposal is refused. The stay of proceedings against you is then ended and both you and your creditors are right back to where you began before the proposal was made. Therefore, any collection actions can, once again, continue against you!

In most cases, this situation will require you to file bankruptcy in order to deal with your financial problems.

But let's assume you've made your deal with creditors.

3/ IF CONSUMER PROPOSAL IS ACCEPTED

Assuming that you have gone through all the necessary steps and the proposal is approved, you will then begin to make your payments to your administrator as agreed. Within the first sixty days of the original date of the proposal, you must meet with your trustee for a counselling session. This is definitely a great opportunity for you to sit down and review money management skills and get advice on the proper way to use credit.

Once the proposal is approved, and your monthly payments are being made on a regular basis, neither the administrator or your creditors will interfere with any aspect of your financial life, be it your banking, your job, or anything else for that matter.

It is critical that all payments under the Proposal are made on time. If you fall behind by 3 months of arrears, the Proposal will fail and all of the payments made will have been in vain. At that point, you can request the Court to allow you to reinstate the Proposal. If the Court refuses, you will probably have to file bankruptcy to stop creditors from pursuing you.

You will also have a second counselling session within seven months of filing, at which your trustee will offer more advice re money management as well as an opportunity to consider other avenues which may have contributed to your financial problems. Once you have completed your payments, your administrator will issue you a certificate of full performance, which confirms that you have in fact carried out all of your commitments under the proposal. It is at this time that you can catch your breath as you will have finally settled all of the debts in the proposal. At that time, your creditors no longer have any further rights to collect unpaid balances.

4/ THE ORDINARY PROPOSAL

If your debts, not including your home mortgage, are greater than \$250,000, and you therefore do not qualify to file a consumer proposal, you still have another option besides bankruptcy. For a person who is self-employed, such as a salesperson or owner of a small unincorporated business, or a professional such as a doctor, lawyer or chartered accountant, an ordinary proposal is often a more practical way to settle debt than by filing bankruptcy. This proposal must give creditors more than they would get from your bankruptcy, and would allow you to keep assets and continue operating your business.

5/ THE STEPS OF AN ORDINARY PROPOSAL

You will recall that if a consumer proposal is refused by creditors, you are simply put back into the position you were in before offering the proposal. On the other hand, if you file an ordinary proposal, refusal by your creditors will automatically

have you in bankruptcy. Therefore, you must be able to offer your creditors a deal that is much more attractive than bankruptcy, so they will support your offer.

When the proposal is filed, it will automatically stop or “stay” all proceedings by creditors, including collection rights and lawsuits. This is the same as the stay of proceedings that follows the filing of personal bankruptcy. If the proposal is successful, then all of your creditors will have been dealt with by the process. If unsuccessful, those creditors will simply become the creditors in your automatic bankruptcy and the procedures after that are the same as in bankruptcy.

In filing this type of proposal, the paperwork is different from that in the consumer proposal. You must also provide your creditors with cash flow statements that show that you will be able to make the payments as promised in the proposal.

You will also have a meeting of creditors at which time a vote is taken on your offer. And, assuming that your creditors support your proposal, it still must also be approved by the court before it can be carried out.

If you are in business for yourself and it is critical that you freeze all of your creditors to give you some breathing room, so that you can prepare and present a plan to reorganize your debts, there is another option available. You can begin the proposal process by filing a “Notice of Intention to Make a Proposal”. This stops all creditors from proceeding against you and gives you 30 days in which to prepare and file a proposal. Sometimes, this can be a critical part of regaining control of your financial affairs.

(F) REBUILDING YOUR CREDIT

Recovering from financial distress is a lot like recovering from a serious illness. After you have taken the necessary medication and fought off the medical problem, you're probably still weak and must slowly rebuild your strength - maybe by starting with small doses of exercise and gradually building up to your previous strengths.

Rebuilding credit is not that different. The steps to constructing a new, revitalized personal credit rating are relatively straightforward and not very difficult. All that's necessary is for you to draw up a plan and stick to it. Add a little discipline and you will be amazed as you once again become a credit-worthy person.

Over the past 30 years, I have followed people as they progressed through their programmes to rebuild credit. The following are the 3 best and most effective steps that you can follow, the ones that work.

1/ REBUILDING CREDIT - STEP ONE: THE CREDIT BUREAU

Your local credit bureau records your payment history from information provided by your creditors. This information remains on your record for 7 years, in a bankruptcy, and for as long as 8 years in a Proposal.. Therefore, the sooner you can begin to clean up that record, the sooner the past problems will appear as "history".

