BANKRUPTCY MODES OF ACQUIRING STATUS

PART (i) VOLUNTARY ASSIGNMENT

PART (i)

VOLUNTARY PROCEEDINGS

TOTAL PROCESS

Sec. Form

A. The Signing of the Legal Documents Required to Commence the Bankruptcy Process - Individual and Company

31(1) 29 26 30 This consists of the signing of the Assignment or Indenture, where the debtor declares that he is insolvent, in other words, unable to meet his obligations as they generally fall due and that he assigns his property to a licensed Trustee, who holds the title to all the debtor's property. Certain property is exempt from seizure by provincial statute and those items that are lein-free--items that have not been used as security for a loan, do not form part of the debtor's property in bankruptcy and only in exceptional cases would the Trustee be interested in furniture or other assets classed as necessities.

B. Detailed Proceedings under the Bankruptcy Act

61 31(2) 31 26(2) 117 129 In the initial stages, the debtor is required to file a sworn document called a Statement of Affairs, which lists his assets and liabilities in the prescribed form, showing the property of the debtor divisable among his creditors, the names and addresses of all his creditors and the amounts of their respective claims, and the nature of each debt--whether Secured, Preferred or Unsecured.

C. Filing and Trustee Appointment

31(3) 32 (1) Once the assignment and Statement of Affairs are prepared, they must be filed with the Official Receiver in the locality of the debtor and his acceptance is required in order to officially commence the bankruptcy proceedings.

31(4) (2) At this same time, he must appoint a licensed Trustee to act in the estate.

31(4) (3) This Trustee normally is selected according to the wishes of the creditors and is not bound to act unless he accepts the appointment.

31(5) (4) If the Official Receiver is unable to find a Trustee willing to act he can cancel the assignment after giving the debtor 7 days notice of intention.

(5) In addition, companies are required to file a Resolution of directors requesting that an assignment be filed. (The Company seal will serve as a substitution.)

(6) On making the assignment, the debtor acquires the status of an undischarged bankrupt and is then subject to certain duties and restrictions that are fully explained to the debtor prior to the making of an assignment, and there are penalties such as fines and court sentences for their non-performance.

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D. Stay of Proceedings

49 Upon the filing of a proposal made by an insolvent person or upon the bankruptcy of any debtor, no creditor with a claim provable in bankruptcy shall have any remedy against the debtor or his property or shall commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy until the trustee has been discharged or until the proposal has been refused, unless with the leave of the court on such terms as the court may impose.

E. Before the First Meeting of Creditors

80(1) (1) The Trustee in Bankruptcy then summons a meeting of creditors and
80(2) with the notice summoning the meeting sends out a list of the creditors with claims amounting to $25.00 or more and the amounts of their claims together with a form for proof of claim and proxy for voting purposes. This form may or may not be applicable to a corporate creditor and therefore the form supplied by the Company should be used.

(2) In consumer estates a list of assets and a pertinent information sheet should be supplied.

F. Proof of Claim Form

97(1)
97(2) (1) A creditor should file his proof of claim with the trustee as soon as
97(3) possible. However, it is not necessary to file it with the trustee
97(4) prior to the meeting of creditors in order to obtain his share of the
97(5) dividends. He may file the proof of claim at any time prior to the
98 discharge of the Trustee, or the final distribution of dividends.

(2) He must file his proof of claim with the trustee prior to the meeting of creditors only if he wishes to attend and vote at the meeting of creditors.

(3) The creditor fills out a proxy form in all cases (except when the creditor is an individual person) if he wishes to attend the meeting of creditors and vote.

(4) If a creditor wishes to prove his claim as secured he should attach to his proof of claim a certified copy of the registered documents he is relying on to prove he has a secured claim.

(5) In all cases Proof's of claim should be accompanied by a Statement of account.

93 For every claim or balance of secured claim of over:
$ 25 and not exceeding $ 200 - one vote
$200 and not exceeding $ 500 - two votes
$500 and not exceeding $1,000 - three votes

For every claim of $1,000 - three votes and one additional vote for

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G. The First Meeting of Creditors

80(5 The purpose of the meeting is to consider: (1) the affairs of the bankrupt, (2) to confirm the appointment of the Trustee or substitute another in place thereof, (3) to appoint inspectors where applicable, and (4) to give such directions to the Trustee as the creditors may see fit with reference to the administration of the estate.

83 84 87 89 90 At the first meeting the Official Receiver or his nominee is the Chairman and shall decide any questions or disputes arising at the meeting. At all other meetings the Trustee is the Chairman. At all meetings where business other than the election of a Chairman and the adjournment thereof is to be done, there must be at least three creditors present or represented and the creditors may vote either in person or by proxy. A creditor is not entitled to vote unless he has filed proof of his claim with the Trustee prior to the meeting at which he wishes to vote and, if a secured creditor, until he has valued his security in which case only the balance of his claim entitles him to votes, the number of which will vary depending on the size of the unsecured creditor's claim or balance of a secured claim.

H. Official Receiver Exam

132 62 63 Prior to the first meeting of creditors, the bankrupt submits to examination by the Official Receiver. Note - In summary consumer estates an Official Receiver examination may not be necessary. The Official Receiver will advise all parties accordingly.

I. Secured Creditors

98 (1) A secured creditor may surrender his security to the Trustee and prove for his whole claim as an unsecured creditor.

99 100 (2) If the secured creditor does not elect to surrender his security, he may realize his security and prove for the balance of his claim.

(3) The Trustee can postpone the realization of the security by making a demand upon the secured creditor requiring the secured creditor to file with the Trustee an affidavit setting out the full particulars of the security within 30 days after receipt of the demand therefore.

(4) The Trustee may redeem the security at the value set out in the affidavit.

(5) The Trustee may demand a sale if the creditor refuses to value the security and will not sell or surrender the security.

101 102 104 (6) The Trustee must elect within one month of receipt of the written notice to redeem the security and, if he does not, the equity of redemption becomes vested in the secured creditor and his claim against the estate is reduced by the amount at which he has valued the security.

(7) Once the security is realized subsequent to a valuation, the realized value must be substituted for the previous valuation which is done by the creditor amending his valuation filed with the Trustee.

(8) The secured creditor who fails to comply with the provisions of the Act may be excluded from any dividend payable to unsecured creditors or secured creditors who are proving for the balance of their claim

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J. Preferred Creditors

107 The preferred creditor does not hold security for his debt but for a number of reasons the Bankruptcy Act has identified certain creditors as having preference over other creditors. Preferred creditors rank after secured creditors but before unsecured creditors. The most significant preferred creditors are usually wages and taxes.

K. Unsecured Creditors

As the low man on the totem pole, he holds no security for his debts nor does the law give him preference to be paid ahead of others. He thus shares with other unsecured creditors in the proceeds after the secured and preferred have been paid.

L. Board of Inspectors

(1) THE INSPECTORS' ROLE

80(5) The Bankruptcy Act place administrative control in the hands of creditors. This control is exercised particularly at the first meeting of creditors by affirming the trustee's appointment, giving him instructions at that time and appointing a board of inspectors. Thereafter, administrative control is exercised through the inspectors (by way of inspectors' meetings), or directly at subsequent meetings of creditors.

The inspectors are appointed as the representatives of the creditors and occupy positions of trust. They are expected to assist the trustee by virtue of their experience and are required to supervise certain aspects of the trustee's administration.

In a proposal, the role of the inspectors may differ from that in a bankrupt estate, as the proposal, being a contract between the debtor and the creditors, may define and limit the responsibilites of the inspectors.

(2) NOMINATION OF INSPECTORS

94(2)

At the first meeting of creditors, in both proposals and in obtaining bankrupt estates, the chairman asks for nominations to the Board of Inspectors. The creditors may appoint any individual to be an inspector, except a person who is a party to any contested action or proceedings by or against the estate.

(3) APPOINTMENT OF INSPECTORS

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The creditors are required to appoint one or more, but not exceeding five, inspectors at their first or subsequent meeting in accordance with a weighted scale of votes. In summary administration it is not mandatory to appoint inspectors.

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(4) COMPOSITION OF THE BOARD OF INSPECTORS

94(4) 94(5) The creditors or the inspectors, at any meeting, may fill any vacancy on the board of inspectors. In addition, the creditors may, on the application of the trustee or any creditor, revoke the appointment of any inspector and appoint another in his place.

94(8) Further, where there are no inspectors or where the inspectors do not exercise their powers, the trustee is required to call a meeting of the creditors for the purpose of appointing or substituting other inspectors, taking such action or giving such direction as may be necessary.

94(12) The Bankruptcy Act also provides that no defect or irregularity in the appointment of an inspector vitiates any act done by him in good faith.

94(1) 94(10) The trustee must act in the best interests of the mass of creditors and the Act sets up a procedure for this by providing for a board of up to five inspectors to interact with the trustee. However, the courts have an overriding supervisory role in the administration, as directions given by the inspectors may still be subject to judical review.

126(e) The Bankruptcy Act requires the creditors to appoint inspectors in all bankrupt estates. In summary estates, it is not mandatory for the creditors to appoint inspectors, however they may do so.

(5) DUTIES AND RESPONSIBILITIES OF INSPECTORS

94 The Bankruptcy Act sets out, in various sections, the responsibilities of inspectors appointed in bankrupt estates. (These responsilities are generally similar in the cases of proposals.)

Generally, these sections can be divided into three main areas of activities:

a) Action: the taking of some specific action by inspectors;

b) Authorization: giving permission to the trustee to perform certain acts;

c) Supervision: approving various reports, documents, accounts and general supervision of the trustee's administration of the estate.

(6) MEETINGS

94(6) The Act permits the trustee to call a meeting of inspectors when he deems it advisable. A majority of inspectors can require the trustee to call a meeting. This request must be in writing.

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(7) INSPECTORS' DECISIONS

94(3) The powers of the inspectors may be exercised by a majority of them.

94(7) An absent inspector must be contacted to resolve an equal division of opinion. Where such a difference cannot be resolved in this manner, the trustee can resolve it himself. (Unless the decision concerns the trustee's personal conduct or interest, in which case the creditors or the court must resolve the issue.)

16(1) 94(10) The trustee may apply to the court where there is a conflict of opinion between himself and the inspectors.

94(10) The Act also allows the trustee or any interested party the right to apply to the court to review a decision or action of the inspectors and the court may revoke or vary any act or decision of the inspectors.

An inspector cannot delegate his responsibilites. He must himself be involved in the decision-making process.

94(9) In cases of conflict between decisions of the inspectors and those of the creditors, the creditors' directions override those of the inspectors.

(8) INSURANCE COVERAGE

The trustee must temporarily insure all the property of the estate, for such amount as he deems advisable until the inspectors are appointed.

13(1) 13(2) One of the first acts of the inspectors is to determine the adequacy of the amount and the hazards against which the bankrupt's property shall continue to be insured by the trustee.

(9) ADMISSION AND DISALLOWANCE OF PROOF OF CLAIM

106(1) 106(2) The trustee is required to examine every proof of claim. Where he considers the claimant is not entitled to rank on the estate, or not entitled to rank for the full amount of his claim, or if directed by a resolution passed at any meeting of creditors or inspectors, he may disallow the claim in whole or in part.

(10) LIMIT OF OBLIGATIONS AND CARRYING ON BUSINESS

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c) the monies that may be borrowed by the trustee.

The section also states that the creditors or inspectors may limit the period of time during which business of the bankrupt may be carried on by the trustee.

(11) SPECIAL REMUNERATION FOR TRUSTEE

21(3) The Act provides for special remuneration where the trustee has supervised or carried on the business of the debtor. The creditors or the inspectors may authorize such special remuneration. In the case of a proposal, the special remuneration may be agreed to by the debtor or in the absence of such an agreement, such amount as may be approved by the court.

(12) AUTHORIZATION

14 The Bankruptcy Act lists 12 powers that the trustee may exercise with the permission of the inspectors. These powers are briefly stated as follows:

(a) disposal of assets by tender, public auction or private contract;
(b) lease property;
(c) carry on the business of the bankrupt
(d) bring, institute or defend legal proceedings;
(e) employ a solicitor in respect to matters sanctioned by the inspectors;
(f) accept future payment and security in the sale of property;
(g) incur obligations;
(h) compromise and settle debts owing to the bankrupt;
(i) compromise claims by or against the estate;
(j) divide property that cannot be readily or advantageously sold;
(k) deal with leases or other interest in any property of the bankrupt;
(l) appoint the bankrupt to aid in the administration of the estate.

(13) WITHDRAWAL OF FUNDS AND TRUSTEE'S DISCLAIMER

13(3) 12(11) In addition to Section 14, two other sections dealing with the inspectors' approval should be noted. These are Section 13(3), concerning withdrawal of funds and Section 12(11), referring to the trustee's disclaimer.

13(3) The trustee requires written permission from the inspectors, or a court order, to withdraw any monies from the estate trustee account, except for funds in payment of dividends and charges incidental to the administration of the estate.

12(11) The trustee may, with the permission of the inspectors, divest himself of all or any part of his right, title or interest in any real or

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(14) SUPERVISION - GENERAL

The inspectors are expected to satisfy themselves that the trustee's administration is satisfactory by examining certain documents and accounts connected with the administration. The Act enables the inspectors to carry out this function by providing for access to the estate's books and records. The sections governing this function are described below.

(15) ACCESS TO INFORMATION

13(7) The estate books, records and documents relating to the administration of an estate shall be deemed to be the property of the estate. Section 13(8) goes further by requiring that the trustee shall permit the books and records of the estate to be inspected and copied by certain persons which include any creditor or his agent at any
13(9) reasonable time. In addition, the trustee shall, from time to time, report to every creditor, when required by the inspectors, or to any specific creditor when required by the Superintendent of Bankruptcy. The purpose of this is to show "the condition of the bankrupt's estate, the monies on hand, if any, and particulars of any property remaining unsold".

The trustee is entitled to charge his actual disbursements for the
13(10) preparation and delivery of any such reports against the estate of the bankrupt.

(16) TRUSTEE'S ADMINISTRATION AND ACCOUNTS

94(13) The inspectors are specifically required, "from time to time", to check certain items in the estate. These items are:

- verify the bank account
- examine the trustee's accounts, and
- inquire into the adequacy of the security filed by the trustee (the estate bond).

The inspectors are also required to approve the trustee's final statement of receipts and disbursements, dividend sheet and disposition of unrealized property.

However, there are certain conditions that must be fulfilled by the
94(14) inspectors before they can be in a position to have an opinion on the trustee's final statement of receipts and disbursements; the inspectors must satisfy themselves in respect to the following:

- that all the property has been accounted for,
- that the administration of the estate has been completed as far as can reasonably be done,
- that the disbursements and expenses incurred are proper and have been duly authorized,

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Should any inspector find that he is not satisfied in the above areas, he should notify the trustee in writing indicating the reasons for his disapproval of the statement. A copy of this notice should be forwarded to the Superintendent of Bankruptcy.

Further, any inspector may present his objections before the taxing officer at the time of the taxing of the trustee's statement in court.

(17) SALE OF ASSETS

14(1a) The Act allows the trustee, with the inspectors permission, to sell estate assets by:

- tender,
- public auction, or
- private contract.

(18) SALES BY TENDER

The inspectors may pass a resolution authorizing the trustee to publicly advertise details of the assets to be sold, and the time and place of the sale. The advertisement must include instructions for the submission of bids, which must be in writing, sealed and to be received by the trustee by a certain time, at a certain place. In addition, the advertisement must state the date, time, and place of a meeting at which bids are to be publicly opened and which bidders are invited to attend.

The trustee is further required to complete a bids register and subsequently table this with the bids at the meeting of inspectors immediately following the opening of the bids. The inspectors would then decide on the successful bidder. The full details for these procedures are to be found in Rule 109 to the Bankruptcy Act, published in the Canada Gazette on April 11th, 1973, as SOR/73-169.

(19) SALES BY PUBLIC AUCTION

Alternatively, the trustee may place the assets with a licensed auctioneer, (with the permission of the inspectors). The inspectors could decide, in this case, to ask the auctioneer for a guaranteed minimum return to the estate.

(20) SALES BY PRIVATE CONTRACT

This third method of sale relates to a situation where there is an interested buyer and in essence, is really an arrangement of buying and selling which any two persons could enter into, except that it requires the permission of the inspectors and must be carried out in full

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(21) SALES OF IMMOVABLE PROPERTY IN QUEBEC

64 The Bankruptcy Act provides procedures for a trustee to sell immovable property in Quebec, where the property is subject to a hypothec or a privilege. The section relates to immovable property in which the estate has an equity. The trustee must obtain the written permission of the inspectors and then notify all the secured creditors before applying to the judge for authorization to make the sale.

98 105 64 68 The general provisions regarding the rights of secured creditors are provided in the Bankruptcy Act, with the specific requirements relating to sales of immovable property in Quebec.

(22) REQUIREMENT TO PAY DIVIDENDS

107 The Bankruptcy Act provides priorities in the distribution of estate funds. Briefly, the rights of the preferred creditors must be satisfied before the ordinary creditors can share in the estate realization.

119(1) Subject to the above, the inspectors may require the trustee to declare and distribute dividends amongst the unsecured creditors. (Necessary funds must be retained, however, to meet unpaid costs of administration).

(23) INSPECTORS' INPUT

12(13) Where the creditors have information regarding assets, fraudulent preferences, dealings between the bankrupt and relatives or a related company or other abuses, these matters should be brought to the attention of the trustee or the inspectors. Section 12(13) allows the trustee to initiate such criminal proceedings as may be authorized by the creditors, the inspectors or the court against any person believed to have committed an offence under the Bankruptcy Act. The inspectors should consult with the trustee as to the best course of action to benefit the creditors in these situations. Where an offence is suspected, the inspectors should discuss this with the trustee. The trustee would normally report the matter to the Superintendent. However, this would not stop any inspector reporting the matter directly to the Superintendent where he considers this appropriate, and advising the trustee of his action.

(24) OFFENCES BY INSPECTORS

172(2) An inspector commits an offence where he accepts any fee, commission or emolument of any kind from the bankrupt or from any person, firm or corporation on his behalf or from the trustee other than or in addition to the regular fees provided for by the Bankruptcy Act.

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(25) CONFLICT OF INTEREST

In the beginning of this booklet, it was stated that inspectors are expected to act in the common interest of the creditors, and not to use their positions for any personal advantage. Consequently, they cannot be allowed to serve conflicting interests.

Therefore, an inspector is barred from acting as an inspector where
94(2) he becomes a party to any contested action or proceedings by or against the estate.

M. Methods of Realization of Bankruptcy Assets (Short)

(1) INTRODUCTION

The most important duty of the trustee is the realization of the assets and the distribution of the proceeds thereof to the creditors.

The Bankruptcy Act generally gives to the trustee the widest
14 possible powers over recovery of the assets of a bankrupt, including the powers of search and seizure, and examination of the bankrupt and persons connected with the bankrupt and his affairs, and provides the utmost flexibility in allowing the trustee to proceed in the most expeditious and businesslike and least costly manner possible to salvage some return from the bankrupt estate for the creditors. The Bankruptcy Act adopts the same sort of attitude towards realization of the assets of the bankrupt estate.

(2) FLEXIBLE PROCEDURE

Indeed, on the whole question of realizations, the Bankruptcy Act is very brief, and sets down very few requirement as to method. The essential provisions are found in Section 14 as follows:

14(1) The trustee may, with the permission of the inspectors, do all or any of the following things;

a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction, or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;...'

k) ...assign...any lease of, or other temporary interest in, property of the bankrupt;...

