

FINANCIAL HARDSHIP – OPTIONS AND OBLIGATIONS

Purpose: This bulletin explains the obligations and options available when industry members and/or their businesses run into financial hardship.

This bulletin applies to all industry members.

Industry members often work on commission, which makes income an uncertainty even though expenses still need to be paid. As a result, industry members are more likely to experience financial hardship than individuals in other professions where income is stable and predictable. When industry members experience financial hardship, they have several options available to deal with their situation. They also have an obligation to report the situation to the executive director, depending on the option they choose.

What are the options?

There are a number of options available to assist individuals and companies in dealing with debt and financial hardship:

- The Credit Counselling Society is a free, non-profit service that offers debt repayment and debt settlement solutions, as well as financial planning education programs. They will attempt to negotiate with creditors on your behalf to establish a manageable repayment program. If the Credit Counselling Society cannot arrange a solution for you, they will advise you on other options. You can find out more by visiting their website <https://www.nomoredebts.org>.
- Money Mentors is a non-profit organization authorized by the Alberta government to manage its Orderly Payment of Debt (OPD) program. The program will consolidate all of your debts at a guaranteed 5% interest rate; determine a single, consolidated payment amount you will pay to an administrator; and, stop your creditors' collection activities. Under the OPD, you repay all of your debt. Money Mentors provides a free financial assessment to determine if OPD is the right solution for you. Money Mentors website provides more details: <https://moneymentors.ca/our-services/the-orderly-payment-of-debts-program/>.

The following options fall within RECA's definition of "bankruptcy proceeding," and require immediate notification to the executive director.

- If your total debts, excluding those secured by your residence, do not exceed \$250,000, one of your options is a consumer proposal. A consumer proposal is a formal, legally binding process that a Licensed Insolvency Trustee (LIT) administers. The LIT will work with you to develop an offer to pay creditors a percentage of what you owe them and/or extend the time you have to pay them. If your creditors accept your offer, you make payments to the LIT and they pay your creditors.

A Division 1 proposal is similar to consumer proposal, but it applies if it is your company experiencing the financial hardship or if your debts, excluding your principal residence, exceed \$250,000.

The Office of the Superintendent of Bankruptcy (OSB) supervises consumer proposals and Division 1 proposals. These processes fall within the definition of bankruptcy proceedings and if you begin one of these processes, you must immediately notify the executive director.

More details, including an explanatory video, are available on the OSB website: <https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br02051.html>.

- Declaring bankruptcy is another option if you run into severe financial issues. In a bankruptcy proceeding, you sign over non-exempt assets to an LIT. The LIT sells these assets or works out repurchase arrangements between you and your creditors, and distributes the funds to your creditors. You may also need to make additional payments to your creditors to settle your debt, which you make through your LIT.

Payment amounts and time will depend on your income, family needs, and other factors. You can protect assets including equity in your home (up to a certain amount), vehicles, furniture, retirement accounts, and other necessities. You will receive a discharge after completing bankruptcy proceedings. This releases you from the legal obligation to repay the debts you had when you filed for bankruptcy. After discharge from bankruptcy, you must continue to pay some types of obligations such as alimony, court-ordered fines, a student loan when it is less than seven years since you finished your studies, and debts arising from fraud. More details including some short videos are on the OSB website. <https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br02048.html>

Personal and business bankruptcy require immediate notification to the executive director.

Corporations have some options that differ from the options available to individuals. If you have any questions or are not sure if you need to report an event, contact RECA at info@reca.ca.

Some of the options that are available also come with other repercussions, such as an impact on your credit score, the length of time it appears on your credit report, and the cost to go through the process.

It is best to seek expert advice from an LIT or one of the non-profit agencies mentioned in this bulletin so you clearly understand your options. Several of these services also offer financial counselling, which may be all that you need.

There are other credit counselling and debt restructuring services available, but many are non-regulated and consumers report varied experiences. It is a good idea to check references and credentials when dealing with any credit counselling or debt restructuring businesses. Keep in mind these businesses are private companies, and they are not legislated to offer these services to you.

What are your obligations?

You must immediately notify the executive director through the myRECA system whenever you are the subject of bankruptcy proceedings. You must also notify the executive director whenever a company you own or are a partner, director, or officer of is the subject of bankruptcy proceedings.

Bankruptcy proceedings include:

- Consumer proposal or Division 1 proposal
- Bankruptcy

How do I notify the executive director?

You notify the executive director through your myRECA at www.myRECA.ca. To begin your notification, select Notify the Executive Director from your My Account tab, and then follow the on-screen prompts.

What happens after I notify the executive director?

After you notify the executive director, you will need to provide additional details about the situation and you will have to upload supporting documentation through your myRECA account. RECA reviews the information to determine if the situation creates any potential harm to the public or impairs your ability to provide competent service. During its review, RECA compares your conduct to its Good Character Policy. When an economic downturn, marital issues, health issues, or similar circumstances outside of your control cause the situation, there is

typically no impact on your licence. However, if you intentionally avoided financial responsibilities, which led to your bankruptcy proceedings, it could affect your eligibility for a licence because it does not meet the good character criteria.

Implications for brokers

If a broker enters into bankruptcy proceedings, it creates a possible conflict of interest because of their ability to hold trust funds for clients. Brokers considering bankruptcy should contact RECA before beginning bankruptcy proceedings. There may be an option that allows you to maintain your broker licence or at least to ensure the continuity of the brokerage.

Industry members who declare bankruptcy need to provide a copy of their discharge from bankruptcy before they obtain a broker licence.

Related information

Legislation

- *Real Estate Act* Rules – sections 14(1)(m), 34(1)(e), 40(1)(e), 42(g)

Information Bulletins

- Good Character – Professional Conduct Review
- Good Character - Licensing
- Notice to Executive Director - Real Estate and Mortgage Brokerage Professionals
- Notice to Executive Director - Real Estate Appraisers

Other information

- Good Character Policy – Professional Conduct Review