

What are the Options for Consumers who are Unable to Pay Debts?

If you are considering taking money from your RRSP to make credit card Payments...STOP and read this first

The COVID-19 pandemic has caused hundreds of thousands of people to lose their jobs in Alberta. Many others have seen a decrease in their monthly income. For everyone affected financially by this crisis, paying the monthly bills is increasingly hard, or simply impossible to manage.

If you find yourself in this unfortunate situation, you may be tempted to withdraw funds from your RRSP in order to maintain your minimum payments to credit card companies and/or other unsecured creditors. Before you do, there are important consumer protection laws and debt repayment options that you should consider.

Your RRSP is Protected

If you are an Alberta resident, your RRSP is protected from creditors. Both the *Bankruptcy and Insolvency Act* (federal legislation) and the *Civil Enforcement Act* (Alberta provincial legislation) prevent creditors from forcing you to cash in your RRSP in order to pay them back. This means that even if an unsecured creditor sues you and obtains court Judgment, it will still not be in a position to forcefully require you to use funds from your RRSP to pay them back. Even if you declare personal bankruptcy, your RRSP will remain intact, and will still be there for you in retirement, once you exit the bankruptcy proceedings.

The purpose of the government instituted RRSP program was to ensure that those who choose to save for retirement have those funds available: Parliament and the Alberta Legislature have reinforced that concept by passing laws to ensure that unsecured creditors are not at liberty to see these funds forcefully collapsed. It remains an individual debtor's right to determine if and when to withdraw funds from RRSP's (note: up until the point when you reach the age of 70 years when you must begin to withdraw funds from your RRSP).

If You Decide to Withdraw from Your RRSP to Pay Credit Card Debt

If you do decide to withdraw all or a portion of funds from your RRSP account(s), it is important to remember the tax implications. Money taken out of an RRSP is considered part of your income and the tax on that income will be owed to the Canada Revenue Agency when you file your 2020 tax return. It is more beneficial to withdraw funds in a year where you do not earn substantial income and you are in a lower tax bracket.

If you are thinking of withdrawing funds from your RRSP account, consider whether it will pay of the entire debt or simply provide a "band-aid solution" that will keep your creditors at bay for a short period of time. If you are only making minimum or small payments, the debt will only continue to grow due to the high interest rates on credit

cards. In the end, you likely will not be out of debt, nor will you have any savings in your RRSP.

Are there options for using Your RRSP funds to help you resolve your debt?

Consumer Proposal

File a Consumer Proposal pursuant to the *Bankruptcy and Insolvency Act*.

If you are an individual (i.e. not a corporation), and are not able to pay your debts when they are due, you are at liberty to file a Consumer Proposal pursuant to Division II of Part III of the *Bankruptcy and Insolvency Act*. To file a Consumer Proposal, your entire debt owing to all creditors cannot exceed the sum of \$250,000.00. This sum does not include any money owing to mortgage lenders/secured lenders which have registered the debt owed to them against title to your home.

To file a Consumer Proposal you need to work with a licenced insolvency trustee ("LIT"). Together, you put forward a formal proposal to ALL of your unsecured creditors to accept less than what is owed. In filing such a proposal, you would be at liberty to offer the amount you receive from collapsing/withdrawing your RRSPs and offering the net amount received (after CRA retains its tax amount) to your creditors. (Note: you are also at liberty to craft a proposal to pay your creditors from third party funds, or by making minimal monthly payments over time for a maximum period of 60 months. The LIT you engage will be in a position to discuss these alternatives with you). If the creditors accept your proposal, then all debt owing to your unsecured creditors is effectively and legally extinguished. While your RRSP may have been depleted in the process, you will no longer be saddled with any outstanding debt.

How a Consumer Proposal Works

- The Proposal must be offered to all of your unsecured creditors. You cannot pick and choose who the formal offer is made to
- Once the Consumer Proposal is filed by your LIT, it is mailed by your LIT to your unsecured creditors. They then have 45 days to prove the financial value of their claim and vote on the Proposal;
- Each creditor who proves its claim gets one vote for each dollar you owe to that creditor;
- If 51% of the votes are in favour of the Consumer Proposal, then all of your unsecured creditors (whether they agree to the terms or not) are bound by the terms of the proposal, once it has been approved by the Court.
- Once you have completed the terms of your Consumer Proposal, your LIT issues a Certificate of Full Performance, pays out your creditors on a pro rata basis and all of your unsecured debt is extinguished;
- If 25% of the votes reject your Consumer Proposal, a meeting of creditors is triggered. At the conclusion of the meeting of creditors, if 51% of the votes remain

in support of your Consumer Proposal, the proposal will be accepted and the objecting creditors will be bound by the same terms;

- If you file a Consumer Proposal, and it is rejected by your creditors, you are simply left in the same situation you are now, and may consider other alternatives.

Alternatives to a Consumer Proposal

Another alternative may be to file an assignment into personal bankruptcy. By doing so, your RRSP's would remain intact and still be there for you upon exiting the bankruptcy process. Once you exit the bankruptcy and obtain an absolute discharge, all of your unsecured debts which existed at the date you filed into bankruptcy are effectively discharged (with the exception of a limited type of debt such as credit you obtained by making false representations which induced a creditor into granting you credit or property).

If you are considering filing an assignment into bankruptcy, it is beneficial and advantageous for you to do so at a time when you are without a job, or are experiencing a reduced level of income. If your monthly income is below standards set yearly by the Superintendent of Bankruptcy (currently \$2243 for a family of 1, net of income tax deductions and other non-discretionary expenses), as long as you comply with all of the duties imposed upon you by the Act (including the payment of fees to your bankruptcy trustee which would be approximately \$1,500 to \$1,800) you would be eligible to exit the bankruptcy 9 months after filing, and be free of all of your unsecured debt.

The [Insolvency Lawyers at Duncan Craig LLP](#) work with LITs in Edmonton and throughout Alberta and would be pleased to introduce you to someone who can help.