

REAFFIRMATION AGREEMENTS¹

When you file a bankruptcy, most of your debts are discharged and you have no further legal liability to pay those debts. [Debts that are not discharged are generally alimony, student loans, taxes, and child support]. Even if a creditor has a security interest in your property [such as a car loan secured by your car, or a home mortgage secured by your home], the debt itself is discharged and you no longer have any legal obligation to repay that debt. But there are certain circumstances that you might want to legally reaffirm a debt, and even though it was otherwise legally discharged in your bankruptcy, you have agreed to legally reinstate the debt and become liable on the debt that can be enforced in court if you default on the debt sometime in the future. Since the bankruptcy is to give you a fresh start and discharge your debts, the statute and the court require certain stringent requirements to allow a debt to be reinstated and reaffirmed. *Below is a generic basic primer on reaffirmations and may not apply to your particular case, so don't rely on it for your specific case.*

Reaffirmations of Secured Debt. Most lenders require you to reaffirm the debt in order to keep the collateral securing the debt. However, reaffirmations legally reinstate the debt, so please discuss reaffirmation with us before you sign or agree to anything. There are new rules on reaffirmations that have to be followed, and even if you are current on the loan, that doesn't mean the creditor won't repossess the collateral if you don't reaffirm the debt. The bottom line to remember is that if you want to keep an item that is secured to a creditor, you have to reaffirm and pay the creditor.....if you want to keep your car, you have to pay your car loan; if you want to keep your home, you have to pay your mortgage(s). However, upon the filing of the bankruptcy a secured creditor [home mortgages and car lenders, etc.] will usually STOP SENDING YOU MONTHLY BILLS for their payment since their debt is discharged, but, again, if you want to keep the collateral (such as your car or your house) you still have to make the payment even though you won't be getting monthly bills. So, make a photocopy of an older bill and each month send in the regular monthly payment so that you do not default on the loan; as they will be able to repossess their collateral if you do default on the monthly payments.

1. **Mortgages.** Under Washington law, if you are in default on your mortgage on your home, and the mortgage company forecloses [generally without a court lawsuit, as mortgages/deeds of trust are most always foreclosed non-judicially] there generally is no further legal liability to the mortgage company on the debt and all they get is the house back in the foreclosure. As such, mortgages on homes are usually NOT reaffirmed. Since if you default and let the home go back to the mortgage company, they don't get a deficiency claim against you anyway, the court will not approve a reaffirmation of the debt. The mortgage company is secured by the property (house), and if you want to keep your house, you just continue to make the monthly payments,

¹ Note that we will review and advise you in regard to the law on Reaffirmation Agreements, the legal effect and requirement for said agreements [especially in regard to automobile loans], but as set forth in our Information Sheets which were given to you, **we generally will not execute or approve Reaffirmation Agreements**, for the reasons set forth in the Information Sheets, and you will need to seek court approval for them. We will advise you on how you may do that yourself.

and keep the mortgage and/or second mortgage current. If you ever refinance or need to show that the mortgages are being paid and current, most clients request an **Annual Payment History Report** and provide the new lender on a refinance the payment history showing that the mortgage is current and being paid each month.

