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PERSONAL INSOLVENCY HANDOUT FOR CONSUMER DEBTORS

Are you experiencing a Personal Financial Crisis?

Remember - you do have options.

It is important for you to understand that bankruptcy legislation is designed to accomplish a number of objectives, including the following:

- To provide a fresh start through statutory mandated relief to an insolvent debtor who is unable to discharge his or her debts
- To provide for a number of alternatives to enable a debtor to avoid the prospect of bankruptcy, if that is a viable option.
- To provide qualified counselling to debtors to enable them to identify and address the causes of insolvency as well as to provide useful tools, which if implemented, can be applied to avoid recurring insolvency.

When people contact us with debt concerns, they often assume there is only one solution, personal bankruptcy. While you research your personal strategy, keep these options in mind as you consider the decision you are making:

- ❑ You could do nothing and hope time will cure all problems.
- ❑ You could attempt to borrow money to pay and consolidate your debts.
- ❑ You could ask your creditors to forgive your debts.
- ❑ You could seek out credit counselling assistance with an Industry Canada accredited counsellor with a reputable credit counselling agency or with a Trustee in Bankruptcy, who will review your situation and ability to pay, then contact your creditors on your behalf to help you to negotiate a solution that pays your creditors as you can afford, and avoids bankruptcy proceedings.

- ❑ You could consider offering a Consumer Proposal to your creditors, with the assistance of a Trustee in Bankruptcy, provided your debts are consumer debts that do not exceed \$ 250,000.00 (excluding mortgages). If your creditors agree with your Consumer Proposal, you will avoid bankruptcy, if they do not, you are not deemed bankrupt and can consider other options to satisfy your creditors.
- ❑ You could consider the filing of a non-consumer proposal to your creditors with a Trustee's assistance under Part III, Division I of the Bankruptcy and Insolvency Act.
- ❑ You could consider the filing of an assignment in bankruptcy if none of the above is viable options for you and you cannot otherwise resolve your debt load.

Not every option will work for you, depending on the scope and amount of your debts and supporting assets. We will review each of these options with you in detail, and where applicable, provide you with access to community resources to enable you to address your particular situation. In the final analysis, the decision to proceed in any particular direction will remain in your hands.

On the following pages, we provide some additional information to help you to understand your rights and responsibilities in the event that bankruptcy is the best option for your situation.

“SO, BANKRUPTCY IS YOUR SOLUTION”

(Edited Reprint of an Industry Canada Publication for Personal Bankruptcy)

Many potential bankrupts have very little knowledge of the significance and implication of the bankruptcy process. The purpose of this pamphlet is to explain in simple terms the duties, restrictions and responsibilities imposed on a bankrupt.

Bankrupts are nevertheless reminded that they must know their duties and the implication of their status as a bankrupt. Therefore, you should also consult the sections of the Act (*Bankruptcy & Insolvency Act*) that affect you. For the purposes of this document, the use of the masculine applies equally to the feminine.

1. WHAT IS BANKRUPTCY?

It is a legal process which provides immediate relief to an overburdened debtor by halting legal actions by creditors (garnishments, seizures, lawsuits, etc.). It results in the elimination of the majority of all liabilities.

While the bankrupt may normally keep furniture, clothing and personal effects, the assets exceeding provincial exemptions must be turned over to the trustee, who will sell them and distribute the proceeds among the creditors.

The process is intended to provide financial rehabilitation for the debtor and a new start in life.

2. **WHO CAN GO BANKRUPT?** (Sections 43 and 49)

In order to declare bankruptcy, an individual debtor must meet certain conditions:

- The debtor must owe at least \$1,000;
- he must be unable to meet regular payments as they fall due; and
- the property owned is insufficient to enable payment of all debts.

In general, bankruptcy is usually the best solution only for those who cannot consolidate their debts at a reasonable cost over a reasonable period of time.

3. **STAY OF PROCEEDINGS** (Sections 69 and 70)

The filing of a bankruptcy halts all garnishments, lawsuits or court proceedings initiated or that may be initiated.

