

# Mortgage & Debtor-Creditor

## **Do I still have to pay my mortgage if my home is damaged, destroyed or condemned?**

Yes, your obligations to pay your mortgage do not stop even if your home is damaged, destroyed or condemned.

## **Do I still have to pay my mortgage during the period where I am prohibited from returning to my home due to a mandatory evacuation order?**

You must continue to pay your mortgage even during the period of being prohibited from returning to your home during a mandatory evacuation order.

## **If I have a mortgage on my property, can I walk away without consequences?**

You can in some cases, but there can be serious consequences if you do this. You should seek legal advice from a lawyer who practices in the area of mortgage enforcement first. Without the agreement of your Bank or mortgage Lender, your walking away from your mortgage could result in a costly judgment against you as a result of the terms of your mortgage, including those mortgages that are high ratio insured mortgage or property owned by a corporation. Your mortgage obligations can be severe and being proactive about getting advice from a lawyer or Lender is recommended.

## **What can I do if I think that I will have to miss a mortgage payment?**

Technically the mortgage Lender can start foreclosing on your property the day after you have missed a scheduled mortgage payment. However, each bank has different policies and will generally have options available to avoid starting foreclosure proceedings. Contact your lender as soon as possible if you anticipate having to miss a scheduled payment. Most banks in Canada have programs such as short term payment deferrals, payment reductions, and extensions for repayment periods. The options available to you will depend on your Lenders so be in contact with the lenders as soon as possible so you can work with them to find a solution that works best for you.

Many Lenders have put relief measures (including deferred payments) into place to assist people affected by the wildfires. Here are statements and information from several lenders:

- **Genworth Canada:** Through the proactive Homeowner Assistance Program, Genworth Canada

is committed to working with lenders to help insured homeowners facing setbacks that temporarily impact their ability to meet their mortgage obligations.

- **ATB Financial:** ATB Financial offers support to Fort McMurray customers. ATB encourages all customers affected by the wildfire to call the Customer Care Centre at 1-800-332-8383 to go over their individual situations with ATB team members, so they can provide the best solutions quickly.
- **First National:** For customers who are affected by the fires in Fort McMurray and area, please contact the toll-free number at 1-866-557-5509 and a representative will be able to advise you of available assistance options.
- **Merix / Lendwise:** Effective immediately, MERIX Financial's assistance program offers an option of deferring the borrower's mortgage payment. The borrower will need to call to speak to a Mortgage Specialist, and Merix/Lendwise will work with them to provide a range of customized mortgage solutions for each individual's personal circumstance. The Customer Service Contact Centre has set up a dedicated team to receive calls and emails from affected homeowners. They will be working extended hours to provide an added layer of support. They are available Monday to Friday 6am - 6pm MDT, Saturdays 8am - 4pm MDT, and Sundays 10am - 4pm MDT. Contact details are as follows:

- Phone: 1-877-637-4911, Option #6.
- Email: [customerservice@merixfinancial.com](mailto:customerservice@merixfinancial.com).

MERIX understands that the crisis will extend beyond the client's mortgage payment and will work with the customer to put in place a longer term solution to help customers and their families to rebuild their homes and their community. The dedicated Fort McMurray Crisis Team at MERIX Financial is ready and committed to provide support and assistance.

- **MCAP:** If you are one of our customers affected by this tragedy, please contact MCAP at 1 800 265 2624.
- **National Bank:** The National Bank Customer Emergency Number is 1-888 835-6281. The bank's main business units will implement a coordinated strategy to proactively contact the clients identified via email, cell phone or any other method at their disposal in order to reassure them and address their specific needs. The measures offered include,

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among other things: deferred payments on personal loans, deferred payments of principal and interest on personal mortgage loans, personalized and case-by-case agreements for affected business clients.