14(2) The permission given for the purposes of this section is not a general permission to do all or any of the above mentioned things, but is only a permission to do the particular thing or things that the permission

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To enhance the flexibility which the trustee needs in order to deal with the assets, the Bankruptcy Act has other provisions to assist and protect him in the efficient handling of the assets, as follows:

12(6) A) For the purpose of realizing on the property of the bankrupt, a trustee has power to act as such anywhere.

12(7a) B) The trustee may, when necessary in the interest of the estate, summarily dispose of the property which is perishable or likely to depreciate rapidly in value.

12(9) C) In the case of an emergency where necessary authority cannot be obtained from the inspectors in time to take appropriate action, the trustee may obtain such legal advice and institute such legal proceedings and take such action as he may deem necessary in the interest of the estate.

16(1) D) A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt.

58
59(4)
186 E) As long as the trustee acts prudently in respecting the title of other persons to property found in the possession of the bankrupt, the trustee is not personally liable for any loss or damage arising from the seizure or disposal by the trustee sustained by any person claiming the property or an interest therein.

(3) CONTROLS TO PROTECT RIGHTS

94(8) However, while the Bankruptcy Act places few controls upon the procedure or method of realization, the Act does impose strict controls before actual realization begins, in order to protect

A) the interests which parties other than the trustee and the bankrupt may have in the property,

B) the interests of the mass of creditors collectively that they obtain the highest possible return on the realization at the lowest possible cost,

C) the interests of prospective buyers of such property, in order to ensure that they be dealt with fairly, and

D) the public interest in the sense that business activity generally ought to be carried on with full protection, not only as regards the relations between the creditors, the prospective buyers and the trustee in any single estate, but rather all such parties in all estates.

The provisions governing such matters are as follows:

94(8) Where there are no inspectors or where the inspectors fail to exercise

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94(9) The trustee shall in the administration of the property of the bankrupt and in the distribution thereof among his creditors have regard to any directions that may be given by resolution of the creditors at any general meeting or by the inspectors, and any directions so given by the creditors shall in case of conflict be deemed to override any directions given by the inspectors.

94(11) No inspector is, directly or indirectly, capable of purchasing or acquiring for himself or for another any of the property of the estate for which he is an inspector, except with the prior approval of the court.

94(10) The decisions and actions of the inspectors are subject to review by the court at the instance of the trustee or any interested person and the court may revoke or vary any act or decision of the inspectors and it may give such directions, permission or authority as it deems proper in substitution thereof or may refer any matter back to the inspectors for reconsideration.

19 Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

(4) ASPECTS OF REALIZATION

A) the measures a trustee must take to ensure that he does, indeed, have the right and title to sell or dispose of property found in the bankrupt's possession;
B) the steps the trustee must take to ensure that whatever he sells does not fall into the hands of certain disqualified persons whose participation in the sales of bankrupt assets render the sales vulnerable to deep suspicion by the creditors and by the public;
C) the economic and the legal "facts of life" of the three kinds of sales permitted by the Bankruptcy Act;
D) descriptions of the various practises connected with such sales which have either been approved or disapproved of by the courts; and
E) methods of realization which do not involve sale of assets at all, but rather involve the direct exercise by the trustee of the debtor's rights of action for the benefit of the mass of creditors collectively.

N. Distribution

118 (1) Charge the Superintendent's levy against all payments made except costs of Section 50(2).

107-117 (2) Apply realized proceeds to the priority of claims.

119(1) (3) Declare and distribute dividends among entitled unsecured creditors

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119(2)		(4) Retain sufficient funds to provide for undetermined claims that may be admitted.
119(3)		(5) Pay dividends plus interest thereon and costs of application as ordered by courts where trustee did not pay dividends as directed by inspectors.
119(4)		(6) Either retain sufficient funds for payment of income tax or wait 90 days after filing income tax returns before paying and dividends.
121		(7) Provide for (but do not declare) dividends in respect of unproven claims at the time dividends on proven claims are declared and paid so that when they become proven the creditor's right to dividends from funds on hand can be satisfied.
122 123(1)	54	(8) Prepare a final statement of receipts and disbursements and dividend sheet, and divide the bankrupt's property among proven claims.
123(2)		(9) Submit Form 54 to inspectors for approval.
123(3)		(10) Forward copy of Form 54 to the Superintendent after inspectors' approval and comments.
123(4) 168	55	(11) Submit accounts for taxation to the taxing officer with any comments of the Superintendent.
123(5)		(12) Forward to (a) every creditor with a proven claim, (b) the registrar, (c) the Superintendent, and (d) the bankrupt by registered mail
	54	(a) a copy of the final statement of receipts and disbursements,
		(b) a copy of the dividend sheet, and
	56	(c) a notice of (i) final dividend and (ii) application for discharge of trustee. Final dividend is to be paid after 15 days from the day of mailing notice. Application for discharge of the trustee may be made after 30 days from the day of final dividend payment.
123(6)		Interested parties may file notice of objection within 15 days of this mailing.
124		(13) Pay final dividends.
125		(14) Forward unclaimed dividends and undistributed funds to the Superintendent. Provide a list of names and addresses of creditors entitled to unclaimed dividends.

O. <u>Discharge of the Bankrupt</u>

139(1)		(1) A receiving order or assignment against any person (except corporations) operates as an application for discharge of the bankrupt.

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139(4)		(2) Corporations must satisfy creditors' claims in full before application for discharge.
139(7)		(3) Where trustee not available to perform his duties re the bankrupt's discharge, the court may authorize someone else to do them.
139(2)	77	(4) The trustee shall make notice to the bankrupt that application will be made to court for a hearing of the application for the bankrupt's discharge. Such notice shall be made at least four days before application for the hearing is made to court.
139(5)		(5) The trustee may obtain funds or guarantees for the payment of his fees and disbursements by making a request to court before the application for a hearing is issued.
139(2)	79	(6) The trustee shall apply to court for the hearing of an application for the bankrupt's discharge. Such application shall be made: (i) before the trustee's discharge, and (ii) after 3 months and before 12 months following the date of bankruptcy.
139(1)	78	(7) The application for the hearing is not made if the bankrupt makes a waiver of application at any time before the application for the hearing is made to court. Waiver is made by notice which is: (i) filed in court, and (ii) served on the trustee.
139(3)	80 81	(8) A bankrupt who has given notice of waiver may apply for discharge at any time. Once the appointment for a hearing is made, the bankrupt shall serve on the trustee (notice of) the appointment.
139(6)		(9) The trustee shall send to: (i) the Superintendent, (ii) the bankrupt, and
	82	(iii) every creditor with a proven claim notice of the day appointed for the hearing no less than 14 days before the hearing date.
13(14) 140(2)	83	(10) The trustee shall forward a copy of his report (Sec. 140(1)) to the Superintendent not less than 10 days before the hearing date.
13(14) 140(2)	84	(11) The trustee shall file his report (Sec. 140(1)) in court not less than 3 days before the hearing date.
142(1)	84	(12) On the hearing, the court may
	85	(i) grant an absolute discharge order,
	86	(ii) refuse an absolute discharge order,
	87	(iii) suspend the order, or
146	87A	(iv) grant the discharge subject to terms or conditions in respect to
	88	future earnings, income or acquired property (i.e. conditional
	89	discharge),

Sec.	Form	
142(3)	91	(13) After one year from the date of discharge, if the bankrupt applies to and satisfies the court that he/she cannot meet the order's terms, the court may modify the offer. The bankrupt shall give 10 days notice of time and place for hearing the application to: (i) the trustee, (ii) the Superintendent, and (iii) every creditor with a proven claim.
	92	(14) The court may annul a discharge if:
150(1)		(i) on application to the court it is shown he failed duties under the Act, or
150(2)		(ii) the discharge was obtained by fraud.
152(1)		(15) The order of a discharge shall be dated on the day made. It shall not be issued or delivered out until appeals have been finally disposed.
152(2)	95 96	(16) The bankrupt shall make notice of discharge in the Canada Gazette.

P. Trustee Discharge

23	When a trustee has completed the duties required of him with respect to the administration of the property of a Bankrupt, he shall apply to the court for a discharge.
23(2)	The court may discharge a trustee with respect to any estate upon full administration thereof, or for sufficent cause, before full administration.
14(a) 23(4)	When all the assets have been disposed of by the trustee and the trustee's accounts have been approved by the inspector and taxed by the court and all objections, applications and appeals have been settled or disposed of and all dividends have been paid, the estate is deemed to have been fully administrated.
123(11) 123(5) 119	The trustee prepares the Statement of Receipts and Disbursements and submits it to the Superintendent of Bankruptcy and to the court. The court taxes the Trustee's accounts. The Trustee distributes the proceeds to the creditors. The Trustee submits his report on the estate to the court and receives his discharge.

PART (ii) INVOLUNTARY INSOLVENCY

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PART (ii)

RECEIVING ORDERS

Section	Rule	Form	
30			**A. Applicability**
			1. Receiving orders are not made against and interim receivers are not appointed for individuals who are: a) farmers, b) fishermen, or c) workers earning wages, salaries, commissions or other compensation at a rate less than $2,500 per year and who do not carry on business.
			2. One or more creditors may petition if the debtor has: a) debts of $1,000 or more, and b) committed an act of bankruptcy within the past six months.
24			3. Acts of bankruptcy are listed in Section 24. The most common act to cause a petition may be where the debtor "ceases to meet his liabilities generally as they become due".
	65		**B. The Petition**
25(1),(3),(5)	66(3)	19,21	1. One or more creditors begin the process by filing the petition verified by affidavit in the court which has jurisdiction in the locality of the debtor. A petitioning creditor shall either: a) state willingness to give up his security for the general benefit of creditors, or b) estimate the value of his security. Where he estimates the value of his security he is admitted as a petitioning creditor to the extent of the debt due less the value of the security.
25(4)			The court may consolidate two or more petitions filed against one debtor.
25(14)		25	A petition cannot be withdrawn without leave of the court.
	74		2. A creditor or the debtor may apply to the

Section	Rule	Form	
			court may adjourn the hearing therof so that notice can be given to a party as it
28(1),(2)		28	directs. At any time after the filing of the proposal and before the receiving order is made, the court may appoint a trustee as interim receiver. It may direct the trustee to take immediate possession and may impose "undertakings" on the petitioner.
	66(1)		3. The court, through the registrar, "issues" the petition, affixes its seal, and sets a hearing.
	66(2)		4. The petitioner files a copy of the issued petition with the registrar.
	67(1)		5. The registrar serves:
		19	a) a true copy of the petition,
		21	b) a true copy of the affidavit, and
		20	c) notice of the hearing of the petition, not less than eight days before the hearing, upon:
	67(2),70		a) the debtor (or legal representative) by personal service, and
	67(2)		b) the Superintendent by registered mail.
	68(1), (2)	22	6. The court may, for cause, order the registrar to substitute service in Rule 67(1) for service in such manner as the court directs or by sending:
		19	a) a true copy of the petition,
		21	b) a true copy of the affidavit,
		20	c) notice of the hearing of the petition, and
		22	d) a copy of the order for substituted service,
			by registered mail not less than eight days before the hearing, to
			a) the Gazette as directed by the court,
			b) the newspaper as directed by the court, and
			c) other persons or organizations as directed by the court.
	68(1)		7. Where the court has ordered substituted service, the registrar serves, in the manner ordered by the court:
		19	a) a true copy of the petition,
		20	b) a true copy of the affidavit,

Section	Rule	Form	
		20	c) notice of the hearing of the petition, and
		22	d) notice of the order for substituted service upon the bankrupt.
	69		8. The petitioner files in court proof of service proved by: a) affidavit, or b) bailiff's return of service at least five days before the hearing.
	71		9. If the debtor intends to contest a petition at the hearing, he: a) files notice thereof in court, and b) serves a copy of the notice on the petitioning creditor or his solicitor two clear days before the hearing. If he does not appear, the court may disregard the debtor's notice.
			C. The Hearing
		24	1. The court may order a stay of proceedings
25(10)			a) where the debtor appears and denies the facts alleged, on such terms as the court sees fit and for such time as is required for trial of the issue. (After trial petition proceedings continue -
	73		See Rule 73),
25(11)			b) for other sufficient reason for such time, terms and conditions as it thinks just, or
25(12)			c) where it has ordered a petitioner not resident in Canada to give security for costs to the debtor, until the security is given.
25(13)			2. Where petition proceedings have been a) stayed, or b) not prosecuted with due diligence or effect the court may for any just cause: a) substitute or add petitioners, and b) make a receiving order on the new petition and dismiss the old petition.
25(7)		26	3. The court may dismiss a petition when: a) it is unsatisfied with the proof of the facts alleged in the petition,

Section	Rule	Form	
			b) it is satisfied that the debtor is able to pay his debts, or c) for other sufficient cause.
	75		Where application is made within 21 days of the dismissal, the court may give judgement for damages or other claims arising out of appointment of an interim receiver including the receiver's remuneration.
			D. Receiving Order
25(6)	76	27	1. The court may make a receiving order if satisfied with: a) proof of facts alleged in the petition, and
	69		b) proof of service of the petition. This is the instant of bankruptcy. The date of bankruptcy is the filing date of the petition.
25(9)			2. Upon a receiving order being made, the court appoints a trustee - as trustee of the bankrupt's property - having regard to the wishes of the creditors.
			E. After the Receiving Order and Appointment
	77(1)		1. The registrar immediately sends a copy of the receiving order by registered mail to the trustee.
	77(2)		2. The trustee, upon receipt, serves upon the bankrupt a copy bearing the official receiver's endorsement.
10 18(1)			3. The trustee begins his duties in the bankruptcy. A trustee may be replaced. Ordinarily his duties end in discharge.
			4. Upon the appointment of a trustee by the court, the procedure is the same as that in a voluntary assignment.
			5. Meeting - the trustee summons a meeting.

Section	Rule	Form	
			F. Stay of Proceedings
49			Upon the filing of a proposal made by an insolvent person or upon the bankruptcy of any debtor, no creditor with a claim provable in bankruptcy shall have any remedy against the debtor or his property or shall commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy until the trustee has been discharged or until the proposal has been refused, unless with the leave of the court on such terms as the court may impose.
			G. Before the First Meeting of Creditors
80(1)			1. The trustee in Bankruptcy then summons a meeting of creditors with the notice summoning the meeting sends out a list of the creditors and with claims amounting to $25 or more and the amounts of their claims together with a form for proof of claim and proxy for voting purposes. This form may or may not be applicable to a corporate creditor and therefore the form supplied by the Company should be used.
80(2)			2. In consumer estates, a list of assets and a pertinent information sheet should be supplied.
			H. Proof of Claim Form
97(1) 97(2) 97(3) 97(4) 97(5) 98			1. A creditor should file his proof of claim with the trustee as soon as possible. However, it is not necessary to file it with the trustee prior to the meeting of creditors in order to obtain his share of dividends. He may file the proof of claim at any time prior to the discharge of the Trustee, or the final distribution of dividends.
			2. He must file his proof of claim with the trustee prior to the meeting of creditors only if he wishes to attend the meeting of creditors and vote.

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			3. The creditor fills out a proxy form in all cases (except when the creditor is an individual person) if he wishes to attend the meeting of creditors and vote.
			4. If a creditor wishes to prove his claim as secured he should attach to his proof of claim a certified copy of the registered documents he is relying on to prove he has a secured claim.
			5. In all cases Proof's of Claim should be accompanied by a Statement of Account.
32			For every claim or balance of secured claim of over: $ 25 and not exceeding $ 200 - one vote $200 and not exceeding $ 500 - two votes $500 and not exceeding $1000 - three votes For every claim of $1000 - three votes and one additional vote for each additional $1000 or fraction thereof.
			I. The First Meeting of Creditors
80(5)			The purpose of the meeting is to consider: (1) the affairs of the bankrupt, (2) to confirm the appointment of the trustee or substitute another in place thereof, (3) to appoint inspectors where applicable, and (4) to give such directions to the Trustee as the creditors may see fit with reference to the administration of the estate.
83 84 87 89 90			At this meeting the Official Receiver or his nominee is the Chairman and shall decide any questions or disputes arising at the meeting. At all other meetings the Trustee is the Chairman. At all meetings where business other than the election of a Chairman and the adjournment thereof is to be done, there must be at least three creditors present or represented and the creditors may vote either in person or by proxy. A creditor is not entitled to vote unless he has filed proof of his claim with the trustee prior to the meeting at which he wishes to vote and, if a secured creditor, until he has valued his security in which case only the balance of his claim entitles him to votes, the number of

Section	Rule	Form	
			K. Official Receiver Exam
132		62 63	Prior to the first meeting of creditors, the bankrupt submits to examination by the Official Receiver. Note - In summary consumer estates an Official Receiver Examination may not be necessary. The Official Receiver will advise all parties accordingly.
			L. Discharge of the Bankrupt
139(1)			(1) A receiving order or assignment against any person (except corporations) operates as an application for discharge of the bankrupt.
139(4)			(2) Corporations must satisfy creditors' claims in full before application for discharge.
139(7)			(3) Where trustee not available to perform his duties re the bankrupt's discharge, the court may authorize someone else to do them.
139(2)		77	(4) The trustee shall make notice to the bankrupt that application will be made to the court for a hearing of the application for the bankrupt's discharge. Such notice shall be made at least four days before application for the hearing is made to court.
139(5)			(5) The trustee may obtain funds or guarantees for the payment of his fees and disbursements by making a request to court before the application for a hearing is issued.
139(2)		79	(6) The trustee shall apply to court for the hearing of an application for the bankrupt's discharge. Such application shall be made: (i) before the trustee's discharge, and (ii) after 3 months and before 12 months following the date of bnakruptcy.

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139(1)		78	(7) The application for the hearing is not made if the bankrupt makes a waiver of application at any time before the application for the hearing is made to court. Waiver is made by notice which is: (i) filed in court, and (ii) served on the trustee.
139(3)		80 81	(8) A bankrupt who has given notice of waiver may apply for discharge at any time. Once the appointment for a hearing is made, the bankrupt shall serve on the trustee (notice of) the appointment.
139(6)			(9) The trustee shall send to: (i) the Superintendent, (ii) the bankrupt, and
		82	(iii) every creditor with a proven claim notice of the day appointed for the hearing no less than 14 days before the hearing date.
13(14) 140(2)		83	(10) The trustee shall forward a copy of his report (Sec. 140(1)) to the Superintendent not less than 10 days before the hearing date.
13(14) 140(2)		84	(11) The trustee shall file his report (Sec. 140(1)) in court not less that 3 days before the hearing date.
142(1)		84 85 86 87	(12) On the hearing, the court may (i) grant an absolute discharge order, (ii) refuse an absolute discharge order, (iii) suspend the order, or
146		87A 88 89	(iv) grant the discharge subject to terms or conditions in respect to future earnings, income or acquired property
142		90	(i.e. conditional discharge), (v) refuse the conditional discharge.
142(3)		91	(13) After one year from the date of discharge, if the bankrupt applies and satisfies the court that it cannot meet the order's terms, the court may modify the offer. The bankrupt shall give 10 days notice of time and place for hearing the application to:

Section	Rule	Form	
			(i) the trustee, (ii) the Superintendent, and (iii) every creditor with a proven claim.
150(1)		92	(14) The court may annul a discharge if: (i) on application to the court, it be shown he failed duties under the Act, or
150(2)			(ii) the discharge was obtained by fraud.
152(1)			(15) The order of a discharge shall be dated on the day made. It shall not be issued or delivered out until appeals have been finally disposed.
152(2)		95 96	(16) The bankrupt shall make notice of discharge in the Canada Gazette.
			L. Trustee Discharge
23			When a trustee has completed the duties required of him with respect to the administration of the property of a Bankrupt, he shall apply to the court for a discharge.
23(2)			The court may discharge a trustee with respect to the administration thereof, or for sufficient cause, before full administration.
14(a) 23(4)			When all the assets have been disposed of by the trustee and the trustee's accounts have been approved by the inspector and taxed by the court and all objections, applications and appeals have been settled or disposed of and all dividends have been paid, the estate is deemed to have been fully administrated.
123(11) 123(5) 119			The trustee prepares the Statement of Receipts and Disbursements and submits it to the Superintendent of Bankruptcy and to the court. The court taxes the Trustee's accounts. The trustee distributes the proceeds to the creditors. The Trustee submits his report on the estate to the court and receives his discharge.

