

***Bankruptcy and Insolvency Guide
Finding Solutions, Not Problems***



Insolvency Consultants & Trustee in Bankruptcy

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*Boale, Wood & Company Ltd. is a member of the
Canadian Association of Insolvency & Restructuring Professionals*

CAIRP

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Introduction

Are you in debt? Do you owe more money than you earn and can't repay your creditors? Are creditors or collection agencies harassing you? No matter what your circumstances are, owing your creditors and not being able to repay them, can be, and generally is, a very stressful time in your life no matter what your age. Don't fool yourself by thinking that making the minimum payments is helping, it isn't. You aren't getting ahead. In most cases, you are likely worse off every month. What should you do? You should obtain professional advice and meet with the Trustees at Boale, Wood & Company Ltd. in order to find out what options are available so you can make an informed decision.

Boale, Wood & Company Ltd. will give you the right advice as to how to deal with your debt and won't lead you astray. We are experts at what we do and are committed to assisting you in obtaining a fresh start. Our reputation is that of being non-judgmental and providing solid practical advice, even if it means you do not use our services. Remember, Trustees in Bankruptcy are Court Officers who have a duty to make recommendations to you solely in your best interests.

This guide provides general information only on possible solutions. Boale, Wood & Company Ltd. offers a free initial consultation. Contact us for an appointment.



Insolvency Consultants & Trustee in Bankruptcy

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We are solution oriented and think outside the box.

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Why see a Trustee First?

There is a myth in Canada that there are government programs that exist that allow you to enter into payment arrangements with your creditors. In reality, there are no programs. However, there is legislation that allows you to compromise your debts. For consumers, that legislation is the *Bankruptcy and Insolvency Act*.

The thought of meeting with a bankruptcy Trustee makes individuals uncomfortable. The typical consumer is often unaware of the role of the Trustee and the options available for dealing with debt and subsequently they delay getting advice.

Trustees are highly trained individuals who are licensed by the Office of the Superintendent of Bankruptcy (OSB) under the authority of the *Bankruptcy and Insolvency Act*. The majority of Trustees also belong to the Canadian Association of Insolvency and Restructuring Professionals (CAIRP).

To help ensure that the rules are followed, the OSB is responsible for supervising the process and protecting the public interest. The OSB is also responsible for issuing operating licenses to Trustees and for reviewing everything that the Trustee does to ensure that every debtor is treated exactly the same and fairly as outlined under the Act.

There is an abundance of misleading information about credit and debt repayment programs in the marketplace and on the internet. Many non trustee firms use words like "avoid bankruptcy" or "we can help reduce your debt to one monthly payment" and are a common theme that you read about all the time. Other types of organizations that offer "credit or debt" consolidation, payment programs or some form of debt relief are in the business of helping you organize your payments and thus charge a fee for their service whether they tell you up front or not. Even the programs that are non-profit charge fees. The fees each and every one of these firms charge differ from company to company and are not to be found anywhere in their promotional material. Trustees' fees in a consumer proposal and in a bankruptcy are set out in the *Bankruptcy and Insolvency Act*. In other words, all Trustees get paid the same fee.

Non Trustee firms offer to help you avoid bankruptcy. In many cases all that is happening is the inevitable is being delayed or you will be put on a debt repayment program that is so onerous, that you will eventually default on and be worse off than you were when you started. And if you owe Canada Revenue Agency a tax debt, none of these programs will work. Remember, if it sounds too good to be true, it probably is.

As well, the majority of these companies have no government oversight, no professional association, no regulatory body and no code of ethics. Trustees have all of these.

Why use a CIRP?

CIRP stands for Chartered Insolvency and Restructuring Professional. Trustees who hold the CIRP Certification are members of the Canadian Association of Insolvency & Restructuring Professional body. Members of CAIRP are subject to its Rules of Professional Conduct and Standards of Professional Practice, and are entitled to present themselves as CIRPs. It is the certification mark of an insolvency professional who has met the standards of admission to CAIRP. Debtors seeking help from a Trustee should choose one who has a CIRP in order to be assured of receiving the highest quality financial care.