- **Street Capital:** For those impacted, Street Capital will look at the following options to help customers through this difficult time: deferral of payment, re-amortization of the loan to result in lower payments, capitalization of outstanding interest arrears and other eligible expenses and special payment arrangements. Please contact the Street Capital Team at 1.877.416.7873 or [customerservice@streetcapital.ca](mailto:customerservice@streetcapital.ca) – 8:30am – 5:00pm EDT. Please be sure to identify yourself as a Fort McMurray customer.

## What happens if I have already missed a mortgage payment?

If you miss a mortgage payment, your mortgage holder will likely still be willing to discuss options and a plan for repayment prior to considering starting foreclosure proceedings. Contact your Lender as soon as possible to make sure you do not limit the options available to you that may help you.

## How may a missed mortgage payment affect my credit score?

Your mortgage information and your history of mortgage payments may appear in your credit report and may count toward your credit score. This depends on the practices of each credit reporting agency.

## Am I protected from missing a payment/defaulting on my mortgage if my mortgage is CMHC or Genworth Financial Canada insured?

No. CMHC (Canada Mortgage and Housing Corporation) insurance and Genworth Financial Canada insurance only benefits the bank. If you default on your mortgage and your Lender suffers a loss, CMHC/Genworth may have to pay the shortfall, which they may seek to collect from you directly.

## Will title insurance cover my mortgage payments or damage to my property?

No. Title insurance protects against defects in legal title (i.e. ownership) of the property while the title is being transferred to you from the previous owner and before it is registered. It also covers unforeseen issues on a real property report, zoning, and government work orders. Title insurance does not protect you from mortgage foreclosure or other debts registered against your property once title is

in your name. Title insurance also does not cover damage from fire.

## What is foreclosure?

Foreclosure is an action that a bank can take if a homeowner stops paying back the mortgage. Foreclosure allows the lender to take or sell the person's house with permission of a court. Most mortgages permit the lender to add charges to your mortgage balance for legal, realtor, and insurance costs incurred by the lender in the foreclosure process. These costs can be substantial, and in most cases, foreclosure should be avoided.

## What happens if I receive a Statement of Claim for foreclosure?

A Statement of Claim for foreclosure is the Lender's notice to you that they are seeking the permission of the court to help them get back the money they loaned you. If you receive a Statement of Claim for foreclosure, get legal advice as soon as possible. Within 20 days of receiving the Statement of Claim, you must file a Statement of Defence. Your legal advisor can assist you with respect to whether or not you ought to file a Statement of Defence or other documents with the court.

## If a foreclosure action is commenced, is there anything I can do to save my home?

Yes. Commencement of the action is the first of many steps. While the action is ongoing, you may pay the outstanding payments (if the mortgage has not matured or, in other words, become fully due) or pay the mortgage debt in full. You can also refinance your home to payout the previous lender or sell your home. However, you will be responsible for all costs incurred by the lender to enforce the mortgage.

## What if I owe more on my home than I can sell my house for?

If you owe more than your house is worth, you likely want to get out of the situation with as little expense and trouble as possible. You may consent to letting the foreclosure process take place and you should try to work cooperatively with the Lender to minimize costs. In certain circumstances, you can hand over the keys to the property without further liability for the remaining amount owing. Be aware, if you owe money to other companies or individuals, and those debts are registered against your house, you still have to deal with them and they can pursue you for any money still owing. Also, if your mortgage is CMHC (or otherwise) insured and CMHC (or another mortgage insurer) is required to pay the Lender for a shortfall, CMHC (or the other

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mortgage insurer) will seek to collect the shortfall from you directly.

## **Do I have to pay property taxes if my property was damaged by the fire?**

According to the Regional Municipality of Wood Buffalo Website at the time of publication, tax notices will be mailed in late May and are due on June 30, 2016. Shortly before this document was published, the Regional Municipality of Wood Buffalo stated on its Facebook page that it is not sure at this time when property taxes will be due or whether they will be deferred due to the fire. You should check the Regional Municipality of Wood Buffalo Website ([www.rmwb.ca](http://www.rmwb.ca)) for updates. You can contact the municipality with questions on Twitter ([twitter.com/RMWoodBuffalo](https://twitter.com/RMWoodBuffalo)).

