

Redemptions, Reaffirmations, and Surrenders in Chapter 7  
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I. Introduction

11 U.S.C. §521(a) reads:

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341 (a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

The code gives the debtor the duties of reporting an intent and carrying it out. Doing so can impose consequences that should be discussed at the time of filing and both during and after the 341 Meeting.

II. Redemptions

- Governed by Section 722 of the Code. The text reads:

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such

holder that is secured by such lien in full at the time of redemption.

So....

- (a) What is “tangible personal property”?
- (b) What is “intended primarily for personal, family, or household use”?
- (c) What is an allowed secured claim?

Glad you asked....

First, an allowed secured claim is governed by Section 506(a)(1)

(a)

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section [553](#) of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

For a good discussion (pre-BAPCPA) of valuation and the allowed secured claim, see *In re Bouzek*, 04-24481-SVK, June 24, 2004

([http://www.wieb.uscourts.gov/opinions/files/pdfs/In\\_re\\_Bouzek.pdf](http://www.wieb.uscourts.gov/opinions/files/pdfs/In_re_Bouzek.pdf)). Hint, Judge Kelley noted that NADA Trade-in Value would be persuasive for a vehicle redemption, absent evidence of damage.

Redemptions may be an effective tool for dealing with creditors who demand unrealistic amounts in reaffirmations. For one amusing redemption case (Ryan’s favorite), see *In re Hargrave*, 10-22880-svk, regarding redemption of a dog (yes, a dog) secured on a line of credit. Sadly, no pictures were attached as exhibits.

### III. Reaffirmations

#### A. Governed by Fed. Rule Bankr. P. 4008:

(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.

(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required under §524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under §524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.

## B. Reaffirmation Hearings

Generally, **no hearing** will be necessary in the following scenarios:

1. The reaffirmed debt is secured by real estate owned by the debtor.
2. The secured creditor is a credit union, the debtor is represented by counsel, and debtor's counsel signed Part C of the agreement.
3. The debtor is represented by counsel, and there is no presumption of undue hardship.
4. The debtor is represented by counsel, and the debtor is able to successfully rebut a presumption of undue hardship after Court review based upon a satisfactory explanation provided by the debtor as to how debtor will make payments.

The following scenarios may necessitate a hearing:

1. The debtor is not represented by counsel.
2. The debtor is represented by counsel, but debtor's counsel did not sign the agreement.
3. The debtor did not fill out the required Part D of the agreement.

4. A presumption of undue hardship is present, and the debtor did not provide a satisfactory explanation as to how the debtor will make payments on the debt.
5. The debtor's disposable income on Schedules I and J do not match their statements in Part D of the reaffirmation agreement, and no explanation as to this discrepancy has been provided, or the explanation provided as to this discrepancy is not sufficient.

Some other notes on reaffirmation hearings:

1. Reaffirmation hearings are in-person hearings.
2. The debtor who signed the agreement must attend.
3. Generally, the debtor's attorney is not required to attend, but may choose to do so. Note that if the debtor's attorney represented the debtor during the negotiation of the agreement, the debtor's attorney may be required to attend the hearing.
4. Generally, the creditor's attorney is not required to attend, but may choose to do so.
5. Be aware of reaffirmation agreement procedures for each judge. These procedures are available on the court's website.

#### C. Follow the Cover Sheet and Reaffirmation Form

The required form is Official Form 240A. Always use the correct form!

The reaffirmation agreement must be filed with the required cover sheet, Official Form B27.

Make sure that the information in the agreement matches the information on the cover sheet.

If the amounts listed by the debtor on Part D of the form do not match Schedules I and J already on file with the court, an explanation as to the discrepancy should be provided.

Both the creditor and at least one debtor must sign the form.

The debtor may rescind a reaffirmation agreement before the later of: (1) discharge; or (2) sixty days after the agreement was filed with the court.

- D. Do NOT Try to Reopen a Case to Enter (or Amend) a Reaffirmation Agreement. See, e.g. *In re Lee*, 356 B.R. 177 (N.D. West Virginia 2006). In the *Lee* case, the filed reaffirmation was severely flawed and the court, *sua sponte*, held a hearing and declined to reopen the case to amend the reaffirmation.

#### IV. Surrenders

##### A. Surrenders of Vehicles

Just like surrenders of real estate (see below), the debtor remains in possession and control until the car is picked up. That means insuring the car (if it is being driven), ensuring there are no moving or parking violations, and getting belongings out of the car.

##### B. Surrenders of Real Property

1. Lately, surrender of real property has been a source of contention. See October 9, 2012 Lou Jones Breakfast Club outline. The listed intent and “carrying out” of the intent does not convey title to any secured lender, including a mortgage lender or property tax assessing municipality. As such, it is crucial for debtors’ counsel to advise clients that unless the foreclosure process is completed or some other accepted form of conveyance, they remain the lawful owners of the property, subject to the usual building codes, tax liabilities, and personal liability for injury on the premises as they were pre-filing.

##### C. Surrenders of other secured property (Jewelry, Furniture, Electronics, Secured Lines of Credit, etc.)

Anecdotally, many lenders claiming a security interest in personal property simply decline to pursue return of the property due to age, condition, etc.

## II. “Other” (Ride-Through, Pay and Retain)

### A. “Ride-Through”

If the debtor does not reaffirm or redeem, the debtor’s personal liability on a secured debt will be discharged. However, the lien of the secured creditor would survive.

It is sometimes possible for the debtor to remain current on all payments during and after the bankruptcy, forego reaffirmation and redemption, and retain the collateral.

Before selecting this somewhat risky option, it is important to review the terms of the contract involved. Determine whether or not the contract contains an ipso facto “due on bankruptcy” clause. Also, it is important to be familiar with the relevant provisions of the Wisconsin Consumer Act.

Be aware of the possible negative ramifications of this option: (1) the secured creditor may cease reporting on time payments to the credit reporting agencies; (2) the secured creditor could take the position that the debt can no longer be refinanced; (3) the secured creditor could try to enforce a “due on bankruptcy” clause if one was present in the original contract; (4) the creditor will likely stop sending billing statements to the debtor.