

A. FORM

For any reaffirmation agreement, the following is a non-exclusive list of items as to the form and filing:

Signed by debtor(s) and debtor's attorney if there is one, and the creditor,

The form of the reaffirmation agreement needs to be on something pretty closely resembling the latest official form,

It must include the reaff cover sheet, with the Filer's Certification filled out,

Showing the collateral, collateral value, amount of debt due on date of petition and amount sought to be reaffirmed, interest rate, monthly payment (and how many months of payments), etc. (all details required in the reaff cover sheet),

Must be readable, and

Timely filed (see Rule 4008 and sec 524(m)).

For a 524(m) review (that is, when the creditor is not a credit union):

The "undue hardship" boxes: one of them should be checked [but this is not on reaff cover sheet]; and

Agreement must comply with Rule 4008, which requires explicitly showing the schedule I and J budget numbers if [in effect, given the reaff cover sheet form, whether or not] they are different from the current budget numbers asserted by the debtor and an explanation of why the Schedule I and J numbers differ from the debtor's current budget numbers (if they do differ) - this is on the reaff cover sheet and must be completed.

ASSUMING THE REQUIREMENTS AS TO "FORM" HAVE BEEN MET, THE COURT MOVES ON TO THE SUBSTANCE OF THE REAFFIRMATION AGREEMENT:

B. SUBSTANCE (Note: the two analyses required by §524(c) and (d) and by §524(m) are entirely independent of each other, so that there may be a review of and/or hearing on a reaffirmation agreement on either or both grounds.)

1. §524(c) and (d) - self represented debtors

Judge must conduct a hearing on a reaffirmation agmt

if debtor is pro se

but not if the reaffirmation is for a "consumer debt secured by real property".

2. §524(m) - undue hardship cases

Judge must review a reaffirmation agreement

if undue hardship is indicated,

but not if the creditor is a credit union,

whether or not the debtor is pro se or the debtor's lawyer signs off on the reaffirmation agreement, and

whether or not the debt is a "consumer debt secured by real property".

If Part D shows that the debtor cannot "afford" the payment (that is, if the income figure minus the expenses figure without the payment at issue leaves a number which does not equal or exceed the payment at issue), there is a presumption of undue hardship. E.g., income of \$4,000 less \$3,700 (excluding the monthly \$500 car payment) = \$300, which is less than the \$500 car payment; or, \$4,000 net income minus total expenses of \$4,200 (which figure includes the monthly car payment) = <\$200>. If there is a presumption of undue hardship, the debtor must explain how the debtor will be able to afford the payment. An explanation that someone else who can afford the payment is making the payment may be sufficient; an explanation that the debtor will prioritize

this payment or the debtor has learned to reduce expenses will likely not be sufficient.

Note: even if the form is deficient, if the deal is particularly advantageous for the debtor (for example, a significant reduction in the principal balance and in the interest rate), the reaffirmation agreement will likely be approved.