The terms of your mortgage require that you pay your property taxes. Failing to do so may result in your Lender noting you in default, which may result in the Lender taking enforcement action.

## **What if I cannot pay my property taxes because of reasons relating to the fire?**

Unless you were enrolled in TIPP (Tax Installment Payment Plan), your property tax payments are still due on June 30, 2016 according to the Regional Municipality of Wood Buffalo website. You should check the Regional Municipality of Wood Buffalo Website ([www.rmwb.ca](http://www.rmwb.ca)) for updates. You can contact the municipality with questions on Twitter ([twitter.com/RMWoodBuffalo](https://twitter.com/RMWoodBuffalo)).

## **Do I have to pay my utility bills and condo fees if my property is damaged or destroyed?**

**For utilities:** According to the Utilities Consumer Advocate, no consumption charges will be issued for May. For April, billing will be issued at a later date and no late fees will be charged. Direct Energy will waive all late payments at this time and not proceed with any collection or disconnection activity. The utilities situation is evolving, so call the Utilities Consumer Advocate at 310-4822 or check their website <http://www.ucahelps.alberta.ca/help.aspx> for updates. You should also contact your utilities provider.

**For condos:** Yes, you are responsible for your payments unless other arrangements have been made. Some condominium corporations are waiving fees given the wildfire. Please contact your condominium corporation for information. If you do not pay your condo fees, penalties or interest may be charged on the outstanding balance

and eventually a lien can be placed against the title to your property. In addition, some mortgage agreements allow the bank to foreclose on your property if you do not pay your condo fees. It is recommended that you get in touch and keep good communications with condo corporations about your situation.

## **What if I cannot pay my credit card bill or other loan payments because of the fires?**

Your obligation to repay your debts continues even if you are a victim of a natural disaster. Creditors (people or companies you owe money to) will charge interest or penalties for missed payments from debtors (individuals who borrowed money). If it becomes apparent that you cannot repay your debts, you may eventually choose or be forced to declare bankruptcy. However, bankruptcy is generally a last resort solution. There are several alternative solutions, such as submitting a consumer proposal, that you would likely want to consider first (see last question for details).

Many banks and credit card companies have put relief measures into place for people affected by the wildfire. Contact your bank for more information:

- **CIBC** is deferring payments on mortgages, loans and credit card bills. It is also re-amortizing mortgage payments to lower monthly costs or crediting client accounts for any fees caused by overdrafts, insufficient funds, early withdrawals on term deposits or even the use of non-CIBC bank machines. Contact information: 1-877-454-9030
- **Scotiabank** is offering affected customers payment deferrals on loans, mortgages and credit cards, and fee reimbursement for unplanned transactions. This extends to small business owners affected by the wildfires, too. Contact information: 1-855-753-4272.
- **RBC** is offering many special financial considerations, including short-term payment deferrals on mortgages, personal loans, home insurance, auto insurance and credit cards. This also extends to small business and commercial clients. Contact information: 1-800-769-2511.
- **TD Bank** is offering deferrals on payments, relief on fees and other adjustments such as flexible credit options when needed. It is also providing on-the-ground assistance through its Mobile Response Unit in Edmonton. Contact information: 1-866-222-3456.

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## If I know I cannot meet my obligations to my creditors can I initiate bankruptcy proceedings?

Yes, under the *Bankruptcy and Insolvency Act*, you can voluntarily initiate bankruptcy proceedings. You can also attempt to negotiate an arrangement with your creditors under Part III of the *Bankruptcy and Insolvency Act* and potentially avoid bankruptcy proceedings.

## Can my creditors start bankruptcy proceedings against me?

Yes, under the *Bankruptcy and Insolvency Act*, your creditors can initiate proceedings against you if you owe more than \$1,000 and have committed an act of bankruptcy under the *Act* within the six months preceding the application.

