FROM YOUR ADVISOR

INSOLVENCY: STARTING OVER

If your debts are overwhelming, there are a couple of ways to get your financial life back in order. And the sooner you take action, the better

By the time potential clients walk into bankruptcy trustee Andre Bolduc's office, they usually have reached the end of their financial road and are unable to pay their debts. Bolduc is senior vice president, financial recovery team, with BDO Canada Ltd. in Ottawa.

Bolduc's clients have exhausted all the other possibilities, including consolidation loans, restructuring their budget or even getting a second job, leaving them with two options: a formal consumer proposal to creditors or bankruptcy.

"Both of [these options] will stay your creditors and give you relief from your creditors," says Bolduc. The most common route for individuals in dire financial straits is the consumer proposal.

Under the consumer proposal process, debtors strike a deal with their creditors to pay a portion of what they owe over a period of up to five years. Creditors often will agree to such a proposal because they will end up getting more than they would under the bankruptcy process.

The proposal process also means you, as a debtor, may be able to keep your house, which you may be forced to sell in bankruptcy.

Doug Hoyes, co-founder of bankruptcy trustee firm Hoyes Michalos & Associates Inc. in Cambridge, Ont., says many of his clients pick a consumer proposal over bankruptcy, even if that choice costs them more.

"Most of the people I deal with don't want to go bankrupt," he says. "They want to, at least, pay some of their bills; they want to, at least, make some kind of arrangement with their creditors."

However, there are limits. Your total debt cannot exceed $250,000, excluding a mortgage, and you'll need to be able to show that you'll be able to repay a portion of what you owe.

Your creditors aren't obligated to accept a proposal just because you make one, and you will need to convince them that they would be better off than if you went bankrupt.

But, Bolduc says, there are scenarios in which bankruptcy may make more sense.

"We're talking about individuals that have a low income and probably can not afford to pay more money in a consumer proposal because they have other priorities, such as food and shelter," he says.

Under a bankruptcy, you surrender your assets, which then are sold to pay your creditors. You are allowed to keep your car, personal possessions and other items (within certain limits), but otherwise these assets must be handed over and you will have to make monthly payments during your bankruptcy, depending on how much money you make.

You also may face the prospect of having to sell your house, depending on how much it's worth and how much remains on your mortgage.

If your home is worth more than the mortgage, you will need to pay the bankruptcy trustee the equivalent of any equity value in your home or face the possibility your home might have to be sold.

Although a consumer proposal can last for up to five years, a first-time bankruptcy usually runs for less time. It will last nine to 21 months before you're discharged, depending on your income.

Both a bankruptcy and a consumer proposal can cover unsecured credit and debt, such as credit card debt, unsecured bank loans, lines of credit, payday loans and unpaid bills.

However, neither option will deal with secured debt, such as your mortgage, a secured car loan or a lease.

In addition, neither a bankruptcy or a consumer proposal includes debts such as spousal or child support, court-imposed fines and student loans that are less than seven years old. You still will have to pay those debts.

If you're having trouble paying your debts, you need help — and the sooner you ask for it, the better, Bolduc says.

"It's important for [members of] the public to understand that if they're in financial difficulty, they're not alone," he says.

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By Craig Wong (CP)

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