

REAFFIRMATION AGREEMENTS

DEBTOR INFORMATION PACKET

Materials prepared by the Atlanta Legal Aid Society and the Bankruptcy Section of the Atlanta Bar Association. Permission has been given for posting on the United States Bankruptcy Court for the District of South Carolina's website.

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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 can not 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 eliminated the debt in your bankruptcy case. Reaffirmation agreements are strictly voluntary. 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; and
- (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.

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.

If you filed your bankruptcy case on or after October 17, 2005, a reaffirmation agreement may be necessary. For example, if you own secured property, such as a car, you must tell the bankruptcy court what you intend to do with it. You have three options:

- (1) keep the car and continue making payments until it is paid off;
- (2) redeem the car by paying it off in a lump-sum payment (this could be less than you owe); or
- (3) return the car to the creditor and owe nothing more.

If you can afford to keep the secured property and continue making payments, it may be necessary to sign a reaffirmation agreement, unless the creditor agrees otherwise. If you decide that you cannot afford to keep the property, you must return it to the creditor. If you decide to return it, the debt will be discharged.

After you file a bankruptcy case, you will receive an appointment to meet with the bankruptcy trustee. This is called the 341(a) hearing or “meeting of the creditors.” After that meeting, you have 30 days to sign a reaffirmation agreement, redeem the secured property or return the secured property to the creditor. If you fail to do one of these things, you may lose important legal rights and the property.

Reaffirmation Hearing

The bankruptcy judge must approve your reaffirmation agreement if you do not have an attorney or if your attorney will not certify the agreement. You will receive a hearing date to appear before a judge and explain why you want to reaffirm the debt. You must also explain how you can afford to make payments in the future. The judge may ask:

- (1) the reasons why you want to reaffirm the debt,
- (2) whether you understand what you are agreeing to,
- (3) whether you are likely to have the ability to maintain the payments, and
- (4) whether the payments will cause a hardship for you or your family.

If you reaffirm a particular debt and the bankruptcy court approves the reaffirmation agreement, that debt is not discharged in your bankruptcy case. You must make the payments, no matter what hardship this may cause you.

Making Payments

While your bankruptcy case is pending, you must continue making payments on your debt to avoid losing your secured property. Your creditor may have stopped sending you the monthly bill after you filed your bankruptcy case. If so, contact the creditor immediately to obtain the correct payment information, including the address and payment date. If you do not hear back from the creditor, it is still your responsibility to send payments on time.

Can I Cancel a Reaffirmation Agreement?

You can cancel (or “rescind”) a reaffirmation agreement:

- (1) before the Court issues the order of discharge; or
- (2) within sixty (60) days from the date the reaffirmation agreement is filed with the bankruptcy court.

Reaffirmation Agreement Forms

To see the official forms provided for reaffirmation agreements, please visit the Eastern District of Wisconsin’s web site at <http://www.wieb.uscourts.gov>. Click on “Bankruptcy Forms” on the left-hand side of the home page. Then click on “Director’s Procedural Forms,” and scroll down to B240A Reaffirmation Agreement and B240B Order on Reaffirmation Agreement. You also may contact the clerk’s office at (414) 297-3291. If you have more questions about reaffirmation agreements and whether you should enter into such an agreement, visit the Pro Se Help Desk in Room 133B of the courthouse between 9:00 a.m. and 10:30 a.m. on Thursday mornings, and discuss your situation with a volunteer attorney.

CONSIDER THIS BEFORE YOU REAFFIRM

Do you really need it?

Answer this question honestly. You may like that new sofa, the new computer or that TV, but its time to make hard choices and you can't keep everything. Only consider reaffirming debts on things you absolutely need, like your car to go to work.

IF 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

You still want to reaffirm?

So 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?**

BEFORE YOU SIGN...

**IF NO,
GIVE IT BACK!**

- If you decide to reaffirm, you must sign the reaffirmation agreement before you get a discharge.
- Do you understand the agreement? Amount you owe? Payment terms? Are all agreed terms in the document?
- If you don't have an attorney, the bankruptcy court must approve the agreement before it is binding and a creditor can enforce it.
- If you change your mind you can cancel the agreement anytime before your discharge or 60 days after the agreement is filed with the court, whichever comes later. Just tell the creditor (in writing is best), and the agreement is cancelled. This is your right to rescind the agreement.