




Type of law:
CIVIL LAW

DEBT, COLLECTIONS, & BANKRUPTCY



A 2022 Alberta Guide to the Law

 **Student Legal
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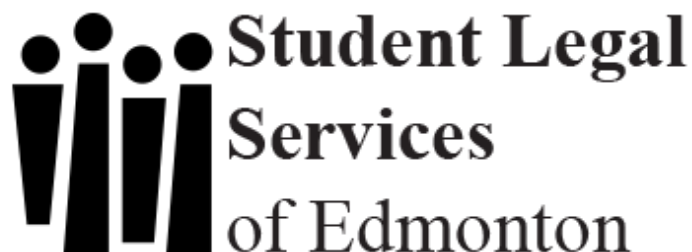
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BANKRUPTCY & DEBT

OVERVIEW

What is bankruptcy?

A legal process when an individual or organization can no longer pay off their debts.

They must either:

- owe at least over \$1000 and be unable to pay bills as they come due, OR
- have liabilities that exceed assets

Bankruptcy can stay on a person's credit bureau for 7 years

What is debt?

- Money that debtors owe to one or more creditors
- A **debtor** is a person, group, or organization who owes money
- A **creditor** can be a person, group, or organization that is owed money

Alternatives to bankruptcy

- Talk to creditors to work out a different solution
- Informal agreements
- Contact money mentors
- Consumer proposals

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

Debt collection

- Collection agencies are licensed companies that try to collect money for other people or companies
- There are a number of limitations of what a collection agency can do.



REMEMBER:

- Generally, collection agencies cannot sue you (unless the debt is assigned to them)
- The police are not involved in debt collection
- Collection agencies can only take your property if it has been put up as **security**



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

Table of Contents



Debt	1
Debt Repayment	2
Collections	4
Civil Enforcement Agencies	6
Bankruptcy and Insolvency	7
Applying for Bankruptcy	9
Alternative to Bankruptcy	10
Who can I call for more help or information?	12

DEBT



Debt is money that a debtor owes to one or more creditors.

- A **debtor** is a person, group, or organization that owes money.
- A **creditor** can be a person, group or organization, who is owed money.

EXAMPLES:

- The debtor owed money from a creditor, who expects the money back.
- The debtor borrowed or used something that the creditor expected to be returned or compensated for if the debtor lost or did not return it.
- The debtor bought something but could not pay the full sale right away, so the creditor agreed to be paid later or in installments.

SECURED DEBT



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

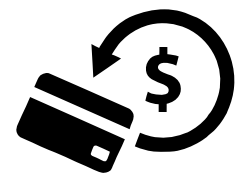
A debt is **unsecured** when no security is set up as collateral by the debtor to borrow from the creditor. Unsecured loans often are smaller in sum than secured loans. Unsecured debts can be riskier for the creditor if the debtor declares bankruptcy, dies, or disappears.

EXAMPLE:

The debtor asks the bank for a loan. If they miss payments, the bank can repossess the home and sell it to pay out the loan.

- the bank is the creditor
- the debtor's house is the security used for the debtor to obtain a secured debt (the loan) to the bank

DEBT REPAYMENT



If you are struggling with repaying your debt it is best to **contact your creditors as soon as you can.**

You should make an **attempt to come to an agreement with your creditors before they turn to a collections agency**, which will try to collect the outstanding debt on behalf of creditors.

Debt repayment agencies:

Debt repayment agencies can be useful when contacting creditors.

- These agencies can help you negotiate and come to an arrangement with creditors for repaying your debt, but they will charge a fee for doing so.
- The employees acting for these agencies are called **debt repayment agents**
- To operate, debt repayment agencies must have a debt repayment agency licence, and their employees will need a debt repayment agent's licence. A debt repayment agent must renew their licence annually and present their licence to a debtor or creditor.

The agreement between the creditor and the debt repayment agency, acting on your behalf, is voluntary.

