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CONSUMER BANKRUPTCY INFORMATION

ASSESSMENT

The first meeting is to assess your present financial situation and will help you in determining the proper course of action. This meeting will:

1. Respond to your immediate problem(s) ...(garnishees, judgments, creditor harassment, etc.).
2. Assess your financial situation and your ability to pay.
3. Identify the options available to you (better money management – budgeting, debt consolidation, informal/formal proposals, and bankruptcy). We will ensure that you have a clear understanding of each option available to you, and why we recommend one option over another based on your individual circumstances.
4. Review your rights and responsibilities, and your creditor's rights and responsibilities.

COUNSELLING SESSIONS

In an effort to assist you in re-establishing yourself financially, you will be provided with two counselling sessions. These sessions will:

1. Assist you in discovering and understanding the root causes of your financial difficulties, including possible non-budgetary causes (marital problems, substance abuse, gambling, etc.).
2. Encourage you to seek remedies for the identified causes of your financial difficulties. It is hoped that these remedies help you avoid repeating the same patterns which lead to your financial difficulties.
3. Provide reference information and referrals to appropriate local professionals and agencies so that they may assist you in overcoming the causes of your financial difficulties.
4. Assist you in acquiring the money-management skills to monitor and budget your income and expenses.

Assuming that bankruptcy is the appropriate course of action given your particular circumstances, then you should carefully read the remaining contents of this pamphlet.

Most of our clients have very little knowledge of the significance and implications of the bankruptcy process. The purpose of the remaining portion of this pamphlet is to explain in simple terms the duties, restrictions, and responsibilities imposed on you if you go bankrupt.

You are nevertheless reminded that you must know and abide by all the duties and responsibilities imposed on you during your status as a bankrupt. Therefore, you should also review the sections of the Act that most affect you.

1. What is bankruptcy?

It is a legal process that provides you immediate relief, halting the actions of all your creditors who may have a claim against your estate (garnishments, seizures, lawsuits, etc.). Your discharge from bankruptcy extinguishes the majority, if not all, of your debts.

While you may normally keep furniture, clothing, and personal effects, the assets exceeding provincial exemption limits will have to be either turned over to the trustee, or arrangements will be made whereby you can repurchase the excess assets from the estate.

2. Who can go bankrupt?

In order to declare bankruptcy, you must meet certain conditions:

- owe at least \$1,000,
- be unable to meet regular payments as they fall due, and
- the realizable value of your property is insufficient to enable payment of all your debts.

In general, bankruptcy should only be considered if you cannot consolidate your debts at a reasonable cost and repay them over a reasonable period of time (at most 3-5 years).

3. Stay of proceedings (Sections 69 and 70)

The filing of a bankruptcy halts all garnishments, lawsuits, or other Court proceedings initiated or that may be initiated by the creditors.

Only the Court may grant permission to creditors to continue actions against you once you are bankrupt.

4. Discharge (Sections 169 and 178)

For first time bankrupts, nine months after the bankruptcy you will be eligible for an automatic discharge (granted an Absolute Order of Discharge) from bankruptcy provided:

(a) Your discharge from bankruptcy was not opposed, and

(b) Your duties have been properly complied with. These duties include:

- ***Timely reporting of monthly income and expenses;***
- ***Providing the trustee with all the necessary tax information to file your tax returns;***
- ***Keeping the trustee informed of any change in residence, employer, marital status, etc.;***
- ***Payments to the trustee in accordance with the surplus income guidelines;***
- ***Attending the first and second counselling meeting; and***

- ***Surrendering all credit cards (including those cards with a zero balance)***
- ***To inform the trustee of any material change in their financial situation (ie: inheritance, lottery winnings, etc.)***

IF THE ABOVE DUTIES ARE NOT PERFORMED ON A TIMELY BASIS, WE AS TRUSTEE ARE OBLIGED TO OPPOSE YOUR DISCHARGE FROM BANKRUPTCY.

If your discharge is opposed or you have previously been bankrupt, we will arrange for your application for discharge to be heard by the Bankruptcy Court of the district. After hearing our report on your conduct throughout the bankruptcy, your present economic situation, and the opposing creditors arguments, the Court may issue any of the following orders:

- (a) **Absolute**: It applies immediately and means that you are no longer responsible for your debts, except for those covered under Section 178 (listed below).
- (b) **Adjourned**: This will postpone the hearing to a later date and be presided over by a Judge instead of a Registrar.
- (c) **Conditional**: You may be required to pay a certain sum of money as a condition of your discharge. The funds would be distributed to your creditors in accordance with the Bankruptcy Act.
- (d) **Suspended**: Same as absolute but with a delay before coming into effect.
- (e) **Refused**: Court has the right to refuse discharge, but it rarely exercises this power.