Only the court may grant permission to creditors to pursue their action in certain special circumstances.

4. **DISCHARGE** (Sections 169 and 178)

The *Bankruptcy and Insolvency Act* provides that a first time-bankrupt will be automatically discharged 9 months after the date of bankruptcy unless the discharge is opposed. In this case, the Court will decide whether the discharge will be granted and may extend the period of bankruptcy.

The Court may grant the following types of Discharge:

- a. Absolute: It applies immediately and the debtor is no longer responsible for his liabilities, except for those covered under section 178 (see attached).
- b. Conditional: The bankrupt will be required to make payments to the Trustee for distribution to the creditors.

- c. Suspended: Same as absolute but with a delay before coming into effect.
- d. Refused: Court has the right to refuse discharge, but it rarely exercises this power.

5. PROPERTY OF THE BANKRUPT (Sections 67 and 68)

The non-exempt assets of the bankrupt, whether in his possession or not, belong to the Trustee. Assets in the bankrupt's possession which belong to others will be returned to them.

Where a creditor holds security against any asset, he will normally be allowed to exercise his rights.

Exempt property

The Trustee will not take possession of certain assets because they are exempt from seizure under provincial law. The following page includes the current exemption schedule for British Columbia. These exemptions are set out in the B.C. Court Order Enforcement Act and apply in any proceedings, including bankruptcy.

**BRITISH COLUMBIA
PERSONAL EXEMPTIONS FROM SEIZURE
as at MAY 1, 1998**

\$4,000 HOUSEHOLD ITEMS

\$10,000 IN WORK TOOLS

\$5,000 EQUITY IN AUTOMOBILE*

\$12,000 EQUITY IN A HOUSE IN GREATER VANCOUVER
OR VICTORIA

\$9,000 EQUITY IN A HOUSE ELSEWHERE IN BRITISH COLUMBIA

* if the debtor is behind in child payments the vehicle exemption is reduced to \$2,000

**NOTE: A BAILIFF MUST EXPLAIN EXEMPTIONS RIGHTS ON FIRST VISIT
THEN PEOPLE HAVE TWO DAYS TO CHOOSE WHICH ASSETS THEY WISH TO
INCLUDE IN THEIR EXEMPTION**

Salary, Wages and Other Assets

When a bankrupt earns income in excess of that necessary to maintain a reasonable standard of living, he is expected to make payments to the Trustee from that excess. The amount of the payment will be decided by taking into consideration the 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 financial situation of the bankrupt, the amount of the payment can be varied at that time.

Property acquired by the bankrupt, such as lottery winnings or inheritance received after the bankruptcy, but prior to discharge, must be turned over to the Trustee.

Tax refunds

A tax return for the period of January 1 to the date of bankruptcy will be prepared by the Trustee. Any tax refund for those periods as well as refunds of previous years not yet received, belong to the Trustee. Any tax payable from the pre-bankruptcy period is considered a pre-bankruptcy debt. Another tax return will be completed for the period from the date of bankruptcy to December 31. A liability shown on this return is the responsibility of the bankrupt.

6. SETTLEMENT OF PROPERTY AND PREFERENCE PAYMENTS (Sections 91 and 95)

Gifts or transfers of property during the 12 months prior to bankruptcy (five years 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 the creditor. The trustee must be informed of any such payments by the debtor.

7. DUTIES IMPOSED UPON THE BANKRUPT (Section 158)

The bankrupt must fulfill all of the following duties:

- deliver credit cards to the Trustee whether or not there is an amount owing;
- reveal and turn over to the Trustee all assets in his possession or control;

- make available to the Trustee all books and records relating to assets or affairs;
- attend at the office of the official receiver (bankruptcy administrator), if and when requested, to be examined under oath as to the facts relating to the bankruptcy;
- provide a complete statement of assets and liabilities including creditors' names, addresses, account numbers, invoices and amounts to the Trustee. Where additional bills or legal documents are received by the bankrupt, they should be forwarded to the Trustee. If assets were accidentally omitted, the Trustee must be informed promptly;
- inform the Trustee of the details of all property disposed of during the 12 months prior to bankruptcy;

- inform the Trustee of the details of all property disposed of by gift during the five years prior to bankruptcy;
- attend the first meeting of the creditors and any other meetings when called upon by the Trustee;
- complete monthly budget statements and submit them to the Trustee on a monthly basis for the duration of the period of bankruptcy and submit a copy of your proof of income (paystub) to the Trustee along with the budget statement;
- make payments to the Trustee as arranged for fees and/or surplus income, and
- keep the Trustee advised of place of residence until discharge.

