

Reaffirmations



**For a Free Consultation
with one of our
experienced attorneys,
call (303) 300-6684.**

Morse & Associates, LLC

910 Sixteenth Street, Suite 1100
Denver, CO 80202
Phone: (303) 300-6684
Fax: (720) 941-2755
Web Page: morsebankruptcy.com
E-Mail:
morse_associates@morsebankruptcy.com

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The Basics

The information enclosed is only intended to give individuals considering bankruptcy an overview of the process. It should not be used as a legal authority and does not speak to any particular case. You should always speak to an experienced attorney prior to making any decision regarding your bankruptcy.



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Secured property in Chapter 7 bankruptcies must be treated in 1 of 3 ways. The property may be kept; this process is called reaffirmation. If the property is surrendered to the creditor, this is called a surrender. The payment of the note secured by the property is adjusted, in many instances this is done through a process called redemption.

If your decision is to reaffirm or keep your property, then you may be asked to sign a formal Reaffirmation Agreement. Most notably reaffirmation takes place with cars and homes. In a Chapter 7 bankruptcy you must generally be current on your car and/or home in order to keep the property. You must also continue to make your regular monthly payments on these properties.

Many lenders, within their rights under the new bankruptcy codes, require a Reaffirmation Agreement to be signed. Debtors should be careful to review Reaffirmation Agreements to ensure that key terms to the financing have not changed to their detriment. Most notably debtors should pay attention to the balances and interest rates reflected in Reaffirmation Agreements.

Reaffirmations Continued...

Reaffirmation Agreements are contracts between the debtor and the lender to take that one particular debt out of the bankruptcy. In most case, it simply requires the debtor to continue to making the payments they have been making in the same way that they have always made them. Debtors must be absolutely certain that they can continue to make these payments. If a formal Reaffirmation Agreement has been signed by the debtor and approved by the Court, there will be no protection afforded the debtor by the Bankruptcy Courts should they cease payment on the reaffirmed debt.

Reaffirmed debts which are later repossessed or foreclosed will be collected upon by the lender as if the bankruptcy had never taken place. For example, take a reaffirmed vehicle where the vehicle's value is \$10,000.00 but the note secured by that vehicle is \$15,000.00. The debtor reaffirms the note only to find 3 or 4 months later they are unable to pay it. When the lender discovers the lack of payment, the lender can repossess the vehicle and sell the vehicle at auction.

If the lender was to receive \$5,000.00 for the vehicle this amount of money

would come off of the amount owed on the note. Reducing the note from \$15,000.00 to \$10,000.00, the lender would then include the cost of acquiring and selling the vehicle, typically \$1,500.00 to \$2,000.00. In our example, the reaffirmed vehicle that the debtor could not pay for and was repossessed now shows as a liability against debtor of approximately \$11,500.00 to \$12,000.00. For this reason, it is absolutely essential that debtors be certain that they can continue to pay for debts that they choose to reaffirm.

If you would like more information regarding Reaffirmations, please call 303-300-6684 for a FREE CONSULTATION with one of experienced attorneys.