

REAFFIRMATION AGREEMENTS

Overview

Reaffirmation Agreements allow debtors to retain dischargeable prebankruptcy debts; debtors sign reaffirmation agreements because they voluntarily decide to pay off their prebankruptcy debts even though they are dischargeable. In some cases debtors retain debts for moral reasons, however, the majority do so in order to keep their property or to continue a relationship with a particular company or a credit lender. Generally, courts want to discourage reaffirmation agreements because if debtors enter into too many, it defeats the purpose of filing for bankruptcy.

Five requirements exist under the Bankruptcy Code in order to determine whether a reaffirmation agreement is valid:

1. The reaffirmation agreement must be entered into prior to discharge and it must then be filed with the court;
2. The agreement has to state that the debtor has the right to rescind the agreement either within 60 days after it's filed or prior to discharge (whichever comes later);
3. If the debtor is represented by an attorney, the attorney has to sign and provide an affidavit verifying that the agreement is voluntary and does not impose an undue hardship on the debtor;
4. The debtor did not rescind the agreement within the required time;
5. That the agreement complies with the requirements of §524(c); and
6. If the debtor is not represented by counsel then the court will approve the reaffirmation agreement if no undue hardship is imposed and the reaffirmation is in the best interest of the debtor unless it's a consumer debt that's secured by real property.

The code tries to safeguard the debtor in several ways. The second requirement gives the debtor an opportunity to rescind the agreement within several months after it's filed so the debtor does not feel that s/he is entering into a final commitment. The sixth's requirement was enacted to protect the debtor and to ascertain that if the debtor is not represented by an attorney there is someone who can verify that there is no fraud involved in the transaction. For additional protection § 524 of the bankruptcy code requires that a judge hold a hearing to inform the debtor of the meaning and the legal consequences of the reaffirmation agreement.

Real Property and Reaffirmation Agreements

One of the major concerns for debtors interested in filing for bankruptcy is what happens to their homes when they file for Chapter 7 bankruptcy. Because during the Chapter 7 bankruptcy all of your nonexempt property goes to the trustee to pay off your debts, and only \$10,000.00 is the exemption limit on a homestead, the debtor runs a risk of losing their property. Therefore, when a debtor has a lot of equity in their property it is not advisable to file for Chapter 7 bankruptcy.

What happens if the property is liened for a secured debt and a debtor is current on mortgage payments? There is currently a split in the circuits on the issue. The 2nd Circuit, and the New York State, interprets § 521(2) of the bankruptcy code to mean that if a filer's property has very little amount of equity and he is current on his mortgage payment, he can keep making payments and still retain

his property without having to choose between the three options of surrender, redemption and reaffirmation. However, some jurisdictions require a debtor to choose.