

Bankruptcy: Understanding Reaffirmation Agreements

Updated July 2013

The City Bar Justice Center acknowledges the Committee on Bankruptcy & Corporate Reorganization of the New York City Bar Association for their assistance in the creation of this booklet.

©2013 The Association of the Bar of the City of New York Fund, Inc.
All rights reserved.



Bankruptcy: Understanding Reaffirmation Agreements

TABLE OF CONTENTS

What is a Reaffirmation Agreement in Bankruptcy?	2
Why Do Debtors Enter into Reaffirmation Agreements?	3
Should You Enter into a Reaffirmation Agreement?.....	4
What are the Effects of Entering into a Reaffirmation Agreement?.....	7
When Can a Reaffirmation Agreement be Entered Into?	8
How is a Reaffirmation Agreement Filed?	9
Is an Attorney Needed to Enter into a Reaffirmation Agreement?.....	10
Can a Reaffirmation Agreement be Cancelled?	11

What is a Reaffirmation Agreement in Bankruptcy?

Individuals who file for bankruptcy (“debtors”) often do so to eliminate (“discharge”) the obligation to pay certain types of debt and to obtain a financial “fresh start.” Not all debts are dischargeable, but most common consumer debts are. In certain limited circumstances, a debtor may wish to pay a particular debt even though the debt can be discharged in bankruptcy. Bankruptcy does not prevent a debtor from volunteering to pay a debt that would otherwise be discharged with money that is not for the benefit of creditors as part of the “bankruptcy estate.” When a debtor agrees to pay such a debt by contract, the debtor must enter into a reaffirmation agreement with a creditor to “reaffirm” the debtor’s intent to pay.

Special considerations come into play when a debtor decides to enter into a reaffirmation agreement because the debtor will be contractually bound to pay the otherwise discharged debt even if, at some point during the life of the agreement, the debtor is unable to make the payments. Congress was concerned when it passed the Bankruptcy Code that at times debtors had been taken advantage of when they signed these types of agreements. The Bankruptcy Code therefore has certain procedures that apply to protect debtors. This pamphlet explains those procedures as well as the reasons for them.

Why Do Debtors Enter into Reaffirmation Agreements?

A creditor to whom a debtor owes a debt can have a “security interest” in property of the debtor, such as an automobile or appliance, that is being purchased by the debtor over time through periodic payments. A security interest protects the creditor if the debtor cannot repay the debt and may give the creditor the right to take away and sell the property if the required payments are not made. Bankruptcy does not make these security interests in property go away. If the debtor would like to keep the property, he or she may have to enter into a reaffirmation agreement with the creditor that obligates the debtor to continue making the required payments during and after the bankruptcy case. It is generally not advisable for a debtor to bind himself or herself to pay an otherwise dischargeable debt unless it is necessary to keep the property that is securing it.

The discharge is the debtor’s alone and does not affect anyone else’s obligations. Therefore, an additional reason why some debtors reaffirm a debt is because a co-obligor (someone who co-signed for the debt) or guarantor (someone responsible for the debt if the debtor defaults) may have to satisfy it even if the debtor receives a discharge. Under those circumstances, the debtor may choose to reaffirm, even if the debtor does not wish to keep the property securing the debt, so the co-obligor or guarantor does not have to pay. Before reaffirming the debt, the debtor should fully understand the responsibilities of the co-obligor or guarantor and should review the documents that set forth their obligations.

Reaffirmation agreements are strictly voluntary. A debtor is not required to reaffirm any of his or her debts. If a debtor signs a reaffirmation agreement, the debtor agrees to pay a debt that otherwise might be discharged in his or her bankruptcy case. There may be other ways to renegotiate payments with creditors without entering into a reaffirmation agreement. A creditor cannot compel you to enter into a reaffirmation agreement.

Should You Enter into a Reaffirmation Agreement?

Reaffirming a debt imposes ongoing obligations on a debtor to make payments and may have significant financial consequences. You should **consider the following questions** before entering into a reaffirmation agreement:

- **Wants vs. Needs?** A debtor may want to keep property that is subject to a security interest, but does the debtor really need it? A debtor should only reaffirm debts on things that he or she really needs. Reaffirming debts on items that are not needed may continue the financial problems that caused a debtor to file for bankruptcy in the first place.

