

REAFFIRMATION AGREEMENT

Purpose of the Form

The ultimate goal of an individual debtor in a bankruptcy proceeding is to obtain a discharge of debts. However, there are times when a debtor does not wish to discharge a particular debt. This usually occurs when a debt is secured by personal property, such as a car.

Nothing prevents a debtor from voluntarily repaying all or part of a debt. However, nothing can force a debtor to repay a discharged debt unless the debtor signs a reaffirmation agreement. Because the debtor is not legally obligated to repay a discharged debt, creditors whose debts are secured by collateral, such as a car, may insist that the debt owed to them be reaffirmed, or they may foreclose on the collateral.

To protect the debtor from undue pressure or from reaffirming a debt that is not in the debtor's best interest, the law requires the attorney for the debtor to carefully explain the debtor's rights to the debtor. If the debtor is not represented by an attorney, the law requires the court to review the record to determine whether the reaffirmation agreement imposes an undue burden on the debtor or a dependent of the debtor and whether the agreement is in the debtor's best interest.

Form B 240 has been revised so that it may be used both by debtors who are represented by an attorney during the course of negotiating the reaffirmation agreement and by those debtors who are not represented by an attorney. The revised form incorporates requirements added to the Bankruptcy Code by the Bankruptcy Reform Act of 1994 and also adopts many of the suggestions made in the final report of the National Bankruptcy Review Commission.

This agreement should only be signed if the debtor intends to again become legally responsible for a debt which would otherwise be discharged in a bankruptcy proceeding.

Applicable Law and Rules

1. Sections 524(c) and (d) of the Bankruptcy Code (11 U.S.C § 524(c), (d)) govern reaffirmation agreements.
2. Section 524(c)(1) provides that, in order to be enforceable, a reaffirmation agreement must be made before the court grants a discharge. (An agreement is "made" when it is signed by both parties.)
3. To protect a debtor from undue pressure exerted by a creditor who seeks to force the debtor to reaffirm a debt, section 524(c) permits the debtor to rescind a reaffirmation agreement at any time prior to discharge or within 60 days after the agreement is filed with the court, whichever occurs later, by giving notice of rescission to the creditor.

4. As an added protection, if the debtor is represented by an attorney, section 524(c)(3) provides that the attorney must sign an affidavit or declaration that the debtor is aware of all the debtor's rights, that the agreement is voluntary, that the repayment of the debt will not cause any undue hardship to the debtor or a dependent of the debtor, and that the attorney has fully advised the debtor of the legal effects and consequences of the agreement and of a default under such an agreement.
5. Section 524(c)(3) requires that reaffirmation agreements be filed with the court. Because filing triggers both the beginning of the rescission period and the scheduling of the reaffirmation hearing, the agreement should be filed promptly.
6. If the debtor is not represented by an attorney, section 524(c)(6) states that the reaffirmation agreement must be approved by the court, which will determine whether the reaffirmation will impose an undue hardship on the debtor or a dependent of the debtor, and whether the reaffirmation is in the best interest of the debtor. Some courts will only make these findings after a hearing. The debtor who is not represented by an attorney should obtain a copy of the local rules from the clerk and check the rules regarding the procedure for approval of a reaffirmation agreement.
7. Fed. R. Bankr. P. 4008 dictates that a hearing to explain the effect of a reaffirmation agreement must be held on not less than 10 days notice to the debtor and the trustee and within 30 days following the entry of the order granting or denying a discharge.
8. In order to give the court sufficient time to schedule the reaffirmation hearing within the 30-day period and give 10 days notice, the agreement should be filed as soon as possible after it is made and no later than 15 days after the entry of the discharge. Rule 4008 requires that a motion by the debtor for approval of a reaffirmation agreement be filed before or at the hearing. As discussed above, the agreement must be made before the discharge is granted.
9. Fed. R. Bankr. P. 4004(c) provides that the court may defer entry of the order granting the discharge on the debtor's motion. This gives the debtor additional time to make a reaffirmation agreement before the court grants the discharge.

Instructions for the Debtor and Creditor

Form B 240 is designed so that it may be used both by debtors who are represented by an attorney during the course of negotiating the reaffirmation agreement and by those debtors who are not represented by an attorney.

The debtor should review carefully the "Notice to Debtor" which is printed on the first two pages of the form.

The debtor's name and the case number should be written in the appropriate blanks at the top of the first page of Form B 240, which is intended to be self-explanatory. The form contains sections to be completed, signed, and dated by the debtor, the creditor, and the debtor's attorney — if the debtor is represented by an attorney. The form requires information on the nature and amount of the debt, any security or collateral for the debt, the documents which created and perfected the security interest or lien (unless they are attached), the debtor's finances, and the debtor's decision to reaffirm the debt. In addition, if the debtor is represented by an attorney, the attorney must make the certification required by 11 U.S.C. § 524(c)(3) before the agreement is filed with the court. The certification is set out on the last page of the form.

If court approval of the reaffirmation agreement is required because the debtor was not represented by an attorney during the negotiation of the agreement, a motion should be filed requesting court approval of the agreement. Form B 240M may be used for this purpose. In addition, unless the motion is filed by the debtor and creditor jointly, a copy of the motion and a completed copy of Form B 20A, Notice of Motion or Objection, should be served on the other party and filed with the court. The original agreement must be filed with the motion and notice.

General Information for the Clerk

Under section 524 of the Code, the court is no longer required to hold a discharge hearing. Nor does the court need to review and approve a reaffirmation agreement, if the debtor is represented by an attorney and the agreement is made and filed before the discharge order is entered.

If the debtor is not represented by an attorney, court action is necessary.

Although Form B 240 no longer contains a motion for court approval of the reaffirmation agreement and a section in which the judge may approve or disapprove the agreement, Form B 240M, Motion for Approval of Reaffirmation Agreement, and Form B 240O, Order Approving Reaffirmation Agreement, may be used for these purposes. The moving party should complete Forms B 240M and B 20A, Notice of Motion or Objection, serve them on the other party, and file them with the court, together with the original agreement document. If the debtor and creditor file the motion jointly, the notice is not required.

Many courts require that a debtor who is not represented by an attorney appear at a reaffirmation hearing even when the reaffirmation agreement and motion are filed prior to the entry of the discharge order, so that the judge may make inquiries of the debtor. Other courts simply forward the agreement and motion to the judge for review and signature. If the procedure is fixed by local rule, a copy of the rule should be given to debtors with this form and instructions. Form B 240O may be used by the judge to approve or disapprove the reaffirmation agreement.

In order to avoid having debtors attempt to reaffirm debts long after the discharge is granted, section 524(c)(1) requires that the agreement be made before the discharge is granted. Section 524(c)(3) requires that the agreement be filed with the court. Because Rule 4008 requires a reaffirmation hearing to be held, on ten days' notice to the debtor and trustee, no later than 30 days after the entry of the discharge, reaffirmation agreements must be filed in time to schedule and give notice of the hearing.