ROLE OF AN INTERIM RECEIVER

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ROLE OF AN INTERIM RECEIVER IN BANKRUPTCY

A. Appointment

(1) A receiver is a person appointed at the insistence of a party to receive or collect rents, issues and profits to which another is legally entitled. He may and is often required to protect and preserve the property out of which he is to receive or collect the rents and other payments.

(2) He is appointed either by the court or out of court, by individuals or corporations. In the first case, he is an officer of the court, deriving his authority from the court; in the second, he is an agent of the parties and has such powers, duties and liabilities as are defined by the instrument or statute under which he is appointed, and derive from the general law of agency.

(3) Most commonly, out of court appointments occur under a mortgage or trust deed; the mortgagee or trustee is often granted the power to appoint a receiver in certain specified events, such as default of the mortgagor or the company on its loan or bond, or where the property over which the creditor is given a security or charge is in jeopardy.

(4) Generally the powers given by the deeds or other instruments are wider than those given in the Judicature Act or similar legislation in force in the provinces.

(5) The Court has inherent equitable jurisdiction to appoint a receiver where a party in an action requests it. This may be done where the plaintiff has no right conferred by agreement to appoint a receiver, and may be sought even where other parties who are so entitled have already appointed one. The Superior Courts of every province have statutory jurisdiction to appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just and convenient to do so.

(6) The Court with bankruptcy jurisdiction has statutory power to appoint an Interim Receiver.

S. 28(1):

28(1) 28 "The court may, if it is shown to be necessary for the protection of the estate, at any time after the filing of a petition and before a receiving order is made, appoint a licensed trustee as interim receiver of the property of the debtor or any part thereof..."

S. 29(1):

29(1) 28 "The court may, at any time after the filing of a proposal under Secion 42, appoint the trustee under the proposal or another, or the trustee under the proposal and another trustee jointly, as interim receiver of all or any part of the property of the debtor..."

S. 30:

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wages, salary, commission or hire at a rate of compensation not exceeding twenty-five hundred dollars per year and who does not on his own account carry on business."

(7) It will be seen from the foregoing provisions of the Bankruptcy Act that an appointment under Section 28(1) can be made by the court at the instance of the petitioning creditor. Under Section 29(1), in the
29(3) case of proposals, the trustee named in the the proposal may apply to the appointed interim receiver, and any other creditor who is affected by the filing of proposal may also make a similar application. Although the Bankruptcy Court has been vested with equitable jurisdiction by s.153, unless an application is before it the Court will not of its own motion appoint an interim receiver.

(8) The appointment by the Bankruptcy Court of an interim receiver (or of a trustee after a receiving order is made) may affect the appointments of receiver previously made either by the parties entitled under a deed or instrument or by a non-bankruptcy court at the instance of a party in an action. In Laval Inc. Transport Inc. v. Chartré (1957) Que. Q.B. 263 (CA)

(9) Similarly, the appointment by the bankruptcy court may affect the rights of persons interested in the property of the bankrupt, or of the debtor under a proposal, and the question is whether in the first situation the prior appointments are discharged and in the second situation, where no receiver had previously been appointed, whether the interested person, usually the mortgagee who is entitled to possession of property charge ahead of the interim receiver, is dispossessed.

B. Grounds of Appointment

28(1) 28 (1) The Bankruptcy Act provided that the court may appoint an
29(3a) interim receiver "when it is shown to the court to be necessary for the protection of the estate of the debtor;" but in the case of a proposal filed by an insolvent person under s.42, the court may also appoint an interim receiver "when at least five per cent of the unsecured creditors representing not less than twenty-five per cent of the unsecured
29(3b) creditors in value request it."

(2) It is insufficient to allege in an affidavit in support of a
28 petition for the appointment of an interim receiver that in the opinion of the petitioner there are good reasons to believe that the debtor would dissipate his assets; the petitioner must disclose the grounds on which the belief is based: Re Hyslop 91925 7 C.B.R. 101 (Ont.).

(3) In deciding on whether or not to apply to the court for appointment of an interim receiver, the creditor or the trustee of the proposal should consider the type of business the debtor is engaged in, if large cash transactions are involved, if significant inventories are handled, and if an interim receiver is not appointed, there is danger of theft or of appropriation by landlords and other creditors. Books and

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debtors of the bankrupt may be misplaced or lost. Even though assets misappropriated may be recovered, the legal and other costs expended to effect such recovery may far exceed any compensation paid to a receiver.

(4) The amount and value of assets to be protected is therefore an important consideration. But in many cases if they are already subject to a charge in favour of secured creditors who have asserted their rights or appointed their own receiver, it is unwise to have an interim receiver.

(5) Economy is very essential. There should be sufficient "free" assets which if not protected are likely to disappear. Essentially, the determination that must be made in each case is whether the added cost incurred by the appointment of a receiver is justified in terms of existing circumstances and the probability of harm that may result if a receiver is not appointed.

(6) Other matters which the applicant for interim receivership should consider are:

i) The previous conduct of the debtor - as stated earlier, if the debtor or parties privy with him have so managed their affairs as to indicate that creditors were being prejudiced by their acts, the court will readily grant the petition.

ii) The insolvency of the debtor - if the evidence of the insolvency of the debtor is strong, there is less need to worry in respect of the appointment, since in the end a receiving order will be made.

iii) Whether the debtor will defend the petition - if the petitioner knows that the debtor is likely to oppose the appointment of a receiver, the problems will be greater as that would lead to additional legal expenses and delays. If there are insufficient funds in the estate, the petitioning creditor will be liable for the costs of the interim receiver, and if the receiving order is not granted the petitioning creditor will be responsible for all the costs.

74 C. Notice of Application to the Debtor

The application for the appointment of an interim receiver can be made without notice to the debtor: However, prior to adjudication on the petition of bankruptcy, in the absence of consent by the debtor, it is a serious matter to deny him an opportunity to be heard, since without notice to him the possession and control of the property will be placed in the hands of the interim receiver. In some exceptional cases, e.g. where he has absconded, there is little point in giving him notice. The court may adjourn the hearing of the application and direct notice of the hearing shall be given to any party it sees fit. An application may be made to the Registrar of the Bankruptcy Court as he is authorized to hear ex parte matters and to make interim orders in case of urgency. The form

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D. Petitioner's Undertaking as to Damages

75 28 In every case of the appointment of an interim receiver, the petitioning creditor must give an undertaking to the Court that he will be responsible in the event that the debtor has sustained damage as a result of the appointment. Under the Bankruptcy Rules, when a petition is dismissed, the Court may award damages against the petitioning creditor for any loss or other claim arising out of the appointment of an interim receiver. The probable damages are very difficult to measure in advance, as they are in the nature of loss of business or damage to the reputation of the debtor. A debtor who has been losing money or is already insolvent has very little to complain about, but the undertaking is very important where the petitioner's application was not well founded in spite of the prima facie case made out at the hearing, and the debtor's business is seriously affected.

E. Functions and Duties of the Interim Receiver

28 (1) As stated above, the order appointing an interim receiver has the effect of depriving the debtor of any legal control he had hitherto exercised over his property. It evens prevents him from bringing an action to recover money without the consent of the interim receiver: Dubnitsky v. Sun Life Assurance Co. (1940) 22 C.B.R. 431 (Que.).

49 49(2) (2) Section 49 stays all proceedings against the debtor when he has filed a proposal or upon his bankruptcy, until the trustee has been discharged or until the proposal has been refused, unless with leave of the Court and on such terms as the Court may impose. The rights of the secured creditors are saved by subsection 2 of that section.

28(1) 28(2) (3) The Bankruptcy Act states that the Court may direct the interim receiver to take immediate possession of the debtor's property or of any part thereof upon such undertaking being given by the petitioner as the Court may impose as to interference with the debtor's legal rights and as to damages in the event of the petition being dismissed. Under Section 28(2) the interim receiver may,

> "Under the direction of the Court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate in value and exercise such control over the business of the debtor as the Court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying on of his business except as may be necessary for such conservatory purposes or to comply with the order of the Court."

29 An interim receiver appointed under Section 29 (following upon a proposal) has the same powers.

(4) One of his first tasks as an interim receiver is to take immediate possession of the debtor's movable property. This would require a change of locks to prevent the debtor from secreting the

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property; but as the section states that there should be no undue interference with his business, the debtor should be allowed easy access, under supervision, to any of the premises controlled by the interim receiver. The receiver is primarily a conservator of assets and in a non-operating business he is solely that. He is a temporary custodian or caretaker: Re Soren Bros. (No. 2) (1926) 7 C.B.R. 545 (Ont.). He may and usually does have agents to help him in fulfilling his trust, such as inventory takers, clerical assistants etc. as may be needed. The receiver should also take possession of books and records of the bankrupt. As a custodian he cannot remove them or any other property: see Re Canadian Coal Supply; Ex p. Staples & Bell Inc., supra.

50(5) (5)(i)An interim receiver has no title to the property in his control, as does a trustee. Vesting property in the trustee does not apply to an interim receiver. Therefore, without an order of the Court 28(2) he has no right to sell property. Section 28(2) empowers the Court to authorize a sale where the property is of a perishable nature or is likely to depreciate in value, and a sale under Court authority is valid and would protect a person purchasing from the interim receiver.

(ii) He has no right to sell property covered by chattel mortgage just as the debtor does not have any such right. In Westlake v. Martin (supra) the Court held that an interim receiver would be exceeding his authority and would be liable to account, if he disposed of mortgaged property.

(iii) There is no distinction between an interim receiver appointed in bankruptcy and one appointed in other matters by the Court, unless the Bankruptcy Act otherwise provides; each is personally liable to individuals dealing with him in respect of liabilities incurred or contracts entered into by him in carrying on the business unless the express terms of the contract exclude, as they may do, any personal liability: Re Smith & Son; Smith v Tew, Hays v. Tew (1929) 10 C.B.R. 393 (Ont.). Therefore, the interim receiver must protect himself.

(iv) He has a right to be indemnified out of the assets in respect of such payments as he has made in discharge of liabilities incurred. But, he is not personally liable on contracts not entered into by him, nor is he liable to pay rent under a lease made by the debtor; it was held in Re Soren Bros. (No. 2) (supra), that an interim receiver obeys a Court order requiring him to take possession of the premises in order to protect the property, does not incur personal liability to pay rent on that account alone.

(v) If he chooses to enter into any personal contract in respect of the demised premises, he cannot escape liability.

F. Control of Business on Appointment

(1) A difficult question to be determined is how far the interim receiver should control the business of the debtor. The order appointing interim receiver directs him to take immediate possession of the debtor's property and control receipts and disbursements thereof but otherwise not to interfere with the carrying on of debtor's business. Should the interim receiver pay the claims of a creditor? The interim receiver may generally pay the continuing expenses such as telephone,

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50 (2) The interim receiver has no greater rights to any accounts receivable than the debtor had. If garnishee proceedings are taken and money paid into Court, the judgement creditor is entitled to have the money paid in court to be paid out to him even if a petition in bankruptcy has been filed and an interim receiver appointed: Arthur C. Weeks Ltd. v. B.C. Contract Sales Ltd. (1961) 3 C.B.R. (N.S.) 47 (B.C.). Similarly, as the stay of proceedings contemplated by Section 50 are in respect of claims provable, debts contracted after the receiving order or assignment not being provable debts, no leave is required to sue a bankrupt for such after-incurred debts.

15(1) 15(2) (3) The Bankruptcy Act confers certain powers on the interim receiver in carrying on the affairs of the debtor. He may with the permission of the Court make advances, incur obligations, borrow money and give security on the property of the debtor. If authorized to carry on the debtor's business, the interim receiver is deemed to be a person engaged in the class of business previously carried on by the debtor (bankrupt) for the purpose of giving security under Section 88 of the Bank Act. The power to borrow is very useful as the business would otherwise come to a standstill in many cases. The interim receiver in order to stay in business for the very short period contemplated by the Act and for his own future credit-worthiness, should meet the obligations he has undertaken. The order appointing him or granting him power to borrow usually provides that the interim receiver's fees are to be paid in priority to the repayment of the loan, and the interim receiver's certificate usually relieves him of personal liability.

G. Liability of Interim Receiver

(1) The personal liability of the interim receiver has been touched upon to some extent in the foregoing pages dealing with the functions of his office. If the interim receiver enters into contracts personally, he is liable thereon to third parties unless he has limited his personal liability thereon. He is entitled to indemnity out of the debtor's assets for obligations properly incurred.

(2) The interim receiver is liable to account for all monies that come into his hands, or that might have come into his hands but for his own negligence or default. If money for which he is answerable does not reach its proper destination, the receiver will be compelled to make good the loss unless he can show that he has acted with perfect regularity and has used such a degree of prudence as would be expected from a private individual in relation to his own affairs: White v. Baugh (1835) 3 Cl.8 Fin. 44, H.L. at p.59. Thus, if he pays money into a bank to a separate receiver's account, he is not liable for loss occasioned by the failure of the bank, but if he has paid the funds into his own general account or mixed it with his own money, it is otherwise: Wren v. Kirton (1805) 11 Ves. 377.

(3) An interim receiver is also liable for loss occasioned by parting with the control of the property or by willful neglect to carry out the orders of the court or by placing money in what he knows to be

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contributed. So also a receiver may be personally liable for acts in excess of his authority; e.g. for taking possession of property not included in the assets which he has been appointed to collect, and for misconduct. He may be ordered to pay out of his own pocket costs incurred by reason of his misconduct or neglect in the discharge of his duties.

(4) An interim receiver is not answerable for trading losses where he has been authorized to carry on business, if he has acted in accordance with the Court's directions.

(5) The interim receiver must manage the property in accordance with the various provincial and federal statutes that govern the responsibility of a person carrying on business, such as Factories' Acts, Food & Drug Acts, Income Tax Acts, Purchase Tax Acts, etc. He may have to observe agreements with trade unions and other bodies regulating the conditions of employment of work people. It is therefore essential for a receiver when concerned in carrying on a business to obtain expert advice from persons experienced in similar business. He must obtain court authorization before undertaking any responsibility that does not clearly fall within the powers already granted to him.

28(1) The undertaking required to be given by the petitioning creditor under Section 28(1), does not absolve the interim receiver from his obligations and personal liability, whether to the creditor on whose petition he has been appointed or to the debtor himself.

P R O P O S A L

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PROPOSALS

For convenience, the stages of the administration of a proposal have been divided into the following headings:

A) Preparing the Proposal - Individual & Company
B) Filing the Proposal
C) Trustee's Administration Before First Creditors' Meeting
D) First Creditors' Meeting
E) Interim Receiver
F) Fraudulent Preferences
G) Inspectors
H) Application to Court for Approval
I) Trustee's Attendance at Hearing for Approval of Proposal
J) Refusal
K) Approval
L) Effects of Approved Proposal
M) Trustee's Administration of Approved Proposal
N) Discharge
O) Trustee's Procedure when Proposal is Unsuccessful and Deemed Assignment in Bankruptcy Results
P) When Creditors have Refused Proposal and Quorum is Present
Q) Annulment
R) No Quorum - Temporary Assignment
S) Trustee's Attendance at First Creditors' Meeting in all Deemed Assignments
T) Procedure by Trustee if Replaced - Substitution of Trustee
U) Trustee's Application for Discharge

A. Preparing the Proposal - Individual and Company

32(2a) 34 61 82 — When an insolvent person makes a proposal, he commences proposal proceedings by lodging (i.e. physically depositing) with a licensed trustee the following documents:

32(2c) 31 — 1) A copy of the proposal in writing setting out the terms of the proposal and the particulars of any securities or sureties proposed, signed by the debtor and the proposed sureties, if any

129(d) 46(1) — 2) A statement showing the financial position of the debtor at the date of the proposal indicating:

(i) the particulars of his assets and liabilities;
31 (ii) the names and addresses of his creditors;
(iii) the securities held by them respectively;
61 (iv) the dates when the securities were respectively given;
(v) such further or other information as may be required.

3) An affidavit of the debtor verifying the financial statement.

4) Resolution of Company appraising the making of the proposal

Sec. Rule Form

When a bankrupt makes a proposal, he commences proposal proceedings by lodging (i.e. physically depositing) with the trustee of the estate the following documents:

32(2a) 34 1) A copy of the proposal in writing setting out the terms of the proposal and the particulars of any securities or sureties proposed signed by the debtor and the proposed sureties, if any.

129 2) The statement of affairs to be submitted by an insolvent person making a proposal.

32(3) 3) Approval of the inspector of the estate (Resolution) When the proposal is made by a bankrupt, it shall be approved by the inspectors before any further action is taken thereon.

The trustee must ensure that the proposal provides for:

41(4) 107(1) 1) Payment in priority to other claims of all claims directed to be so paid in the distribution of the property of the debtor.

41(4) 107(1b) 2) Payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal.

21(1) 21(2) 21(3) 21(5) 123(4) The trustee may enter into an agreement with the debtor regarding the amount of his fees; but the trustee will never be entitled to more than the amount permitted to him by the Bankruptcy Act and which amount must be taxed;

46(1) The debtor and the trustee could probably make a binding contract as to the trustee's fees in connection with the proposal which contract would be legally enforceable between them; but this does not mean that a trustee, who is an officer of the court and is supposed to impartially represent the creditors at least to the same extent as he might impartially protect or advise the debtor, might claim and indeed secure payment of an exorbitant fee mainly because the debtor agreed, and this to the prejudice of the creditors, who have agreed to a proposal to which the trustee was also a party.

On the basis of the foregoing, the court would reduce the fee agreed upon between the trustee and the debtor, and order the surplus to be distributed to the creditors.

41(2) 3) Terms that are reasonable and calculated to benefit the general body of creditors.

"There can be any number of schemes offered in proposals. The only limit is the ingenuity of the draftsman and the question of whether or not the creditor will accept them";

41(2) To the foregoing should be added the fact that the Court must also accept them.