- A proposal by the debt repayment agency may not be accepted by the creditor, or it may be accepted but cancelled later if you fail to comply with the terms of the agreement.
- If either occurs, then the creditor may turn to a collections agency to collect the unpaid amount.
- If a creditor has decided to reject the agency's proposal or will no longer participate in the debt repayment agreement, the agency has 30 days to notify you of this decision once they are informed of it by the creditor.

DEBT REPAYMENT CONTRACTS



The agreement that a debt repayment agency enters on your behalf, with your creditors must follow certain guidelines. The agreement must:

- Be in writing
- Be dated, and signed by you and the debt repayment agency
- Include both your and the debt repayment agency's name, telephone number, and address
 - The email address and fax number of the agency should also be included if available
- Describe the services that the agency will provide you along with a list of prices that corresponds with these services
- State the creditors that will be paid under the contract
- Include the total amount owing, the amount per payment, a schedule of payments, and the number of payments that each creditor should receive

LIMITATIONS ON DEBT REPAYMENT AGENCIES



There are certain practices that debt repayment agencies are prohibited from doing, such as:

- Entering into an agreement with you to accept money from you that is less than the amount you owe your creditors as a final settlement, unless the creditors have agreed to it
- Giving anyone untrue or misleading information
- Failing to provide a receipt for all cash transactions
- Lending money to you in order for you to pay off your debts
- Discussing your debt with anyone other than yourself, your representative, your creditor, or a guarantor of your debt
- Making you pay a fee for an NSF (insufficient funds) cheque unless this was included in the debt repayment agreement
- Claiming breach of contract if you cancel the agreement with them
- Offering to pay you money or other compensation to enter into a debt repayment agreement
- Collecting a fee from the debtor unless written authorization by the debtor is given or an agreement in writing has been signed by the debtor and the debt repayment agency, and the debtor has been given a copy of the authorization or agreement



Creditors may use a collection agency to try and collect money from debtors who have not been repaying their debt properly.

- Collectors are the employees of these agencies and perform debt collection, locate debtors within Alberta, and deal with debtors.
- A collection agency must have a collection agency licence and their employees will need a collector's licence. A collector must **renew their licence annually** and **present their licence to a debtor or creditor**.
- An agency can either hold a license for helping creditors in collecting debts owed or for helping debtors with debt repayment, but not for both. Their employees cannot hold both a collector's licence and a debt repayment agent's licence at the same time.

Tips for identifying legitimate collection agencies



- Know that collection agencies **must give you written notice** or make a reasonable attempt to give you written notice before they try to collect unpaid debts from you
- If you are unsure whether the collection agency contacting you is legitimate, **don't provide them with your personal or financial information**
- Ask for the company name, phone number, address, and website information
- Ask the individual that contacted you, what organization they represent, and for specific details of the debt
- **Contact Service Alberta's Consumer Contact Centre or the Better Business Bureau to check that the collection agency is real.**
- You can reach **Service Alberta** by phone at 780-427-4088 or Toll-Free at 1-877-427-4088, and by email at servicealberta@gov.ab.ca
- If the collections agency is recognized as a legitimate by either Service Alberta or the Better Business Bureau, then **call the agency to confirm that they have contacted you**

If you think you are being scammed, report this to the **Canadian Anti-Fraud Centre** by phone at 1-888-495-8501 or online through the Fraud Reporting System



LIMITATIONS ON COLLECTION AGENCIES



Collection agencies and their employers can do many things to try and deal with collection; however, **the Collection and Debt Repayment Practices Regulation sets out rules and limitations that prohibit certain practices, such as:**

