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A GUIDE TO THE LAW IN ALBERTA REGARDING

CREDIT AND YOU: WHAT YOU NEED TO KNOW ABOUT YOUR CREDIT

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GENERAL

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CREDIT AND PERSONAL REPORTING

1. What is a credit file?

Your credit file contains information that lenders can look at to help decide if they will extend credit to you. The information contained in it pertain to your employment history, income, marital status, debt payment history and assets. The reporting agency/credit agency is a private company that keeps files on individuals who apply for credit. These agencies are required to ensure that the information is correct and fair and must be based on reliable sources.

Agencies are prohibited from reporting such things as health care history, any negative information about a debt where the last activity was more than 6 years prior, judgements more than 6 years ago unless there is confirmation that the debt has not yet been paid, a bankruptcy discharged more than 6 years ago, family details other than the name and age of your spouse, your race, creed, colour, ancestry, ethnic origin, religion or political affiliation. There are additional pieces of information that can not appear on your credit file. If you believe that there is information there that should not be, you can check with Alberta Government Services or Credit Counselling Services.

2. How do I know what is in my file?

You have the right to find out what is in your file. You will need to show proof of identification in order to get a copy of your credit file. If you do not provide the proper identification, the credit agency does not have to provide any information to you.

Your file will contain all information that is in your file as of the date you requested it, it will explain where the information came from if it is not obvious and it will show you who has requested the information in the past 6 months.

Your credit file will be provided to you for free by mail. If you request the document on the internet and want to see it immediately, they will charge a fee for the service.

3. How can I correct this information?

If there is information in your file that you disagree with or is incorrect, you have the right to explain or protest the information. In order to explain or add information to your file, you can submit a predetermined number of words to the reporting agency. They are required to include this in your file and report it when your credit is requested. Each reporting agency allows a different number of characters or words. As well, if you submit it to one agency the information is not shared with the others. You are required to report the correction to **each** reporting agency separately.

If there is something in your report that you believe to be incorrect, you can write a statement to the reporting agency. They will investigate the statement as to the accuracy. Within 90 days they are required to confirm, correct, add to or delete the information. If this occurs they are also required to send an amended copy of your credit report to anyone who has received it in the past 6 months. Again, you should be ensuring that all of the different reporting agencies are made aware of the inaccuracy as they do not share information between them.

4. Who has access to this information?

Your credit file can only be viewed by someone who has received permission from you or has advised you that they will be reviewing your file. They must have a legitimate business reason for requesting the information. When you apply for credit you often fill out an application form and included in this is a written consent for them to obtain your credit information.

Each time your credit file is requested, that request is listed on your file. You can check your credit file periodically to see who is

accessing the information. In Canada, the reporting agencies are Equifax Canada, Northern Credit Bureaus and Trans Union of Canada.

DEALING WITH BILL COLLECTION AGENCIES

1. General Information

If you do not pay your bills, often the business you are dealing with will send your outstanding debt to a collection agency. A collection agency works on their behalf to collect the debt. The collection agency can only collect debts when they have received authorization from the creditor you have been dealing with.

2. Who is required to follow the rules pertaining to collection agencies?

Two sets of rules govern who the rules apply to. Companies that are in the business of collecting debts and people that work for them are required to be licenced. This protects borrowers from abusive practices by collection companies.

Companies that collect debt for themselves or lawyers that collect debt for a client are not required to be licenced. As well, others that are not required to be licenced are civil enforcement bailiffs or agencies and people licenced under the *Insurance Act*.

3. What collection agencies can and can not do.

There are strict rules as to when, how often and where collection agencies are allowed to contact you. They can contact you at home or at work in order to try to collect the outstanding debt. They can only phone between 7 a.m. and 10 p.m. If you have requested that they not contact you at work, they can not continue to do so but you must make alternate arrangements for them to contact you and you must ensure that they are able to contact you at that number.

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The collection agency can not call you so often that it could be considered harassment. They are not able to speak to anyone about the debt except for those directly involved - namely you and the creditor. Your friends, relatives, employer and neighbors can not be contacted unless it is to verify employment or to get your address or phone number.

If you have explained to the agency that you are not the person who owes the debt, they are required to investigate the matter and can not contact you until they are convinced you are the person who owes the debt.

Unless the creditor (the person you originally owed the debt to) agrees, the collection agency can not take you to court for the debt.

If you request a statement of account, the collection agency is required to give you a copy. However, the agency is only required to give this information to you every 6 months.

If you think that the collection agency you are dealing with is not complying with the rules as stated in the *Fair Trading Act* you can make a complaint to the Consumer Services Branch of Alberta Government Services. If a collection agency does not follow the *Act* they can be fined or have their licence suspended or canceled.

4. How can I protect myself?

If you owe a debt and are still dealing with the original creditor and not a collection agency try to make arrangements for payments with them before they turn your file over to a collection agency. Let them know that you are having problems paying the bills so that you can make arrangements with them.

