

REAFFIRMATION AGREEMENTS



UNDERSTANDING
REAFFIRMATION
AGREEMENTS

What is a Discharge?

A discharge is an order issued by the bankruptcy court stating that your debts have been forgiven and do not have to be repaid. The discharge only applies to debts that arose before the filing of your bankruptcy case. Certain debts cannot be discharged in a chapter 7 or a chapter 13 bankruptcy case. You are not required to reaffirm any debt or sign any agreement regarding a debt that has been or will be discharged in your bankruptcy case.

What is a Reaffirmation Agreement?

When you file a bankruptcy case, some or all of your debts are discharged and you are no longer legally responsible for paying them back. This gives you a “fresh start.” However, after filing your bankruptcy case, you may want to repay a particular debt or you may be asked by a creditor to pay a debt. If you decide that you want to pay any specific debt that otherwise would be discharged, you may be required to sign a reaffirmation agreement and file it with the court.

Under a reaffirmation agreement, you agree to pay a debt even though you could have discharged the debt in your bankruptcy case. Reaffirmation agreements are 100% strictly voluntary. You are not required to sign one.

When you reaffirm a debt, you continue to be legally responsible for paying it back. This gives the creditor some legal rights. For example, if you have a car loan and miss a payment in the future, the creditor can do any of the following things:

- (1) repossess the car
- (2) sell the car to someone else
- (3) sue you for all the money you still owe on the car (the deficiency balance).

When you reaffirm a debt, that debt is treated as if you never filed a bankruptcy case and such debt is not forgiven. This can have serious financial consequences. Therefore, reaffirmation agreements must not impose an undue burden upon you or your family and must be in your best interest. It is wise to consider all of your options before entering into a reaffirmation agreement.

When you complete your Chapter 7 petition you will fill out the Statement of Intent form where you will reflect what you intend to do with a debt. If you intend to reaffirm on a debt then the creditor should send you a copy of the reaffirmation agreement to review, sign, and return to them for filing on the court docket. Please note that many creditors will require that you be 100% current on your debt before they will agree to provide you with these forms.

Should I Reaffirm a Debt?

In many cases, you do not need to reaffirm a debt. This will give you the full benefit of a “fresh start” by eliminating your debt. However, you may have special reasons for paying back a particular debt. If this is the case, you may be able to pay it back on a voluntary basis, without signing a reaffirmation agreement. It is a good idea to talk to an attorney to find out what is best for you. You may also find the attached chart helpful.

Do you REALLY need this?

Yes.

Can you get another one for less money? IF SO, DON'T REAFFIRM!

Can you really afford it? (I MEAN REALLY!!) IF NOT, DON'T REAFFIRM!

Has the creditor offered you a "new deal," credit card or anything else to reaffirm?

WEIGH YOUR OPTIONS LOWER INTEREST RATES AND BETTER PAYMENT TERMS MAY NOT BE THE ANSWER

No. Then don't sign reaffirmation agreement and give it back.

If you still want to keep it.

Can your creditor repossess or take the property if you don't make your payments?

Make sure the creditor shows you the paper that says they can take your property. If they can't, DON'T REAFFIRM!

Are you way behind on your payments? If you do not have a real chance to catch up, you will default later and lose your property anyway. DON'T REAFFIRM!

When you owe a lot of money and the creditor is offering to give you new credit or keep your account in good standing, be careful and think: ARE THERE CHEAPER WAYS TO GET CREDIT?

Remember that many creditors will still not report your payment on your credit report even if you reaffirm. Don't reaffirm JUST for that reason!

Before you sign off on the agreement

- If you decide to reaffirm, you must sign the reaffirmation agreement before your case is discharged. Typically the creditor files this on the court docket once you return it to them.
- Do you understand the agreement? Amount you owe? Payment terms? Are all agreed terms in the document? Make sure it is 100% correct.
- If you don't have an attorney, the bankruptcy court must approve the agreement before it is binding and a creditor can enforce it. Most courts will require you to appear before the court to ensure you understand.
- If you change your mind you can cancel the agreement any time before your discharge or 60 days after the agreement is filed with the court, whichever comes later. This is your right to rescind the agreement. Send the creditor the notice by certified mail of the cancellation.