"Where a debtor involved in a proposal sells to his creditors, it is usual to provide in the proposal that creditors shall have no right of set-off";

Thus, where a creditor received dividends under a proposal, and subsequently purchased goods from the debtor, and refused to pay for the goods, setting off the price of the goods against the unpaid balance of the claim which he submitted in the proposal, the Court disallowed the creditor's attempt at set-off ordering the creditor to pay to the trustee the price of the goods sold, stating:

"It must be admitted that: Composition creditors had a right to purchase goods from the debtor during the period of the composition, but if all the creditors purchase goods and not pay for them and then claim a set-off, how would it be possible for the company to carry out its composition? If so, the whole assets might be swept away by the action of one, and the effect would be to deprive the debtor of the means of paying his composition. The assets are the funds for payment of the composition. There can be no benefit to one creditor behind the back of the creditors of the composition. (The creditor) might just as well have purchased goods, the value of which together with the dividend he was to receive, would pay him in full, while the other creditors would only get their dividends as agreed under the composition":

If the trustee does not ensure that the proposal contains the three terms mentioned above, the Court shall refuse to approve the proposal.

By virtue of the Interpretation Act RSC 1970, c.I-23,s.28, "In any enactment, 'shall' is to be construed as imperative". Therefore, the Bankruptcy Act leaves no discretion to the Court, and it must refuse the proposal, even though it will have been accepted by the overwhelming majority of creditors required for the passing of a special resolution.

The trustee shall make or cause to be made an appraisal or investigation of the affairs and property of the debtor, such as to
32(5) enable the trustee to estimate with reasonable accuracy the cause of the debtor's financial difficulties or insolvency.

The trustee shall report the result of his appraisal or investigation to the meeting of the creditors.

B. Filing the Proposal

42(1) 81(2)
46(1) 82
180(1)
180(4)

Trustee files with the Official Receiver:

1) copy of the proposal
2) a copy of the statement of affairs

Sec. Rule Form

The time of the filing of the proposal shall constitute the time:

42(1) 1) for the determination of the claims of creditors;
41(10) 2) and for all other purposes of the Bankruptcy Act;
39(1) 3) determination of the date upon which the debtor will be deemed to have made an assignment upon rejection of the proposal by the creditors or disapproval of the proposal by the court.

In particular, from the time of filing of the proposal, it is
32(4) impossible to withdraw the proposal and any security or guarantee tendered with the proposal.

However, if the debtor makes an assignment before the court has approved the proposal, the date of the assignment shall be deemed to be
44 the date of the filing of the proposal, but otherwise the proposal is no longer in effect.

If the Official Receiver appoints another trustee in the bankruptcy
31(4) 80 then, the proposal trustee proceeds directly to the "Procedure when Trustee is Replaced".

31(4) 80 If the Official Receiver appoints the proposal trustee as trustee
80(1) in the bankrupcy by the debtor's assignment, the trustee must advise the
80(3) creditors that the debtor is now bankrupt.
80(4)

If the first creditors' meeting to consider the proposal has not
88 taken place before the debtor makes the assignment, the trustee must
35 37 advise the creditors by registered mail that the meeting ordinarily called to consider the proposal will instead be the first meeting of creditors in the bankruptcy, for which voting letters (if already sent to the creditors) will not be acceptable (Sec. 87(2)).

If the meeting called to consider the proposal has already taken
88(1) place, the trustee shall call by registered mail a new first meeting of creditors in the bankruptcy, giving at least five (5) days' notice. The calling of the first meeting in the bankruptcy, in all other respects, as well as the seizure and protection of assets and all subsequent bankruptcy proceedings are then carried on in accordance with ordinary bankruptcy procedure.

If one or more creditors present a petition for a receiving order before the proposal was filed and the proposal is subsequently rejected either by the creditors or by the court, the resulting bankruptcy will be deemed to have commenced on the date the petition was filed:

C. Trustee's Administration Before First Creditors' Meeting

Immediately after filing of the proposal, the trustee must:

37(2) 1) send by registered mail, to creditors who have not taken court proceedings against the debtor, and

Sec. Rule Form

2) serve upon creditors who have taken court proceedings against the debtor and register in the court files of those proceedings, notices of stay of proceedings against the debtor and his property.

49(1)
13(6)
25

3) file copies of these notices in his records.

While section 49(1) provides for an automatic stay of proceedings against the debtor and his property upon the filing of a proposal, and all the creditors of the debtor will be notified of the proposal and will be presumed to know of the stay of proceedings, this simple precaution ensures that the creditors will in fact know that proceedings are stayed, and this will later save the debtor and the creditors, and possibly the trustee, the trouble of undoing things which would otherwise have been done by the creditors in the exercise of their remedies against the debtor after the filing of the proposal in their ignorance of the filing. It should be carefully noted that section 49(1) expressley stays proceedings "upon the filing of a proposal", whereas section 25 contains no similar provision for the filing of the petition for a receiving order. As regards to the petition for the receiving order, although, by virtue of section 50(4), "the bankruptcy shall be deemed to have relation back to and to commence at the on time of the filing of the petition on which a receiving order in made ...." section 75, despite its wording, protects transaction entered into by the debtor retroactively-become-bankrupt between the date of filing of the petition for a receiving order and the date of its granting:

50(4)
75

The filing of a proposal does have an effect on the debtor and his property at the outset. It stays proceedings. The filing of a proposal is the debtor's own voluntary act, and, insofar as proceedings are stayed, does affect him and his property, but not to the extent of diminishing his civil capacity. Rather, it curtails the rights of his creditors. Whether the creditors reject the proposal and a retroactive deemed assignment results, or whether they accept it, this curtailment of their rights continues, and their rights are extinguished completely upon the discharge of the debtor. Unlike the situation of the petition, a debtor under a proposal is not at any time free from its effects, nor are his creditors:,

49(1)

51(2)
51(3)
51(4)

If any property of the debtor has been seized before the service of the notice of stay of proceedings upon a seizing officer acting on behalf of any creditor, further execution proceedings are stayed, but the trustee cannot automatically recover any of the property seized because there has been no assignment to him of the property of the debtor.

46(1)
50(5)

29(1) 28
29(3) 74 74
75
29(2)

In order to recover property seized by creditors other than owners, the trustee should apply to the court for the appointment of the proposal trustee as interim receiver of the seized property and with directions by the court to take immediate possession of the seized property and to take such other action as the court may deem advisable.

Sec. Rule Form

46(1) 51 This is necessary because, the trustee, having no claim to title over the property of the debtor, can have no legal interest in any station relating to that property, without having first been appointed interim receiver. Section 46(1) renders inapplicable section 51 as regards the proposal trustee:

37(2) 57 36 The trustee shall send by registered mail to the Registrar a notice of the proposal.

33(1) The trustee shall forthwith call a meeting of creditors in the following manner.

33(1) The trustee prepares the following set of documents for all creditors and the Superintendent.

5 106 35 107 1) notice of the date, time and place of the meeting;

33(1b) 82 31 33(11b) 61 2) a condensed statement of the assets and liabilities;

33(1c) 3) a list of creditors affected by the proposal with claims amounting to $25 or more, and the amounts of their claims as known or shown by the debtor's books;

32(2a) 33(1d) 34 50 4) a copy of the proposal;

97(1,2) 51 87(2) 48 49 5) a form of proof of claim and proxy ;

31(1f) 37 35 6) a voting letter (vote taken by creditor himself without attending first creditors' meeting);

7) pertinent information pertaining to debtor affairs.

33(1) 37(2) The trustee sends a set of these documents to the creditors and the Superintendent by registered mail at least ten (10) days prior to the meeting.

NOTE: It is not necessary to publish notice of the filing of the proposal in a local newspaper (Section 80(4) rendered inapplicable by Section 46(1));

33(2) Where the proposal is being made by a bankrupt, and where a statement of the debtor's assets, liabilities and creditors was presented to a first creditors' meeting in the bankruptcy, and if the condition of the debtor's estate remains substantially the same when the trustee is required to convene a meeting to consider the proposal, the trustee may omit the following documents:

33(1b) 1) the condensed statement of the assets and liabilities;

33(1c) 2) a list of the creditors and their claims.

33(11b) The trustee shall file the statement of assets and liabilities with

Sec. Form Rule

38 The trustee must establish which creditors do or do not have the right to vote for the appointment of inspectors, if any.

Since the proposal must be voted upon as a whole and not part by part, it may be argued that a creditor disqualified from voting on one part cannot on any other part, and therefore cannot vote upon the proposal at all.

If the trustee is in doubt whether a proof of claim should be admitted or rejected for the purpose of voting, he shall:

83(3) 1) mark the proof as objected to

2) allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being substained by the court.

36(1) 39(1) (i) upon the appeal by the debtor (Sections 86(1) and 163 both rendered applicable by Section 46(1)), if the proposal is refused by such vote.

86(1) 163 36(1) (ii) upon the appeal by the debtor if the proposal is accepted by such vote.

The question of eligibility to vote, apart from the question of the validity of the claim, is not for the adjudication of the trustee, but for the court.

All that the trustee must be concerned with at this stage is whether all the formalities required by law have been followed by the creditor in filing the proof of claim.

87(3) The trustee should be ascertain that the proxies are valid and in the possession of individuals qualified to hold them.

87(4) A debtor may not be appointed a proxy to vote at any meeting of his creditors.

The vote of the trustee or of his partner, clerk, solicitor or solicitor's clerk, as proxy for a creditor, shall not be reckoned in the majority.

13(6) The trustee files in his records copies of all the notices sent out and the registered mail proofs.

D. Creditor's First Meeting

97(1,2) 97(3,4) 97(5) 87(1) In order to be qualified to vote, the creditors must lodge proofs of claim with the trustee and prove their claims before the time appointed for the meeting.

Sec. Rule Form

35 37 87(1) Voting letters must also be in the possession of the trustee before the time appointed for the meeting, accompanied by the proofs of claims of creditors choosing to vote in this manner.

97(2,3) 97(4,5) Trustee shall examine each proof of claim to ensure that it is filed in the prescribed form and is a claim provable in bankruptcy.

95(1) 94 106(1) 92 107(1) 107(3) If necessary, the trustee shall require from the claimant, whether he claims as secured, preferred, or unsecured, further evidence in support of the claim before admitting the claim and listing the claim according to its rank.

If the claim is unliquidated (i.e. exact amount not definite) or contingent (i.e. whether or not the amount is definite, the legal validity of the claim is in dispute), the trustee shall either:

14(1i) 91 95(2) 1) compromise the claim

12(9) 91 162(1-b,f,g,h) 2) apply to the Registrar to have the claim valued

162(4,5) 97 93 106(2) 95 106(4) If the proof of claim is <u>not</u> properly made on its face, the trustee may disallow the claim in whole or in part

The debtor may assist the trustee in this task and may validly raise objections to proofs of claim and urge the trustee to disallow them.

106(2) 52 If the trustee disallows the claim, he shall give to the claimant a notice of disallowance containing reasons for disallowance.

When the trustee issues the notice of disallowance, the trustee should have sufficient funds deposited in his trust account to cover all such disallowed and disputed claims, or the amount payable on the disputed claims if they are subsequently found to be valid. If the trustee were to make a distribution to the ordinary creditors whose claims are not disputed, and at a later date, certain of the disputed claims are found to be valid, the trustee would be personally liable for the dividend on the claims of those creditors for whom the funds were not available.

The proofs of claim should be available at the meeting so that:

97(7) 1) they can be examined by the creditors.

39(1) 84(4) 2) the trustee can determine the statutory majority of the creditors with proved claims which will become necessary if the proposal is defeated and bankruptcy results.

Because the <u>Bankruptcy Act</u> permits creditors who prove their claims to vote on the proposal by voting letter without actually attending the meeting, the quorum is not necessary <u>to determine the vote of creditors</u> on the proposal, but it will become necessary if the creditors refuse to

Sec. Rule Form

39(1)
39(1-a,b
80(5)

accept the proposal, whereupon the debtor shall be deemed to have filed an assignment and bankruptcy will result, in which the trustee will require directions from the creditors with respect to the administration of the estate.

If all the creditors decide to vote by voting letter without attending, then the trustee can proceed to calculate the vote and determine whether the proposal has been accepted or rejected.

35
84(1)

If some vote by voting letter, and others attend, again, it is not necessary to have a quorum for holding the meeting to consider the proposal. Because of Section 35, Section 84(1) is rendered inapplicable by Section 46(1) for the meeting called to consider the proposal.

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36(1)
87(1)
46(1)

The number of proved claims necessary in order for the trustee to determine the statutory majority required for passing a special resolution is constituted only by proved claims filed before the time appointed for the meeting, and not the time at which it actually begins, if it begins late (Section 87(1) rendered by Section 46(1)):

---In re J.A. Lacasse (1940) 21 CBR 368;

---In re Barry Steel Products Limited (1941) 22 CBR 308;

---In re Madeau (1949) 30 CBR 89.

87(1)
97(7)

The purpose of the strict application by the court in this matter is to ensure that the rights of the creditors to examine the proofs of claim of other creditors pursuant to Section 97(7) would not be defeated by the late filing.

86

Also, the right of the trustee to examine all proofs of claim and determine their validity, as well as the eligibility of creditors to vote, pursuant to Section 86, would be defeated by late filing.

Therefore, if only one creditor files a proof of claim, whether he decides to vote by voting letter, in person or by proxy, his proved claim constitutes the total of the voting proved claims, and the trustee may proceed to conduct the meeting with the "participation" of this one creditor alone.

84(1)

If he votes for the proposal, it is accepted. If he votes against the proposal and bankruptcy results, he constitutes the quorum required to hold the first creditors' meeting in the bankruptcy and may proceed to conduct the meeting all by himself:

---In re Glennie (1923) 4 CBR 226.

Sec. Rule Form

86(1) 46(1) The trustee must decide whether each claim can be admitted or rejected for the purpose of voting, even if they can later be admitted in whole or in part as valid claims in the proposal.

The trustee must establish which creditors do or do not have the right to vote for the acceptance of the proposal.

The trustee must have regard to disqualifications established by the Bankruptcy Act against various persons with respect to their capacity to vote on various aspects of the proposal, namely:

1) with respect to voting on the proposal's acceptance:
   i) a creditor related to the debtor;
   ii) the debtor as proxy;
   iii) a creditor who entered into a receivable transaction with the debtor;

2) with respect to voting for the appointment or substitution of the trustee:
   i) the trustee's partners and employees and solicitor;
   ii) the debtor's relatives;

3) with respect to voting on the appointment of inspectors, if any:
   i) the debtor's relatives

4) the trustee's total incapacity to vote.

3,4 36(3) A creditor who is related to the debtor, as defined by Sections 3 and 4 may vote against, but not for, the acceptance of the proposal.

87(4) A debtor may not be appointed a proxy to vote at any meeting of his creditors.

A creditor is not entitled to vote at any meeting of creditors:

3(2,3) 1) if the creditor did not at all times within the twelve months preceding the proposal of the debtor, deal with the debtor at arm's length, or

3(1) 87(6) 108(1) 2) if the creditor entered into a reviewable transaction with the debtor at any time prior to the proposal.

87(6) 108(2) 3) if the creditor is a spouse or former spouse of the debtor claiming for wages, salary, commission or compensation for work done or services rendered in connection with the trade or business of the debtor.

The trustee must establish which creditors do or do not have the right to vote for the appointment or substitution of the trustee.

Sec. Form Rule

91(2) The vote of the trustee or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for the passing of any resolution affecting the remuneration or conduct of the trustee. Since the trustee's appointment is provided for and the creditors are permitted to alter or modify the proposal at the first creditors' 36(1) meeting, the creditors may decide to change the trustee originally appointed in the proposal by the debtor because of the trustee's conduct.

91(3) 46(1) The father, mother, son, daughter, sister, brother, uncle, or aunt by blood or marriage, wife or husband or the debtor are not entitled to vote for the appointment of a trustee required for passing any resolution affecting the remuneration or conduct of the trustee.

91(2) The trustee must act as chairman of the meeting (Section 83(1) rendered applicable by Section 46(1):

—Re Forbes (1972) 17 C.B.R. ns 55.

36(4) The trustee CANNOT VOTE on the proposal as a creditor.

36(4) If the trustee is himself a creditor of the proposal debtor, Section 36(4) forbids him to vote on the proposal as a creditor, is rendered inapplicable by Section 46(1).

91(1) Ordinarily, when the trustee is a proxy holder for one or more creditors, Section 91(1) would permit him to vote as a creditor. However, because Section 36(4) forbids him to vote as a creditor, the permission to vote by proxy in Section 91(1) is rendered inapplicable by Section 46(1).

91(1) 41(4) 36(1) 10(1) 91(2) Therefore, Section 91(1) does not apply to proposals. Moreover, because every proposal must make provisions for the remuneration of the trustee and by virtue of Section 36(1) the creditors may alter or modify the proposal by substituting a new trustee for the trustee appointed by the debtor. Since such a vote will most likely concern the conduct of the trustee, the trustee is also forbidden to vote on this matter.

2 36(1) Because the requirements for the special resolution do not lend themselves to the result of a tie, there is no question of a casting vote for the trustee chairing a meeting to consider a proposal (Section 83(3) rendered inapplicable by Section 46(1)). Morever, if in number, the vote split is 50-50, the creditors have not attained a majority (51-49), but merely equality, and the proposal must fail. Because of all the issues in the proposal in which the trustee already has an interest which by itself disqualifies him from voting in the ordinary course of the consideration of the proposal, he will certainly not be allowed the final determination of such issues by a casting vote.

Sec. Form Rule

In the light of the Forbes decision, cited above, which requires the trustee to act as chairman of the meeting called to consider the proposal, all the foregoing observations regarding the trustee's ineligibility to vote are completely consistent with the impartiality he must maintain from the outset when the proposal is made up to and including his conduct of the creditors' meeting.

At the time appointed for the meeting, the trustee calls the meeting to order.

83(4,5) 92 13(6) Trustee shall have minutes of the meeting prepared and filed later in his records.

32(5) The trustee shall report to the creditors' meeting the result of his appraisal and investigation of the affairs and property of the debtor.

Occasionally, the proposal is not made in terms of a specified number of creditors, but rather a lump sum is proposed by the debtor to be paid to all the unsecured creditors, whether preferred or ordinary. Such a proposal is known as a "basket proposal". It is usually made when there is a guarantor for the proposal who does not wish to be committed for an indefinite amount, and who therefore has decided to restrict his liabilities to a specified lump sum. Such a proposal is also used when the books of the debtor have not been properly kept with the result that it is difficult to determine from those books exactly what the liabilities of the creditors are, and an estimate is the best that the debtor and the trustee can do. When a "basket proposal" is made, the trustee should calculate, on the assumption that all the preferred and ordinary claims are valid, the balance remaining after deduction of the preferred claims under Section 107, and report to the creditors' meeting the proportion payable on the ordinary claims from the balance.

93 94 The creditors may, by ordinary resolution (Section 93) require the meeting to be adjourned:

34(b) 133(1,2) 134 162(1) 162(b,g,h)

1) For the examination under oath before the Registrar.

(i) of the debtor and/or

(ii) such other person as may be believed to have knowledge of the affairs and property of the debtor or of the administration of the debtor's proposal:

34(b) The testimony of the debtor, or of such other person, if transcribed, shall be placed before the adjourned meeting.

32(5) 34(a) 2) To enable further appraisal or investigation of the affairs and property of the debtor to be made.

2 36(1) The creditors may alter or modify the proposal by special resolution with the approval of the debtor (company).

