

Norwell Office
167 Washington Street
Norwell, MA 02632
781.660.8665



Cape Cod Office
1550 Falmouth Road, Ste 10
Centerville, MA 02632
866.263.5972



WHAT IS A REAFFIRMATION AGREEMENT AND SHOULD I SIGN ONE?

A reaffirmation agreement is a contract in which a Chapter 7 debtor (the person who files a bankruptcy case) and a lender agree that a debt will not be discharged in a Chapter 7 bankruptcy case.

If the goal of a bankruptcy case is to eliminate (discharge) as much debt as possible, it may seem foolhardy to agree that a debt will survive the bankruptcy. But there may be a number of reasons why you might agree to remain responsible for a debt.

REAFFIRMING SECURED DEBT

Most reaffirmations are done to protect collateral on a secured debt. Secured loans, like car loans and home loans, are actually two agreements: the promise to pay borrowed money (the promissory note) and a promise to give up the collateral if the borrowed money is not repaid (the security agreement). In a bankruptcy case, only the promise to pay is discharged. The security agreement remains in force, and after the bankruptcy case is over, the secured creditor can still repossess or foreclose. To protect the collateral, you can agree that the loan will not be discharged, and that you will continue making payments on the loan until the debt is paid in full, just as if the bankruptcy had not been filed. This is a reaffirmation agreement.

REAFFIRMING UNSECURED DEBT

Sometimes you might choose to reaffirm an unsecured debt, like a personal loan or credit card. That happens much less frequently than with debts secured by collateral, most often to protect someone else who is also liable on the debt. Spouses are often jointly liable. Parents will often co-sign for children. If the co-debtor did not file a bankruptcy, the lender will look to the co-debtor for payment after your obligation is discharged. To protect the co-debtor, you may choose to reaffirm the account.

WHAT HAPPENS IF YOU SIGN THE REAFFIRMATION AGREEMENT?

When you sign the reaffirmation agreement, the lender will file it with the court before the discharge is entered. Unless you have negotiated new terms for the loan, you will continue paying according to the same terms you had before the bankruptcy case was filed. After the Chapter 7 case is discharged, you can continue to work with the lender. The lender will send you statements and will report your payment status to the credit bureaus as if you had never filed a bankruptcy case.

Likewise, if you default on the terms of the reaffirmation, the lender will have the right to repossess or foreclose without having to get permission from the bankruptcy court. If the collateral is repossessed or you have an accident that is not covered by insurance, you will still be responsible for the debt that remains. This is called a deficiency balance.



If the goal of a bankruptcy case is to eliminate (discharge) as much debt as possible, it may seem foolhardy to agree that a debt will survive the bankruptcy.

WHAT HAPPENS IF YOU DO NOT REAFFIRM THE DEBT?

If you choose not to reaffirm the debt, it will be discharged at the end of your Chapter 7 case with your other dischargeable debts. You will no longer be obligated to pay the account, and the lender cannot actively try to collect the debt by demanding payment from you.

If you have collateral on the loan, the creditor will still have the right to repossess or foreclose on the collateral because the security agreement is not discharged in the Chapter 7 case. The lender is faced with a decision: whether to take possession of the collateral right away or wait. Many will repossess or foreclose on the collateral immediately. Some creditors, however, would rather take payments. The important thing to remember is that the creditor can decide at any time to repossess the collateral unless you signed and filed a reaffirmation agreement with the court, your payments and insurance are current and you are not otherwise in default of the loan terms.

Without a reaffirmation agreement, the lender may not report payments to the credit bureaus, even if the payments are made timely. The creditor will probably not allow you to refinance the debt, and in the case of a home loan, the mortgage company may refuse to consider a request for a loan modification. The lender may be reluctant to deal with you at all in fear of running afoul of the discharge injunction, which prohibits the creditor from taking any action to collect the debt other than take possession of the collateral. Therefore, even a call to the lender's customer service line can be a frustrating experience.

SHOULD YOU SIGN THE REAFFIRMATION AGREEMENT?

Just because a creditor offers you a reaffirmation agreement, you are not obligated to sign it. It is your choice, but there are a number of factors you need to consider when you make that choice.

Can you afford the payments? As a part of the reaffirmation agreement, your attorney must certify to the court that you can afford the payments. Your attorney will usually use the information on your income and expenses that you already provided to the court for this purpose. If the attorney cannot certify to the court that you can afford the payments, the court may set a hearing and require that you testify about your ability to pay.

What is the collateral worth? If your collateral is underwater, meaning you owe more than the collateral is worth, signing a reaffirmation agreement might be a bad idea. This might be the best opportunity you will have to get out from under a burdensome debt.

Can you replace the collateral? If the collateral is something you need, like a car to get to work, it might be easier to replace than you might think. Your attorney can give you guidance on this, but there are many car dealers who specialize in financing for people just out of bankruptcy. It might cost you a little more in interest, but save you money in the long run.

Do you have a co-debtor on the loan? If your co-debtor did not file bankruptcy, that co-debtor will continue to be responsible for the debt after your obligation is discharged. If that will cause a problem for you or for your co-debtor, signing the reaffirmation agreement might be a wise choice.

Reaffirming a debt is a serious matter. Your attorney understands the consequences and is in the best position to advise you on how a reaffirmation will affect your particular circumstances.