

The Language of Insolvency

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Definitions

Insolvency: A company is considered “insolvent” when it cannot pay its debts. Being insolvent is a description of a company’s financial situation; it is not a formal legal state.

Secured Creditor: A lender who takes collateral in exchange for loaning money.

Trustee: A person authorized by the federal government to administer the insolvency process.



Alberta landowners should be aware that recourse exists for unpaid surface lease rentals through the Land and Property Rights Tribunal (LPRT).

A landowner can submit a claim to the LPRT under Section 36 of the *Surface Rights Act* to have their annual rental paid in full through General Revenue if a company is insolvent. When there is a stay of proceedings, the LPRT can only order payments after the receivership or bankruptcy process is completed.

Receivership

A receiver is responsible for taking possession of and selling the assets on behalf of all stakeholders. The majority of receiverships in Alberta are Court appointed. In some cases, a receiver may be privately appointed to act on the behalf of one secured creditor.

The receiver makes a determination on whether or not to continue operations and market the assets as a “going concern.” This means that the company is treated as if it will survive and the business operations will continue, though they usually do not. A receivership can occur without notice to unsecured creditors.

Creditors must be notified within 10 days of a company’s appointment into receivership. The receiver’s website will contain more information for secured creditors. There is no process for unsecured creditors.

If the receiver is court-appointed, there will be a “stay of proceedings” during the receivership process that prevents creditors from taking action against the company. This is not the case when the receivership is privately appointed on behalf of a secured creditor.

Bankruptcy

Bankruptcy is similar to receivership but it occurs on behalf of all creditors. This process is led by an independent and impartial licensed insolvency trustee. Here, the goal is to satisfy as many secured and unsecured creditors as possible from the pool of money earned through selling assets.

Secured or unsecured creditors may apply to have a company considered bankrupt (“petition”), or companies can apply for bankruptcy themselves if they are experiencing overwhelming debt burden (“assignment”).

There is a process for unsecured creditors to submit their claim. However, the reality is that the value of assets in a bankruptcy is usually much lower than the total liabilities. When bankruptcy proceedings are initiated without a receivership, it is typically driven by unsecured creditors.

There will be a “stay of proceedings” which prevents creditors from taking action against the company during the bankruptcy process.

Bankruptcy Protection

A company facing financial challenges may attempt to restructure in order to continue operating. This will involve negotiations with creditors, who are given the opportunity to comment on a restructuring plan if they complete their Proof of Claim on time.

This type of restructuring can be done under the federal *Bankruptcy Insolvency Act* or *Companies’ Creditor Arrangement Act*, depending on the amount due and the position taken by secured creditors.

There is a “stay of proceedings” during this process which prevents creditors from taking action against the company.

Alberta