

Reaffirmation is the only way to remain liable on a debt that is otherwise dischargeable in a Chapter 7 bankruptcy.

At least in Michigan, signing a reaffirmation agreement is never a good idea, unless the bank is changing the terms to your advantage.

A recent case from the Eastern District of Virginia, *In Re Lopez*, WL 2623479 holds just that.

Mr. Lopez was not represented by counsel, and signed an agreement to reaffirm the first mortgage on his home, held by the Navy Federal Credit Union.

The court discusses 11 USC 521, which requires the debtor to file the Statement of Intent, as to debts secured by personal property.

Debtors must indicate their intent regarding the debt, to surrender the property, reaffirm, or redeem, or other.

The debtor must carry out the intent stated within 45 days after the meeting of creditors, or the stay is lifted as to that property.

Homes are real estate, not personal property, so 11 USC 521 et al do not apply.

The Court found that the home was worth more than the balance owed on the mortgage, and the debtor was current.

Being that the mortgage company did not change any of the terms of the mortgage in the reaffirmation agreement, the Court found there was no benefit to the debtor, and refused to approve it.

If you keep up the taxes and insurance, and make the payments, the bank cannot foreclose, you can keep your home without risk of being sued by the mortgage company, if, someday, you can no longer make the payments.

So, it says here, for a debtor attorney to approve reaffirmation of a mortgage is malpractice.

Even if you reaffirm, bankruptcy law allows the debtor 60 days to change his mind.

Just file a rescission of the reaffirmation agreement, you are off the hook, and it is just like you never signed.

The reaffirmation process was added to the law in 1979.

In the bad old days, if a creditor tricked you into paying even one cent on a debt discharged in bankruptcy, that revived the entire debt, just as if you had never filed.

So the reaffirmation provisions were instituted to protect debtors.

A recent Tennessee case shows some debtors may need protection from their lawyers.

Not only did this attorney have his clients reaffirm a mortgage, he botched the rescission of the agreement, after his clients decided to give up their home.

In re Graham, 430 B.R. 473, (E.D. TN 2010) involved a reaffirmation of a mortgage with a credit union, a second mortgage, for \$27,230.22.

Why this was done, I have no idea.

A second mortgage cannot take your house unless they pay off the first mortgage.

Not likely to happen these days.

Hey, if you like your credit union, and want to send them your money, by all means, have at it.

But you can send any creditor money, without signing a reaffirmation agreement which legally binds you again, and allows the creditor to sue you if you don't hold up your end of the agreement.

Just to complete the idiocy, the debtors apparently continued to keep their checking and savings accounts at the credit union.

So, after they signed the reaffirmation, but before the creditor got around to filing it with the court, they changed their minds, and filed an amended Statement of Intent that they were surrendering the house.

The bankruptcy court held, that amended Statement of Intent form is NOT a rescission, so the credit union could seize the debtors' accounts, and do whatever else is legal in Tennessee, to collect the \$27,230.22 they now owe on a house they no longer own.

Now, some of the mortgage companies say they will not tell the credit reporting agencies that you are making the payments on time, unless you reaffirm.

So? You have the right to include accurate information in your credit report.

You can add that at least once a year, yourself, without them.

The mortgage companies are required to give you at least annual statements.

The downside of reaffirmation?

You sign to reaffirm a \$120,000 mortgage that you owe on your home worth \$100,000, something else goes wrong down the road, and you

cannot make the payments, they foreclose for the \$100,000 the home is worth, and sue you for the \$20,000 difference.

Unless they are giving you some fantastic modification, DON'T DO IT!