

**THE
REAFFIRMATION
PROJECT
DEBTOR INFORMATION PACKET**

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Atlanta
Legal Aid
Society

and



Bankruptcy Section of the Atlanta Bar Association

What is a Discharge?

A discharge is an order issued by the bankruptcy court stating that your debts have been forgiven and do not have to be repaid. The discharge only applies to debts that arose before the filing of your bankruptcy case. Certain debts can not be discharged in a chapter 7 or a chapter 13 bankruptcy case. You are not required to reaffirm any debt or sign any agreement regarding a debt that has been or will be discharged in your bankruptcy case.

What is a Reaffirmation Agreement?

When you file a bankruptcy case, some or all of your debts are discharged and you are no longer legally responsible for paying them back. This gives you a “fresh start.” However, after filing your bankruptcy case, you may want to repay a particular debt or you may be asked by a creditor to pay a debt. If you decide that you want to pay any specific debt that otherwise would be discharged, you may be required to sign a reaffirmation agreement and file it with the court.

Under a reaffirmation agreement, you agree to pay a debt even though you could have eliminated the debt in your bankruptcy case. Reaffirmation agreements are strictly voluntary. When you reaffirm a debt, you continue to be legally responsible for paying it back. This gives the creditor some legal rights. For example, if you have a car loan and miss a payment in the future, the creditor can do any of the following things:

- (1) repossess the car;
- (2) sell the car to someone else; and
- (3) sue you for all the money you still owe on the car (the deficiency balance).

When you reaffirm a debt, that debt is treated as if you never filed a bankruptcy case and such debt is not forgiven. This can have serious financial consequences. Therefore, reaffirmation agreements must not impose an undue burden upon you or your family and must be in your best interest. It is wise to consider all of your options before entering into a reaffirmation agreement.

Attached are (i) Official Form B240A, the Reaffirmation Agreement; and (ii) Official Form B240B, the Order on Reaffirmation Agreement. If you wish to reaffirm a debt, these are the forms you should use.

Should I Reaffirm a Debt?

In many cases, you do not need to reaffirm a debt. This will give you the full benefit of a “fresh start” by eliminating your debt. However, you may have special reasons for paying back a particular debt. If this is the case, you may be able to pay it back on a voluntary basis, without signing a reaffirmation agreement. It is a good idea to talk to an attorney to find out what is best for you. You may also find the attached chart helpful.

If you filed your bankruptcy case on or after October 17, 2005, a reaffirmation agreement may be necessary. For example, if you own secured property, such as a car, you must tell the bankruptcy court what you intend to do with it. You have three options:

- (1) keep the car and continue making payments until it is paid off;
- (2) redeem the car by paying it off in a lump-sum payment (this could be less than you owe); or
- (3) return the car to the creditor and owe nothing more.

If you can afford to keep the secured property and continue making payments, it may be necessary to sign a reaffirmation agreement, unless the creditor agrees otherwise. If you decide that you cannot afford to keep the property, you must return it to the creditor. If you decide to return it, the debt will be discharged.

After you file a bankruptcy case, you will receive an appointment to meet with the bankruptcy trustee. This is called the 341(a) hearing or “meeting of the creditors.” After that meeting, you have 30 days to sign a reaffirmation agreement, redeem the secured property or return the secured property to the creditor. If you fail to do one of these things, you may lose important legal rights and the property.

Reaffirmation Hearing

The bankruptcy judge must approve your reaffirmation agreement if you do not have an attorney or if your attorney will not certify the agreement. You will receive a hearing date to appear before a judge and explain why you want to reaffirm the debt. You must also explain how you can afford to make payments in the future. The judge may ask:

- (1) the reasons why you want to reaffirm the debt,
- (2) whether you understand what you are agreeing to,
- (3) whether you are likely to have the ability to maintain the payments, and
- (4) whether the payments will cause a hardship for you or your family.

If you reaffirm a particular debt and the bankruptcy court approves the reaffirmation agreement, that debt is not discharged in your bankruptcy case. You must make the payments, no matter what hardship this may cause you.

Making Payments

While your bankruptcy case is pending, you must continue making payments on your debt to avoid losing your secured property. Your creditor may have stopped sending you the monthly bill after you filed your bankruptcy case. If so, contact the creditor immediately to obtain the correct payment information, including the address and payment date. If you do not hear back from the creditor, it is still your responsibility to send payments on time.

Can I Cancel a Reaffirmation Agreement?

A reaffirmation agreement can be cancelled:

- (1) before the court issues a discharge; or
- (2) within sixty (60) days from the date the reaffirmation agreement is filed with the bankruptcy court.