After completing a bankruptcy or proposal, the trustee will provide you with a certificate of discharge or a certificate of full performance. Immediately, take this certificate to your local credit bureau and have them enter it on your credit record. In this way, anyone checking your credit will know that you have terminated your past problems. Aside from that history, you now have a clean slate available to record new, good credit performance.

Understand that this new information must be provided by your creditors. Therefore the challenge is for you to create information that will be reported. The idea here is to get a record of good performance into the system. When you apply for new credit, that record will be checked. The more good information that you can accumulate, the less important will be the old bad history. As you build this new record, it will become easier to obtain new credit when needed.

To begin this rebuilding process, you should start at your bank.

2/ REBUILDING CREDIT - STEP TWO: YOUR BANKER

Your banker can be a great help in your program to establish a good credit record. If your bank was one of the creditors in your bankruptcy or proposal, go to another bank. Otherwise, continue to deal with your branch.

First, introduce yourself to the account officer. Explain what you have gone through and your intention to rebuild your

creditworthiness. Open a chequing account and a savings account. Begin to put regular monthly deposits into the savings account, no matter what the amount. This will create a record of your money management skills. Also, make sure that you never have a cheque returned as NSF! This would ruin any effort made to date.

If possible, open an RRSP at the branch. Again, the amount of the monthly payment doesn't really matter - it's the record of consistent savings that counts!

After about six months, ask the account officer to give you a personal loan for the amount held in your savings account, and pledge the cash in the account as security for the loan. For example, if you have \$500 in the account, borrow \$500 and put the proceeds in another account. Arrange for monthly payments of, say, \$100 from that other account. Make all the payments as agreed and at the end of 5 months the loan will be paid.

Now the trick is to have the bank report the loan payments monthly to the Credit Bureau. This good credit-paying history will now be reflected on your credit record and will be available for anyone checking your credit to see. Even if the bank doesn't forward the information, if you give the banker as a reference on a credit application, your loan history will be there for the banker to report to a potential creditor. Sometimes, by explaining what you are trying to accomplish, your banker may instead offer you a low-limit credit card!

3/ REBUILDING CREDIT - STEP THREE: CREDIT CARDS

Credit cards may have been a major part of your earlier financial problems. Hopefully, after completing a proposal or bankruptcy, you will have learned how to manage credit properly and are ready to use credit cards carefully. Far more than a source of credit, cards are important for such things as identification and for reserving air plane seats and theatre tickets.

The first place to go for a new card is a department store or any of the private label cards for gas, hardware, etc. These merchants usually recognize that, without any debt, you are now a good risk for extending credit. Another approach is to obtain a secured credit card, in which you deposit an amount equivalent to the credit level needed.

Once you obtain a new card, begin using it regularly, but always being careful to charge only what you can pay in full when the bill arrives. Be sure to pay the account in full immediately on receipt each month. Remember, each payment is reflected on your credit record and helps rebuild your creditworthiness.

After a period of building good credit information, you should then apply for a bank credit card. If you still have difficulty getting this card, speak to your banker. Remember? You now have a close relationship at your bank. If there are still difficulties, suggest posting a security deposit with your banker for the amount of the credit limit on the requested card. There are often a number of ways to get to the same point.

(G) CONCLUSION

Rebuilding credit is a long process. You didn't create a bad history overnight. Don't expect to correct it instantly. But persevere! The longer that you can demonstrate that you are once again financially responsible for your obligations, the greater the chances become that a new creditor will have the confidence and the willingness to extend credit to you. You will then be in control of your financial life!



SPERGEL

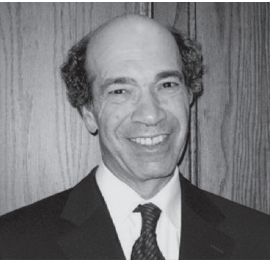
Insolvency • Restructuring • Consulting

1-855-SPERGEL **www.spergel.ca**

TORONTO OFFICES

307A Danforth Avenue, Toronto, Ontario M4K 1N7
(near Chester Subway Station, east of Broadview) **416-778-8813**

2451 Bloor Street West, Toronto, Ontario M6S 1P7
(at Jane Street Subway Station) **416-778-9168**



Frank Kisluk is a Chartered Accountant and Trustee in Bankruptcy. Over the past 30 years, he has helped thousands of individuals deal with and overcome their financial problems and go on to enjoy their lives without the pressures that come with unmanageable debt. He is well-known as a frequent guest commentator on radio, television and in the financial press.

Frank is a vice-president of msi SPERGEL inc, a Toronto-based Trustee in Bankruptcy, with offices throughout the GTA, Hamilton, Mississauga/Brampton, Barrie and Oshawa/Peterborough.