
SECURED PROPERTY: REAFFIRMATION AGREEMENTS

A Reaffirmation Agreement is a contentious option. Some attorneys may encourage you to reaffirm while others stringently oppose. So why is this contentious?

A reaffirmation agreement is a legally binding agreement filed with the court that you will continue to be held liable for your home and/or car loan(s). If you reaffirm a debt and then fail to pay it, you will owe the debt the same as though you never filed bankruptcy. The debt is not discharged and the creditor can take legal action to recover a judgment against you.

We strongly believe in the power of the discharge and therefore we do not believe it is in our client's best interest to retain debt on property that is often upside down in value and/or incurred at a time of deep financial distress and turmoil.

The most prudent option is to simply **retain and pay**.

To retain and pay you continue to pay your home/vehicle loan on time, each month and at the end of the repayment period the property is yours. If you find you can no longer make payments at a time in the future, the discharge granted you the ability to surrender this property with no financial implications because the debt was discharged. A reaffirmation functions as if you never filed bankruptcy.

THE DEBT IS DISCHARGED, BUT THE LIEN REMAINS

UNDERSTANDING YOUR CAR AND HOME LOANS

First understand the three documents relating to the ownership of your home:

1. Deed – This is the document that says *who owns the home*
2. Mortgage – This is the document that allows the *bank* to foreclose on your home if you are not current.
3. Note - This is the document that makes you personally responsible for the *money owed* on the home.

Scenario:

- You have now received a discharge
- You did not reaffirm the mortgage
- You still have the property
- You have continued to make payments per the terms of the original loan

In a nutshell: The underlying debt (The note) has been discharged, but the creditor still has a lien on the collateral (The Mortgage.) As long as you continue to make the payments they can't bother you or the collateral (The Deed is still in your name and you still own the property.) If you ever default, then they can foreclose, *but they can never claim that you owe*

them any money. That would be a violation of the bankruptcy discharge, for which you could file suit against them!

Reaffirmation relating to the ownership of your car:

In short, the same applies to the note on your car. Keep making payments, on time each and every month and at the end of the term, the car is officially yours.

You can stop here or continue reading below for a more detailed explanation regarding home ownership.

In a little more detail: When you took out this loan you signed papers which gave the creditor two different rights:

1. to collect money from you; and
2. to take the property away from you if you failed to make the payments (or if you otherwise defaulted on the terms of the loan).

The bankruptcy discharge eliminates their right to demand money from you, but in most (almost all) cases it does not affect the lien that they have on your property. This creates the interesting situation described above, where for most purposes the mortgage remains in effect, but you now have the absolute right to walk away at any time if that turns out to be the right thing for you. This is especially true if you have always been current on the payments for this particular loan. They are not allowed to foreclose unless you are in default, and despite what your contract might say, the law does not consider bankruptcy to be a default for these purposes. However, even if you did default in the past, if they continue to accept payments from you then legally they have waived the default, which puts you right back into the driver's seat.

THE BOTTOM LINE: If you want to keep the property, just keep making the payments and be sure to comply with any other contractual terms, such as paying local property taxes and maintaining valid insurance. If you eventually pay off the loan you will own the property outright. But if you ever decide that paying for the property is not in your best interest, whether that's because you can't sell it for enough to pay off the mortgage(s), or because you simply can't afford to make the payments, you can simply walk away and there's nothing the mortgage company can say about it. They can still foreclose under the mortgage, but that's all they can do.