2. **2nd Mortgages.** This is more problematic for 2nd mortgages. Again, the same rules apply, and if you want to keep your home, you have to pay the 2nd mortgage as well as the first mortgage. Even though the debt (the 2nd mortgage) is discharged in your bankruptcy, they still have a lien on the home, and if you want to retain the home, then you still need to pay the 2nd mortgage. Again, they will stop sending you monthly bills, so make sure you make the payments timely and keep the loan current if you are keeping your home. Again, the court will generally not approve a reaffirmation agreement, even if you file a motion to approve it, since all that would do is set you up for a potentially large deficiency claim by the 2nd mortgage holder if you should ever default on the home and the first mortgage forecloses. Since the first mortgage holder "only gets the house back" as stated above, if you reaffirmed the 2nd mortgage then you have legally reinstated the obligations under the 2nd mortgage Note, and if the first mortgage does foreclose, even though you have no further liability to them, you are now stuck for paying a potentially large 2nd mortgage debt that was otherwise legally discharged. So, the court will generally not allow that circumstance to happen and refuse to allow reaffirmations for 2nd mortgages. So, again, follow the same rules for the 1st mortgage, and make payments on time, keep the loan current, and ask for Annual Payment History reports to prove that you are current and the loan is not in default.
3. **Vehicles:** Even if you don't reaffirm a debt, you may want to keep a debt secured by collateral, and the creditor may allow you to keep it if you stay current on the debt (usually home loans.). But that might not be the case for car loans. So, even if they stop sending you monthly bills because of the bankruptcy, if you owe money on the item of collateral that you want to keep, you **MUST** keep making the payments **ON TIME** to avoid losing the item after the bankruptcy is concluded. Keep making the payments, even if you stop receiving a billing statement. Most car lenders will allow you to reinstate and reaffirm the car loan to keep the car. This has to be done in writing and has to be filed with the court before your discharge is entered to be enforceable against you, and you get a small window to rescind the agreement if you think you were pressured into signing it and change your mind. Some vehicle finance companies / banks will allow you to keep vehicles as long as the payments are on time. However, they may not and they are not required to accept payments without a reaffirmation agreement. And the court will review the agreements and determine if it is in your best interest to reinstate the debt. If the car is way underwater, i.e. you owe \$15,000 on a car that is only worth \$10,000, the court will probably not let you reinstate the debt since that would only set you up for a big deficiency claim if you default and the car is repossessed. So, car loan reaffirmations are disfavored if the car is underwater and you have no equity in the car.

4. There are some downsides associated with this whole process, even if you are current, just like home loans discussed above, in that a Lender may refuse to send you monthly statements, so try to set up "auto pay" from your Bank, or make a copy of an old statement with all the account information, so that if that happens it will be up to you to remember to make your monthly payments as they become due so that you do not run into a default situation. Second, the creditor may not report your regular payments to the credit reporting agencies. This failure to report can cause problems down the road if you attempt to refinance the property or purchase another property, so make sure you request, get and keep Annual Payment History Reports.
5. If you do not wish to retain the collateral, you do not need to repay the debt and we should make arrangements to return the collateral to the creditor. By now, you should have made your intention clear to us whether to surrender collateral, redeem it from the lien encumbering it or reaffirm the debt and make the payment under the terms of the contract.

B. Reaffirmation of Unsecured Debt. You can also reaffirm a debt that is not secured if you want to pay that creditor back even after the bankruptcy. Many companies, such as Visa or Master Card, may request that you reaffirm the debt with them, and they will let you keep your credit card with some nominal credit extended to you. Even though this is a good way to start reestablishing credit, we would caution your reaffirming a general unsecured debt, as a reaffirmation **reinstates** the legal liability to repay that entire debt, and not just new charges. If circumstances change after filing, and you find that you cannot repay that creditor, they would have all of their legal rights to sue and collect on that debt because of the reaffirmation; even though your bankruptcy would have otherwise discharged your legal liability to that creditor. In addition, the court will not approve a reaffirmation where it will pose an undue hardship on you if you reaffirm it. We are not in a position to advise you on a number of reaffirmation circumstances, as we do not monitor your current and future financial circumstances to represent to the court that the reaffirmation is not an undue hardship on you, so we must rely on you in the reaffirmation process. If you want to reaffirm a debt, with the knowledge that you would not otherwise have to pay the creditor back, and you want to pay them for whatever reason [reestablish credit, moral obligation to that particular creditor, etc.], we will not second-guess you, and we may file the reaffirmation agreement with the court on your behalf; **however, because of the new certification rules for reaffirmations that you can make the payments, it will be unlikely that our office will approve any reaffirmations since we are not in a position to certify your ability to make the payments and that in doing so it will not be a hardship.** In doing so, however, you must recognize the legal implications of such reaffirmation.

Please return your completed reaffirmation to Vortman & Feinstein in person, by fax to 206-386-5355, or via email to feinstein2010@gmail.com or kpscordato@gmail.com.