



A reaffirmation agreement in bankruptcy is a new contract signed between you and a lender that reaffirms your debt and personal liability for the obligation. The Bankruptcy Reform Act of 2005 states that any reaffirmation agreement(s) must be entered into prior to the filing of a discharge in bankruptcy.

Some creditors believe that the new 2005 bankruptcy law requires that a debtor sign a reaffirmation agreement if they want to retain the vehicle.

The reason that a reaffirmation agreement is such a potentially disastrous contract for the Chapter 7 debtor is simply this: in the absence of a reaffirmation agreement, if you fell on hard times after your Chapter 7 bankruptcy case closed and defaulted on your car payments, then sure, the lender could repossess the car. But, importantly, they could not sue you for the “deficiency” between what you then owed and the value of the car (plus interest, attorneys’ fees, impound fees).

But if a Chapter 7 debtor signs a reaffirmation agreement, then that creates a brand new, post-bankruptcy binding contract, which allows the lender to sue the bankruptcy debtor in the event of a repossession subsequent to his or her bankruptcy. And, one must remember, you can only obtain a Chapter 7 discharge once every 8 years!

Therefore, if the Chapter 7 debtor were to lose his or her job, say, one year after receiving a Chapter 7 bankruptcy discharge, and as a result default on the reaffirmed car loan, then the lender can not only repossess the car, but also sue the debtor, and he or she will not be able to discharge that new lawsuit in bankruptcy.

Bankruptcy debtors should try to avoid reaffirmation agreements if possible because reaffirmation agreements, by and large, do NOT benefit the reaffirming debtor. Instead they set up the reaffirming debtor for a law suit later if he or she defaults.

Thus, the smart debtor doesn’t sign a reaffirmation agreement unless it includes better terms on a new contract and he or she is certainly permitted to do so.

FYI, the only lenders that do routinely repossess cars without a reaffirmation agreement post bankruptcy despite the fact that the borrower is current are Ford Motor Credit and Chrysler Financial.