

REAFFIRMATION AGREEMENTS

Reaffirmation Agreements are agreements where (despite having the debt discharged in your bankruptcy) you agree to re-obligate yourself for that debt and continue to pay it. **If you do** decided to sign a reaffirmation agreement, you will again be fully liable for the entire debt and they will be able to collect the full reaffirmed balance regardless of whether you end up using the account again in the future or keep the vehicle or home that secures the debt. **IT IS SELDOM IN YOUR BEST INTEREST** to sign such an agreement. In addition, it is normally our practice **NOT** to allow clients to sign reaffirmation agreements unless there is a large benefit to you for doing so.

Unsecured Loans (eg. Credit Cards)

It is **NEVER** a good idea to sign these agreements with unsecured creditors. In fact, most unsecured creditors no longer even offer them. You are better off securing a new credit card (possibly a small secured one to start off) than to deal with a prior credit card or loan company.

Mortgages:

Some mortgage companies will also request that you sign a reaffirmation agreement. However, on a mortgage this is **VERY DANGEROUS!** Signing a reaffirmation agreement will mean that if you later should find yourself unable to pay all of the remaining (30 years or so) payments and they later have to foreclose, you will owe them the balance on the loan if they sell the home for less than what is owed against it (known as a “deficiency”). In fact, they are so dangerous that the Bankruptcy Court Judges in Colorado will normally **NOT** approve them. Note that the mortgage company may later tell you that they can’t send your future statements in the mail, allow you access to their website, or even report your good payments to the credit reporting companies because you didn’t sign a reaffirmation agreement. But even if you signed such an agreement, the Judges generally will not approve them. Even though the mortgage company may not continue reporting your good (and bad) payments to the credit reporting companies, you are better off not signing these agreements. You can always write the mortgage company a letter to their RESPA address and demand a register or accounting of all of your good payments and this can be used to establish that you have made all of your post bankruptcy payments. If you really think you can get a better deal, consider refinancing or modifying the loan at a later date. But remember that once you sign a refinance or modification, you are signing a brand new loan and you are back on the hook again and obligated for the full amount.

Auto Loans:

In some cases, auto lenders have clauses permitting them to repossess vehicles if a reaffirmation agreement is not signed. Most of the reputable lenders will not act on this and will simply allow you to continue making your car payments without the reaffirmation agreement. There are still one or two lenders who may still elect to repossess the vehicle if you don’t sign one, so you may want to talk to your attorney and discuss whether a reaffirmation is advisable in your case. If you do **not** sign a reaffirmation agreement, you only have to continue to make your payments if

you want to keep the vehicle. You will receive your title once all payments are completed. Yet, if you later decide to give the vehicle back before completing all of your payments, your lender would not be able to come after you for the remainder. However, **if you do** sign a reaffirmation agreement, you will again be fully liable for the debt and they will be able to collect the full reaffirmed balance regardless of whether you keep the car or not. In addition, should something happen to the vehicle (for example - you get into an accident that is not your fault), your insurance (or the person's insurance who hit you) will only pay you what the vehicle is worth (book value). If you sign a reaffirmation agreement and the amount you receive from insurance is not enough to pay off the full, you will be obligated to pay the remainder to your lender. If you did not sign the reaffirmation, you could have simply turned over the vehicle and the insurance payment and owed nothing further. Again, unless the lender provides you with a substantial benefit, reaffirmation agreements are not in your best interest.

It is this office's policy not to sign off on reaffirmation agreements UNLESS there is a substantial benefit to you (our client). A substantial benefit means that the company is substantially lowering your interest rate, lowering your principal balance or lowering your monthly payment. However you can, should you choose, ignore our advice and do a reaffirmation agreement without our approval. If you do this on your own, the Bankruptcy Court will hold a hearing and the Judge in your bankruptcy case will have to determine whether or not you can afford to make the payments before he approves the reaffirmation agreement. We will not attend this hearing with you and you will need to be prepared to explain to the Judge why and how you think you can afford to pay for the secured debt.

Should you decide to reaffirm a debt, you should also be aware of the fact that you may rescind your agreement at any time **prior to the date that you receive your "Discharge Order"** (normally between 3 and 5 months after your case is filed. You may also rescind the agreement within 60 days after the agreement is filed with the Court, whichever of these two dates is **later**, by giving timely written notice of rescission to the lender and to the court. Be sure to send it Certified Mail, Return Receipt Requested so that you can prove that the notice was sent and was timely.

Finally, please note that the court has the final say whether to accept a reaffirmation agreement or not, and in some cases the court will refuse to allow the agreement to be approved. This is unusual, but is outside of our control.