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ALL ABOUT BANKRUPTCY MEDIATION

Canada

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Protecting the Integrity of the Insolvency System
Protéger l'intégrité du système d'insolvabilité

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This brochure provides basic information on the mediation process. It does not provide detailed legal advice. For additional information related to mediation and bankruptcy, you may contact:

- a trustee in bankruptcy;
- the nearest Office of the Superintendent of Bankruptcy; or
- a lawyer who specializes in bankruptcy.

What is mediation?

Mediation is a way of resolving conflict between two or more people. The parties involved in the disagreement agree to work with an impartial person called a mediator who helps them settle their dispute.

Why is mediation included in the consumer bankruptcy process?

The mediation process is more flexible and less costly than formal court proceedings. It allows the people who are affected by the bankruptcy to be directly involved in deciding how their disagreement will be settled.

Who is the mediator?

The mediator may be an employee of the Office of the Superintendent of Bankruptcy or someone with training and experience in mediation who is approved by the Superintendent.

What does the mediator do?

The mediator's role is to help the parties communicate. To reach an agreement, all parties must understand what issues are in dispute and what each party wants or needs. The mediator will help the parties explain their point of view and discuss ways to settle the disagreement. The mediator does not decide what the settlement will be. The parties decide that together.

The mediator explains the mediation process including the procedures for additional meetings (rescheduling and adjournment). The mediator is not allowed to act as a legal counsel to any party involved in the mediation.

What is the trustee's role in the mediation?

The trustee's role is to provide guidance to people who are affected by the bankruptcy.

Who may attend the mediation session?

The bankrupt, the trustee, the creditor who asked for mediation (if applicable) and the mediator will participate in the session. The parties present at the mediation session should have signing authority and bring all pertinent documentation.

When can mediation be used to resolve disputes?

Mediation can be used to resolve two types of disputes:

1. when the trustee and the bankrupt are not in agreement with the amount that the bankrupt, who has surplus income, is required to pay creditors; or
2. when opposition to the discharge is based on the fact that the bankrupt has failed to comply with the requirement to make surplus income payments, or if the bankrupt could have made a viable proposal[1] and has chosen bankruptcy rather than a proposal as a solution to debt.

1. A consumer proposal is an offer made by a debtor to his or her creditors to modify his or her obligations to them. For example, you may propose to your creditors that you will pay a lower amount each month, but over a longer period of time. Or you may propose that your creditors accept being paid a percentage of what you owe.

1. Surplus Income Mediation

At the beginning of the bankruptcy, the trustee determines whether you have any surplus income, taking into consideration the standards issued by the Superintendent of Bankruptcy, your total income, and your personal and family situation. Surplus income is the amount of total income a bankrupt receives that exceeds the amount needed to maintain a reasonable standard of living. If the trustee concludes that you have surplus income, the trustee will set the amount you must pay into the bankruptcy estate. This amount may be adjusted during the administration of your bankruptcy if there is a change in either your total income or personal or family situation.

Who can request surplus income mediation?

- If the *bankrupt* does not agree with the amount of surplus income to be paid, the trustee must request mediation.
- If any of the *creditors* do not agree with the amount of surplus income to be paid, they may ask for mediation by submitting a written request to the trustee.

2. Discharge Mediation

Toward the end of a bankruptcy, where the discharge of an individual bankrupt is opposed by a creditor or the trustee on the grounds that the bankrupt has not made the required surplus income payments or has chosen bankruptcy instead of a proposal as a solution to debt, the trustee must ask the Office of the Superintendent of Bankruptcy for mediation.

What happens if the parties reach an agreement?

Mediation is successful when all the parties reach an agreement. The parties sign a "mediation settlement agreement." The bankrupt will be required to comply with all conditions of the agreement.

What happens if the parties cannot agree?

1. Surplus income mediation

If mediation fails, the trustee may apply to the court to fix, by order, the amount the bankrupt is required to pay the bankruptcy estate.

2. Discharge mediation

If mediation fails or the bankrupt does not comply with the conditions of the mediation settlement agreement, the trustee asks the court for a hearing to decide the matter.

Questions?
Need more information?

Call your trustee in bankruptcy or the nearest Office of the Superintendent of Bankruptcy.

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