

Personal Bankruptcy

A personal bankruptcy can fall into one of two categories:

- Summary Administration

- The majority of personal bankruptcies would fall into this category.

- In a summary administration bankruptcy the value of the realizable assets does not exceed \$10,000.

- Realizable assets are assets that are not classified as exempt and are not fully encumbered by a secured creditor. Realizable assets do not generally include your principal residence, work related tools, household furnishings, RRSP's (or other exempt assets).

- The value of a realizable asset is what it could be sold for by the bankruptcy trustee. It is not the original cost of the asset or the value to replace it.

- First time bankrupts are eligible for an automatic discharge after nine months if there is no objection to the discharge.

- Ordinary Administration

- Personal Bankruptcies for individuals with realizable assets in excess of \$10,000 would fall into this category.

- A notice will be printed in the local newspaper for all Ordinary Administration bankruptcies.

- An ordinary administration bankruptcy would not be eligible for an automatic discharge, however a first time bankrupt could still be discharged by the Court after nine months if all obligations are completed and there are no objections to the discharge.

Questions and Answers

Do I qualify to file a bankruptcy?

The technical (legal) qualifications to file a bankruptcy are:

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- You owe more than \$1,000;

- You reside, carry on business or have property in Canada;

and

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- You are unable to pay your debts as they become due; or
- You have ceased paying your current obligations in the ordinary course of business; or
- The value of your assets if sold (at fair market value) would not be enough to pay all of your obligations.

The decision to file bankruptcy usually comes down to more practical considerations. Every person's situation will be a little bit different and so it is a good idea to speak to a Trustee if you think that you might need to file a bankruptcy. There are a number of options available and it is important to assess your specific situation to choose the one that is right for you. Many people technically qualify to file for bankruptcy but it is not their best practical option.

What are the requirements to complete a bankruptcy?

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- The monthly income and expense statements have been submitted during the period of the bankruptcy. These are budget sheets that must be filled out and submitted at the end of each month;
- Two financial counselling sessions must be attended;
- The affidavit of earnings must be filled out and signed in front of a commissioner of oaths. This is done around the seventh month of the bankruptcy. We have commissioners at our office and this can be done either by coming in to the office or with a commissioner of oaths in your local area.
- The bankruptcy fees must be paid in full;
- Tax information for the year prior to the bankruptcy and the for the year of the bankruptcy must be provided to the trustee;
- No creditors have opposed the discharge;
- The above are the basic requirements. In some cases there may be something additional, this will be discussed with you if it applies to your situation.

If it is a first time (summary administration) bankruptcy and above requirements have been completed within the required time period you would be eligible for an automatic discharge after nine months. In the case of an ordinary administration bankruptcy, or a second (or third) time bankruptcy, an application for discharge could be made to the Court after nine months. In the case of an ordinary administration bankruptcy you would be eligible for an absolute discharge. In a second (or third) time bankruptcy you would be eligible for a suspended discharge. Then length of the suspension varies based on the circumstances.

In Saskatchewan, a second time bankrupt would likely receive a six month suspension. A third time bankrupt would receive a suspension of at least 2-5 years. The circumstances of the bankruptcy and the conduct of the bankrupt would determine the length of the suspension.

If I complete all of my requirements can my discharge still be opposed?

There are a few circumstances that might cause your discharge to be opposed even if you complete all of your requirements. These circumstances can include the following:

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- You have surplus income. Surplus income can result in an extension in the length of time you are required to make payments. This will be discussed with you at the time your bankruptcy is signed and again at the time your discharge is being prepared.

- A creditor or the trustee has an issue that they would like to have brought up at a discharge hearing. In some cases a creditor or the trustee would like the Registrar to hear the circumstances and issues relating to a bankruptcy to make a decision about the discharge of a bankrupt. In most cases this would relate to a bankrupt's conduct prior to or during the bankruptcy.

It is my first time bankruptcy, how long will I be in bankruptcy?

Summary Administration

A first time bankruptcy is at minimum a nine month process. A first time bankrupt would be eligible for discharge nine months and one day from the date the bankruptcy was filed. In order to receive your discharge you must complete the requirements of the bankruptcy and no creditor must oppose your discharge. If you do not complete the requirements of the bankruptcy you would remain in bankruptcy indefinitely until the requirements were completed.

Ordinary Administration

A first time bankruptcy would also be at minimum a nine month process. Instead of receiving an automatic discharge, you would be eligible for an Absolute discharge issued by the Bankruptcy Court. If you do not complete the requirements of the bankruptcy you would remain in bankruptcy indefinitely until the requirements were completed.

It is not my first bankruptcy, how long will I be in bankruptcy?

In the case of a second time bankruptcy (or third time bankruptcy), an application for discharge could be made to the Court after nine months for a suspended discharge. Then length of the suspension varies based on the circumstances. In Saskatchewan a second time bankrupt would likely receive a six month suspension. A third time bankrupt would receive a suspension of at least 2-5 years. The circumstances of the bankruptcy and the conduct of the bankrupt would determine the length of the suspension.

What happens with my creditors? How long does it take for the phone calls or garnishees to stop?

Once a bankruptcy is filed a stay of proceedings will be in effect. This comes into effect immediately. A stay of proceedings prevents the creditors from taking any further action against you. This would include phone calls or garnishees (other than maintenance enforcement garnishees). Once the creditor has been notified of the bankruptcy they should not have any further contact with you. Any phone calls from creditors should be referred to the trustee.

What is the cost of a bankruptcy?

It does not cost anything to come in to the office to see a trustee or an administrator to discuss your options or for the initial consultation(s). If you decide to proceed with filing a bankruptcy there are a number of things that can be involved that generate possible recovery for the benefit of your creditors. In most cases when you decide you are going to file a bankruptcy you will be quoted a fee from the trustee for the cost of the bankruptcy. This should be written up in the form of a payment agreement. The payment agreement should outline the amount of fees being paid, the payment schedule of required payments, whether income tax refunds are being applied and whether surplus income payments, or asset repurchase are part of the payments.

It is necessary for the trustee to have detailed information about your situation (including your monthly income and expenses and any assets you may own) before they will be able to tell you the total costs involved with your bankruptcy.

([Click here for more information about the cost of bankruptcy](#))

What will happen to my assets?

Property or assets that are owned by you (excluding exempt property and property you are holding in trust for another party) is turned over to the trustee for the benefit of your unsecured creditors. The definition of property also includes property which comes into your possession or is received by you while you are in bankruptcy. This could include things such as winnings or inheritances.

Will I have to meet with my creditors face to face if I file for bankruptcy?

Summary Administration

A meeting of creditors will only be held if requested by your creditors. In most cases a meeting will not be requested. If a creditors meeting is requested you would have a duty to attend this meeting.

Ordinary Administration

A meeting of creditors will be scheduled within 21 days of the filing of your bankruptcy. It is possible that some or all of your creditors will attend this meeting. In a lot of cases no creditors will attend the meeting. As one of your duties, it is required that you attend this meeting. The main purposes of this meeting are to consider the affairs of the bankrupt, to affirm the appointment of the trustee (or substitute another trustee), and for the creditors to give directions to the trustee as they see fit with regards to the administration of the bankruptcy estate.

More questions and answers can be found in the Frequently Asked Questions section.