Sec. Form Rule

84(3) 33(1a) 33(1d) If, as a result of an amendment proposed by the creditors present at the meeting called to consider the proposal, a substantial change is made in the proposal, the trustee should not use the voting letters of absent creditors approving the proposal. Rather, the trustee should adjourn the meeting, call a new meeting of creditors giving at least ten (10) days notice and send all creditors the amended proposal and new voting letters:

--- Re Rideau Carleton Raceway Holdings Ltd. (1971) 15 C.B.R. ns 72 at p. 7.

E. Interim Receiver

28 30 The creditors may apply to the court for the appointment of an interim receiver on the proposal:

29(1) 12(2,3,6,7) 138 1) to take immediate possession of the property of the debtor; and

29(2) 2) to direct the interim receiver to exercise control over the business or the property of the debtor or take other action.

37 The creditors may, with the consent of the debtor, include such provisions or terms in the proposal as the creditors deem advisable with respect to the supervision of the affairs of the debtor.

21(3) The debtor may be persuaded to agree to special remuneration to be paid to the trustee for such a provision.

Ordinarily, because in an approved proposal, the debtor retains ownership and possession of all his property and control of all his affairs, and the trustee has no rights with respect to any property of the debtor, the trustee cannot exercise his rights for the recovery of fraudulent preferences under Sections 69 to 79 inclusive. Because of the basic nature of a proposal, Section 46(1) renders all the provisions inapplicable.

F. Fraudulent Preferences

However, where the creditors, with the consent of the debtor, decided that one of the powers of supervision of the affairs of the debtor by the trustee to be granted in the proposal would be the recovery of fraudulent preferences, conveyances or settlements, such provision was recognized and enforced by the court:

---In re Caplan: Lawrence v Dashiff (1971) 15 CBR ns 191.

Sec. Form Rule

G. Inspectors

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38 The creditors may appoint from one to five inspectors of the estate of the debtor, who shall have the powers of an inspector under the Bankruptcy Act but subject to any extension or restrictions of those powers by the terms of the proposal.

The trustee calls for the vote on the proposal.

36(1) The creditors may resolve to accept the proposal by special resolution which requires a majority calculated as follows:

1) the scale of votes by value of claims established for ordinary resolution in Section 93 does not apply in this calculation for a special resolution:

——Re Windsor Home Furniture Co. Ltd. (1954) 34 CBR 53.

2) Total the number of creditors:
(i) present personally,
(ii) eligible to vote (refer back to notes in this part relating to eligibility) and,
(iii) not abstaining;

3) Total the number of:
(i) proxies and
(ii) voting letters

which are
(i) eligible to vote and
(ii) not abstaining;

4) Total of
(i) creditors
(ii) voting letters and
(iii) proxies

as in the previous two steps equals the number of heads present, eligible to vote;

5) Total the value of all claims proved by the heads present, eligible to vote and not abstaining;

6) The vote must be carried by a majority in number (50% plus one) of all heads present, eligible to vote and not abstaining;

7) That majority must also represent three quarters in value of all claims proved by the heads present, eligible to vote and not abstaining;

Sec.	Form	Rule	
86(3)	49		8) If the vote is not carried by at least 50% plus one of the heads
153(2)	50		present, eligible to vote and not abstaining, the special resolution
163	51		cannot be carried, regardless of the value of the claims held by the
	52		affirmative votes, with the result that the creditors have refused the proposal, subject to appeal by the debtor.
			9) If the vote is carried by at least 50% plus one of the heads present, total the claims of all heads voting to accept the proposal;
			10) If the total claims of all heads voting to accept the proposal do not represent three-quarters in value of all claims proved by all the voting heads (for and against), the result is that the creditors have accepted the proposal, subject to appeal by one or more objecting creditors.
36(1)			
10(1)			Acceptance of the proposal by special resolution includes automatic confirmation by special resolution of the appointment by the debtor of
36(1)			the trustee in the proposal.
83(4)			
92			The trustee immediately prepares the resolution for the vote.
			The trustee immediately has them signed by:
			1) all voting creditors;
			2) all voting proxy holders.
35			In the resolution, the trustee mentions the voting letters of all creditors not present in person or by proxy, and annexes them to the resolution.
13(6)			The trustee files the resolution in his records.
165			If an appeal is taken to court from the vote, all proceedings are stayed until all appeals have been finally disposed of or exhausted.
			If the appeal is by a debtor against a vote defeating the proposal, the debtor does not become bankrupt immediately, and the decision as to whether or not the debtor is bankrupt must be made to the court:
			Pending all appeals by the debtor, the trustee has the power to act only as trustee in the proposal, and not as trustee in bankruptcy.
29	74		Pending appeals by the debtor, if the creditors or the trustee may
	75		apply to the court having jurisdiction in bankruptcy for the appointment of an interim receiver in the proposal, or, if the debtor has appealed
165			to the Court of Appeal, and if it appears that the appeal is not being prosecuted diligently, the creditors or the trustee may apply to the Court of Appeal to cancel and determine the stay of proceedings thereby
39(1)			causing an automatic deemed assignment by refusal of the creditors to
42(1)			accept the proposal retroactive the date of filing of the proposal.

Sec. Form Rule

If bankruptcy results by reason of the dismissal of the debtor's appeal or cancellation of the stay of proceedings, the trustee proceeds when "Trustee's Procedure when Proposal Unsuccessful and Deemed Assignment in Bankruptcy Results".

If after the appeal, the proposal is held to be accepted, the trustee proceeds by making "Application to Court for Approval".

H. Application to Court for Approval

40 The trustee applies to the court forthwith for the court's approval of the proposal by obtaining a hearing date from the court.

40 37(2) At least fourteen (14) days before the hearing date, the trustee sends a notice of hearing of application for approval by registered mail to the following persons:

1) the debtor;

2) the Superintendent;

3) every creditor who has proved his claim.

At least ten (10) days before the hearing date, the trustee shall forward to the Superintendent a copy of a report to the court on the proposal

The trustee files in his records copies of

1) the notice of hearing,

2) the report to the court,

13(6) 3) the registered mail proofs.

The trustee also drafts, in advance to be readily available at the hearing on the proposal, alternative orders which the court may render in order to expedite proceedings, and he has them available in court on the hearing date.

I. Trustee's Attendance at Hearing For Approval of Proposal

162(a,d) 162(5) If there were no creditors opposed to the proposal (i.e. if the special resolution was unanimously carried), the Registrar can approve the proposal.

If there were creditors opposed to the proposal, the judge hears it.

Sec. Form Rule

40
41(1,2,3) 83 If the trustee's report contains facts justifying the refusal to
162(1d) approve the proposal, the application is deemed to be opposed and the judge must hear it.

The court hears:

1) a report of the trustee on the proposal
   (i) as to the terms of the proposal, and
   (ii) as to the conduct of the debtor;

2) the trustee on matters relating to the report but which may not appear in it;

3) the debtor;

4) any opposing, dissenting or objecting creditor.

5) such further evidence as the court may require.

162(1g)
34(b) If the debtor or other persons believed to have some knowledge of the affairs and property of the debtor have been examined before the Registrar pursuant to a vote by the creditors for such an examination the testimony, if transcribed, may be read in court.

"As to proposals, they must always be carefully scrutinized by the court when presented for approval; otherwise the Act would not require the trustee to apply to the court, on notice to the creditors, for approval by the court of all proposals accepted by the creditors at a meeting called for that purpose.

However, not withstanding such approval, and even though the trustee may make a favourable report upon the proposal, "...the burden of establishing that the proposal is reasonable and calculated to benefit the general body of creditors is upon the party asking for approval. If is not upon the substantial minority of creditors who opposed the proposal at the general meeting of creditors and who through their counsel renewed their objections when the court was asked to approve the proposal to satisfy the court that its approval should be refused..."

"...it (is) not sufficient that the statutory majority of the creditors approve the proposal. The approval of the court is quite independent of that of the creditors and is based upon different considerations. It is always open to the court to consider whether the proposal is reasonable and is or is not for the benefit of the creditors, including the minority as well as the majority..."

The Bankruptcy Act puts a controlling power over proposals into the hands of the court "...for the purpose of protecting the creditors against their own recklessness; for the purpose of preventing the

Sec. Form Rule

the majority of creditors from dealing thus recklessly, not only with their own property, but with that of the minority, and of enforcing, so far as the legislature could, a more careful and moral conduct on the part of the debtors....":

"....it is (the court's) duty to take into consideration not only the wishes and interest of the creditors (majority and minority creditors) but the conduct of the debtor, the interest of the public and future creditors, the moral standpoint or, in other words, the requirements of commercial morality":

Consequently, the court's approval of a proposal accepted by the statutory majority of creditors is not automatic. The positive factors which will permit a court to approve a proposal are very difficult to determine from the decided cases, because each case rests upon its own particular circumstances, particularly as regards the financial condition of the debtor, as well as his conduct during the period leading up to the making of his proposal, and prospects for carrying out the proposal. Moreover, the consideration of such factors varies from province to province, from judge to judge, and from year to year. For instance, a proposal offering a relatively low return on the creditors' claims, which might have been acceptable in the Great Depression days of the 1930's, would not be acceptable in times of relative prosperity.

41(8) Therefore, it is very difficult to determine affirmative guidelines for the court's approval. It is much easier, however, to determine guidelines for the court's rejection of a proposal, many of which are made imperative by the Bankruptcy Act, and some of which have been developed by the court in the public interest in the exercise of the discretion allowed to the court. These guidelines shall now be examined in turn.

This means that, in the following instances, when the Bankruptcy Act uses the word "shall", the court has no discretion whatsoever to approve the proposal, even though the statutory majority of creditors has accepted it.

The court shall refuse to approve the proposal if it does not provide for:

41(4) 107(1) 1) payment in priority to other claims of all claims directed to be so paid in the distribution of the property of the debtor;

41(4) 62 107(b,i) 2) payment of all proper fees and expenses of the trustee on and incidental to proceedings arising out of the proposal;

41(2) 3) terms that are reasonable and calculated to benefit the general body of creditors.

The terms of the proposal must be definite. Therefore, a proposal

Sec. Form Rule

41(6) The Bankruptcy Act recognizes the validity of a proposal made by a corporation which provides for distribution of shares in the capital stock of the corporation among the creditors.

"A proposal made conditional upon the purchase of shares or securities or upon any other payment or contribution by the creditor shall provide that the claim of any creditor who elects not to participate in the proposal shall be valued by the court and shall be paid in cash upon the approval of the proposal".

The Court shall refuse to approve the proposal:

1) if the proposal does not provide reasonable security for the payment of at least:
   (i) fifty (50) cents on the dollar on all the unsecured claims provable against the debtor's estate, or
41(3) (ii) such percentage of such claims as the court may direct;

AND

2) if certain facts are proved against the debtor which would prevent the court from granting an unconditional discharge to the debtor. These facts are the following:

---the assets of the debtor are not of a value equal to 50 cents on the dollar on the amount of his unsecured liabilities, unless the debtor
143(1a) satisfies the court that the fact that the assets are not of a value equal to 50 cents on the dollar on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible.

In order for the debtor to maintain that he cannot be held responsible for such a shortage of assets,

> "....what the debtor has to allege and to prove are facts which the court will consider as being out of the ordinary bad state of the commercial business which occurs in turns as does prosperity, and which affected the insolvency specially exceptionally, or which created such a strong commotion in the business market that it could not reasonably be foreseen nor be protected against and caused many insolvencies. The proof did not establish any extraordinary conditions of the business market generally....".

On this basis, the court refused to accept the explanation of the debtors as to the disproportion between their assets and liabilities and refused to approve the proposal.

Where no other traders in the debtor's line of business have suffered financial losses to the same extent as the debtor, the debtor's burden of proof of conditions beyond his control will not be satisfied.

Sec.	Form	Rule	
143	(1b)		The debtor has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position with the three years immediately preceding his proposal.
143	(1c)		The debtor has continued to trade after knowing himself to be insolvent; where the principals in the debtor company registered themselves as a partnership under a name similar to that of the company and traded under the partnership name during the insolvency of the debtor company, this fact led the court to disapprove the proposal of the company:
143	(1d)		The debtor has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liablilities. The debtor's lack of "ordinary business prudence and foresight" coupled with "inability to recollect details of....business transactions" during the period of his insolvency caused the court to disapprove the debtor's proposal.
143	(1e)		The debtor has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his business affairs.
143	(1f)		The debtor has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him.
143	(1g)		The debtor, has within the three months preceding the date of his proposal, incurred unjustifiable expense by bringing a frivolous or vexatious action.
143	(1h)		The debtor has, within the three months preceding the date of his proposal, when unable to pay his debts as they became due, given an undue preference to any of his creditors.
143	(1b)	73 74	"....if the effect of the transaction with the creditor is to give him an undue preference, <u>even though the transaction itself may stand</u>, the debtor will have have brought himself within the operation of Section 59(h)(now Section 143(1)(h))", which means that even though the impugned transaction cannot be attacked under the fraudulent preference provisions of Sections 73 and 74, nevertheless, the debtor's participation in such a transaction is a fact militating against the court's approval of his proposal.
43	(4)		When a proposal is annulled and bankruptcy results, the money in the hands of the proposal trustee (representing payments made to the trustee by the debtor, which the trustee had not yet distributed to the creditors) do not form a separate trust for the benefit of the proposal creditors only; they become part of the assets of the bankruptcy, and are distributable to both the proposal creditors and subsequent creditors.

Sec. Form Rule

Thus, where any proposal purports to create a preference in favour of the proposal creditors over future creditors upon goods to be subsequently acquired in the continuance of the debtor's trade, such a proposal, violating the fundamental rule of equitable treatment for all creditors and upsetting the distribution contemplated to achieve such equal treatment, will be disapproved by the court:

143(1i) The debtor has, within the three months preceding the date of his proposal, incurred liabilities with a view of making his assets equal to 50 cents on the dollar on the amount of his unsecured liabilities (Section 143(1)(i);

143(1j) The debtor has on any previous occasion been bankrupt or made a proposal to his creditors.

143(1k) The debtor has been guilty of any fraud or fraudulent breach of trust.

143(1m) The debtor has failed to perform the duties imposed on him under the Bankruptcy Act or to comply with any order of the court.

147
69 The debtor made a marriage settlement or marriage contract and was not, at the time he made the marriage settlement or marriage contract, able to pay all his debts without the aid of the property comprised in the settlement or contract.

147(b) The debtor made a marriage covenant giving gifts of future property to the debtor's wife or children.

143(1z)
169
170
171 The debtor has committed any offence under the Bankruptcy Act or any other statute in connection with his property, his proposal or the proceedings thereunder.

All of the foregoing imperative and discretionary reasons for the court's refusal to approve a proposal were based upon the

41(3)
169
170
171
41(2) circumstances among others, that the proposal did not provide reasonable security for the payment of not less than 50 cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct. However, the fact that such security does in fact exist will not, by itself, compel the court to approve the proposal. The court still has discretion, and may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in the Bankruptcy Act.

Under all other circumstances, the court may in its discretion either:

1) approve the proposal, or

41(8) 2) refuse to approve the proposal

Sec. Form Rule

---Discretionary reasons for refusal to approve

Even if none of the statutory impediments to the approval of a proposal is present or proved during a court hearing, the court still has discretion to approve or refuse to approve a proposal, which it will exercise in the public interest. In such cases, if the court finds that a proposal, the prospects of which make it extremely attractive and beneficial to the creditors, would on other grounds be opposed to the public interest, then the public interest will be allowed to prevail, even at the risk of causing severe losses to creditors in a bankruptcy.

1) For several weeks prior to the making of the proposal, the debtor had been under interim receivership, and its principals had failed to disclose to the interim receiver the existence of a stock-in-trade valued at $32,000;

2) The debtor issued a financial statement so erroneous that its auditors disclaimed responsibility for its contents;

3) In the financial statement, the inventory had been over-valued, at retail prices instead of at cost, and the court found that this was done with the obvious intent to deceive its readers;

4) Salaries had been paid to persons doing no work for the company, and several weeks before the proposal, they had been raised;

5) Money was paid to someone who allegedly supplied goods to the debtor, but who in fact did not supply anything;

6) Within the year preceding the proposal, the debtor had suffered a loss of a kind which showed that it had no control over its cash position;

7) The assets of the debtor were not of a value of 50 cents on the dollar;

8) The debtor had continued to trade long after knowing that it was insolvent, even to the point of selling its stock at a loss in order to get cash in the till.

I. Refusal

41(8) 16
162(1b5) 84
13(6)

If the court refuses to approve the proposal, the trustee obtains a copy of the court order, signed by the judge, which constitutes evidence of his appointment as trustee for the time being, files it in his records and proceeds directly to Part IX of this paper entitled "Trustee's Procedure when Proposal Unsuccessful and Deemed Assignment in Bankruptcy Results".

Sec. Form Rule

J. Approval

41(8) 16 162(1b,5) 84 13(6) If the court approves the proposal, the court issues a written order signed by the judge or Registrar, or if court orders otherwise then as indicated on drafted court order, the trustee drafts a new one in accordance with the court's actual order, the trustee drafts a new one in accordance with the court's actual order, which order constitutes conclusive evidence of the trustee's appointment, and of which the trustee obtains a copy to file in his records.

K. Effects of Approved Proposal

42(2) A proposal accepted by the creditors and approved by the court is binding on all creditors with claims provable under the Bankruptcy Act and affected by the terms of the proposal.

49(2) Secured creditors are not affected by the proposal.

148(1) 42(2) However, if certain kinds of unsecured creditors, listed in Section 148(1) voted against the proposal, the proposal does not release the debtor from their claims. These claims continue to be payable in full even though

49(1) 1) proceedings for the recovery of these claims is suspended, and

41(5) 2) dividends are paid on them during the proposal period.

41(5) After court approval of the proposal, the trustee is an intermediary between the debtor and his creditors, to supervise the debtor's performance of the terms of his proposal.

---Fortier v. Lefaivre (1955) BR 258 at p.259.

41(5) 43(1) The debtor retains all his right, title and interest in his property and full capacity to dispose of or otherwise deal with it. This status continues provided that the debtor performs all the terms of the proposal.

41(9) If the proposal was made by a bankrupt, the approval by the court of the proposal made after the bankruptcy operates to annul the bankruptcy and to revest in the debtor all the right, title and interest of the trustee in the debtor's property, unless the terms of the proposal otherwise provide.

L. Trustee's Administration of Approved Proposal

BOND

12(1) 41(5) 46(1) The trustee shall forthwith give a bond to the Official Receiver for the due accounting for, the payment and the transfer of all property received by him as trustee and for the due and faithful performance of his duties.

Sec. Form Rule

BANK ACCOUNT

13(3) 13(5) The trustee must open a bank account in trust for the creditors for each proposal separately and separate from his private banking account.

13(6) Each proposal trust account records forms part of the trustee's records.

41(5) The debtor must make all payments under the proposal punctually to the trustee.

DEFAULT

43(1) 42(2a) If the debtor makes default in the performance of any provision of the proposal, if there is a surety, the trustee calls upon the surety for payment.

43(1,3) If payment is not made promptly by the debtor or by the surety, the trustee should apply to the court to annul the proposal.

---Re Berdux (1951) 323 CBR 68 at p. 69.

If no application to annul is made, the proposal will be in abeyance until either:

1) the debtor makes payment, or

2) an application is made to the court to annul the proposal.

43(4) 16(1) 162(1i) 56 43(5) 13(6) If the court annuls the proposal, the trustee obtains a copy of the court order signed by the judge or Registrar which constitutes conclusive evidence of his appointment as trustee for the time being and files it in his records. He proceeds with the administration of deemed assignment in bankruptcy.