Upon obtaining your discharge, you are released from all debts, except for:

- (a) Fines or penalties imposed by a Court or default on bail bond;***
- (b) Alimony or support of a child or spouse;***
- (c) Debts arising from fraud, embezzlement, or misappropriation of funds; and***
- (d) Debts not disclosed to the trustee (these creditors will be entitled to the dividend that would have been paid if a claim had been submitted in the bankruptcy).***
- (e) Any award of damages by a court in civil proceedings in respect to;***
 - i. Bodily harm intentionally inflicted or sexual assault or***
 - ii. Wrongful death resulting therefrom.***
- (f) Student loans, if student becomes bankrupt before or within 10 years after finishing studies (some hardships are taken into account)***
- (g) Debt for interest for debts that survive a bankruptcy***

5. Property of the bankrupt (Section 67 and 68)

Your assets, whether in your possession or in the possession of a third party, will automatically be taken into control by the trustee and held in the estate for the general benefit of creditors. The exception is your exempt property, see definition below.

Where a creditor holds security against any asset, he will normally be allowed to exercise his rights to realize on his security, after permission from the trustee. Often you can make arrangements with the secured creditor to continue to keep possession of the secured asset. The ability to make this arrangement with the secured creditor will often depend on, among other things:

- (a) Your relationship with the creditor,
- (b) Loan repayment history,
- (c) Employment stability, and
- (d) The amount of disposable income in the household and its stability.

Exempt property

The trustee will not take possession of certain assets if they are exempt from seizure. Exempt property will vary from one province to another.

- (a) In B.C., the equity in a home amount to \$12,000.00 (Greater Vancouver Regional District) and \$9,000.00 elsewhere in the province***
- (b) \$4,000.00 worth of household goods***
- (c) \$10,000.00 in tools of their trade***
- (d) all necessary clothing and medical aid***
- (e) \$5,000.00 in value from a motor vehicle (provided that the vehicle is not encumbered) or \$2,000.00 if they are in debt for child maintenance arrears.***

Salary, wages, and other assets

When you earn income in excess of that necessary to maintain a reasonable standard of living, you are expected to make payments to the trustee from that excess until the date of discharge. The amount of the payment will be discussed and decided upon between you and the trustee, after taking into consideration your family responsibilities. In the event of a dispute, the Court may be asked to decide on the amount to be paid.

Should there be any subsequent change in the situation, the amount of the payment can be varied at that time.

Property acquired by you, such as lottery winnings or an inheritance received after the bankruptcy, but prior to discharge, must be turned over to the trustee as it constitutes assets divisible amongst its creditors. However, certain sources of income such as pension plan benefits, welfare and disabled persons assistance, old age or family allowances are exempt from seizure in most provinces.

Tax refunds

A tax return for the period of January 1st to the date of bankruptcy will be prepared by the trustee (Pre-Bankruptcy Return). Any tax refund for that period as well as refunds of previous years not yet received will have to be remitted to the trustee. Another tax return will have to be prepared for the bankrupt for the period from the date of bankruptcy to December 31st (Post Bankruptcy Return). Any refund from that return will also be paid into the bankruptcy estate.

6. Settlement of property (Sections 91 and 95)

Gift or transfers of property during the twelve months prior to bankruptcy (five year in certain circumstances) are subject to review by the trustee and may be reassessed by the court.

If, during the three months prior to bankruptcy (twelve months if a related person), a creditor received preferential or special treatment, such as being paid while others were not, the trustee may demand reimbursement from these creditor. The trustee must be informed of these payments.

7. Duties imposed upon the bankrupt (Section 158)

You must also fulfill all of the following duties:

- (a) Reveal and turn over to the trustee all your assets in your possession or control.*
- (b) Make available to the trustee all goods and records relating to assets or your affairs.*
- (c) Attend at the Office of the Official Receiver (Bankruptcy Administration), if and when requested, to be examined under oath as to the facts relating to the bankruptcy.*
- (d) Provide a complete statement of assets and liabilities including creditors' names, addresses, account numbers, invoices, and amounts. Where additional bills or legal documents are received by you, they should be forwarded to the trustee. If assets or debts were accidentally omitted, the trustee must be informed promptly.*
- (e) Inform the trustee of the details of all property disposed of during the twelve months prior to the bankruptcy.*
- (f) Inform the Trustee of the details of all property disposed of by gift during the five years prior to the bankruptcy.*