- To act for a creditor an agency must have **reasonable belief that the debtor actually owes** the creditor money and that the money is overdue
- Agencies **cannot charge their client fees beyond** what they have discussed and approved
- **Agencies acting for creditors cannot charge fees to a debtor** other than the debt unless the debtor gives them a bounced cheque and the agency notified the debtor in writing that a fee would result from such a cheque before the cheque was submitted
- **Agencies must give a contact number** where messages can be left, as well as their full name and license information on all correspondences to debtors and creditors
- Agencies must give **enough information to a debtor** to ensure they **know who the creditor is, what the debt is for, and how much the debt is**
- Agencies cannot make agreements or arrangements without their client's **express consent**
- Agencies cannot continue to contact a debtor if the **debtor has provided written information that they have a representative that will be handling the issue** of debt on the debtor's behalf,
- Once an issue is going to court, **agencies can contact the debtor's employer to confirm employment status** and information
- Agencies must **give written reports of the status** of the account to their client
- Agencies cannot contact debtors between **10 pm and 7 am** in Alberta and must be **reasonable in how they contact debtors** (cannot use misrepresentation, harassment, intimidation etc.)
- **Agencies can contact those linked to the debtor only to obtain the contact information** of the debtor, and they cannot share information about the debt with anyone other than the debtor, the debtor's representative, a creditor or someone approved by the debtor
- Agencies **cannot continue to collect** or try to communicate with people who have informed the agency **they are not the debtor**, unless the collector has taken reasonable steps to confirm they are the debtor
- Agencies cannot continue to try and collect if they have been informed that the **debt is in dispute and going to court**



If a debt has been untouched and unacknowledged by the debtor for 2 years and there was no court order regarding the debt, an agency cannot pursue the debtor for it.

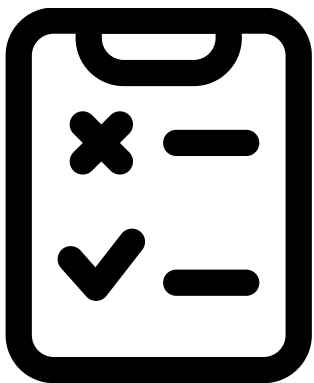
CIVIL ENFORCEMENT AGENCIES

Civil enforcement agencies are not the same thing as collection agencies. **While collection agencies try and collect debts without having to bring a matter to court, a civil enforcement agency is often the last resort to collect on debts.** When a judgment from the Court is issued, civil enforcement agencies will often help the creditor realize the debt owed.

Enlisting a civil enforcement agent:

- A person must have a judgment obtained in court against the debtor, OR
- A person must have entered into a security agreement against a debtor that has a provision for civil enforcement

Civil enforcement agencies are governed by the Civil Enforcement Act and Civil Enforcement Regulation



If someone owes you money through a judgment from the courts, it can be helpful for you to get a **'financial statement of debtor form'** from the person who owes you money. This form can be found on the Court of King's Bench of Alberta website under "Civil forms."

You can **serve the debtor with the form, and they must respond within 15 days with correct and full information.** This allows a creditor to know when and/or where a debtor is receiving money from.

BANKRUPTCY AND INSOLVENCY



Bankruptcy is a legal process that occurs when an individual or organization can no longer pay off their debts. **By filing for bankruptcy a person signs over all of their assets (with some exclusions) to a bankruptcy trustee.** These assets can be used to help pay off some of the outstanding debts to creditors. **Actions from an unsecured creditor stop once a person declares bankruptcy.**

To apply for bankruptcy, you must be insolvent:

- Must owe at least \$1000 and be unable to make payments on your debt as they become due; OR
- Have liabilities that exceed assets

If the property is security for a loan, then the creditors could take that property. If a creditor did not receive any property from a person as security, then that creditor would be an unsecured creditor. **Upon filing for bankruptcy, an unsecured creditor may not commence or continue legal action against an individual for payment of the debt.** The exception to this is if the Court decides not to discharge debts through bankruptcy in certain situations.