13(3) In ongoing proposals, the trustee must deposit the debtor's payment in the proposal trust account.

SCHEME OF DISTRIBUTION

The trustee must prepare the distribution list of creditors.

107-112 The scheme of distribution in Sections 107 to 112 inclusive is rendered applicable to proposals by Section 46(1)):

---Perras v. Boulet (1959) 38 CBR 168 affirming (1958) BR 823

107(1) 108 109 107(1d3) The trustee must separate from among the preferred creditors, certain creditors and claims and list certain of the claims as unsecured and list other such claims as being postponed or deferred until all other unsecured creditors have been paid 100 cents on the dollar. If the proposal does not provide for payment of 100 cents on the dollar,

Sec. Form Rule

If any of the claims were disputed, the trustee should have sufficient funds deposited in his trust account to cover them, or the amount payable on the disputed claims should have been adequately secured, so that the funds will be available to pay the dividends on disputed claims if they are subsequently found to be valid:

---Re Mohawk Sports Equipment Limited (1971) 15 CBR ns 63

DIVIDENDS

Before paying dividends, the trustee must deduct:

1) all proper fees and expenses of the trustee, which include the following items allowed by the Bankruptcy Act:

123(1) (i) "...all moneys disbursed and expenses incurred and the remuneration claimed by the trustee..."

21(3) (ii) "...such special remuneration as may be agreed to by the debtor, or in the absence of agreement with the debtor, such amount as may be approved by the court..."

29 (iii) expenses and fees for services rendered as interim receiver on the proposal, if the trustee was so appointed by the court;

37 (iv) any fees and expenses in respect of supervision of the affairs of the debtor pursuant to special terms to that effect in the proposal;

PLUS

41(7) 108 118 107(1c2) 2) The Superintendent's levy upon all payments on account of the claims of creditors.

41(4) 107(1,2) Then, the trustee must pay all other preferred claims in full in the order provided for.

41(5) 107(3) 92 Afterwards, the trustee shall pay dividends to the unsecured creditors in accordance with the terms of the proposal.

13(4) All payments of preferred claims and dividends are made by cheques drawn by the trustee on the trust account.

If there in only one dividend payable under the terms of the proposal, or where the final dividend has become payable, proceed directly to Part XIV of this paper entitled "Trustee's Application for Discharge".

Sec. Form Rule

Each dividend should be accompanied by a dividend sheet, showing:

97(1-5) 1) all creditors who have proved their claims (Section 97(1 to 5);

41(5) 2) the amount received from the debtor as at the date of payment of the dividend;

3) the deduction of the trustee's fees and expenses, determined as noted above;

4) the deduction of the Superintendent's levy, noted as above;

5) amounts paid to preferred creditors;

6) the balance available for distribution of dividends of unsecured creditors;

7) the claim proved by each creditor;

(112) 8) the proportion of each creditor's claim to total claims expressed as a percentage;

9) the actual dividend payable in money to each creditor.

37(2) Payments of dividends and dividend sheets are sent to the creditors by registered mail.

Copies of the dividend sheets are also

31(11c) 37(2) 1) sent to the Superintendent by registered mail, and

31(11c) 2) filed in court.

13(6) The trustee files copies of the dividend sheets and registered mail proofs in his records.

N. Discharge

41(5)
42(2)
148
150(1)
25(1)

When the debtor remits the final dividend payment to the trustee, the debtor is simply released from further payments without any formality, except for the balance of certain debts remaining payable in full. The trustee should inform the debtor of his continuing responsibility for such debts. He should, in particular, be warned that, if he fails to pay these debts, and if the total of such debts is large enough, the debtor can become bankrupt, even though he has already performed all the other provisions of his proposal.

Sec. Form Rule

41(9) The debtor does not require a discharge because if he makes his proposal as an insolvent person, no change in his status takes place upon the creditor's acceptance and the court's approval of the proposal, and if he made the proposal as a bankrupt, "...the approval by the court made after a bankruptcy operates to annul the bankrupt..."

O. Trustee's Procedure When Proposal Unsuccessful and Deemed Assignment In Bankruptcy Results

When the proposal is made by an insolvent person,

36(1) 39(1) 1) if the creditors refuse to accept the proposal by special resolution, or

41(8) 41(10) 2) if the court refuses to approve a proposal accepted by the creditors

39(1) 41(10) 42(1) the debtor shall be deemed to have made a assignment and on the day the proposal was filed, that is to say, retroactively.

If the proposal is made by a bankrupt,

36(1) 39(1) 1) if the creditors refuse to accept the proposal by special resolution, or

41(8) 41(10) 2) if the court refuses to approve a proposal accepted by the creditors.

the debtor remains bankrupt, and nothing changes.

41(12) Only the trustee's costs shall be payable out of the estate of the debtor, but not the debtor's costs

ANNULMENT

43(4) If the court annuls the proposal on application, following default by the debtor to perform its terms, the debtor shall be deemed to have made an assignment on the day the proposal was annulled, that is to say, there is no retroactively in the deemed assignment.

43 43(2) In an annulled proposal, every transaction in which the debtor and/or the trustee participated remains intact.

43(2) 43(4) 42(1) Section 43(2) contains two distinct provisions. The first provision is of general application to all transactions entered into by the debtor and/or the trustee between the time the proposal was filed and the date of annulment and states that an order annulling the proposal, "...shall be made without prejudice to the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the proposal..."

The second provisions concerns specifically a guarantee given by a surety when the proposal was first made by the debtor. This provision was added to the section which, before the coming into

Sec. Form Rule

"...notwithstanding the annulment of the proposal, a guarantee given pursuant to the proposal remains in full force and effect in accordance with its terms".

The reason for this amendment was because, under the ordinary common law, a guarantee is merely an accessory to a principal contract, and the general rule is that "the accessory follows the principal". This means that, if the principal contract ceases to exist, then the accessory contract, in this case the guarantee, must cease to exist at the same time. Therefore, when the proposal ceases to exist by reason of its annulment, then, under the ordinary common law (as opposed to a statute like the Bankruptcy Act), the guarantee also ceases to exist, the theory being that what the guarantor undertook to guarantee was a proposal, and not a bankruptcy:

---Cloutier v. Dumas (1954) 34 CBR 178;

The purpose of the amendment, therefore, is to provide a statutory rule, overriding the ordinary common law, and keeping alive the accessory guarantee, even though the principal contract, the proposal, has ceased to exist by virtue of the annulment. Consequently, because of this amendment, the decision in Cloutier v. Dumas no longer represents the law on this point.

The proposal may be annulled where it appears to the court:

43(1) 1) that the proposal cannot continue without injustice or undue delay, or

43(1) 2) that the approval of the court was obtained by fraud,

in which cases annulment and resulting bankruptcy would be a penalty against the debtor, for not having performed the provisions of the
95(1) proposal by his own effort, but the creditors would be protected by the guarantor's payment of their claims as determined in the proposal, and the guarantor(s) would in turn become unsecured creditor(s) in the debtor's bankruptcy.

In all three cases of deemed assignments mentioned above, the trustee's procedure is identical, except only as to the numbered forms to be used for notices, certificates, reports, etc., as indicated in Part XI of this paper entitled "No Quorum - Temporary Administration", in the events that:

39(1) 1) the creditors refuse the proposal;

41(10) 2) the court refuses to approve the proposal;

43(4) 3) the court annuls the proposal.

50(5) By virtue of the deemed assignment, the debtor becomes bankrupt and ceases to have any capacity to dispose of, or otherwise deal with, his

Sec. Form Rule

P. When Creditors have Refused Proposal and Quorum is Present

At a meeting where the creditors have refused to accept a proposal, although no quorum is necessary for the vote of acceptance or rejection because voting letters were permitted, now that the bankruptcy has occured, a quorum is necessary to hold the first meeting of creditors in the bankruptcy.

The quorum is calculated as follows:

84(1) 87(2,3) 1) if there are less than four (4) creditors in the proposal, all of them must be present in person or by proxy

2) if there are four (4) or more creditors in the proposal, at least three (3) creditors must be present in person or by proxy.

39(1) 41(10) 43 Nevertheless, even though there is no quorum, and consequently, even though the creditors, in these instances, cannot vote upon the appointment or substitution of the trustee, the trustee's temporary appointment takes place immediately upon the deemed assignment.

12(1) 46(1) The trustee shall forthwith give a bond to the official receiver for the due accounting for, the payment and the transfer of all property received by him as trustee and for the due and faithful performance of his duties.

In all cases of deemed assignments, (i.e. whether or not a quorum is available for the first creditors' meeting in bankruptcy), the trustee shall forthwith file a report with:

37(2) 1) the Superintendent, by registered mail, and

39(2) 41(10) 2) The Official Receiver as follows:
41(11) (i) creditors refuse proposal;
43(4) (ii) court disapproves proposal;
43(5) (iii) court annuls proposal.

13(6) The trustee files copies of the reports in the registered mail proofs in his records.

84A(1) The trustee obtains from the Official Receiver copies of the certificate of deemed assignment as follows:

39(2) 1) creditors refuse proposal;

41(11) 2) court disapproves proposal;

43(6) 3) court annuls proposal;

31(4) 80 The trustee also obtains from the Official Receiver an ordinary certificate of appointment.

Sec. Form Rule

41(11) 56 These two certificates constitute conclusive evidence of his
43(5) temporary appointment as trustee.

13(6) The trustee files the certificate in his records.

The trustee must act immediately to safeguard the property of the bankrupt for the creditors in the following manner.

If any property of the bankrupt has been seized, the trustee must serve and /or register in the court actions by the seizing creditors the following documents:

49(1) 1) notices of stay of proceedings;

2) certified true copies of the certificate of deemed assignments as follows:

39(2) (i) creditors refuse proposal;
41(11) (ii) court disapproves proposal;
43(4,5) (iii) court annuls proposal;

50 The trustee may then recover the seized property.
51(2,3,4)

The trustee must also serve and/or register these documents in all
49(1) other court proceedings by creditors.

In a proposal accepted by the creditors and approved by the court, the debtor would have retained full capacity and the incapacity of the trustee would have persisted.

50(5) 92.1 However, now that bankruptcy has occurred, the debtor's property
59(4) has passed to and vested in the trustee, the trustee does have the
39(1) capacity to claim property seized from the debtor and to compel
41(10) seizing-creditor-owners to file proofs of property claims, with
42(1) respect to property in the possession of the debtor-becomes-bankrupt "at the time of the bankruptcy". In the cases of the creditors' refusal and the court's disapproval of the proposal, the retroactivity of the deemed assignment to the date of the filing of the proposal will invalidate seizures by creditor-owners which ostensibly were valid on the sole ground that the debtor, not the trustee, had full capacity with respect to the property.

However, each creditor is required to be notified of the making of the proposal and so become aware of the possibilities that the insolvent later may be deemed to have become a bankrupt as of the
59(4) 92.1 date of the filing of the proposal..." This includes the creditor
59(3) purporting to seize as owner, and attempting to by-pass the
59(2) trustee, claiming that the seized property is his own and not the
12(3) debtor's. The mere assertion of the claim to ownership is not
12(5) necessarily valid. Once retroactivity has supervened the seizure,
12(6) the trustee in the bankruptcy has capacity to demand that the creditor-owner file a proof of property claim to justify what he

Q. Annulment

43(4) When an approved proposal is annulled, bankruptcy begins only upon annulment and is not retroactive. Because property claims pursuant to Section 59 concern property "...in the possession of the bankrupt at the time of the bankruptcy..." the trustee in
59(3) bankruptcy following annulment will not be able to use the procedure of Section 59(4) to compel the seizing creditor to justify a seizure completed before annulment. If there is any ground for recovery of seized property by way of attack against the title of the seizing creditor purporting to be owner, the trustee does not have the benefit of compelling the seizing creditor to prove his title but must take ordinary proceedings for recovery of possession and prove the defects he alleges in the creditor's title to the seized property.

56
12(2,3) The trustee must advise the manager of the bankrupt's bank that the bankrupt has made an assignment and seize all the bank accounts of the bankrupt.

50(5)
52(1,2) If the bankrupt owns real estate, the trustee must register in Land Titles Registry Offices against the bankrupt's land, in order to transfer ownership or equitable title to himself as trustee true copies of the certificates of deemed assignment, certified by Official Receiver, as follows:

39(2) 1) creditors refuse proposal;

41(11) 2) court disapproves proposal;

43(6) 3) court annuls proposal;

39(1a) When the proposal is rejected, if there is a quorum present, the trustee shall forthwith call a meeting of creditors who are present at
80(1,5) that time, and such meeting shall be deemed to be the first meeting of creditors in the bankruptcy.

Proceedings at the first creditors' meeting in bankruptcy and the trustee's duties following that first meeting are governed by the trustee's ordinary bankruptcy procedure.

R. No Quorum - Temporary Administration

Because Section 35 permits creditors to vote by voting letter without attending, if the proposal is rejected, the trustee may be without a quorum for the holding of the first creditors' meeting in the bankruptcy.

Where, by court judgment, the proposal has become a deemed assignment, a quorum will definately not be present.

Sec.	Form	Rule	
			The trustee should, as soon as possible:
12(6) 138			1) visit the bankrupt's residence and place of business;
12(2-6) 13(7) 129(b)			2) take possession of the books and records and property of the bankrupt;
171(2)			3) make a complete physical inventory;
12(7a) 12(9) 162(1h)			4) take conservatory measures respecting the bankrupt's property and urgent legal proceedings if necessary.
13(1) 11 13(2)			The trustee shall forthwith temporarily insure and keep insured (Section 13(1)) in his official name of "the trustee of the estate of _____, a bankrupt" all insurable property of the bankrupt for such amount and against such hazards as the trustee may deem advisable. If any property of the bankrupt was insured before the trustee's seizure, the bankrupt's insurance passes to the trustee automatically and without notice to the insured or any other action by the trustee.
39(1b) 41(10) 43(5) 80			The trustee shall forthwith call the first meeting of creditors in the bankruptcy in the following manner.
			The trustee prepares whichever of the following notices is applicable:
39(1)			1) creditors refuse proposal;
41(10)			2) court disapproves proposal;
43(4)			3) court annuls proposal;
80(1)		37(2)	The trustee sends the above notices by registered mail to
			1) the creditors
13(11a)			2) the Superintendent
			The trustee prepares whichever of the following publication notices is applicable:
39(1)			1) creditors refuse proposal
41(10)			2) court disapproves proposal
43(4)			3) court annuls proposal
			The trustee publishes the above notices:
80(4)			1) in a local newspaper at least six (6) days prior to the meeting (summary bankrupt excluded)

Sec. Form Rule

80(1) 37(2) The trustee shall send a notice of the first creditors' meeting to the bankrupt by registered mail.

129(c) 84(A2) The trustee also serves upon the bankrupt one copy of the certificate of deemed assignment with the endorsement of the Official Receiver, requiring the bankrupt to present himself for examination with respect to his conduct, the causes of his bankruptcy and the disposition of his property.

13(6) The trustee files copies of all such notices and registered mail proofs in his records.

If a meeting with a quorum has already been held, the trustee serves the notices of examination on the bankrupt and proceeds to determine the claims of the creditors.

95(4) 42(1) 95(5) 106(1) 41(5,8) 43(2) The claims provable of creditors under the proposal shall be determined as of the date of the filing of the proposal and are provable in the bankruptcy for the full amount of the claims, less any dividend paid on them pursuant to the proposal.

If the trustee disputed any of the claims filed, he should have sufficient funds deposited in his trust account to cover all such claims, or the amount payable on the disputed claims should be adequately secured so that the funds will be available to pay the dividend on disputed claims if they are subsequently found to be valid.

MONEY (LEFT UNDER THE PROPOSAL)

The moneys which the trustee may have received from the debtor towards payment of the next dividend, and which have not been distributed, are not set apart in trust for the proposal creditors, but are property of the debtor, and pass from the proposal trustee to the bankruptcy trustee for distribution among all creditors of the bankrupt.

---In re Allflex Company Limited (1962) 3 CBR ns 80 at p. 83.

All other proceedings in the bankruptcy are governed by the trustee's ordinary bankruptcy procedure.

S. Trustee's Attendance at First Creditors' Meeting in all Deemed Assignments

CHAIRMAN

83(1) At first creditors' meeting in deemed assignments, the Official Receiver or his delegate shall be chairman.

39(1) 80(5) 41(10) 93 The creditors may, by ordinary resolution:

Sec. Form Rule

56 2) appoint or substitute another trustee.

If the trustee's appointment is affirmed, the trustee

84(4,5) 92 1) prepares copies of the minutes of the first meeting.

80(5) 2) takes particular note of instructions given by the creditors

13(6) 3) files the minutes in his records;

4) follows ordinary bankruptcy procedure for administration of estate, and for application for discharge from bankruptcy of both debtor and trustee.

T. Procedure by Trustee if Replaced - Substitution of Trustee

189(1) 50(5) 12(2) 13(6,7) 173(1e) If a new trustee is appointed, then the former trustee shall forthwith deliver to the new trustee all the books and records of the estate and all property of the bankrupt.

122 123(2) 62 The trustee prepares a statement of receipts and disbursements which shall contain a complete account of:

123(1) 1) all moneys received by the trustee out of the property of the bankrupt or otherwise;

123(1) 2) the amount of interest received by the trustee;

3) all moneys disbursed and expenses incurred;

4) and the remuneration claimed by the trustee;

41(5) 5) receipts will include moneys received from the debtor but not yet paid over to the creditors as dividends.

Receipts would also include moneys seized and any proceeds, realized from any disposition of the debtor's property.

Items properly included in the remuneration of the trustee, as permitted by the Bankruptcy Act, include the following:

21(2,4) 1) fees for work done in preparing the proposal and presenting it to the first meeting of creditors and, if accepted, to the court;

29 2) if the trustee has been appointed interim receiver; services rendered as such;

37 3) if the trustee supervised the affairs of the debtor in accordance with provisions to that effect in the proposal, services rendered as such;

Sec. Form Rule

21(3) 22(5) 4) such special remuneration as may have been agree to by the debtor upon taxation:

50(5) 12(2,3) 49(1) 80 5) if the proposal trustee has become the trustee of the debtor's deemed assignment, fees for services rendered as bankruptcy trustee until his replacement.

123(3,4) 13(11,c) 13(12) 37(2) The trustee shall send the statement of receipts and disbursements by registered mail to the Superintendent.

123(4) Upon receiving any comments which the Superintendent may have made the former trustee shall obtain a hearing date from the court for his application to pass his accounts.

The trustee prepares the following documents:

18(1) 61 5(1) 106 1) a notice of at least four (4) days of his application to pass accounts;

112 123(1) 107 2) a copy of the statement of receipts and disbursements.

37(2) The former trustee shall serve these two documents by registered mail upon the following persons:

61 1) every creditor whose claim has been proved (unless the registrar dispenses with service upon creditors);

13(11c) 61(b) 2) the Registrar;

61(c) 3) the bankrupt;

61(d) 4) the new trustee;

13(11c12) 123(3,4) 61(e) 5) the Superintendent.

18(1) The former trustee prepares his application to the court to pass his accounts.

61(a) The former trustee must verify his application by affidavit.

123(4) The former trustee must also present any comments which the Superintendent may have made.

18(2e) 23(3) 162(1i) 162(4,5) 21(4) The remuneration for services of the former trustee is determined by the court in accordance with the services actually rendered by the former trustee with appointment between him and the new trustee if necessary.