Free Legal Assistance from Volunteer Attorneys

If you are unsure about the reaffirmation process or have any questions about your agreement, you can receive free legal assistance from volunteer attorneys on the day of your reaffirmation hearing. Please arrive at least **ONE HOUR** prior to your hearing and meet your volunteer attorney in Courtroom 1403 on the 14th Floor, 75 Spring Street S.W., Atlanta, Georgia 30303.

Please bring as much of the following information with you as possible:

- (1) Schedules;
- (2) Statement of Financial Affairs;
- (3) the reaffirmation agreement;
- (4) the motion to approve the reaffirmation agreement;
- (5) contracts with the creditor regarding the debt;
- (6) recent monthly bills, statements and/or payment information; and
- (7) recent correspondence from the creditor.

More information regarding reaffirmation and The Reaffirmation Project is available on the website for the United States Bankruptcy Court for the Northern District of Georgia: www.ganb.uscourts.gov

CONSIDER THIS BEFORE YOU REAFFIRM

Do you really need it?

Answer this question honestly. You may like that new sofa, the new computer or that TV, but its time to make hard choices and you can't keep everything. Only consider reaffirming debts on things you absolutely need, like your car to go to work.

IF YES

Can you get another one for less money? IF SO, DON'T REAFFIRM!

Can you really afford it? (I MEAN REALLY!!) IF NOT, DON'T REAFFIRM!

Has the creditor offered you a "new deal," credit card or anything else to reaffirm?

WEIGH YOUR OPTIONS- LOWER INTEREST RATES AND BETTER PAYMENT TERMS MAY NOT BE THE ANSWER

You still want to reaffirm?

So you still want to keep it.

Can your creditor repossess or take the property if you don't make your payments? Make sure the creditor shows you the paper that says they can take your property. If they can't, DON'T REAFFIRM!

Are you way behind on your payments? If you do not have a real chance to catch up, you will default later and lose your property anyway. DON'T REAFFIRM!

When you owe a lot of money and the creditor is offering to give you new credit or keep your account in good standing, be careful and think:

ARE THERE CHEAPER WAYS TO GET CREDIT?

BEFORE YOU SIGN...

**IF NO,
GIVE IT BACK!**

- If you decide to reaffirm, you must sign the reaffirmation agreement before you get a discharge.
- Do you understand the agreement? Amount you owe? Payment terms? Are all agreed terms in the document?
- If you don't have an attorney, the bankruptcy court must approve the agreement before it is binding and a creditor can enforce it.
- If you change your mind you can cancel the agreement anytime before your discharge or 60 days after the agreement is filed with the court, whichever comes later. Just tell the creditor (in writing is best), and the agreement is cancelled. This is your right to rescind the agreement.

Presumption of Undue Hardship
 No Presumption of Undue Hardship
(Check box as directed in Part D: Debtor's Statement
in Support of Reaffirmation Agreement.)

UNITED STATES BANKRUPTCY COURT

District of _____

In re _____,
Debtor

Case No. _____
Chapter _____

REAFFIRMATION AGREEMENT

[Indicate all documents included in this filing by checking each applicable box.]

- Part A: Disclosures, Instructions, and Notice to Debtor (pages 1 - 5)
- Part B: Reaffirmation Agreement
- Part C: Certification by Debtor's Attorney
- Part D: Debtor's Statement in Support of Reaffirmation Agreement
- Part E: Motion for Court Approval

[Note: Complete Part E only if debtor was not represented by an attorney during the course of negotiating this agreement. Note also: If you complete Part E, you must prepare and file Form 240B - Order on Reaffirmation Agreement.]

Name of Creditor: _____

- [Check this box if]* Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act

PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR

1. DISCLOSURE STATEMENT

Before Agreeing to Reaffirm a Debt, Review These Important Disclosures:

SUMMARY OF REAFFIRMATION AGREEMENT

This Summary is made pursuant to the requirements of the Bankruptcy Code.

AMOUNT REAFFIRMED

The amount of debt you have agreed to reaffirm: \$ _____

The amount of debt you have agreed to reaffirm includes all fees and costs (if any) that have accrued as of the date of this disclosure. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.

Form 240A - Reaffirmation Agreement (Cont.)
ANNUAL PERCENTAGE RATE

[The annual percentage rate can be disclosed in different ways, depending on the type of debt.]

a. If the debt is an extension of “credit” under an “open end credit plan,” as those terms are defined in § 103 of the Truth in Lending Act, such as a credit card, the creditor may disclose the annual percentage rate shown in (i) below or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate disclosed, or that would have been disclosed, to the debtor in the most recent periodic statement prior to entering into the reaffirmation agreement described in Part B below or, if no such periodic statement was given to the debtor during the prior six months, the annual percentage rate as it would have been so disclosed at the time of the disclosure statement: _____%.

