Women's financial learning centre

WFLC Fact Sheet - Personal Bankruptcy in Canada

Bankruptcy is intended as a "fresh start for someone hopelessly burdened with debt". It is definitely not a magic cure all for someone in debt. In fact, it is rather sobering to learn of the many restrictions that can apply and the serious consequences that can result.

Bankruptcy should really be thought of as a last resort, after you have considered your other debt management options, such as re-negotiating loans, consolidating your debts, selling assets, or undertaking a debt-management program, etc. If you have duly considered the various other debt management alternatives that are available to you, and they don't adequately deal with your situation then you can seek relief from your debt load through bankruptcy. Here are some quick tips to guide you through a complex subject:

What is Bankruptcy?

- In Canada, the legal process of bankruptcy is regulated by Canada's *Bankruptcy and Insolvency Act*. This legislation sets out the terms and conditions whereby an honest but otherwise overwhelmed debtor to obtain relief from his or her debts;
- Bankruptcy legislation is designed to ensure that both debtors and creditors are treated equally and fairly;
- If you declare personal bankruptcy in Canada you essentially turn over everything you own to a "bankruptcy trustee" in exchange for the elimination of *some or all* of your debts.
- Bankruptcy trustees are licensed by the federal government. They work with both debtor and his/her creditors to come up with a suitable plan to deal with the various outstanding debts, including selling of assets and direction of various funds;
- Bankruptcy rules differ from province to province.

What Does it Mean to Declare Personal Bankruptcy?

- Bankruptcy can halt creditor calls, the garnisheeing of wages and other forms of legal action;
- Some debtors are shocked to learn that not all debts are erased. You could go bankrupt but still end up having to pay off some of your debts;
- Bankruptcy only deals with "unsecured debts" such as personal loans, credit cards, overdrafts;
- "Secured loans" such as your car loan or mortgage are not covered. Creditors can still repossess your car or foreclose on your home;

- Student loans might not be discharged, e.g. if it is less than seven years since your schooling finished;
- You will still be liable for alimony and child support payments.

Treatment of Assets & Income

- Some assets are exempt depending where in Canada you live. These might include some clothes and household items and a car worth less than a specified amount ($5,650 in Ontario) and RSPs/RIFs; (more info) (**http://www.bankruptcycanada.com/bankruptcyexemptions.htm)**
- Going bankrupt costs money, e.g. you will likely have to pay trustee fees;
- You might also have to continue to pay down your debts. Any income you earn above your family's survival needs can be deemed by the trustee to be "surplus income" and be directed towards your creditors;
- Every bankruptcy is treated on a case-by-case basis. Trustees and the courts have a certain amount of leeway in how they interpret and apply the rules;
- Individual circumstances can have a bearing on bankruptcy rulings, including your income (if any), amount and kind of debt, assets, family size, health issues, etc.

Bankruptcy Discharge

- To be discharged from bankruptcy means that the debtor is released from the obligation to repay his or her debts (only those prior to bankruptcy, of course);
- Once discharged the bankrupt person can go out and borrow more money if someone is willing to give them a loan;
- There can be conditions set on a discharge and you can be refused one;
- A discharge can occur in as little as 9 months, depending on whether or not you complied with all of your bankruptcy duties and responsibilities;
- If you have declared bankruptcy before, it will likely take you longer to be discharged the next time;
- A bankruptcy will remain a part of your credit history for up to six years from the date of your discharge. (A second bankruptcy for 14 years.)

The Emotional and Psychological Effects of Bankruptcy

While there is governmental assistance and other forms of help to assist you with the financial and legal aspects of bankruptcy, you should be aware that there are also serious emotional, psychological, family and social repercussions as well. These must also be addressed if you are to truly get a "fresh start".

Advantages & Disadvantages of Personal Bankruptcy

Advantages:

- Bankruptcy gives you some protection from collection and legal action and wage garnishees;
- It eliminates your unsecured debts;
- It is relatively quick;
- It can be less inexpensive than other options – like paying off your bills;
- Fresh financial start;
- Improved credit risk – after your discharge period.

Disadvantages:

- Bankruptcy is very hard on your credit history
- You might be required to turn over some possessions to the bankruptcy trustee;
- Requires you to keep detailed records of your income and expenses while you remain bankrupt;
- Social stigma;
- You can not selectively pay off creditors – your parents, for example;
- Some of your debts, like student loans and income taxes *might* not be covered;
- You might be restricted from running for public office or holding certain positions in public or private companies. Some application forms will ask you to state whether or not you have ever gone bankrupt;
- Bankruptcy is not "free". In fact it can be quite expensive by the time you pay for your trustee and other expenses;
- Increased risk for future bankruptcies (It is not uncommon for some people to declare bankruptcy more than once.)
- Family assets can be at risk;
- Your employment might be at risk, directly or indirectly, depending on your employer and the position you hold;
- Ability to obtain future credit for both personal or business reasons.

For more details check out:

The *Office of the Superintendent of Bankruptcy Canada*

(http://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/home)