8. BANKRUPTCY OFFENCES (Sections 198 and 199)

The bankrupt is liable to a fine and imprisonment if found guilty of any of the following offences under the *Bankruptcy and Insolvency Act*.

- failing to perform the previously mentioned duties as a bankrupt;
- fraudulently disposing of assets before or after bankruptcy;
- omitting to answer fully and truthfully all questions when examined under oath;
- making false declarations regarding assets or liabilities;
- destroying or concealing books or documents relating to his property or affairs;
- obtaining property or credit by false representation during the period of 12 months prior to bankruptcy and until the date of discharge;
- fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from him; or
- within the twelve month immediately preceding his bankruptcy, pawns, pledges or disposes of any property that he has obtained on credit and has not paid for, unless in the case of a trader the pawning, pledging or disposing is in the ordinary way of trade and unless in any case he proves that he had no intent to defraud.

To summarize each step of the process:

1. Contact Trustee, formal declarations, assignment and turnover of assets, if any.
2. Appear before the official receiver to be questioned, if required.
3. Attend meeting of creditors (normally at the Trustee's office).
4. Attend a minimum of two credit counselling sessions.
5. Payments to the Trustee, when required.
6. Provide the Trustee with monthly statements of income and expenses and income tax information.

Note: This pamphlet has been prepared primarily for the consumer. Certain details and explanations have been omitted or abbreviated. To learn about the consequences and effects of a business bankrupt, one should seek expert advice.

BANKRUPTCY AND INSOLVENCY ACT

SECTION 178

Debts not released by an Order of discharge – An Order of discharge does not release the bankrupt from:

178. (1) An order of discharge does not release the bankrupt from

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;

(a.1) any award of damages by a court in civil proceedings in respect of

- (i) bodily harm intentionally inflicted, or sexual assault, or
- (ii) wrongful death resulting therefrom;

(b) any debt or liability for alimony or alimentary pension;

(c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

(g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred

- (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
- (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student; or

(h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).

Court may order non-application of subsection (1)

(1.1) At any time after five years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

- (a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and
- (b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

Claims released

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

R.S., 1985, c. B-3, s. 178; R.S., 1985, c. 3 (2nd Supp.), s. 28; 1992, c. 27, s. 64; 1997, c. 12, s. 105; 1998, c. 21, s. 103; 2000, c. 12, s. 18; 2001, c. 4, s. 32; 2004, c. 25, s. 83; 2005, c. 47, s. 107; 2007, c. 36, s. 54.

(Excerpt from the *Bankruptcy & Insolvency Act of Canada*)

11(d) EFFECT OF ASSIGNMENT ON YOUR SITUATION

1. Any one who co-signs a debt for you will **become responsible** for that debt. If you have co-signed anyone’s debt you must list that debt as one of your creditors.
2. With some exceptions (ie. child/spousal support) garnishees against your income or assets filed **after** your bankruptcy documents are registered have **no effect** on your income or assets, as long as they relate to a pre-bankruptcy debt. Any funds or assets seized **prior** to your assignment into bankruptcy will be **paid to the Trustee** for the benefit of your creditors.
3. Your assignment is a matter of **public record** and anyone who knows how to search public records can discover it at any time. Some credit bureaus maintain records about individual credit ratings and your assignment will be on those records. When their users request an assessment of your credit rating, the bankruptcy assignment will be disclosed. The various credit bureaus maintain individual records for various periods of time.

It will be your responsibility to establish a new credit rating after your personal bankruptcy by dealing responsibly with your creditors.