- **Can the debtor replace the property that is subject to a security interest for less money?** If yes, a debtor should not reaffirm. A debtor should not enter into a reaffirmation agreement to retain property if he or she can get adequate replacement property for less money. For example, if a replacement used car costs \$5,000 at a 5% interest rate and the reaffirmation agreement would require the debtor to pay \$6,000 at a 5% interest rate or \$5,000 at a 6% interest rate, then the debtor should not enter into the reaffirmation agreement.
- **Can the debtor really afford to satisfy the obligation he or she is seeking to reaffirm?** It is a mistake for a debtor to sign a reaffirmation agreement if he or she may not be able to make the required payments. Once bound by a reaffirmation agreement, the debtor will be personally liable for the debt. If the debtor defaults later, the creditor can obtain a judgment against the debtor personally in addition to repossessing the property securing the debt. For example, if a debtor reaffirms a car loan for \$15,000 and the car securing the loan is worth \$8,000, then, if the debtor defaults, the creditor may repossess the car and the debtor may still be liable to the creditor for \$7,000 (the difference between the amount of the loan and the value of the car at the time it is repossessed). In this situation, since the value of the car is less than the debtor would pay under the reaffirmation agreement, the debtor is better off not reaffirming and instead purchasing a replacement car.

- **Is the debtor behind on payments?** A debtor should make sure that he or she is able to catch up on missed payments before reaffirming.
- **Has the creditor offered the debtor a “new deal” or better terms?** Be careful! New credit, lower interest and/or better payment terms may appear enticing, but a debtor still may not be able to afford the ongoing payment obligations.
- **Is the creditor able to take away the debtor’s property?** If a creditor says it can take away the debtor’s property if a debt is not repaid, then the debtor should make sure that the creditor provides documents supporting that statement. The vast majority of reaffirmation agreements are for secured debts (such as a car loan), where the creditor can repossess the debtor’s property, as opposed to unsecured debts (such as a credit card balance).
- **Does a debtor need to enter into a reaffirmation agreement with respect to a loan for real property, such as a mortgage on the debtor’s home, if the debtor is current on payments?** The Bankruptcy Code is clear that a debtor must enter into a reaffirmation agreement to retain personal property, such as an automobile or appliance, even if he or she is current on all payments. If, however, the debtor is current on payments on a loan for real property, such as a house, then he or she may not have to reaffirm the debt to retain the property and for the loan to remain in place. Instead, the debt may “ride through” the debtor’s bankruptcy without being reaffirmed. It is advisable to consult an attorney to determine whether the “ride through” option is available.

- **Is a co-obligor or guarantor responsible for satisfying the debt?**

If yes, then the debtor may wish to reaffirm the debt so the co-obligor or guarantor does not have to pay. If, however, a debtor is a guarantor of a loan and the borrower (non-debtor) has the property securing it, the guarantor (debtor) should not have to reaffirm the debt for the borrower to keep the property, as long as the borrower is current on the payments. In any event, if the debtor does not care whether the property is repossessed from the borrower, then the debtor should not sign the reaffirmation agreement.

- **Should a debtor enter into a reaffirmation agreement just to improve his or her credit? No.**

There are other ways for a debtor to improve his or her credit, such as by paying bills on time, keeping balances low on credit cards, and reducing the number of credit cards that a debtor has open.

What are the Effects of Entering into a Reaffirmation Agreement?

When a debtor enters into a reaffirmation agreement, he or she is obligated to pay the reaffirmed debt. The reaffirmed debt is treated as if the debtor never filed for bankruptcy. As such, reaffirmation can have significant financial consequences. For example, if a debtor reaffirms a car loan and misses a payment in the future, the creditor may be able to repossess the car and/or sue the debtor

for the balance of the loan. **If a debtor cannot pay the reaffirmed debt, he or she must wait eight years after filing for bankruptcy before filing again to discharge the reaffirmed debt.**

Given these significant consequences, you must make sure that you understand the terms of a reaffirmation agreement before signing, including (1) the amount that you will owe, (2) the timing of the payments and (3) any right the creditor may have to take away the property if you fail to make payment.

