



**PETERSON, PETERSON, WALCHLI & ROBERSON LLP**

Attorneys at Law

230 NE Second Avenue, Suite C, Hillsboro, OR 97124

T: 503.547.0576 ♦ F: 503.547.0543 ♦ www.petersonlaw.net

---

---

**REAFFIRMING DEBTS**

**1. What does reaffirming a debt mean?**

If a debt is reaffirmed, you will owe the debt as if you had never filed for bankruptcy protection. In most instances, clients will try to reaffirm debt on a vehicle. After a debt is reaffirmed and your bankruptcy case is over, and if you fail to make payments, the lender can repossess the vehicle, sell it, and sue you if any money is left owing to the lender.

**2. Will the judge reaffirm the debt?**

In order for a debt to be reaffirmed, a bankruptcy judge must find that (1) you have the ability to repay the debt and that (2) it is in your (and your dependent's) best interest that the debt is reaffirmed. This requires a short court hearing 2-3 months after the meeting with the trustee.

Typically, judges DO NOT reaffirm debt on a vehicle (1) if you owe a lot more money than the vehicle is worth, (2) the judge does not believe you have enough income to make the payment given your other expenses, or (3) the interest rate, or other terms in the reaffirmation agreement, are not fair.

**3. What are the pros and cons of reaffirming debt?**

	Lender	Debtor
Judge APPROVES the Reaffirmation Agreement	PRO: If you fail to make payments, the lender can repossess the vehicle and sue you for any amounts that remain owing, plus collection fees. You can also be sued for failing to insure or reasonably maintain the vehicle.	PRO: By making timely payments, you will re-build your credit. CON: If you fail to make payments, the lender can repossess the vehicle and sue you for any amounts that remain owing, plus collection fees.
Judge DENIES the Reaffirmation Agreement	CON: If you fail to make payments, the lender can repossess your vehicle, but the lender CANNOT sue you for failing to make payments. You can still be sued for failing to insure or reasonably maintain the vehicle.	PRO: If you fail to make payments, you can voluntarily give the vehicle back to the lender and the lender cannot sue you for failing to make payments. CON: Making timely payments does not re-build your credit because your personal obligation to pay the debt was discharged in bankruptcy.

#### **4. Should I reaffirm the debt?**

This is your choice. Sometimes, you may not have any other good options. If you do not remember what we discussed about alternatives to reaffirmation (or we did not mention it), please call us so we can advise you.

*PLEASE CAREFULLY READ PAGES 5-7 OF YOUR REAFFIRMATION AGREEMENT BEFORE SIGNING IT.*

Most of the time, the terms in the reaffirmation agreement are the same as before you filed for bankruptcy protection. Sometimes, the terms of the reaffirmation agreement are BETTER for you (such as a lower interest rate) because the lender wants the judge to reaffirm the debt.

#### **5. If the judge denies the reaffirmation agreement, and I want to keep the vehicle, what do I do?**

If the judge denies the reaffirmation agreement, then you can continue to make vehicle payments as you did prior to filing for bankruptcy protection. The lender *could* repossess the vehicle, but lenders often do not do this because it is not in their financial interests to repossess as long as you are making timely payments. If the terms in the reaffirmation agreement are BETTER for you, some lenders will honor the terms in the reaffirmation agreement even if the judge denies your request to reaffirm the debt, but do not count on it.

#### **6. How come you, as my attorney, do not appear with me at the reaffirmation hearing?**

If I represent you at the reaffirmation hearing, the Bankruptcy Code requires me to certify, in writing, that you have the ability to repay the debt. I believe this requirement interferes with the attorney-client relationship because it is sometimes to your advantage to have the judge deny reaffirmation, as explained above.

#### **7. What can I expect to happen at the reaffirmation hearing?**

You will be in a courtroom. When your name is called, you will approach the tables where the parties sit. The judge will ask you a few questions, such as how you are paying your expenses and why do you want to reaffirm the debt. The judge will likely explain what the effect of reaffirming a debt is, and ask you if you understand.

The lender's attorney will most likely not be present. Before the hearing, you and the lender have signed a reaffirmation agreement, and it has been filed with the court. For this reason, a reaffirmation hearing is not an adversarial or high-conflict hearing because you and the lender have already agreed to reaffirm the debt.