

## **NOTICE TO DEBTORS REGARDING “REAFFIRMATION AGREEMENTS”**

You filed your Chapter 7 bankruptcy to obtain a “fresh start” and a discharge of your debts. But you are here today asking the court to approve a “reaffirmation agreement” whereby you agree to remain *personally liable* to pay one or more of the debts you owed prior to bankruptcy notwithstanding your discharge.

Because reaffirmation agreements erode the fresh start that you receive in Chapter 7 bankruptcy, they must be reviewed and approved by the court. When your case is called, you should step forward to the microphone and state your name. I will then ask you a few questions to determine whether (a) you understand the consequences of reaffirming the debt; (b) it is in your best interest to pay the debt; (c) you can afford to pay it, and that (d) payment of the debt will not impose an undue hardship on you or your family. Before your case is called, I ask that you to consider the following:

First, if the court approves your reaffirmation agreement, it is just like signing a new contract with the creditor. It will be just the same as if you didn’t file bankruptcy. For instance, if you later miss a payment, the creditor will be able to sue you even though you filed bankruptcy. Many creditors with car loans ask for reaffirmation agreements. If the court approves reaffirmation of a car loan, and you later miss a payment, the creditor can repossess the car and sell it at an auction. Because most cars are worth less than what is owed against them, the creditor could then sue you for the difference.

Second, nothing requires you to enter into a reaffirmation agreement. Your old contract does not require it, California law does not require it, and bankruptcy laws do not require it. The decision to enter into a reaffirmation agreement should be voluntary on your part. Let the court know if a creditor is forcing you to do this.

Third, sometimes people believe that they have to sign reaffirmation agreements just to keep their cars or other property. If you have a loan secured by your automobile or other property, you have two options besides reaffirmation.

a. Continue to Pay Your Debt. If you are current on your payments despite your bankruptcy, you can keep the property and continue making regular payments to the secured creditor according to your loan agreement without reaffirming the debt. The real consequence of the court not approving a reaffirmation agreement is that when you miss a payment in the future, the creditor cannot sue you. It does not mean, however, that you can choose not to continue making regular payments in the meantime.

b. Redemption. If the value of the property is less than the debt, you may want to consider *redeeming* the property by paying the secured creditor the value of the property. You can negotiate the value with your creditor. If you cannot agree on a value, you can ask the court to decide it. Upon payment of the agreed amount, you can keep the property and you will have no further obligation on the debt.

Fourth, if you have a debt that you feel a moral obligation to repay, you can *voluntarily* do so without a reaffirmation agreement. For instance, some family member or friend may have co-signed a loan for you. You are free to voluntarily repay any debt you owed before bankruptcy. The money you are now earning is your own money and you can spend it as you choose. That means you can pay a discharged debt if you want. Voluntary repayments, unlike a reaffirmation, are not legal obligations to repay. If you voluntarily make payments on debts which were discharged in your bankruptcy but have to stop for some reason, the creditor cannot sue you. It's hard to predict the future but you might lose your job or have other bills that you need to pay and miss future payments.

Sometimes debtors sign a reaffirmation agreement to keep a credit card. Usually, the court will not approve reaffirmation agreements for credit cards or contracts for luxury items.

Finally, you may have obtained a home equity loan for debt consolidation or other purpose secured by a second or third lien on your home. If the value of your home is less than the balance owed on your mortgage to the first lienholder, then it is not in your best interest to reaffirm the home equity loan with a junior lienholder. If you are current on your payments despite your bankruptcy, you can keep the property and continue making regular payments to the secured creditor according to your loan agreement without reaffirming the debt. If you cease making payments in the future, the creditor can foreclose on the real property securing the claim but it cannot hold you personally liable for the debt. On the other hand, if you reaffirm the debt and later default, the creditor could foreclose on your home and still sue you and hold you personally liable on any deficiency.

IF YOU DO NOT WISH TO "REAFFIRM" THE DEBT, TELL ME THAT WHEN YOU STEP UP TO THE MICROPHONE AND I WILL DENY APPROVAL OF THE AGREEMENT, THEN DECLARE IT "VOID" AND UNENFORCEABLE AGAINST YOU.

Remember, even if I approve the reaffirmation agreement and enter an "order" to that effect, you can still change your mind. The deadline for changing your mind is 60 days from the date you filed the agreement with the court or the date when you get your discharge, whichever occurs later in time. If you decide to change your mind, you must do it in writing. You should send a copy to the creditor at the address in the reaffirmation agreement and also send a copy to the court.

Peter H. Carroll  
United States Bankruptcy Judge