--- And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: _____%. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:

\$ _____ @ _____ %;
\$ _____ @ _____ %;
\$ _____ @ _____ %.

b. If the debt is an extension of credit other than under than an open end credit plan, the creditor may disclose the annual percentage rate shown in (i) below, or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate under §128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to entering into the reaffirmation agreement with respect to the debt or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed: _____%.

--- And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: _____%. If different simple interest rates apply to different balances included in the amount reaffirmed,

2. INSTRUCTIONS AND NOTICE TO DEBTOR

Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

6. If the creditor is not a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. If the creditor is a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.

7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

Frequently Asked Questions:

What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A “lien” is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State’s law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

NOTE: When this disclosure refers to what a creditor “may” do, it does not use the word “may” to give the creditor specific permission. The word “may” is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

PART B: REAFFIRMATION AGREEMENT.

I (we) agree to reaffirm the debts arising under the credit agreement described below.

1. Brief description of credit agreement:

2. Description of any changes to the credit agreement made as part of this reaffirmation agreement:

SIGNATURE(S):

Borrower:

Accepted by creditor:

(Print Name)

(Printed Name of Creditor)

(Signature)

(Address of Creditor)

Date: _____

(Signature)

Co-borrower, if also reaffirming these debts:

(Printed Name and Title of Individual
Signing for Creditor)

(Print Name)

Date of creditor acceptance:

(Signature)

Date: _____

PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).

[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

[Check box, if applicable and the creditor is not a Credit Union.] A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: _____

Signature of Debtor's Attorney: _____

Date: _____

PART D: DEBTOR’S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

[Read and complete sections 1 and 2, **OR**, if the creditor is a Credit Union and the debtor is represented by an attorney, read section 3. Sign the appropriate signature line(s) and date your signature. If you complete sections 1 and 2 **and** your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating “Presumption of Undue Hardship.” Otherwise, check the box at the top of page 1 indicating “No Presumption of Undue Hardship”]

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$_____, leaving \$_____ to make the required payments on this reaffirmed debt.

I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____

(Use an additional page if needed for a full explanation.)

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: _____

(Debtor)

(Joint Debtor, if any)

Date: _____

— Or —

[If the creditor is a Credit Union and the debtor is represented by an attorney]

3. I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: _____

(Debtor)

(Joint Debtor, if any)

Date: _____

PART E: MOTION FOR COURT APPROVAL

[To be completed and filed only if the debtor is not represented by an attorney during the course of negotiating this agreement.]

MOTION FOR COURT APPROVAL OF REAFFIRMATION AGREEMENT

I (we), the debtor(s), affirm the following to be true and correct:

I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

Therefore, I ask the court for an order approving this reaffirmation agreement under the following provisions (*check all applicable boxes*):

- 11 U.S.C. § 524(c)(6) (debtor is not represented by an attorney during the course of the negotiation of the reaffirmation agreement)

- 11 U.S.C. § 524(m) (presumption of undue hardship has arisen because monthly expenses exceed monthly income)

Signed: _____
(Debtor)

(Joint Debtor, if any)

Date: _____

United States Bankruptcy Court

_____ District of _____

In re _____,
Debtor

Case No. _____
Chapter _____

ORDER ON REAFFIRMATION AGREEMENT

The debtor(s) _____ has (have) filed a motion for approval of
(Name(s) of debtor(s))
the reaffirmation agreement dated _____ made between the debtor(s) and
(Date of agreement)
_____. The court held the hearing required by 11 U.S.C. § 524(d)
(Name of creditor)
on notice to the debtor(s) and the creditor on _____.
(Date)

- COURT ORDER:
- The court grants the debtor's motion under 11 U.S.C. § 524(c)(6)(A) and approves the reaffirmation agreement described above as not imposing an undue hardship on the debtor(s) or a dependent of the debtor(s) and as being in the best interest of the debtor(s).
 - The court grants the debtor's motion under 11 U.S.C. § 524(k)(8) and approves the reaffirmation agreement described above.
 - The court does not disapprove the reaffirmation agreement under 11 U.S.C. § 524(m).
 - The court disapproves the reaffirmation agreement under 11 U.S.C. § 524(m).
 - The court does not approve the reaffirmation agreement.

BY THE COURT

Date: _____

United States Bankruptcy Judge