Members of CAIRP use the CIRP mark in the delivery of the following services:

- consumer and commercial insolvency administration;
- conducting business reviews;
- corporate restructuring;
- turnaround of under performing businesses and related advisory services.

The Trustees at Boale, Wood & Company Ltd. are members in good standing of the CAIRP and hold the CIRP certification.

Why choose us and why we are different.

Every year, thousands of Canadians experience financial difficulties or financial problems. Whatever your reason, the professionals at Boale, Wood & Company Ltd. can help you make a fresh start.

Meeting Directly with a Trustee - at Boale, Wood & Company Ltd., you will meet directly with a licensed Trustee. When facing financial challenges, we realize that you're looking for people you can trust to be discreet, professional, give you the right advice and people who can put your mind at ease. We are experts in our field.

Free initial consultation with a Trustee - many Trustee firms delegate this important function to a less experienced administrator who may not recognize certain issues affecting you or someone who may be a co-signor, co-borrower and so on. Your decision is too important for that.

Little or no waiting - we will do our best to schedule an appointment with a Trustee as soon as possible.

Approach - we will listen to your needs, recognize issues, offer sound practical advice and can make decisions regarding fees.

Our philosophy is if you don't need to go bankrupt, we will tell you that. It may be the end result, but rest assured we will not lead you astray.

Options

There are a number of options available for an individual to deal with ongoing debt problems. These options will address the causes of financial difficulty and provide a fresh start to the individual who cannot meet their debt obligations. However, individuals dealing with debt often make a number of mistakes, in particular, only seeking the help that provides them immediate relief rather than dealing with their debt as a whole.

Common pitfalls in dealing with debt

Individuals who are in financial difficulty will often try other avenues of dealing with their debts before they seek the professional advice of a Trustee. These options include:

- Obtaining a high interest debt consolidation loan from a finance company;
- Pay day loan arrangements;
- High interest rate credit card advances;
- Using one credit card to pay another;
- Borrowing funds from friends and/or family; and
- Entering into unrealistic debt management or repayment plans.

These options generally only provide short term relief or only deal with one debt, as opposed to all debts. Debtors do not understand the true cost of these options. In most cases, these options are not viable alternatives to dealing with debt. They are short term solutions to long term problems and do not address the true causes of financial difficulty. As well, individuals are reluctant to meet with a Trustee out of fear of the word “bankruptcy”.

However, our experience indicates that most individuals feel more in control of their future after meeting with us as they now have sufficient information to make an informed decision. There are options other than bankruptcy and the Trustee will explain all of these options and the option that is best suited for your situation.

In the table on the next page, there are a number of self-help solutions on dealing with debt and how to avoid bankruptcy. However, they do not always work. If you are unable to utilize any of the above options, then you need the advice of a Trustee to determine what options are available for you to deal with your debt and what the best course of action for you is. Remember, doing nothing is not an option.

How to avoid bankruptcy

Option	Advantages	Disadvantages
Increase income, take a part time job	Maintain same lifestyle Provide for opportunities Develop responsibility & skills Keep family independent of social assistance	May not solve financial mismanagement problems May interfere with primary job, studies, family life
Reduce living expenses	More money available for debt servicing	Lifestyle will change Can create conflict among family members
Convert assets to cash	Lifestyle may be maintained Using assets accumulated for such purpose (Canada Savings Bonds, RRSP's, life insurance, stocks)	Assets may be sold at lower market value Reduced collateral Alternative transportation or housing may have to be found
Debt Consolidation Loan	May reduce monthly payments and interest on debt balances Only one payment per month Ability to budget monthly income and expenses more effectively Pays existing creditors Relieves stress and tension	Usually a higher interest rate Spending pattern may not change May continue to use credit cards May increase cost of total debts (lower payments over longer period resulting in higher interest cost)

If you are unable to utilize any of the above options, then you need the advice of a Trustee to determine what options are available for you to deal with your debt and what the best course of action for you is. Remember, doing nothing is not an option.