If you owe a debt and you are dealing with a collection agency, keep track of what you have paid and when. Make your payments

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in a form that allows you to keep track of your payments, such as money orders or cheques. Ask for receipts for each payment you make.

In some situations creditors can seize your property by contacting the civil enforcement agency. They are not required to have a judgement to do this. The most common situations where this occurs is when there is a debt of rent owed to the landlord.

5. Where can I go for help?

Credit Counselling Services of Alberta assists with assessment of your debt, information on how to deal with creditors and general information on how to deal with your debt.

Alberta Government Services can assist with information on what legal steps creditors can take to collect debts.

WHAT CAN HAPPEN IF YOU DO NOT PAY YOUR DEBTS

1. Did you secure the transaction?

If you have secured a debt it means that you have used another possession as collateral and promised to give this to the creditor if you do not pay the debt. When you promise property as security this is usually registered in the Personal Property Registry. Other creditors can check the registry to see what is registered against your name.

If you do not make your payments as you had agreed to the creditor can take the security. If the property you have put up as security is not worth enough to cover the debt, the creditor can sue for any difference as well as any legal costs and interest.

Before the creditor can seize the property that has been secured they have to prove that they have made reasonable efforts to collect the money owed. Once they have proven this they will

contact a civil enforcement agency to collect the property. You will be given 20 days notice before the agency can sell your property. You can get back your property but you will need to pay all arrears and any administrative costs that were incurred by the agency. The costs you will need to pay will be listed on the notice that is provided. If you do not pay they have a right to sell the property.

2. Did I buy the property under a conditional sales contract?

If you have bought items under a conditional sales contract the creditor owns the goods until you have paid for them in full. The goods themselves are the security, you do not put up another item as the security. If you do not make the payments as agreed to in the contract the creditor can seize the goods or sue you in order to get a judgement for the amount you owe.

An example of this is the sale of a car. Even though you are in possession of the car, you are not the sole owner of it until you make the final payment. If you do not make your payments the dealer can seize the car which is the security.

3. What if the transaction was unsecured?

In a situation where you have not promised security to the creditor but you still get credit from them, you have an unsecured credit agreement. Examples of this are credit cards and utility bills. If you do not pay bills owed to an unsecured creditor they can sue you.

In cases where it is a utility bill, they will likely cut off the services and then pursue legal action against you. If you want to have the service reconnected you will need to pay any outstanding debt and any other administrative fees that are owed.

4. What happens when a creditor sues you?

If the creditor is trying to recover \$25,000 or less from you, often the case will be heard in the Civil Division of the Provincial

Court. You will be served with a civil claim either in person or by registered mail. The civil claim will advise you of who is suing you, the reasons for the claim and how much the claim is for.

If you ignore the claim a judgement will automatically be filed against you and you will not have a chance to defend yourself against the claim. Included with the claim should be a Dispute Note. In order to dispute the claim you will need to fill this out and return it to the court. If a dispute note is not included you can request one from the courts. Once you have filed this the court will contact you to advise of dates for mediation (if applicable) and trial. You have 20 days to file the dispute note.

Alternatively, you may be able to negotiate a settlement with the creditor even though they have filed a claim against you. You can try to contact the creditor and work out an arrangement for payment.

If you do not dispute the fact that you owe the money it is also possible to go to court with the documents and pay the amount owing plus any related costs. Ensure that you get a receipt for the transaction. Payment can be made by cash, certified cheque or money order.

If the creditor is trying to recover more than \$25,000 then the claim will be filed in Court of Queens Bench. You will be notified of the action by a Statement of Claim. You will have 15 days to respond to the claim; either by a statement of defense or a demand of notice. Because these matters are often very complicated most people will hire a lawyer. Students are not able to represent people who are dealing with matters in the Court of Queens Bench, and as such Student Legal Services of Edmonton would only be able to provide you with basic information and would suggest you speak to a lawyer about the matter.

5. What is a judgement?

A judgement is the decision that is made by the courts with respect to the claim that has been filed. If the creditor is successful in court with their claim against you the court will issue a judgement that sets out the details of what the court's decision was. If there is a judgement against you it will show on your credit file. Even if you pay it will stay on your record for 7 years.

The creditor, once they have a judgement for payment from you, has several options open to them to collect. They can register a writ of enforcement to seize property or to garnishee your wages or bank accounts.

6. What is a writ and what items can and can not be seized?

The Court of Queens Bench issues writs of enforcement and then registers the writ with the Personal Property Registry. If there is more than one judgement against you, there can be multiple writs registered. If one creditor seizes property and sells it or garnishes wages or a bank account, all of the creditors with judgements will receive a share of the money.

In cases where you own land or property the writ can be registered in the Land Titles Office against the title of that land or property. If there is a sale or a request for a new mortgage you may have difficulties trying to remortgage or sell the property until the judgement is paid.