When Can a Reaffirmation Agreement be Entered Into?

A reaffirmation agreement must be entered into before the granting of a discharge and filed with the clerk of the bankruptcy court for it to be valid and binding. An executed reaffirmation agreement may be filed by any party, including the debtor or a creditor. It must be filed within 60 days after the first date set for the first meeting of creditors in the bankruptcy case unless the deadline is extended by the bankruptcy court. You will receive notice of the date set for the first meeting of creditors.

How is a Reaffirmation Agreement Filed?

A reaffirmation agreement will be enforceable only if it complies with specific procedures and makes certain necessary disclosures. If you have filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York, then you must follow the Guidelines for Filing a Reaffirmation Agreement in the Southern District of New York, which may be found at <http://www.nysb.uscourts.gov/sites/default/files/4008-1-guidelines.pdf>. In addition, form documents and additional instructions are available at: <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>. These documents may be updated from time to time. Updated versions will be posted to this website.

In the United States Bankruptcy Court for the Southern District of New York, all reaffirmation agreements must be filed with an Official Form 27, *Reaffirmation Agreement Cover Sheet*. Parties who wish to adopt the form of reaffirmation agreement provided by the Administrative Office of the United States Courts may use (1) Procedural Form B240A, *Reaffirmation Documents*, (2) Procedural Form B240B, *Motion for Approval of Reaffirmation Agreement* and (3) Procedural Form B240C, *Order on Reaffirmation Agreement*. Parties who do not wish to follow the bankruptcy court forms and are drafting their own documents should refer to the *Guidelines for Filing a Reaffirmation Agreement in the Southern District of New York* for additional instructions.

If you have filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of New York, Procedural Form B240A, *Reaffirmation Documents*, must be used to document reaffirmation agreements, which may be found at <http://www>.

uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx. In addition, all reaffirmation agreements must be filed with an Official Form 27, *Reaffirmation Agreement Cover Sheet*.

If you have filed for bankruptcy in a court other than the United States Bankruptcy Court for the Southern or Eastern Districts of New York, please refer to that bankruptcy court's website for instructions and applicable forms.

Is an Attorney Needed to Enter into a Reaffirmation Agreement?

While it is always advisable to seek the assistance of an attorney, a debtor does not need an attorney to enter into a reaffirmation agreement. The reaffirmation process, however, is slightly different if a debtor is *pro se* ("on your own").

If a debtor is represented by an attorney, the attorney has to certify in writing that he or she advised the debtor of the legal effects and consequences of the reaffirmation agreement, including a default under the agreement. The attorney also has to certify that the debtor made a fully informed decision to enter into the agreement, that the debtor voluntarily decided to reaffirm the debt, and that the reaffirmed debt will not create an undue hardship for the debtor or his or her dependents.

If a debtor is not represented by an attorney, then, after filing the agreement with the bankruptcy court, the debtor will receive a hearing date to appear before a judge to explain why he or she would like to reaffirm the debt and how he or she can afford to make payments. Except in certain limited circumstances relating to

the reaffirmation of real property (such as a house), the judge has to approve the reaffirmation agreement by finding that it is in the debtor's best interest and does not impose an undue hardship on the debtor or his or her dependents.

Can a Reaffirmation Agreement be Cancelled?

A reaffirmation agreement can be cancelled by a debtor by the later of: (1) the issuance of a discharge in the bankruptcy case or (2) 60 days from the date the reaffirmation agreement is filed with the bankruptcy court.

As with any contract, you should think very carefully before signing a reaffirmation agreement. Consider whether is it worth it to bind yourself contractually to make the payments. It generally is not advisable to sign a reaffirmation agreement if you can purchase replacement property for less than the cost of keeping your property under the reaffirmation agreement.

Since entering into a reaffirmation agreement may have significant financial consequences, you should be certain that you fully understand the terms and ramifications of the agreement before signing. Only by making an informed decision will your interests be protected.