Proposals

A proposal is an alternative to bankruptcy. A proposal is usually a cents on the dollar arrangement between you and your creditors. In order for the creditors to vote in favour of a Proposal it is necessary that the Proposal offer the creditors something better than they should expect to receive if you went bankrupt. Even if the Proposal offers something better than bankruptcy, the creditors may not always vote in favour of it and, in some instances, the significant creditors will request improved Proposal terms in order to obtain their favourable vote. However, if your proposal meets the voting thresholds and is accepted by the creditors, it is binding on all creditors, even those who may have voted against it.

There are two types of proposals:

- Consumer Proposals (for those with debts under \$250,000 – excluding mortgages on the principal residence);
- Ordinary Proposals (for those with more complex cases).

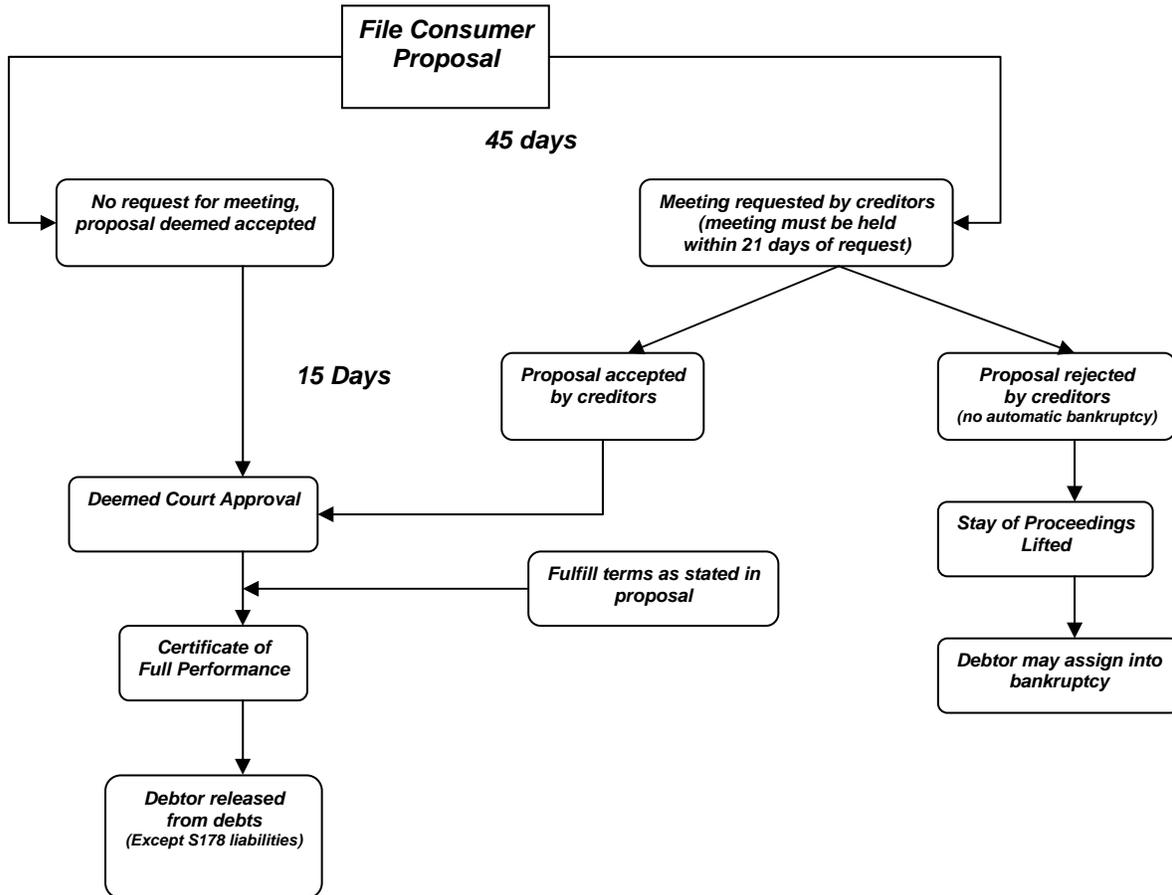
For a proposal to succeed and be accepted by your creditors, the debtor must be able to show the following:

- Stability – steady employment that shows a level of income over and above that which is necessary to meet the basic living expenses.
- Ability to pay – that the proposed payment is within the debtors budget and that the debtor can afford it.

