



Questions for Volunteers to Ask Debtors Before Reaffirmation Hearings

Note: This checklist packet should not be construed as legal advice, and is only intended as a guide to assist volunteers in this process.

Updated on October 15, 2012



Counseling Debtors Before Reaffirmation Hearings

1. **REAL PROPERTY**: Is the reaffirmation agreement for a home or any other kind of real property?
 - a. If **YES**:
 - i. Do you know the bankruptcy judge does not have the right to affirm this kind of agreement?
 - ii. Are you aware that the agreement you filed may result in personal liability for the loan, even if the judge does not approve the agreement?
 - iii. Do you know that you have time to rescind the agreement?
 - iv. Would you like more information about how to do this?
 1. Refer to Bankruptcy Self Help Desk (tell debtor we will be handing out flyer before the hearings begin).
 - b. If **NO**, move on to question 2.

2. **PERSONAL PROPERTY**: What kind of personal property is the reaffirmation agreement for (i.e., auto, furniture, computer equipment, timeshare)?
 - a. **AUTO**:
 - i. Is the reaffirmation agreement for a car loan?
 1. Who drives the car?
 2. What is the value of the car?
 3. What are the monthly payments on the car?
 4. Are you current with insurance on the vehicle?
 5. Are you current on your payments?
 - a. If **NO**, why?
 - i. Are you having difficulty making payments?
 - ii. Are they refusing to take payments? Please advise client to inform the bankruptcy judge that this is happening.
 - iii. How much time to do you need to get current?
 - iv. You can request that the judge postpone this hearing until you become current because the bankruptcy judge could deny your agreement if he/she believes you don't have the ability to stay current on your payments.
 - b. If **YES**, is it easy or difficult to make the payments?
 - i. If your income is not enough to cover your expenses, the judge is likely to deny the reaffirmation agreement.

- ii. Did the lender reduce your interest in the reaffirmation agreement, or lower your payments or the amount you owe?
- iii. Have you asked your lender about reducing the interest rate, lowering your payments or reducing the amount you owe on the vehicle?
- iv. If not, did you know you can request a continuance so that you can speak with the lender about this? (Explain that bankruptcy judge cannot force the lender to change terms of the contract with lender.)

b. **OTHER PROPERTY**: Is reaffirmation agreement for something other than a car?

i. What is the property that you are reaffirming under this agreement?

1. What is the value of the property now?
2. Why do you want to reaffirm?
3. Explain that judge may deny the agreement, in order to protect your right to a fresh start in the bankruptcy process.

c. **Explain what a reaffirmation agreement is** and that the court will examine several factors to determine whether this agreement is an undue hardship. Please advise debtors that if the bankruptcy judge asks them if they want to withdraw or dismiss the reaffirmation agreement that **a creditor could exercise its option to repossess the car if the judge withdraws or dismisses the reaffirmation agreement.**

3. **FINANCIAL MANAGEMENT COURSE**: Did you know there is a second online course, called the financial management course, which you must do after filing for bankruptcy relief?

a. Did you already complete the financial management course?

i. If **NO**:

1. Please advise debtor to complete the course and file the certificate and cover sheet (Form B23) with the court (**NOT** the trustee) immediately.
 - a. Refer debtor to Bankruptcy Self Help Desk if debtor needs further assistance.

ii. If **YES**:

1. Did you already file the certificate and Form B23 with the bankruptcy filing window (**NOT** with the trustee)?
 - a. If **NO**, refer to Bankruptcy Self Help Desk for assistance.
 - b. If **UNSURE**, refer to bankruptcy filing window to ask the bankruptcy court clerk to check, or refer to Bankruptcy Self-Help Desk.

WARNING: If you do not file the certificate and Form B23, **your case will be CLOSED without a discharge** (meaning you will **still owe all your debts**), and **you will have to pay \$260 to reopen your case** later to try to correct this problem and receive a discharge.