21(3) Even if there has been an agreement between the debtor and the trustee regarding the trustee's remuneration, the trustee's remuneration must be taxed by the court.

Sec. Form Rule

Even though such agreements are legally enforceable, the court will not permit the payment of an exorbitant fee, merely because the debtor has agreed to it, to the prejudice of the creditors:

---L'Hotel du Lac St-Joseph v. Grosleau (1928) 10 CBR 14 at p. 15;

---In re Roy (1963) 4 CBR ns 275 at p. 279.

21(2) Ordinarily, where the trustee has not handled any property for realization, the court will allow a sum not exceeding 7½% of the net receipts.

---In re Brown: Ex parte Allen (1922) 2 CBR 392 at p. 393 and 395.

21(5) On application by the trustee, a creditor or the debtor and upon notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration:

---Re Space-Pak International Limited (1972) 17 CBR ns 120.

18(2e) 107(1bi2) The remuneration and disbursements of the former trustee shall be paid by new trustee as soon as funds become available as a preferred claim

---Re Space-Pak International Limited (1972) 17 CBR ns 120

39(1) 41(10) 39(2) 41(11) 31 Where the proposal is refused by either the creditor or the court, and the debtor is deemed to have made an assignment on the day when the proposal was filed, and the certificate of assignment issued by the receiver has the same effect as an assignment filed by the debtor, the debtor is deemed to have been bankrupt from the day of filing the proposal, and the proposal trustee is deemed to have been administering the bankruptcy from that day, with the result that the trustee will be entitled to be paid by preference. The decision in In re McCartney Sales and Services Ltd. (1955) 35 CBR 61, that the trustee in such circumstances was not preferred, but merely unsecured, has been rendered inapplicable by the sections previously quoted, introduced into the Bankruptcy Act by the 1966 amendments:

---Re Mastrogiovanni (1971) 16 CBR ns 261.

43(4) 107 When an approved proposal is annulled even though the annulment does not make the bankruptcy retroactive, the trustee is a preferred creditor for the services rendered in the proposal and in the ensuing bankruptcy until he is replaced.

---Perras v. Boulet (1959) 38 CBR 168 affirming (1958) BR 823.

23(3,4) The court hears the former trustee's application for the passing of his accounts. At that time, all claims and objections made by the bankrupt and/or any creditor and all applications and appeals will be

Sec. Form Rule

TAXATION

After taxation of his accounts, the former trustee shall:

13(11c) 123(1,5) 1) file a copy of the statement of receipts and disbursements in court, and

2) send another copy by registered mail (Rule 37(2)) to the Superintendent for feedback in Bulletin.

13(6) The former trustee files copies of all the foregoing documents and the registered mail proofs in his records.

DISCHARGE OF FORMER TRUSTEE

23(3,4) 23(1) Three months after the final disposition of the claims, objections, applications and appeals by the court or three months after substitution, whichever is later, the former trustee applies for his discharge as follows.

The former trustee shall obtain a hearing date from the court for his application for discharge.

The former trustee prepares the following documents

123(5c) 63(b) 1) a notice of his application for discharge

23(1) 63 2) his application for discharge

123(5a) 63(b) The trustee annexes to these two documents a copy of his taxed statement of receipts and disbursements.

37(2) The former trustee shall serve these documents by registered mail upon the following persons:

61(a) 1) every creditor whose claim has been proved

13(11c) 61(b) 2) the Registrar

61(c) 3) the bankrupt

13(11c12) 4) the Superintendent

13(6) The former trustee files copies of these documents and the registered mail proofs in his records.

The former trustee files in court the following documents:

23(1) 63 1) his application for discharge

63(a) 2) an affidavit verifying his application for discharge

123(5c) 63(b) 3) a copy of the notice of application for discharge

Sec. Form Rule

The former trustee drafts a discharge order to take with him to the hearing before the Registrar.

The court hears the former trustee's application for discharge.

13(6) 37(2) After receiving his discharge from the court, the former trustee must send the copy to the Superintendent by registered mail and file a copy of the discharge order and registered mail proofs in his records.

U. Trustee's Application for Discharge

The procedure in this section applies when the trustee's appointment has been affirmed by the creditors, whether they have accepted or rejected the proposal.

Although the debtor does not require a discharge in the case of an approved proposal, because his status and capacity are not in any way affected by the proposal, the trustee, having been appointed by the creditors and/or court, and having been charged with duties under the proposal, must be discharged from these duties upon full performance.

The trustee shall prepare the following documents:

1) a statement of receipts and disbursements;

122 2) a dividend sheet.
123(2)

122 62 The statement of receipts and disbursements shall contain a
123(2) complete account of:

123(1) 1) all moneys received by the trustee out of the property of the bankrupt or otherwise;

123(1) 2) the amount of interest received by the trustee;

3) all moneys disbursed and expenses incurred;

4) and the remuneration claimed by the trustee.

Items properly included in the remuneration of the trustee, as permitted by by the Bankruptcy Act, include the following:

21(2,4) 1) fees for work done in preparing the proposal and presenting it to the first meeting of creditors and, if accepted, to the court;

29 2) if the trustee has been appointed interim receiver, services rendered as such;

37 3) if the trustee supervised the affairs of the debtor in accordance with provisions to that effect in the proposal,

Sec.	Form	Rule	
21(3) 21(5)			4) such special remuneration as may have been agreed to by the debtor subject to variation by the court upon taxation:
			---Re Space-Pak International Limited (1972) 17 CBR ns 120
50(5) 12(2,3) 49(1) 80			5) if the proposal trustee has become the trustee of the debtor's deemed assignment, fees for services rendered as bankruptcy trustee until his replacement.
38 94(13,14) 123(3)			If there are any inspectors, the inspectors must approve both documents.
123(3,4) 41(7) 118, 107(1c2) 13(11c12) 123(3,4)	108		The trustee must also prepare a cheque in payment of the Superintendent's levy deducted from the dividend The trustee must send the foregoing documents and cheque by registered mail to the Superintendent for the comments of the Superintendent.
123(4)			Upon receiving any comments which the Superintendent may have made the trustee shall obtain a hearing date from the court for taxation of his accounts.
21(3)			Even if there has been an agreement between the debtor and the trustee regarding the trustee's remuneration (Section 21(3)), the trustee's remuneration must be taxed by the court:
			---L'Hotel du Lac St-Joseph v. Grosleau (1928) 10 CBR 14 at p. 15.
123(4) 162(1fi) 162(4,5)			On the hearing date, the trustee makes his application, accompanied by the Superintendent's comments, if any, to have his accounts taxed by the taxing officer.
168	38 41-46		After the taxation of his accounts and the legal costs, if any, the trustee shall obtain a hearing from the court for his application for discharge.
			The trustee prepares the following documents:
123(5a)			1) a copy of the taxed final statement of receipts and disbursements
123(5b)			2) a copy of the dividend sheet
123(5c)	63(b)		3) a notice of (i) final dividend, and (ii) a notice of his application for discharge
13(6)			The trustee files copies of each of these documents and the registered mail proofs in his records.
123(5c6)			The trustee waits for fifteen (15) days from the mailing date, in

Sec. Form Rule

23(4) 123(5c) After the fifteen day period, or after all objections, applications and appeals have been settled or disposed of, whichever is later, the trustee pays the final dividend.

23(4) The estate is now deemed to have been fully administered.

123(5c) Thirty (30) days after the payment of the final dividend the trustee shall file in court the following documents:

23(1) 63 1) his application for discharge;

63(a) 2) an affidavit verifying his application for discharge

37(2) The trustee shall serve these documents by registered mail upon the following persons:

61(a) 1) every creditor whose claim has been proved;

13(11c) 61(b) 2) the Registrar;

61(c) 3) the debtor;

13(11c) 4) the Superintendent.

13(12) 23(6) The trustee drafts a discharge order to take with him to hearing.

162(c,f) 162(4,5) The court hears the trustee application for discharge

5(2,3,d) After receiving his discharge from the court, the trustee must send a copy to the Superintendent by registered mail.

13(6) The trustee must file a copy of the discharge order and the registered mail proofs in his records.

13(6) The trustee must file a copy of the discharge order and the registered mail proofs in his records.

23(9) The discharge operates as a release of the bond given upon the appointment to the Official Receiver.

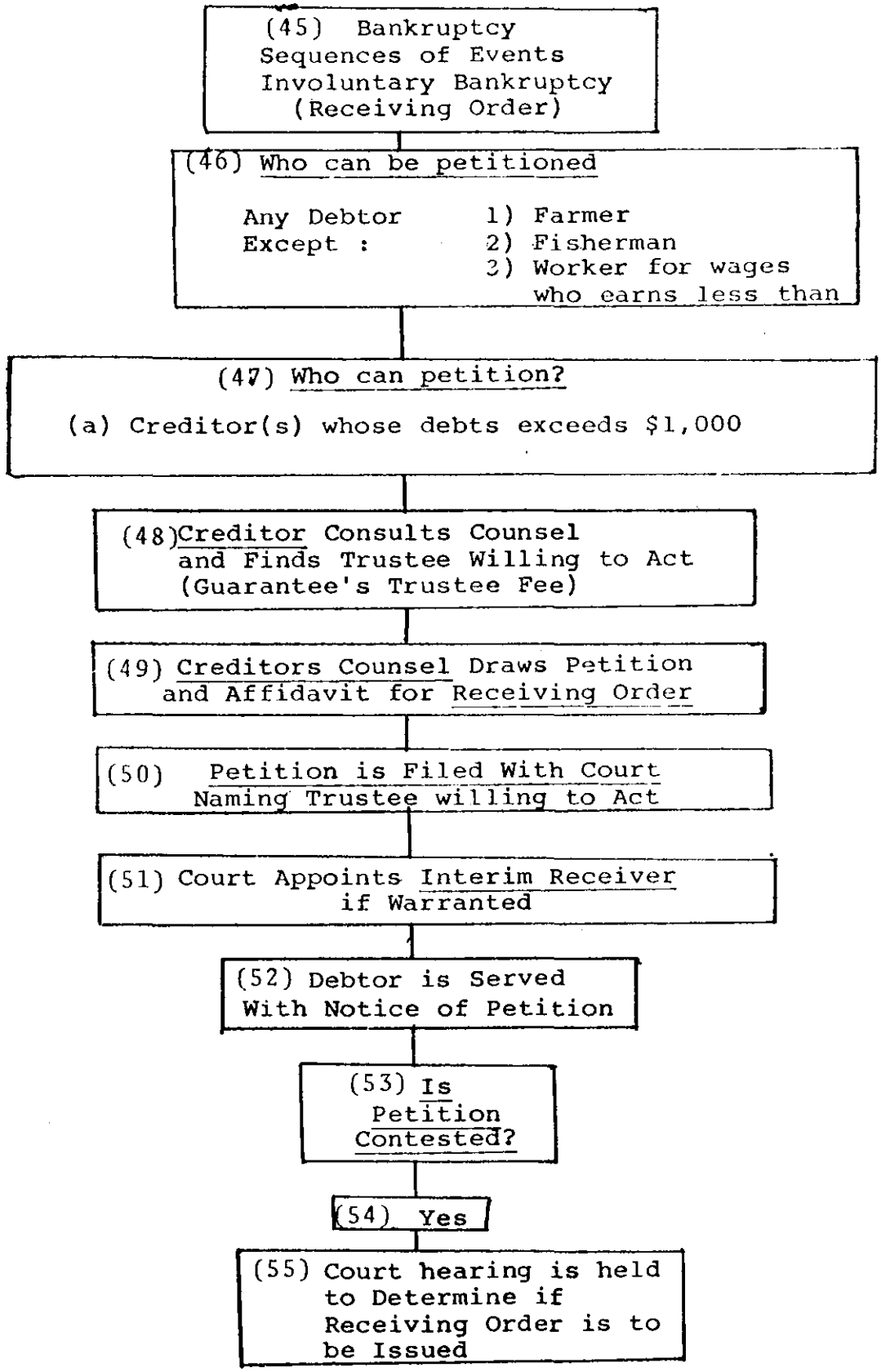
The bond is kept by the Official Receiver against possible future claims against the trustee brought within the period stipulated by provincial statutes of limitation or prescription.

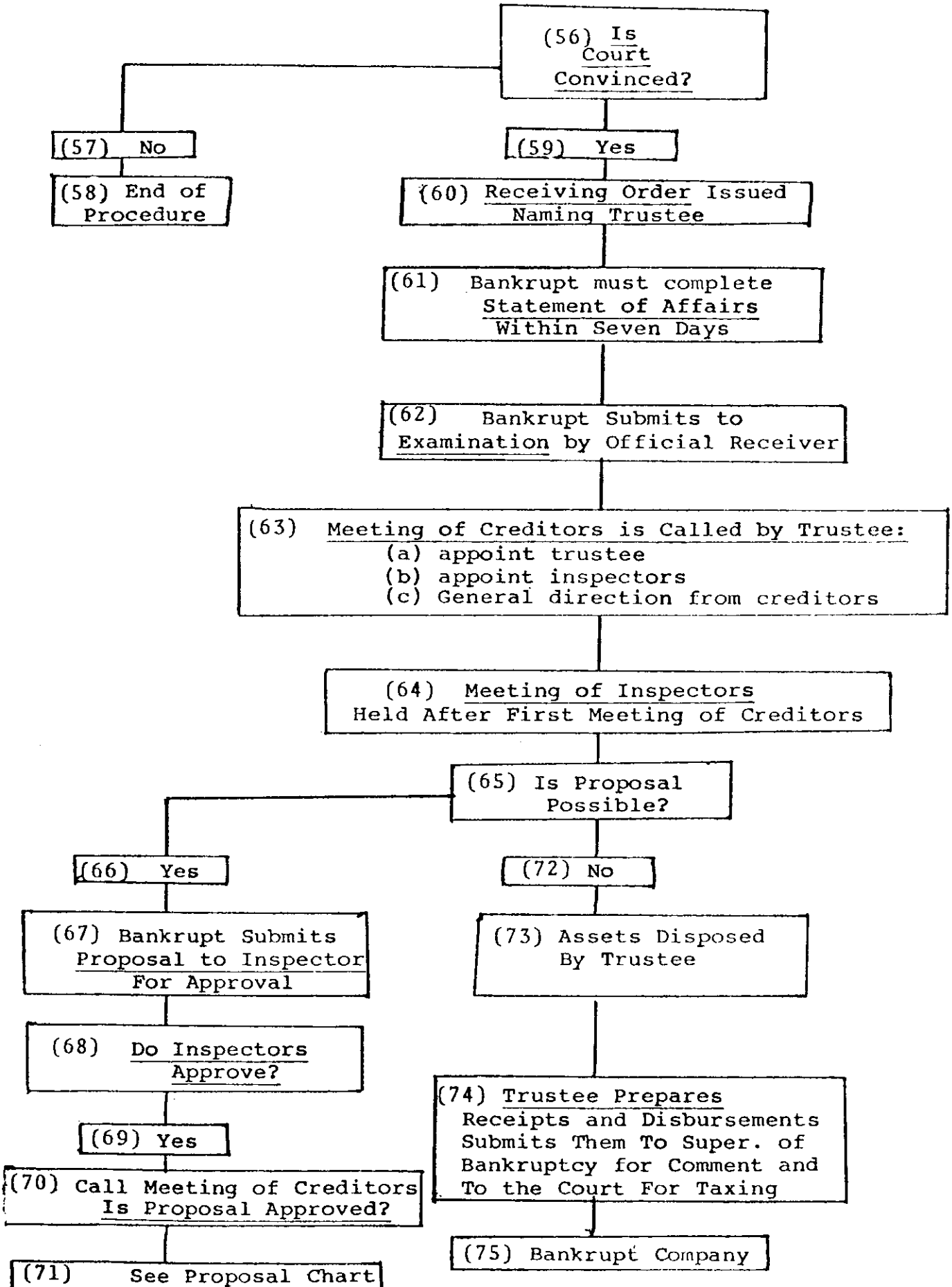
13(3,4) 13(5) The trustee must close the estate bank account.

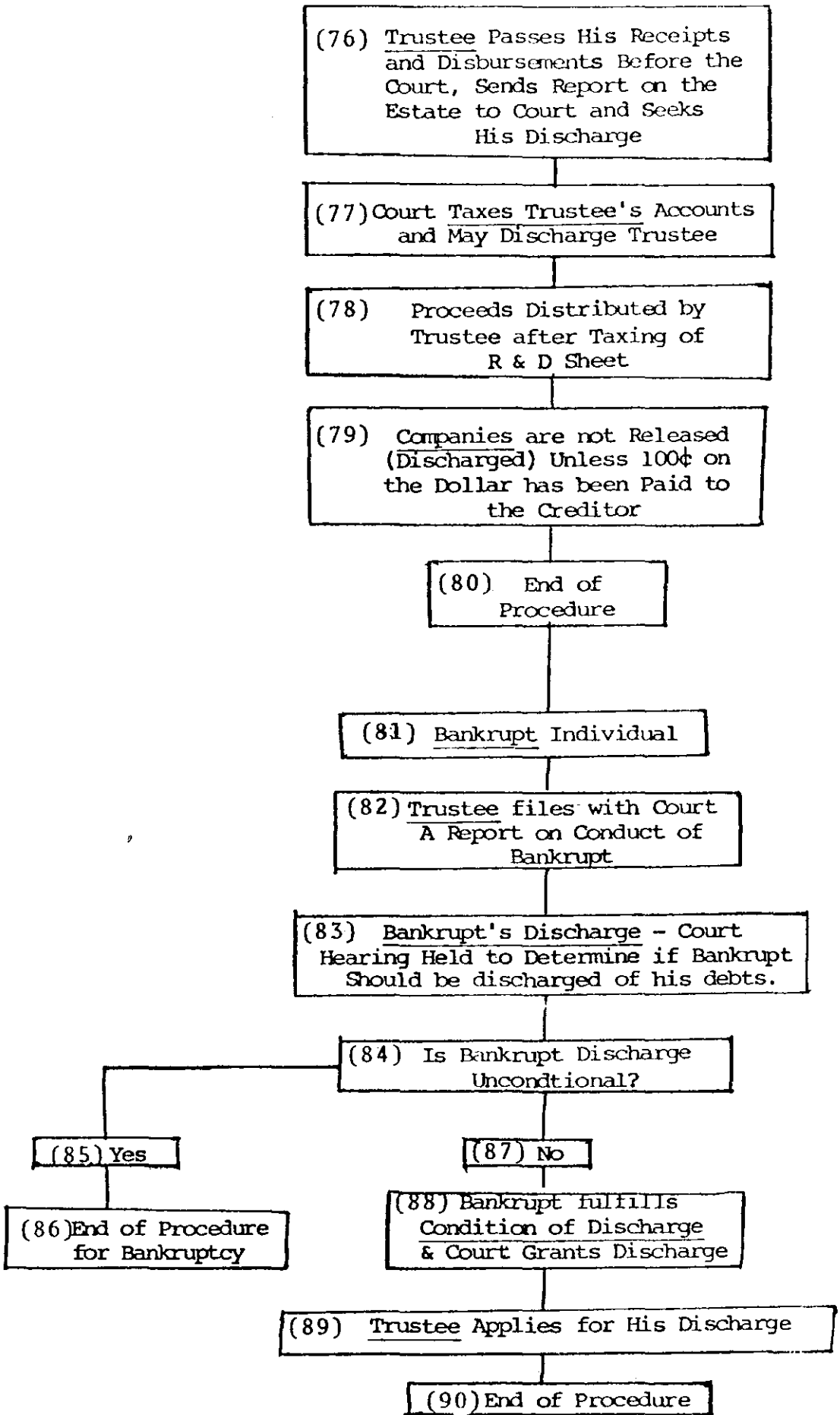
23(10) The trustee who has been discharged remains de facto trustee.