Should these two basic factors not be present, a lump sum proposal where the funds are provided by a third party may be the only option available to avoid bankruptcy. If that is not available, bankruptcy may be the only option.

No matter how much the debtor wishes to repay their creditors, there is no advantage to making a proposal where they cannot meet the payments. In other words, the worst thing anyone in debt can do is enter into a repayment option they cannot keep. An illustrative view of the timing of the process is set out on the next page.

Consumer Proposal Process



Personal Bankruptcy

If you are unable to solve your problems with credit counselling or a proposal to your creditors, then you may have to consider making a voluntary assignment in bankruptcy.

Bankruptcy is a legal process, regulated by the *Bankruptcy and Insolvency Act*, by which you may be relieved of most, or all, of your debts. Personal bankruptcy laws are designed to permit an honest but unfortunate debtor to obtain a discharge from their debts while treating creditors equally and fairly.

When you declare bankruptcy, your creditors will be stopped from taking most legal steps to recover their debts from you. We will contact your creditors directly.

The two most common questions people ask about bankruptcy are:

1. Will I lose my assets?

In the majority of situations, you won't lose your assets, as both Provincial and Federal laws allow a bankrupt person in British Columbia to retain:

- Household furniture up to \$4,000
- Tools of the trade up to \$10,000
- A vehicle valued up to \$5,000
- Equity in a home of up to \$12,000 (\$9,000 outside the GVRD or Capital District)
- Certain life insurance policies and RRSPs (However, any contributions made in the previous 12 months are to be paid to the Trustee).

Other assets you have may be sold by the Trustee for the benefit of your creditors; however, this will be discussed in greater detail at your initial free consultation with one of our professionals. Arrangements can also be made to allow you to keep assets that would normally be sold.

2. What happens to the income I earn during my bankruptcy?

You may be required to make a payment of a portion of your income during the bankruptcy period. As each individual's situation is different, we will advise you prior to the bankruptcy of any payment required and what the likely time period will be.

As compassionate professionals who want to help solve your financial problems, we will explain your options to you in detail and help you make decisions that are right for you. Our Trustees will help you develop a creative, workable solution that will see you through your time of financial difficulty so that you can have the fresh start that you deserve.

How to get the process started

Call us for a free initial consultation. (604) 605-3335.

A proposal or a bankruptcy is commenced by meeting with a licensed Trustee who will assess your financial situation, will explain the options available to you and explain your rights and your responsibilities. After the meeting, you will have enough information for you to make an informed decision about the next step.

Should you wish to proceed and use our services, you will be required to complete an application form that discloses all relevant details of your financial situation.

(available at <http://www.boalewood.ca/images/forms/applicationform.pdf>)

There will be a list of documents that the Trustee will require copies of including statements from your creditors, your most recent pay stub and your last tax return and assessment.

From there, the Trustee will prepare all the required documents for either a bankruptcy or a proposal for you to sign and the process of a fresh start begins.

Frequently Asked Questions

What assets can I keep?

In BC, the exemptions are set out in the *Court Order Enforcement Act*. You are allowed to keep the following assets:

- Household goods and furnishings up to \$4,000
- Tools of the trade up to \$10,000
- Equity in a motor vehicle up to \$5,000 if there is no family maintenance debt
- Equity in a motor vehicle up to \$2,000 if there is a family maintenance debt
- Equity in a home up to \$12,000 in the GVRD and CRD \$9,000 outside these areas

An amendment to the *Bankruptcy and Insolvency Act* (July 2008) allows money in an RRSP, RIF or a Deferred Profit Sharing Plan to be also claimed as exempt property. However, any contributions made in the previous 12 months are to be paid to the Trustee.

