

# **Is a Reaffirmation Agreement Necessary in Order to Keep a Vehicle in Chapter 7 Bankruptcy in Arizona?**

Prior to the 2005 amendments to the bankruptcy code, a debtor could keep a vehicle in Chapter 7 bankruptcy by simply staying current on the loan. If the debtor defaulted on the loan after receiving a discharge, the only remedy available to the car lender was to repossess the car. The car lender could not pursue the debtor for the deficiency amount. However, the 2005 amendments to the Bankruptcy Code now require a debtor to reaffirm all secured personal property loans, such as car loans, if you wish to keep the property. Reaffirming your car loan means that if you fail to make payments at any time after reaffirming, the lender will repossess the car, sell the vehicle, and you will be responsible for the total amount of the loan minus the sale price, with fees. As a result, it doesn't always make sense to reaffirm your car loan. For example, if you have a car that is worth \$30,000 and you owe \$15,000, even though you would be able to retain the vehicle because it has less than \$5,000 in equity (negative \$15,000 equity), it wouldn't make sense to do so because you could anticipate a rather large deficiency if you were to default in the future. You should consult with an experienced Tucson bankruptcy lawyer if you are faced with the difficult decision of reaffirming or surrendering your vehicle in Chapter 7 bankruptcy.

I am often asked by potential clients whether you can keep your vehicle in Chapter 7 bankruptcy without signing a reaffirmation agreement? Surprisingly the answer to this question is yes. However, if a debtor fails to sign a reaffirmation agreement, the lender has the right to repossess the car, even if the debtor stays current on the loan. Now you may be asking yourself why would a car lender repossess a vehicle that I am current on? You are correct in that it doesn't make much business sense to repossess a vehicle you are current on. Most vehicles have very little equity or no equity at all and car lenders often take a loss on repossessed vehicles. With that said, the risk of repossession is there if you do not sign a reaffirmation agreement, and there are certain car companies whose policy is to repossess if you do not reaffirm.

## **Is a Reaffirmation Agreement Always Approved by the Court? What Happens if the Court Denies My Reaffirmation Agreement? Can the Lender Repossess my Vehicle?**

If you are not represented by an Arizona bankruptcy attorney or your bankruptcy lawyer refuses to sign the reaffirmation agreement, the court has to approve the contract. You may be asking yourself, why would an attorney not sign my reaffirmation agreement? Attorneys often do not sign reaffirmation agreements because your financial situation does not show an ability to continue to make payments on the vehicle. Furthermore, the attorney must sign a declaration stating reaffirming the debt is in your best interests and will not cause a financial hardship to you or your dependents. If your current income and expenses do not show an ability to pay, attorneys will often decline to sign the reaffirmation agreement.

The lender has an argument that since the reaffirmation agreement was never approved, they retain the right to repossess even if the debtor remains current. On the other hand, it's not the fault of the debtor whose attorney wouldn't sign the agreement or whose agreement was denied by the bankruptcy judge. Therefore, I have found in practice that as long as you submit the reaffirmation agreement for denial, the car lender will not repossess your vehicle.

Our discount Tucson bankruptcy lawyers are available 24 hours a day, 7 days a week to answer your questions.