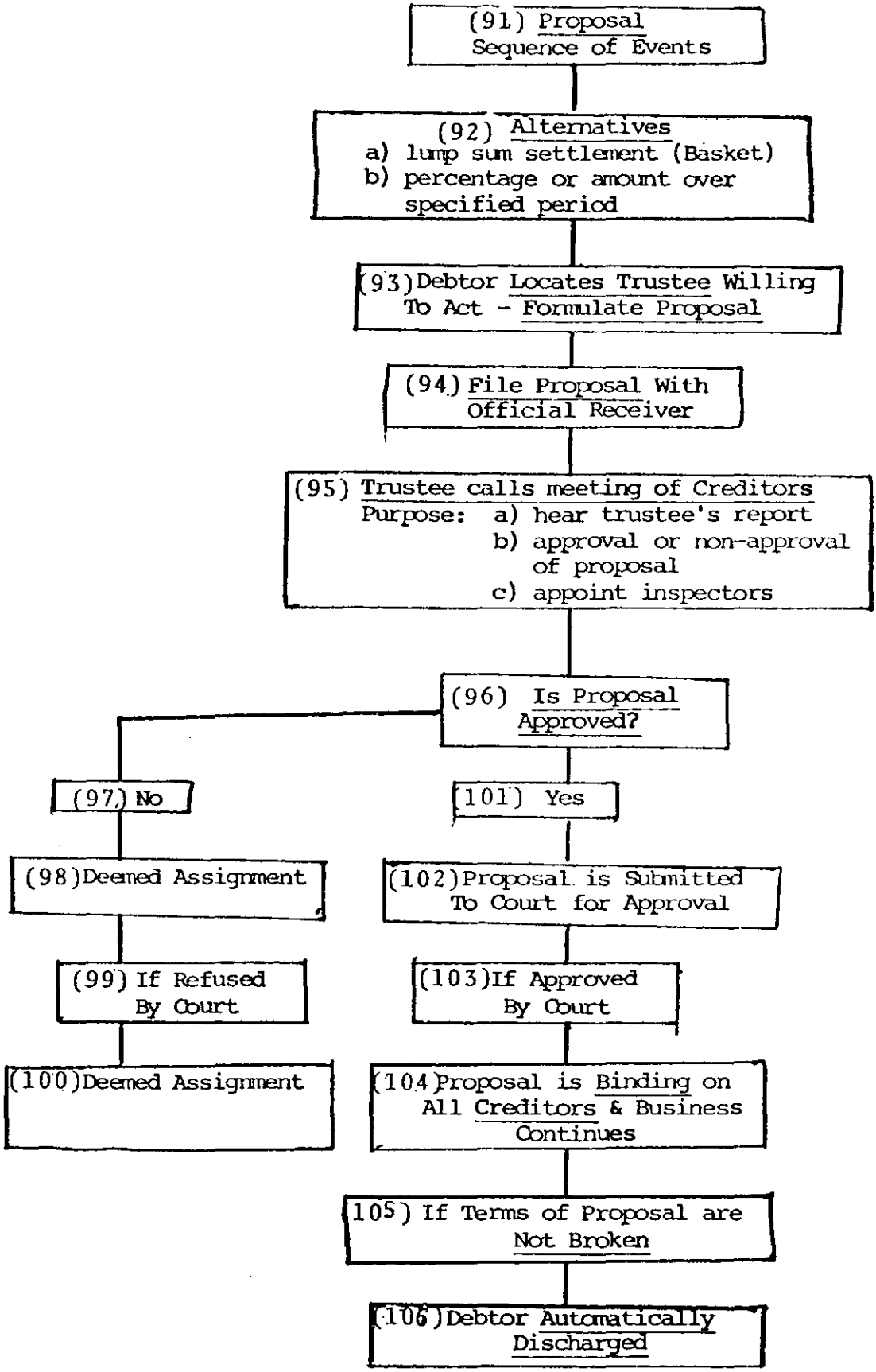
13(6,7) 64(1,2) 29 The discharged trustee must keep all books, records and documents relating to the administration of the proposal for twenty (20) years after his discharge. However, if it has been necessary to take possession of any of the debtor's own rules, records and documents as

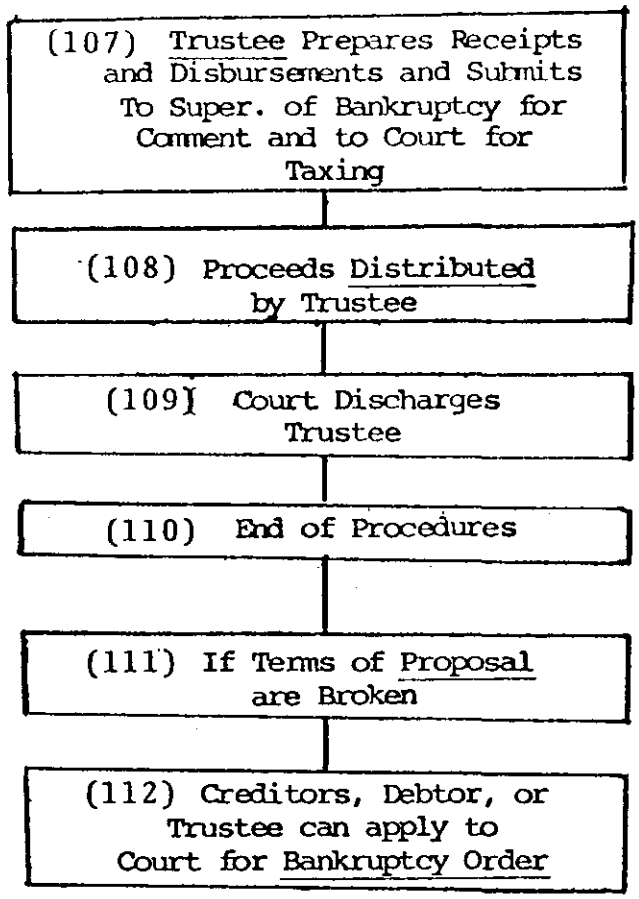
Sec.	Form	Rule	
37 32(2b) 23(6)		64(6)	supervision over the debtor's affairs provided for in the proposal or as trustee of the debtor's bankruptcy before the proposal was accepted, the trustee must return the debtor's own books, records and documents after the trustee has received his discharge.

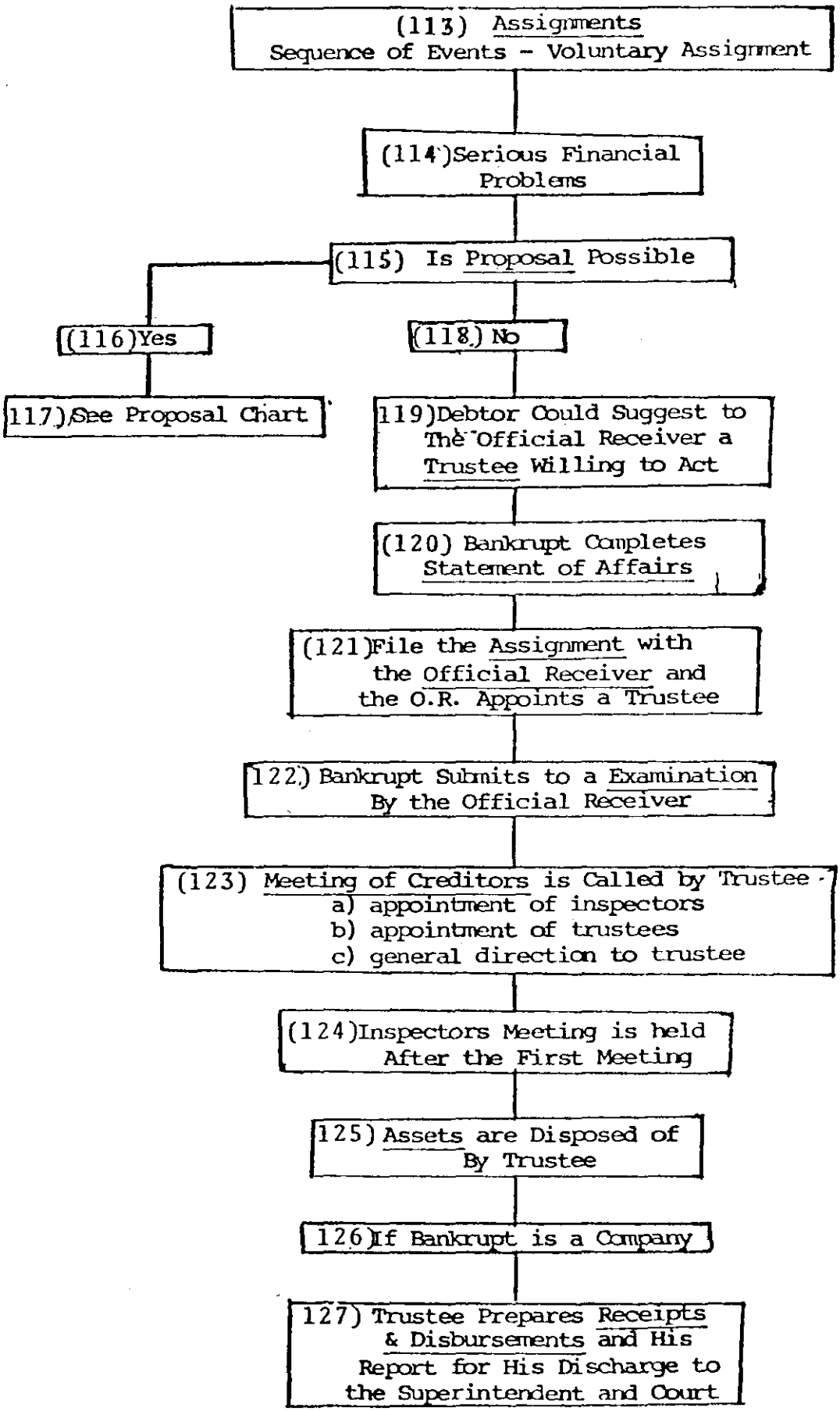

(45) Bankruptcy Sequences of Events Involuntary Bankruptcy (Receiving Order)
(46) Who can be petitioned
Any Debtor Except :
1) Farmer
2) Fisherman
3) Worker for wages who earns less than
(47) Who can petition?
(a) Creditor(s) whose debts exceeds $1,000
(48) Creditor Consults Counsel and Finds Trustee Willing to Act (Guarantee's Trustee Fee)
(49) Creditors Counsel Draws Petition and Affidavit for Receiving Order
(50) Petition is Filed With Court Naming Trustee willing to Act
(51) Court Appoints Interim Receiver if Warranted
(52) Debtor is Served With Notice of Petition
(53) Is Petition Contested?
(54) Yes
(55) Court hearing is held to Determine if Receiving Order is to be Issued

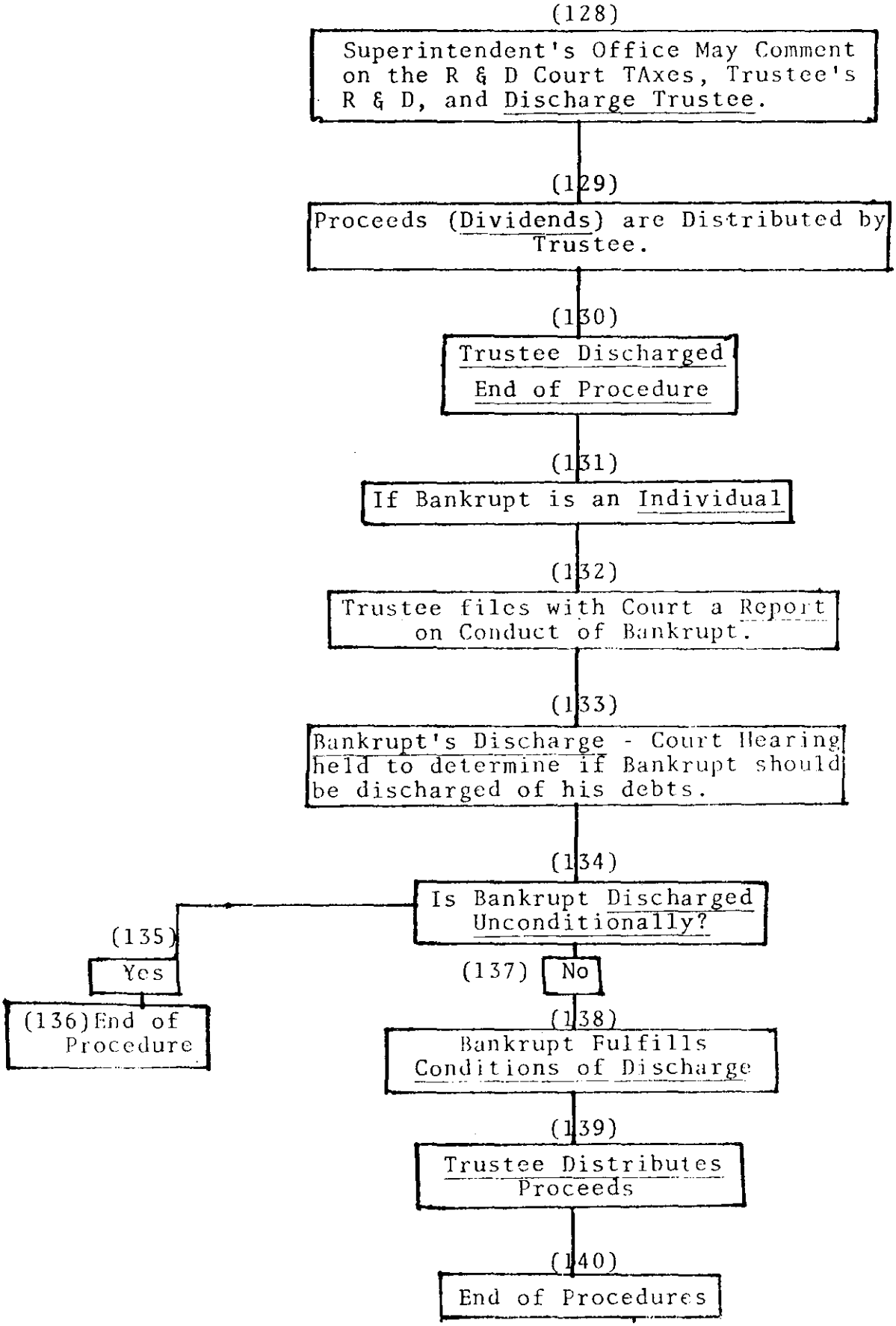

(56) Is Court Convinced?
(57) No
(58) End of Procedure
(59) Yes
(60) Receiving Order Issued Naming Trustee
(61) Bankrupt must complete Statement of Affairs Within Seven Days
(62) Bankrupt Submits to Examination by Official Receiver
(63) Meeting of Creditors is Called by Trustee:
(a) appoint trustee
(b) appoint inspectors
(c) General direction from creditors
(64) Meeting of Inspectors Held After First Meeting of Creditors
(65) Is Proposal Possible?
(66) Yes
(67) Bankrupt Submits Proposal to Inspector For Approval
(68) Do Inspectors Approve?
(69) Yes
(70) Call Meeting of Creditors Is Proposal Approved?
(71) See Proposal Chart
(72) No
(73) Assets Disposed By Trustee
(74) Trustee Prepares Receipts and Disbursements Submits Them To Super. of Bankruptcy for Comment and To the Court For Taxing
(75) Bankrupt Company


(76) Trustee Passes His Receipts and Disbursements Before the Court, Sends Report on the Estate to Court and Seeks His Discharge
(77) Court Taxes Trustee's Accounts and May Discharge Trustee
(78) Proceeds Distributed by Trustee after Taxing of R & D Sheet
(79) Companies are not Released (Discharged) Unless 100¢ on the Dollar has been Paid to the Creditor
(80) End of Procedure
(81) Bankrupt Individual
(82) Trustee files with Court A Report on Conduct of Bankrupt
(83) Bankrupt's Discharge - Court Hearing Held to Determine if Bankrupt Should be discharged of his debts.
(84) Is Bankrupt Discharge Uncondtional?
(85) Yes
(86) End of Procedure for Bankruptcy
(87) No
(88) Bankrupt fulfills Condition of Discharge & Court Grants Discharge
(89) Trustee Applies for His Discharge
(90) End of Procedure


(91) Proposal
Sequence of Events
(92) Alternatives
a) lump sum settlement (Basket)
b) percentage or amount over specified period
(93) Debtor Locates Trustee Willing To Act - Formulate Proposal
(94) File Proposal With Official Receiver
(95) Trustee calls meeting of Creditors
Purpose: a) hear trustee's report
b) approval or non-approval of proposal
c) appoint inspectors
(96) Is Proposal Approved?
(97) No
(98) Deemed Assignment
(99) If Refused By Court
(100) Deemed Assignment
(101) Yes
(102) Proposal is Submitted To Court for Approval
(103) If Approved By Court
(104) Proposal is Binding on All Creditors & Business Continues
(105) If Terms of Proposal are Not Broken
(106) Debtor Automatically Discharged


(107) Trustee Prepares Receipts and Disbursements and Submits To Super. of Bankruptcy for Comment and to Court for Taxing
(108) Proceeds Distributed by Trustee
(109) Court Discharges Trustee
(110) End of Procedures
(111) If Terms of Proposal are Broken
(112) Creditors, Debtor, or Trustee can apply to Court for Bankruptcy Order


(113) Assignments
Sequence of Events - Voluntary Assignment
(114) Serious Financial Problems
(115) Is Proposal Possible
(116) Yes
(118) No
117) See Proposal Chart
119) Debtor Could Suggest to The Official Receiver a Trustee Willing to Act
(120) Bankrupt Completes Statement of Affairs
(121) File the Assignment with the Official Receiver and the O.R. Appoints a Trustee
122) Bankrupt Submits to a Examination By the Official Receiver
(123) Meeting of Creditors is Called by Trustee
a) appointment of inspectors
b) appointment of trustees
c) general direction to trustee
(124) Inspectors Meeting is held After the First Meeting
125) Assets are Disposed of By Trustee
126) If Bankrupt is a Company
127) Trustee Prepares Receipts & Disbursements and His Report for His Discharge to the Superintendent and Court


(128)
Superintendent's Office May Comment on the R & D Court TAxes, Trustee's R & D, and Discharge Trustee.
(129)
Proceeds (Dividends) are Distributed by Trustee.
(130)
Trustee Discharged
End of Procedure
(131)
If Bankrupt is an Individual
(132)
Trustee files with Court a Report on Conduct of Bankrupt.
(133)
Bankrupt's Discharge - Court Hearing held to determine if Bankrupt should be discharged of his debts.
(134)
Is Bankrupt Discharged Unconditionally?
(135)
Yes
(136) End of Procedure
(137)
No
(138)
Bankrupt Fulfills Conditions of Discharge
(139)
Trustee Distributes Proceeds
(140)
End of Procedures