4. Debts for income taxes are released by your bankruptcy assignment just as other credit obligations. The obligation to pay **income taxes** on income earned **after** the date of your bankruptcy assignment is **your responsibility**. The Trustee will decide if he will be filing the tax return for the period following the bankruptcy assignment, called the post-bankruptcy tax return. Most bankrupts voluntarily assign their post-bankruptcy income tax refund to the Trustee.
5. Commitment to make monthly payments to your Trustee – You will no longer have to make payments on your unsecured debt, however you are **required to make payments to the Trustee** for the benefit of your creditors. The amount of the payment is based on the Trustee’s review of your situation and Guidelines established by the Superintendent of Bankruptcy. It is critical that you **adhere to these negotiated payments**. The Trustee’s fee is based on a percentage of the amount of funds recovered in your bankruptcy estate and is a first charge on the funds collected in your bankruptcy.

Should you fail to meet these commitments our firm will **oppose** your discharge, ask the Court to **garnishee** your income or make an application for his discharge and leave you as an undischarged bankrupt (sine die).

Reviewed By

Debtor’s Signature

Date

11(e) DISCHARGE PROCESS

AUTOMATIC DISCHARGE

The Trustee can sign your discharge if this is your first bankruptcy, if you attend both counselling sessions and if no one objects to your discharge. The Trustee will object to your discharge if you do not fulfill your obligations.

OBJECTED DISCHARGES (application to Bankruptcy court)

- | | |
|---------------------------------|---|
| Suspended Discharge (Postponed) | A suspended discharge discharges the bankrupt after a specific period of time. |
| Conditional Discharge | If the Court determines you have the ability to pay some monies to the Trustee, you may be ordered to do so. The Court may also order you to fulfill any outstanding duties. You will not be discharged until these conditions are met, after which a new Court application must be made for your discharge from bankruptcy. |
| Absolute Discharge | The Court may discharge you from bankruptcy effective the day of the Court hearing. |
| Refused | This is granted only if there is a blatant abuse of the bankruptcy system in your bankruptcy. The Court will refuse your discharge and leave you in bankruptcy until you can demonstrate to the Court that your application for discharge should be reconsidered. Some bankrupts may never get a discharge. Your creditors may request leave from the Courts to continue their collection actions. |
| Deemed Conditional Discharge | <p>If you have ongoing surplus income and there are no other grounds for an opposition to your discharge, the Trustee may recommend that your discharge be made subject to conditions. This is different from a Conditional Order of Discharge because it is a mutual agreement made between the Trustee and the bankrupt and is not imposed by a Court. The maximum length of such an agreement is twelve months.</p> <p>If you agree to the conditions recommended by the Trustee, both parties sign an agreement setting out those terms. Once the terms of the agreement have been complied with, the Trustee issues a Certificate of Discharge (Conditions Met). If you do not meet the terms within the required timeframe, the matter must be referred to Court and a Court hearing is held to have the matter of your discharge heard before a Registrar In Bankruptcy.</p> |

If you disagree with the Trustee's recommendation, you may request mediation. This is normally held before an official of the Office of the Superintendent of Bankruptcy. If an agreement is reached at the mediation session, the parties sign a Mediation Agreement. Again, once the terms of the Mediation Agreement have been complied with, the Trustee issues a Certificate of Discharge (Conditions Met).

If no agreement is reached at a mediation session, then the matter must be referred to Court.

DISCHARGE OF TRUSTEE – Non Co-operative Bankrupts

Adjourned Sine Die If it becomes apparent to the Trustee that you are not prepared to co-operate, making payments as agreed, or attend required counselling, the Trustee will make an application for his discharge without obtaining your discharge. Effectively your discharge will be left on "hold" and you will have to bring forward your discharge on notice to the Trustee. In the meantime, your creditors may be allowed to proceed against you for collection of debts declared in your bankruptcy, as though the bankruptcy had not been filed.

Debtor's Name

Date

Further information can be obtained by contacting us directly, or by accessing our website located at <http://www.manning-trustee.com>