

**CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN  
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO**

**Reaffirmation Agreements.**

**Deadlines & Hearings.** Pursuant to § 524(c), a reaffirmation agreement is only enforceable if it is entered into prior to the granting of a discharge. As such, this Court will not approve a reaffirmation agreement signed after entry of discharge. This Court holds hearings on reaffirmation agreements monthly, usually on a Wednesday afternoon at 3:00 p.m. If your reaffirmation agreement is set for hearing, a notice of hearing will be mailed to you with the details. A debtor may rescind a reaffirmation agreement prior to discharge or within 60 days after the agreement is filed with the court, whichever occurs later.

**Attorney Representation.** If an attorney represented you in filing your chapter 7 bankruptcy case, then your attorney should also advise you on any proposed reaffirmation agreements. Attorneys are not allowed in this district to “unbundle” or limit their scope of representation to exclude this service. See Local Bankruptcy Rule 9010-1 on the Court’s website.

If the debtor has an attorney of record, the Court will not set a hearing on the reaffirmation agreement. It will merely make a docket entry that states, “Debtor is represented by counsel. No further action to be taken on Reaffirmation Agreement.” This same entry will appear whether or not the debtor’s attorney has signed the Reaffirmation Agreement. If the attorney has not signed it, however, the Court will then issue an Order to Show Cause to the attorney, asking why the Court should not sanction the attorney for unbundling this service.

The Court is aware that the national Reaffirmation Agreement form does not presently provide the attorney with a place to indicate that he or she *has* advised the debtor on the Reaffirmation Agreement but does *not* find reaffirmation of the agreement to be in the best interests of the debtor and/or that it does not impose an undue hardship. ***The way that counsel can signal to the Court that he or she has fulfilled the duty to represent the debtor on Reaffirmation Agreements but does not support the reaffirmation is to file a Notice of Advisement, Local Bankruptcy Rule 9010-1.1. This will prevent the issuance of an Order to Show Cause.***

**Questions the Court will ask the Debtor at the Hearing.** For those debtors who are not represented by an attorney, the Court will hold a hearing to consider approval of your reaffirmation agreement. In doing so, the Court will only consider whether approval is the debtor’s best interests and whether it would impose an undue hardship on the debtor or the debtor’s dependents to agree to pay this debt following bankruptcy. The law does not allow the Court to consider the creditor’s best interests or hardship, only the debtor’s.

To make this assessment, the Court will ask some personal questions of the debtor. The reason is not to embarrass the debtor in such a public forum, but only to elicit the necessary information from which the Court can make its decision. These questions will include the following:

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1. The Court will confirm the terms of the debt being reaffirmed (the name of the creditor, the loan balance, the interest rate, and the value of the creditor's collateral). If the debtor is attempting to reaffirm a loan for an amount significantly higher than the value of the collateral (the car or home) that the debtor is trying to keep and the interest is already very high, then the Court may suggest that the debtor take one month to investigate the possibility of replacing this collateral for much less debt. This happens most frequently with car loans, especially if the debtor "rolled over" an old car loan into a new car loan. If the debtor needs to investigate this possibility, then the Court will continue the hearing to another date;
2. Has the debtor always been current on this particular loan? If not, the Court will need to confirm the debtor has been current since the date of signing the reaffirmation agreement. If the debtor has been delinquent in the past, the Court may inquire further to determine whether the conditions that led to the delinquency are likely to continue or reoccur. If the debtor is not current since signing the reaffirmation agreement, the Court is unlikely to approve the reaffirmation agreement as it would not protect the debtor and would only serve to increase the creditor's rights against the debtor following the bankruptcy;
3. If the loan is a car loan, the Court will ask how many vehicles the debtor owns, keeps, or uses. This information is helpful in determining whether the debtor actually needs the car that serves as collateral for this loan;
4. If the loan is a home mortgage, the Court will ask how many loans are secured against the home. If there are multiple mortgages, the Court will ask about the relative priority of these loans. For example, is the loan to be reaffirmed a second mortgage? In many instances, it is not necessary to reaffirm a second mortgage because this lender is much less likely to foreclose;
5. Then the Court will ask about the debtor's "take home" pay or net income after taxes. The Court will inquire as to whether the debtor's primary source of income is stable and dependable or whether it is based on a source that fluctuates greatly (like commissions) or that may not continue into the future (like unemployment income or job income when the company is threatening layoffs);
6. The next topic will be the debtor's total monthly expenses, including mortgage or rent payments, utilities, gas, food, and all other types of expenses. The Court will ask whether the expenses have decreased since filing bankruptcy or whether they are expected to decrease. With these questions, the Court is trying to assess whether the debtor has a sufficient "margin" or cushion to protect against unexpected expenses like car repairs. Often this line of questioning reveals that the debtor is continuing to operate on a negative monthly cash flow, despite shedding many debts in the bankruptcy filing. If this is the case, the Court may continue the hearing and require the debtor to submit a new budget that shows the debtor can eliminate expenses in order to realize a positive cash flow;

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7. If the answers to all of these questions demonstrate that reaffirming the debt will not pose an undue hardship and is in the best interests of the debtor, the Court will first explain to the debtor the legal consequences of reaffirming a debt. This includes the fact that reaffirmation means the debt will not be forgiven by the bankruptcy filing. If the debtor cannot make payments in the future on, for example, a car loan, then the creditor will repossess the car, regardless of whether the debt was reaffirmed. But with reaffirmation, the creditor is able to keep all of its rights and remedies, including the right to sue the debtor for any difference between the value received from selling the car and the amount of debt still owed. With a money judgment against the debtor, it can then garnish the debtor's wages or seize other assets to satisfy the debt. Without reaffirmation, the only thing the creditor can do after the bankruptcy is to repossess the car. With reaffirmation, the personal obligation to pay the debt will follow the debtor and the debtor cannot obtain another bankruptcy discharge for eight years. Once the Court is assured that the debtor understands these risks, the Court will ask if the debtor still desires to reaffirm the debt; and
  
8. With home mortgages, the law provides that the Court does not make the ultimate decision – it is up to the debtor to choose whether to reaffirm the debt, with the Court only providing its advice. With all other types of debts, the decision to approve or not approve the reaffirmation agreement is left to the Court's discretion. The Court will tell the debtor to inform the creditor of the outcome of the hearing.