Reaffirmation Agreements

When a borrower files for relief under Chapter 7 of the United States Bankruptcy Code, the borrower is typically entitled to a discharge of the borrower's debts. One of the exceptions to discharge occurs when the creditor and borrower voluntarily agree to enter into a reaffirmation agreement. A debt, subject to a properly executed and filed reaffirmation agreement, allows that debt to "pass through" the bankruptcy and not be discharged by the bankruptcy court.

A reaffirmation agreement creates a new contract between the creditor and the borrower. Typically, a reaffirmation agreement is used for secured debt, most commonly associated with a mortgage on real property or a security interest in an automobile. Although it is uncommon, there is no prohibition against a debtor reaffirming an unsecured debt.

The reaffirmation agreement forms have been updated on a number of occasions over the past five years. If you use a reaffirmation agreement, it is important to make sure that it includes all of the necessary documentation required by the court for approval.

The fully executed reaffirmation agreement must be filed with the bankruptcy court prior to the borrower's discharge date. In most instances, the discharge date will be 60 days after the first date set for the first meeting of creditors. If the reaffirmation agreement is not filed with the bankruptcy court prior to the discharge date, it may be ineffective and the bankruptcy court can deny approval of the reaffirmation agreement altogether.

It is totally voluntary that a debtor and creditor sign a reaffirmation agreement. In the event that the borrower chooses not to sign a reaffirmation agreement, the underlying debt associated with the loan transaction will be discharged by the court. If the loan is secured, the lender will always have its rights to repossess or foreclose upon the collateral. The filing of a bankruptcy petition typically is an event of default under the loan, in and of itself. Therefore, in those instances where a debtor refuses to sign a reaffirmation agreement, but continues to keep the payments current under the secured loan, the lender can accept the payments until a monetary default occurs (at which time the lender can pursue the collateral, but cannot pursue any deficiency claim against the debtor), or bring a motion to have the bankruptcy stay lifted so it can pursue repossession or foreclosure.

The primary benefit to the lender of entering into a reaffirmation agreement is that if there is a default later on, the lender retains the right to pursue not only the repossession or foreclosure of the collateral, but the borrower(s) for any deficiency claim that may arise after repossession or foreclosure of the secured property.

In today's business climate, reaffirmation agreements are becoming increasingly rare. Legal counsel representing debtors are very hesitant to recommend that the borrower sign reaffirmation agreements. Those attorneys are also leery of signing off on the reaffirmation agreement, because the reaffirmation agreement requires that the bankruptcy attorney make a representation that the

reaffirmation agreement, and the attendant future payments, will not create an undue hardship on the debtor. Most bankruptcy attorneys do not want to expose themselves to a claim against them if the debtor has “reaffirmation remorse”.

Despite their decreased use, reaffirmation agreements are still something to consider pursuing when the lender receives notification of a bankruptcy filing. Anastasi & Associates has all of the updated reaffirmation agreement forms available and we have paralegals and attorneys alike capable of handling the reaffirmation process efficiently and cost effectively.