It is not the creditor that seizes property under a writ of enforcement, it is a civil enforcement agency that is hired to do so. Before the seizure occurs, you will be given a notice of seizure, a notice of objection and an information for debtor form. These will either be posted on your door or given to you personally. The bailiff may take the property at this time or advise you that they will be seizing it and advising you that you are not to sell, remove or damage the property.

You have 15 days to give a notice of objection once you have received the notice of seizure. In the notice, you will give the reasons for your objection and subsequently, a hearing date will be set for a judge to decide if the creditor is entitled to take the property. If you do not file a notice of objection, the property can be sold and the money obtained for it will be forwarded to the creditor.

The civil enforcement agency does not have the right to take anything you own; there are certain exceptions. These include household furnishings and appliances worth up to \$4,000, one motor vehicle with a value of up to \$5,000, tools required for your trade up to a value of \$10,000 and personal property that you require in order for you to earn your livelihood up to a value of \$10,000. If the creditor is a landlord the exemption for household furnishings and appliances is different and is only up to a value of \$1,000.

7. What is garnishment?

Another way the money owed in a judgement can be collected is by garnishment. This is a legal procedure where the creditor applies to the courts to take money from such places as your bank account, your pay cheque or from those who owe you money. The creditor will file a writ of enforcement in the Court of Queens Bench who will supply a garnishee summons that is then delivered to your bank or your employer.

Wages or the money in your account can be legally seized but only up to the amount of the judgement debt and costs. If you do not have enough money to cover the debt, the creditor can continue to garnishee you accounts and/or wages until the judgement is paid in full. A garnishee summons is effective for one year. If the money has not been collected the summons can be renewed. You will not receive advance notice of garnishment. A copy of the summons will be provided to you by your employer, bank or the creditor within 15 days.

If the creditor chooses to garnish wages they will not take your whole pay cheque. You are allowed to keep enough to cover basic expenses. The exemptions are dependant on each individual situation - they will take into account how many children there are and what your income is. The minimum exemption for a person with no dependants is \$800 net per month and the maximum is \$2,400 net per month. These amounts increase by \$200 for each dependant. If the debt owed is for unpaid child support or alimony under a court order the rules are different. In order to get more information about garnishment in these situations call the Alberta Justice Maintenance Enforcement Program.

If the creditor chooses to garnishee your bank account, they are allowed to take the full amount that is owed if the funds are available. If you do not have enough to cover the whole debt, the creditor is still able to take all of the money that is in the account and they are not required to leave anything for you. If your pay cheques are deposited directly into your account all of this can be garnisheed because it is considered a bank deposit. The only exception to this is payments under the *Social Development Act*, such as Social Services Aid payments, handicap benefits under the *Assured Income for the Severely Handicapped Act* or widow's pensions under the *Widows' Pension Act* as long as these payments are deposited into a separate account and not mixed with any other money. Joint bank accounts can be garnisheed.

If you believe that the garnishment was calculated incorrectly you can file an objection with the Court of Queens Bench. You must do so in the same district as the original summons was filed. You will likely need help from a lawyer in order to proceed with an objection. Also, because the money is paid by your bank or employer to the courts and then out to the creditor it is a good idea to file your objection as soon as possible before the money is paid to the creditor.

8. What happens once I have paid?

Once you have completely paid the judgement it should be discharged. This means that it will be removed from the records at the Court of Queens Bench and the Personal Property Registry and shows that you no longer owe the debt. Usually the creditor does this but you will want to check and make sure it is done so there are no problems in the future. You can also advise the credit agencies so that it is documented on your credit file that you have paid the debt in full.

9. Where can I get legal help for my debts?

Credit Counselling Services of Alberta assists with assessment of your debt, information on how to deal with creditors and general information on how to deal with your debt.

Alberta Government Services can assist with information on what legal steps creditors can take to collect debts.

HOW CAN STUDENT LEGAL SERVICES HELP WITH CREDIT ISSUES?

Student Legal Services of Edmonton offers information to those who have questions about legal issues. Generally, SLS can try to help you figure out exactly what the issue is. We can give you information on different things you can do. If your situation is complex, we may be able to act on your behalf as your agent, depending on you financial situation. Students at SLS are not able to act on your behalf in matters in the Court of Queens Bench but we may be able to give you information or refer you to another agency that can help.

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REFERRAL NUMBERS

Alberta Government Services

Consumer Services Branch (780) 427-4088
1-888-427-4088
www.gov.ab.ca/gs

Alberta Justice Maintenance Enforcement Program (780) 422-5555

Alberta Motor Vehicle Industry Council (780) 466-1140
Investigations 1-877-979-8100
www.amvic.org

Credit Counselling Services of Alberta (780) 423-5265
1-888-294-0076
www.creditcounselling.com

Equifax Canada 1-800-465-7166
www.equifax.ca

Lawyer Referral Service 1-800-661-1095

Northern Credit Bureaus 1-800-532-8784
www.creditbureau.ca

Trans Union of Canada (780) 429-1690
www.tuc.ca