

# REAFFIRMATION AGREEMENTS

**(THIS IS IMPORTANT IF YOU HAVE A CAR LOAN)**

**IMPORTANT!** This information is intended to provide debtors with a general understanding of reaffirmation agreements and does not constitute legal advice. Reaffirming a debt has serious consequences. If you are a debtor in a Chapter 7 case, you should consult an attorney who is familiar with bankruptcy law and procedures and who can provide legal advice based on your particular financial situation.

## **What is a reaffirmation agreement?**

Debtors usually file Chapter 7 bankruptcy cases in order to obtain a “discharge.” This is a bankruptcy court order that eliminates the debtor’s personal liability for most debts. A reaffirmation in bankruptcy is a voluntary agreement (usually involving vehicles, but can involve other property too) between a chapter 7 debtor and a creditor which basically provides that the debtor’s debts to that creditor will not be discharged. In agreeing to reaffirm a debt owed to the creditor, you promise to continue paying that debt even though you would not be required to repay it after you receive a discharge in your bankruptcy case. In return, the creditor agrees to not take certain actions, such as repossessing the vehicle securing a car loan, so long as you continue making payments and complying with the loan agreement.

## **Why would I agree to reaffirm?**

In most instances, debtors should NOT reaffirm any debts. There are a few situations, however, when reaffirmation may be a good idea. For example, secured creditors – to whom you provided collateral such as a car in order to borrow money - usually have the right to seize the property securing an underlying debt even after a discharge is granted and the bankruptcy case is completed. They can even repossess your vehicle if you are current, but only if you have not signed a Reaffirmation Agreement. In my experience, most creditors will let you keep the vehicle even if you don’t Reaffirm, so long as you are current and remain so. However, there are certain creditors that have a policy to not allow Debtors to keep property without a Reaffirmation Agreement being signed. Therefore, it’s important to let your attorney know what your intent is and to have a thorough discussion of the matter so you are clear on all of your options as well as the benefits and risks involved in your particular case.

Depending on your specific circumstances, you may want to agree to pay the money still owed on a particular item of property so that you can be certain to keep it. If you do Reaffirm a debt, the creditor is prevented from repossessing the property so long as you remain current. Some other benefits to reaffirming a debt are that the creditor will continue to credit report the account which can help you rebuild your credit (though there are certainly other ways to do this). The creditor will also continue to send you monthly statements and allow online access to your account. Many Debtors find themselves locked out of their online access and their automatic payments are stopped once their case has been filed. If you Reaffirm, these things may be reinstated.

### **Why would I not reaffirm?**

You should not reaffirm a debt if you cannot afford to make the payments described in the reaffirmation agreement, or if it involves something you don't really need. For example: if you reaffirm a car loan that you truly can't afford and after the bankruptcy case is complete, you default and the lender repossesses your car, you will be liable for any deficiency. For example, say the car was sold for \$7,000.00 but you owe \$12,000.00 on the loan, you will still be responsible for the \$5,000.00 balance – IF you reaffirmed the loan. The whole point of the bankruptcy was to eliminate your personal obligation on your debts. By reaffirming, you are putting your personal liability back on the line for the debt being reaffirmed. Therefore, the more you owe on a vehicle above what it's worth, the bigger the risk to reaffirming.

### **Are there alternatives to reaffirmation?**

At the beginning of the case, a Chapter 7 debtor with secured debt is required to file a "Chapter 7 Individual Debtor's Statement of Intention." If you state on this form that you wish to retain the property securing a debt, you must indicate whether you intend to (1) reaffirm the debt or (2) "redeem" the property by paying the creditor a lump sum for its value. There may be other options for which you should consult an attorney. As an alternative, you may indicate that you intend to surrender or turn over the property to the creditor instead of making any payments.

### **How do I reaffirm a debt?**

A creditor and your attorney will typically prepare a reaffirmation agreement for you to sign. One signed, it gets filed with the court.

### **Are there forms for reaffirmations?**

Yes. There are several forms which contain certain information which will help the court in deciding whether you can afford the payments and whether the Reaffirmation Agreement is in your best interest and should be approved.