Will all my debts be eliminated by filing bankruptcy?

Certain debts are not released by bankruptcy. This would include:

- Student loans, if bankruptcy is filed prior to seven (7) years after the finish of studies;
- Certain awards for damages;
- Court imposed fines or penalties;
- Alimony, maintenance and Child Support;
- Debts as a result of a proven fraud, misappropriation or similar items;

Will I be able to get another student loan?

Yes, Canada Student Loans now allows students who have been bankrupt or who are bankrupt to obtain additional loans for their education. For more information on this topic following the link below will direct you to the Canada Student Loans website.

http://www.hrsdc.gc.ca/en/learning/canada_student_loan/index.shtml

Will I have to make monthly payments?

The Superintendent of Bankruptcy sets the Standards pertaining to income. Depending on the amount of income and the number of people you have to support, you may be required to make monthly payments to the Trustee. You and your Trustee will determine the amount to be paid based on these Standards and your personal circumstances. These payments will stop once you receive your discharge from bankruptcy. The Income Standards can be found on our website in the forms section.

What about student loans?

Recent changes to the *Bankruptcy and Insolvency Act* now state that if the date of bankruptcy is **more** than 7 years after you completed your studies, the debt will be discharged with the bankruptcy. If the bankruptcy occurs **within** 7 years after the completion of studies the student loan debt is not released with the bankruptcy and you will have to continue payments after you are discharged. The "hardship provision" now allows for you to make an application to Court after 5 years if you are still unable to pay your student loan.

How will my credit rating be affected?

The fact that you have been bankrupt will remain on your credit report for 6 years after you are discharged or 3 years after completion of a consumer proposal. For more information on credit rating, you should visit the Equifax website at http://www.equifax.com/home/en_ca

Will I lose my house if I file for bankruptcy?

You may be able to keep your house if you file for bankruptcy. This is a complicated area and depends on a number of things, including the amount of equity in the home and if the mortgage holder would be agreeable to letting you keep it. Each situation is different and your home will be discussed when you meet with us at the consultation.

What if there is a lien on my vehicle?

You may be able to keep assets that you have pledged to creditors, such as a car, however, in these cases you will have to negotiate with the creditor directly. We will explain the provincial laws to you when you attend the free consultation.

Will my creditors stop calling me?

Yes. Our office will deal with your creditors. By law, actions against you must cease when a bankruptcy is filed. This includes garnishees, judgments and other legal actions. This does not apply to secured creditors such as banks holding, for example, a lien on a car.

How long will I be in bankruptcy?

The bankruptcy process is a minimum of 9 months long for a first time bankrupt. When the bankruptcy is over, your debts are discharged by law (you no longer have to pay back your debts). There are some exceptions to the rule, and we will explain these to you when we meet.

If you have been bankrupt before, or you do not perform your duties in the bankruptcy or if your discharge is opposed, then the Bankruptcy Court will decide what type of discharge you will receive.

Will notice of my bankruptcy be published in the newspaper?

No. For most consumer bankruptcies, no notice is required to be published in the newspaper.

How much does a bankruptcy or proposal cost?

The Trustee's fees for a consumer proposal and a personal bankruptcy are set out in the *Bankruptcy & Insolvency Act Rules* and are based upon the amount of funds paid to the Trustee. The Trustee is not paid by the government or by the Superintendent of Bankruptcy. Legal aid or other government agencies do not provide for payment of fees.

In more complex cases where an Ordinary Proposal or Ordinary Bankruptcy is filed, there is more work for the Trustee to do and the Trustee's fee is normally based upon the number of hours spent by the Trustee's staff at normal billing rates. Costs will vary depending upon the complexity of the proceedings, and can be paid for out of funds paid to the Trustee. In all cases, the Trustee must have his final fees approved by the Court.

Glossary of commonly used insolvency terms

Assets

Assets are any items of property you own that have value, such as a house, car, furniture, or cash.

