

City of Kingston
Housing Division
Department of Community Services
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GUIDELINE

- Legislation/Regulation
 Operational

DATE: 2004-01-22
NUMBER: 04-01

The policies and procedures in this Guideline are recommended to be implemented by housing providers funded by the Municipality under the following programs:

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| <input checked="" type="checkbox"/> Public Housing Program | <input type="checkbox"/> Aboriginal Program |
| <input checked="" type="checkbox"/> Non-Profit Program | <input checked="" type="checkbox"/> Public Housing Rent Supplement Program |
| <input checked="" type="checkbox"/> Co-Op Program | <input checked="" type="checkbox"/> Ontario Community Housing Assistance Program (OCHAP) |
| <input type="checkbox"/> Federal Program(if participating in central waiting list management) | <input checked="" type="checkbox"/> Community Sponsored Housing Program (CSHP) |
| <input type="checkbox"/> Social Housing Registry | |

* Please note: If your program is not checked, this Guideline doesn't apply to your project.

SUBJECT: COLLECTION OF ARREARS FROM TENANTS WITH BANKRUPTCY PROCEEDINGS

BACKGROUND:

Under section 49(1) and (2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, a tenant may apply for bankruptcy protection:

- (1) *An insolvent person or, if deceased, his/her legal personal representative with the leave of the court, may make an assignment of all his/her property for the general benefit of his/her creditors.*
- (2) *The assignment made under subsection (1) shall be accompanied by a sworn statement in the prescribed form showing the property of the debtor divisible among his/her creditors, the names and addresses of all his/her creditors and the amounts of their respective claims and the nature of each, whether secured, preferred or unsecured.*

Only creditors named by the tenant in bankruptcy proceedings are included in the process. When a tenant files for bankruptcy indicating a housing provider and the amount owed for rent, a claim by the housing provider for rent arrears is stayed until the Court approves a plan for paying the various creditors.

To be included as a recognized creditor under the *Bankruptcy and Insolvency Act*, every housing provider would have to prove the claim for arrears of rent under section 124(1):

- (1) *Every creditor shall prove his/her claim, and a creditor who does not prove his/her claim is not entitled to share in any distribution that may be made.*

Under section 136 of the *Bankruptcy and Insolvency Act*, the ordering of debt priorities and scheme of the handling of the debts under the bankruptcy are set out and include reference to rent arrears:

- (1) *Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:*

- (f) *the landlord for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled thereto under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent*

The housing provider can claim up to three months of rent accrued prior to filing for bankruptcy.

After the secured creditors' claims are satisfied, the claim of the landlord ranks among those given preference by the Bankruptcy and Insolvency Act, and ahead of regular unsecured creditors.

Pre-bankruptcy arrears after the discharge of a bankrupt tenant may have to be written off.

ACTION TO BE TAKEN:

1. Claim to collect rent arrears:

- Housing provider should decide whether to press a claim for rent arrears or not by determining whether the bankrupt tenant has sufficient assets to pay for the debts owed or not.
- Assets that exceed the total amount of three month rent may be considered sufficient to pursue the claim.
- A claim may be made in Court that rent is a "necessity of life" not covered by the *Bankruptcy Act*.

2. Procedures upon receipt of a bankruptcy notice:

- Before accepting any claim that arrears need not be paid out the housing provider have to receive an officially documented notice that the tenant has actually gone through legal processes, which protect bankrupts and insolvent persons from creditors.
- Upon receipt of a bankruptcy notice, advise the Trustee handling tenant's affairs to provide actual confirmation that arrears owed were named as a debt of the bankrupt tenant by filling out the Proof of Claim. The failure to name all debts is an offence under section 198 of *Bankruptcy and Insolvency Act*.
- Discontinue any other action against the tenant for rent arrears indicated under the Proof of Claim.

4. Provider's options after discharge of the bankruptcy:

- Ensure that current rent and any rent other than the arrears covered by the bankruptcy, is paid promptly.
- Continue, if necessary, any action for securing vacant possession of the property, unless the Trustee elects to take possession of the property for the time being.
- A claim may be made for any subsidies provided to the tenant if the arrears are the result of fraudulent misrepresentation, such as an incorrect report of income.

5. Recording rent arrears write-offs:

- On the effective bankruptcy date, rent arrears indicated in the Proof of Claim must be recorded as an uncollectible item.
- It may be necessary, after the discharge of the bankruptcy, to write off the arrears accumulated prior to the established date of bankruptcy action.

REFERENCE:

- *Bankruptcy and Insolvency Act*, R.S.C. 1985.
- Memorandum, Legal Services Group, January 5, 2004

If you have any questions, please contact Mila Kolokolnikova, Supervisor of Program, Policy & Research.

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