## What happens if I declare bankruptcy?

The purpose of the *Bankruptcy and Insolvency Act* is to allow for an orderly and fair distribution of the property (both personal property and real property) of a bankrupt individual amongst his/her creditors. It also allows the honest, yet unfortunate, debtor to secure a discharge of debts so that he/she can make a fresh start. When you declare bankruptcy, most or all your assets are signed over to a trustee, who will either sell them or transfer them to repay your debts. Once you declare bankruptcy, your debts to unsecured creditors will be stopped (unsecured debt means there was no collateral/asset involved in securing the funds).

Please note: Not all types of debt can be discharged by declaring bankruptcy (e.g. student loans). However, starting immediately, all student loan payments or Alberta Repayment Assistance Plan payments will be automatically deferred for six months, interest-free for affected students. Current students may apply to have their loan reviewed for extension based on their financial circumstances or due to extension or withdrawal from studies. Applications can be made by calling the Student Aid Alberta Service Centre. Mon-Fri, 7:30 a.m.-8:30 p.m. (MST), toll-free in North America 1-855-606-2096. Student loan borrowers are reminded that they do not pay interest on for six months on their Alberta student loan following graduation. No application is necessary.

## Are there alternatives to declaring bankruptcy?

Bankruptcy is generally considered to be a “last resort” solution, as bankruptcy is an invasive process which can have long-lasting effects. You may be able to avoid bankruptcy by consolidating your debt via a loan from your bank, selling assets, arranging lower payments with your creditors or arranging an Orderly Payment of Debts (OPD) plan with a credit counselor such as [moneymentors.ca](http://moneymentors.ca). There are also formal alternatives to bankruptcy, such as submitting a Consumer Proposal for debts under \$250,000 (not including your home mortgage).

## Resources

**Lawyer Referral Service** may be able to help you find a lawyer. Call the number below and describe your problem to the operator. The operator will give you the names and contact information for up to three lawyers that practice in the area of law that would best suit your needs. To reach an operator, call:

- In Calgary: 403-228-1722
- Toll free anywhere in Alberta, Saskatchewan, Lower Mainland British Columbia, Yukon, Northwest Territories and Nunavut: 1-800-661-1095

**Dial-A-Law** provides general information on a wide variety of legal issues in Alberta. To listen to a pre-recorded Dial-A-Law topic, call:

- In Calgary: 403-234-9022
- Toll free anywhere in Alberta: 1-800-332-1091

**Pro Bono Legal Clinics** that may also be able to assist:

- **Calgary Legal Guidance:** 403-234-9266 ([www.clg.ab.ca](http://www.clg.ab.ca))
- **Edmonton Community Legal Centre:** 780-702-1725 ([www.eclc.ca](http://www.eclc.ca))
- **Student Legal Assistance (at the University of Calgary):** 403-220-6637 ([www.slacalgary.ca](http://www.slacalgary.ca))
- **Student Legal Services of Edmonton:** 780-492-2226 ([www.slsedmonton.com](http://www.slsedmonton.com))
- **Central Alberta Community Legal Clinic - Red Deer & Area:** 403-314-9129 ([www.communitylegalclinic.net](http://www.communitylegalclinic.net))
- **Lethbridge Legal Guidance:** 403-314-9129 ([www.lethbridgelegalguidance.ca](http://www.lethbridgelegalguidance.ca))
- **Medicine Hat Legal Help Centre:** 403-712-1021 ([facebook.com/Medicine-Hat-Legal-Help-Centre-416282775178600](https://facebook.com/Medicine-Hat-Legal-Help-Centre-416282775178600))
- **Grande Prairie Legal Guidance:** 780-880-0036 ([www.gplg.ca](http://www.gplg.ca))

\*Please note that pro bono clinics may not offer legal services in all areas of law.

This information and other resources are available online at [www.pbla.ca/gethelp/fortmcmurrayfire](http://www.pbla.ca/gethelp/fortmcmurrayfire)