Assignment in Bankruptcy

The formal term for “going bankrupt” is “making an assignment for the general benefit of creditors”. It is a legal process where the non exempt assets of a bankrupt vest with the trustee, who in turn liquidates them to satisfy your debts with your creditors.

Bankruptcy

Bankruptcy is a legal process to allow someone with money problems to get a fresh financial start. When you declare bankruptcy, the Trustee steps into your financial shoes, and deals directly with your creditors.

Consumer Proposal

A Consumer Proposal is an alternative to bankruptcy, where you offer to pay your creditors a percentage of what you owe them over a specific period of time. It is a compromise of your debt, whereby you are able to retain your assets. Generally, you would make monthly payments to a Trustee, and the Trustee will use that money to pay your creditors. The amount you pay depends on your personal situation and the amount of money you make.

Co-signer, co-borrower, supplemental cardholder, spousal cardholder

A co-signer, co-borrower, supplemental cardholder, spousal cardholder is someone who may be responsible for a loan or debt of another person. Generally, if the main borrower/cardholder cannot repay the loan, the other person will become responsible for the debt.

Counseling

The Trustee must provide two counseling sessions to all individuals who file a Consumer Proposal or Bankruptcy to help them understand the causes of their financial difficulties and provide financial guidance to help you avoid a future financial difficulty.

Credit Rating

Your credit rating is a history of all the money you have borrowed and owe. It shows if you have successfully paid your debts over time.

Discharge from Bankruptcy

The release of a debtor from the obligation to repay his or her debts.

Unsecured Creditors

An “unsecured” creditor is someone who lends you money without "attaching" to any of your assets.

Secured Creditors

A “secured” creditor is someone who has a lien or mortgage on a certain piece of your property, such as your house or car, and has the right to seize and sell that property if you do not repay your loan.

Stay of Proceedings

No creditor has any right or remedy against the property of a bankrupt, or may commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

Equity

Equity represents the percentage of your assets that you personally own. For instance, if you have a mortgage on your home, the “equity” in your home equals the market value of your home minus the amount of your mortgage and applicable selling costs.

Exempt Property

Property which is either held in trust for some other person, or declared exempt through provincial legislation i.e. *BC Court Order Enforcement Act*.

Garnishment

A legal process where a creditor has obtained a judgment and the court has allowed them to seize your salary, money in your bank account, or other money you own to repay your debt.

Official Receiver

The Official Receiver is a federal government employee in the Office of the Superintendent of Bankruptcy and an officer of the court with specific duties under the *Bankruptcy and Insolvency Act*.

Principal Residence

The home in which you (and your family) live most of the time. It can be a house, condominium, mobile home, or even a houseboat.

Surplus Income

Every year, the Superintendent of Bankruptcy publishes guidelines outlining how much money a bankrupt person is entitled to retain for living expenses. Fifty percent (50%) of any income over and above that amount must be paid into their bankrupt estate, and is called “surplus income.”

Trustee / Trustee in Bankruptcy

A Trustee, also known as a Trustee in Bankruptcy, is a person who is licensed by the Office of the Superintendent of Bankruptcy to administer the *Bankruptcy and Insolvency Act*. Trustees are strictly regulated, and must keep informed of current case law and directives.

Resources

Boale, Wood & Company Ltd.

<http://www.boalewood.ca/>

Office of the Superintendent of Bankruptcy

<http://osb-bsf.ic.gc.ca>

Canadian Association of Insolvency and Restructuring Professionals

<http://www.cairp.ca/>

Canada Revenue Agency

<http://www.cra-arc.gc.ca/>

Canada Student Loans

http://www.hrsdc.gc.ca/en/learning/canada_student_loan/index.shtml

Supreme Court of British Columbia

<http://www.courts.gov.bc.ca/>

Business Practices and Consumer Protection Authority of BC

http://www.bpcpa.ca/index.php?option=com_content&task=view&id=174&Itemid=28

Province of BC – Statutes

<http://www.qp.gov.bc.ca/statreg/>

Equifax

www.equifax.ca

TransUnion Canada

www.tuc.ca