

Bankruptcy Basics for Albertans

Seven things to know before filing for bankruptcy

1. Bankruptcy is a legal process.

Canada's *Bankruptcy and Insolvency Act* sets out the law for bankruptcy. It applies the same across Canada. Bankruptcy is a legal process which frees a person or company from the obligation to pay some or all of their debts, allowing them to have a fresh start.

To file for bankruptcy, you must owe at least \$1000 to one or more creditors and not be able to pay your debts as they are due. You will sign over most of your assets to a Licensed Insolvency Trustee. You can usually keep property that is security for a loan (such as a house or financed vehicle) if the lender lets you keep it. You can also keep assets that are exempt by provincial, territorial or federal laws. The trustee will use or sell the assets you transfer to them to pay your creditors (people you owe money to). You are bankrupt until your bankruptcy is **discharged**.



A **discharge** marks the end of your bankruptcy period. You can be automatically discharged if you meet certain conditions. If someone challenges your discharge, the court makes a decision.

2. You must work with a Licensed Insolvency Trustee.

To file for bankruptcy, contact a Licensed Insolvency Trustee. A Licensed Insolvency Trustee is a person licensed by the Office of the Superintendent of Bankruptcy.

A trustee can:

- give you information and advice about the bankruptcy process and alternatives to bankruptcy
- complete the paperwork to file for bankruptcy
- manage assets held in trust and deal directly with your creditors
- make sure that both your rights and the creditor's rights are respected

A trustee is ethically and legally obligated to provide you with objective, unbiased advice on your options. They will not 'sell' you into bankruptcy. If another option makes sense, the trustee should advise you of this.

To find a **Licensed Insolvency Trustee** near you, visit the Government of Canada's website:

<https://www.ic.gc.ca/app/scr/tds/web/>

If a Licensed Insolvency Trustee will not accept your case or if you cannot afford to hire a trustee, contact the Office of the Superintendent of Bankruptcy Canada's **Bankruptcy Assistance Program**.

3. Bankruptcy lasts at least nine months.

The length of your bankruptcy depends on many things. The shortest time is nine months.

You can be automatically discharged after nine months if:

- This is your first bankruptcy, and you cooperate with the trustee.
- Your surplus income is less than \$200 per month.
- Your creditors, the Superintendent of Bankruptcy or your trustee do not oppose your discharge. (They may oppose your discharge if you do not fulfil your duties or if you were not honest during the process.)
- You received credit counselling.

Surplus income is income above the threshold amount set by the Office of the Superintendent of Bankruptcy for your family size. If your surplus income is more than \$200 per month, you must pay your trustee 50% of the surplus amount. This money is added to your bankruptcy estate, and either divided among your creditors or used to cover the costs of your bankruptcy.

The following can extend the length of your bankruptcy:

- Surplus income payments
- One or more previous bankruptcies
- If you owe more than \$200,000 of personal income tax debt representing 75% or more of your total unsecured debt
- Failure to complete one or more duties
- Opposition to your discharge by your creditors, your trustee or the Superintendent of Bankruptcy

Your bankruptcy can last for up to 36 months if it is your second bankruptcy and you have surplus income greater than \$200 per month.

4. You have duties to fulfill as a bankrupt.

As a bankrupt, you must:

- Be honest with your trustee
- Tell your trustee about all of your assets (property and money) and liabilities (debts)
- Tell your trustee about any property that you sold or transferred (disposed of) in the past few years
- Give the trustee all of your credit cards
- Attend a meeting of your creditors (if your creditors request a meeting)
- Attend two counselling sessions
- Notify your trustee in writing of any address changes
- Attend an examination at the Office of the Superintendent of Bankruptcy (if required)
- Help the trustee as needed in administering your estate
- Pay the trustee's fees
- Each month, give your trustee a copy of your pay stubs and proof of other income
- Make surplus income payments (if required)

Not fulfilling your duties can extend your bankruptcy.

5. Bankruptcy does not necessarily cover all of your debts.

Bankruptcy does not discharge you from all types of debts. You continue to owe some debts during and after your bankruptcy. The following debts are not covered by bankruptcy:

- support payments (child, spousal or partner)
- student loans (if you stopped being a student less than seven years ago)
- court-ordered fines or penalties
- debts arising from fraud

Bankruptcy usually does not affect secured debts, such as a mortgage or vehicle financing. A secured loan means the lender requires the borrower to use its property as collateral for the debt. If the borrower defaults on the loan, the lender can seize the property. It can use the property to repay the loan. If you can afford monthly payments while bankrupt, you may be able to make an agreement with the secured creditor. However, declaring bankruptcy is usually an act of default under a mortgage and can trigger the foreclosure process (though the lender can choose not to foreclose if you are making payments). Talk to a Licensed Insolvency Trustee for more information and advice.

6. Bankruptcy has a long-term effect on your credit score.

When you file for bankruptcy, the Credit Bureau is notified. They will assign you the lowest credit score.

The bankruptcy remains on your credit score for six years after your discharge. If you file for bankruptcy a second time, it can remain on your credit score for up to 14 years after discharge.

7. Make sure your bankruptcy is discharged.

Once you declare bankruptcy, you remain bankrupt until discharged. Depending on the circumstances of your bankruptcy, you can be automatically discharged or you may have to apply for a discharge.

While bankrupt, you must tell creditors you are bankrupt if you are applying for more than \$1000 in credit. If you are not cooperating with the trustee, they may remove themselves from your file. If a Licensed Insolvency Trustee is not working with you, then you lose certain protections. Creditors can start lawsuits against you or garnish your accounts. As well, the effect on your credit score lasts for years after you are discharged. If you do not get discharged as soon as possible, the effect lasts longer.

GET MORE INFO & HELP

Bankruptcy FAQs

www.law-faqs.org/national-faqs/bankruptcy/

Government of Canada - You Owe Money

https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/h_br01854.html

Help with Debt Alberta

Answer questions to find resources for your situation.

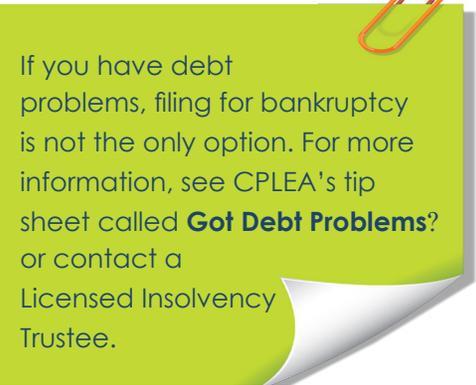
<https://www.cplea.ca/help-with-debt-alberta/>

Consumer Debt Negotiation Clinic

Get free legal advice about your options and help negotiating with your creditors.

<https://law.ucalgary.ca/clinics/public-interest-law/ongoing-projects/consumer-debt-negotiation-project/info-clients>

You can download, print off or order copies of CPLEA resources from www.cplea.ca/publications



If you have debt problems, filing for bankruptcy is not the only option. For more information, see CPLEA's tip sheet called **Got Debt Problems?** or contact a Licensed Insolvency Trustee.

You should not rely on this publication for legal advice.