There are certain types of property creditors cannot take including:

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

Filing for bankruptcy is outlined by the Bankruptcy and Insolvency Act

APPLYING FOR BANKRUPTCY



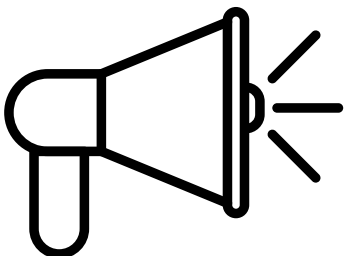
To file for bankruptcy, a **person may want to first contact a bankruptcy trustee to determine if they are eligible for bankruptcy.** A trustee usually charges service fees depending on how long they spend on a case. As well, if a person chooses to file for bankruptcy, a bankruptcy trustee will assist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

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



Filing for bankruptcy

- Allowed a base amount for living expenses
- If a person earns more than a base amount (a surplus income), then the trustee will take that and pay the creditors with it. Surplus income includes any money received from tax returns or selling assets.
- Trustee will also take their fee from the surplus income



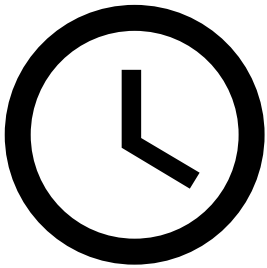
After declaring bankruptcy

- Must provide a monthly accounting of income and expenditures to their trustee
- Must inform existing creditors or business partners that they have declared bankruptcy
 - If a person does not do this, they could be guilty of an offence and be liable to pay a fine or serve up to a year of imprisonment

APPLYING FOR BANKRUPTCY CONT.

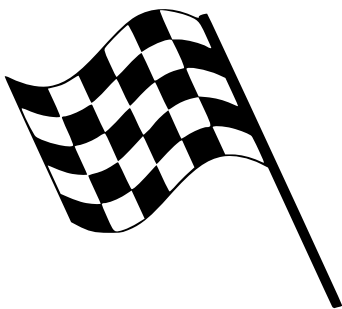


Bankruptcy period



- If a person has declared bankruptcy more than once, then this period could be longer
- **During the bankruptcy period, a person must pay a certain amount of money (depending on what they discuss with the trustee) each month to their various creditors.**
- If a creditor can prove a claim then they will be part of the bankruptcy

Discharge



- **Once the bankruptcy period is over, the trustee can file for a discharge, which ends the period of discharge**
 - After declaring, a person may receive a discharge after 9 months depending on their conduct and if your trustee approves.
 - If a person does not get a discharge after 9 months, the trustee will likely apply to the Court for discharge between 3-12 months after the person became bankrupt.
- **All remaining debt owed will be wiped out, subject to certain exceptions**
 - Court fines, child and spousal support, debts incurred by fraud, and debts incurred during bankruptcy are not discharged through bankruptcy.
 - A creditor can oppose a discharge and attempt to get further payment

A person's Credit Bureau will reflect the bankruptcy for 6-7 years. The filing for discharge is a public document.

- There will not be any legal prohibitions from a person discharged from bankruptcy in acquiring further credit
- There may still be some difficulties in getting creditors to endorse



ALTERNATIVES TO BANKRUPTCY



Talking to creditors directly to see if they will **accept less for the debt owed** could be an alternative to bankruptcy. An individual may also speak to the loans manager at a bank to consolidate their debt. However, these are informal agreements, and may not necessarily be legally binding.



Money Mentors

1-888-294-0076

- Counsellors who help find alternative ways to bankruptcy to pay off debt
- Offers the **Orderly Payment of Debts Program** which assists individuals in making payment schedules that satisfy the creditors
 - Program schedules are based on a person's cash flow and will have a fixed interest rate
 - A person is able to pay their debt in full with the assistance of a debt counselor
- **If a person is part of this program, they are protected from certain legal actions (ex. garnishes)**

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



Consumer Proposals

A consumer proposal is a binding legal process. A trustee will create a proposal that offers creditors a portion of what the person owes, or will increase the time allowed to repay the debt, or both. A trustee will accept the payments and in turn, pay the creditors.