APPENDIX: WHERE TO GO FOR HELP OR FURTHER INFORMATION

Legal Assistance:

- **Consumer Bankruptcy Project of the City Bar**

Justice Center: The Pro Bono Consumer Bankruptcy Project, with the assistance of volunteer attorneys, advises low-income* New Yorkers who are considering filing for Chapter 7 personal bankruptcy and assists with the preparation of bankruptcy petitions and schedules. All clients file and appear pro se.

This Project does not handle reaffirmation agreements for debtors already in bankruptcy.

*Those with incomes at or below 200% of the Federal Poverty Guidelines based on their family size.

Contact: City Bar Justice Center, Legal Hotline,
Monday through Friday 9:00 a.m. – 5:00 p.m.
(212) 626-7383. Website: www.citybarjusticecenter.org.

- **New York City Bankruptcy Assistance Project of Legal Services for New York City (“NYC BAP”):** The NYC BAP assists low-income* New York City debtors prepare and file pro se Chapter 7 bankruptcy petitions in the bankruptcy courts for the Southern and Eastern Districts. This Project does not handle reaffirmation agreements for debtors already in bankruptcy.

*Those with incomes at or below 200% of the Federal Poverty Guidelines based on their family size.

Contact: LSNY, (646) 442-3630 (leave a message and a staff member will return your call within 48 hours).
Website: www.lsnyc.org (NYC Bankruptcy Assistance Project).

- **Legal Referral Service of the New York City Bar (“LRS”):**
New Yorkers who need referral to a lawyer in private practice for representation on a bankruptcy matter can call the Legal Referral Service. Callers are screened by Referral Counselors, who are lawyers or paralegals trained to help evaluate the various options and who can recommend appropriate legal help. The LRS can make referrals to lawyers in private practice that can provide bankruptcy assistance for a fee.

Contact: Legal Referral Service, LRS Hotline, Monday through Friday 8:30 a.m. – 5:30 P.M. (212) 626-7373(English) or (212) 626-7374 (Spanish). Website: <http://www.abcny.org/get-legal-help/legal-referral-service> or www.ilawyer.org.

Other Bankruptcy Assistance:

- **Eastern District Bankruptcy Court Pro Se Law Clerk:**
If you do not have a lawyer, and you are involved in a consumer bankruptcy case in the U.S. Bankruptcy Court for the Eastern District of New York, you may get information about the bankruptcy process and bankruptcy filing requirements from the Bankruptcy Court Pro Se Law Clerk’s Office. Staff may answer questions about the bankruptcy forms, schedules, and process, but cannot prepare your petitions or forms for you or give legal advice. Schedule: Mondays through Fridays, 9:00 AM to 12:00 PM and 1:00 PM to 3:00 PM. Location: Brooklyn: Clerk’s Office (First Floor) 347-394-1700, U.S. Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Brooklyn 11201. Central Islip: Long Island Federal Court House, 290 Federal Plaza, Central Islip, NY 11722 (available on Wednesday 9:00 A.M. to 3:00 P.M.). Telephone: (631-712-6200)

– **Continued on the back**

Bankruptcy Courts for the Southern and Eastern Districts of New York:

- The **Southern District** services the counties of Bronx, Manhattan, Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan. The website address for the Southern District of New York bankruptcy courts is www.nysb.uscourts.gov. If you live in Manhattan or the Bronx, you may file at any of the following Southern District of New York bankruptcy court locations, but your case will be assigned to the Bowling Green courthouse, which is located in Manhattan:
 - 1 Bowling Green, New York, NY 10004.
Telephone: (212) 668-2870
 - 300 Quarropas Street, White Plains, NY 10601.
Telephone: (914)-390-4229
 - 355 Main Street, Poughkeepsie, NY 12601.
Telephone: (845) 451-6362
- The **Eastern District** services the counties of Brooklyn, Queens, Staten Island, Nassau and Suffolk. The website address for the Bankruptcy Courts of the Eastern District of New York is www.nyeb.uscourts.gov. If you live in Brooklyn, Queens or Staten Island, you may file at any of the following Eastern District of New York bankruptcy court locations, but your case will be assigned to the Cadman Plaza courthouse, which is located in Brooklyn:
 - Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 11201. Telephone: (347) 394-1700
 - Alfonse M. D’Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722. Telephone: (631) 712-6200