- Consumer proposals are a common alternative to filing for bankruptcy for people with total debts that do not exceed \$250,000
- The term of payments for a consumer proposal cannot exceed five years

Benefits:

- Actions against a person from unsecured creditors are stopped, and
- A person can keep their assets, as long as they maintain their regular payments to the secured creditors

Consumer Proposals cont.

Role of a trustee:

If a person wishes to file a consumer proposal, they must contact a trustee.

The trustee will file the consumer proposal

- The individual no longer has to make payments to the unsecured creditors
- Any garnishments of wages are stopped
- The trustee will submit the proposal to the creditors:
 - Creditors will then have 45 days to accept or reject the proposal, this can happen either before or during the meeting of the creditors
 - Meeting of creditors includes anyone who owns at least 25% of the debt
 - At the meeting, creditors will vote to either accept or refuse the proposal.

Filing a consumer proposal:

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

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

Proposal accepted?



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

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

Proposal rejected?



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

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

Final steps:

Once a person meets all of the conditions of the proposal (including all payments), they will be legally released from the debts in the proposal!

- BUT: if a person missed more than three payments the proposal will be annulled.
- Creditors would then be able to request the **entire** debt remaining



WHO CAN I CALL FOR MORE HELP OR INFORMATION



Student Legal Services: Civil Law Project

11036 88 Ave NW
Edmonton, AB T6G 0Z2

Ph: 780-492-8244
Admin: 780-492-2226
Fax: 780-492-7574

Law student caseworkers can provide basic legal information on various topics in civil law, such as landlord-tenant matters, as well as information on various resources for more in-depth assistance. The caseworkers are also able to act as an agent in certain civil law matters, such as with Residential Tenancy disputes, wrongful dismissal, and WCB hearings.

Edmonton Community Legal Centre

Telus House, South Tower
Second Floor, 10020 – 100 Street
Edmonton, AB T5J 0N3

Ph: 780-702-1725
www.eclc.ca

Provides legal services for low-income Albertans in certain areas of family and civil law. These services include free legal information, referral, and legal education. ECLC may also be able to provide legal advice if you fall within their eligibility criteria.

Legal Aid Society

10320 102 Avenue
Edmonton, AB

Ph: 1-866-845-3425
www.legalaid.ab.ca

Free legal information. Lawyers may represent you for a highly reduced rate if you make less than a certain amount. In-person assessments are closed due to COVID-19. Please apply over the phone.

Alberta Supports Contact Centre

10242 105 Street
Edmonton, AB

Ph: 1-877-644-9992
css.ascc@gov.ab.ca

Open 8:15 – 4:30 pm M-F for general inquiries about Income Support. Closed statutory holidays.

Four Directions Financial

Ph: 780-426-3848.
www.boylestreet.org

Next door to Boyle Street Community
Services at 10112 105 Avenue

An agency of ATB Financial developed in partnership with Boyle Street Community Services that allows Edmontonians who are experiencing homelessness or who are living in poverty to open a bank account. You do not need to be a member of Boyle Street Community Services to bank there. Four Directions uses biometrics as identification, removing the barrier of identification to secure banking.

Money Mentors

Ph: 1-888-294-0076

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

Edmonton:

Quikcard Centre
Suite 175, 17010 – 103 Avenue
Edmonton, AB T5S 1K7

Lethbridge:

Idea Building
Suite 101, 1221 – 2nd Ave
South Lethbridge, AB T1J 0E4

Calgary:

Suite 150, 1200 – 59 Avenue SE
Calgary, AB, T2H 2M4

Medicine Hat:

Suite 114, 640 – 3 Street SE
Medicine Hat, AB T1A 0H5

Red Deer:

United Way Building
4811 48 Street
Red Deer, AB, T4N 1S

Grande Prairie:

Aberdeen Centre
#219, 9278 101 Ave
Grande Prairie, AB, T8V 5B6

Fort McMurray:

Suite 15B 10019 MacDonald Avenue
Fort McMurray, AB, T9H 1S9

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