

Reaffirmation Agreements

11 U.S.C. § 524

Section 524 of the Bankruptcy Code governs reaffirmation agreements. Under BAPCPA, creditors must include very specific language in reaffirmation agreements; debtor's attorneys must submit certifications to accompany agreements; the court must hold a hearing on reaffirmations for all unrepresented debtors; the court must review reaffirmation agreements if a presumption of undue hardship exists (based on the debtor's monthly income and expenses); and some discharges shall be held until necessary hearings are concluded.

The debtor or creditor files Director's Form 240, the reaffirmation agreement (which must include prescribed disclosures pursuant to the statute). The agreement:

- must state monthly income and current monthly expenses, and identify amount(s) available to payments on the debt being reaffirmed;
- must include the Debtor's Statement in Support of the Reaffirmation Agreement, which must state that entering into the reaffirmation agreement will not impose "undue hardship" on debtor.

If the debtor is represented by counsel for purposes of the reaffirmation agreement, the debtor's attorney must sign certification¹ that:

- the debtor has been fully informed and that the agreement is voluntary; and
- the agreement does not represent an undue hardship on debtor; or
- if a presumption of undue hardship is established, that the attorney believes that debtor shall be able to make the payment.

If the debtor is not represented by counsel for purposes of the reaffirmation agreement:²

- the debtor must submit a motion for approval of the reaffirmation to the court pursuant to 11 U.S.C. § 524(d);
- the court shall give notice and hold a hearing on approval of the reaffirmation agreement;

¹ If the agreement is e-filed by the attorney, the court should check to see if the attorney signed the certification. In some instances, the attorney of record is filing the reaffirmation agreement for the debtor but has decided not to represent the debtor for purposes of the reaffirmation agreement. If the attorney does not sign the certification agreement, the debtor should be deemed pro se for purposes of the reaffirmation agreement.

² These requirements shall apply if the debtor is pro se with regard to the entire case or whether the debtor is proceeding pro se only with regard to the reaffirmation agreement, i.e., if the attorney refuses to sign the required certification.

- the court shall enter an order either approving or disapproving the agreement;
- the clerk should delay entry of discharge until the hearing is concluded.³

For 60 days following the submission of a reaffirmation agreement, the agreement shall be presumed to create an undue hardship if the total of the debtor's monthly expenses plus the amount required to reaffirm the debt is greater than the debtor's monthly income. With a presumption of undue hardship:

- the court shall review the presumption;
- the debtor may rebut presumption, in writing, by identifying additional sources of payment to meet obligations under reaffirmation
 - if the court disapproves the agreement, the court's determination must be on notice and hearing and concluded prior to entry of the discharge.

In a case in which there is a presumption of undue hardship, some courts automatically set the case for hearing and then forward the agreement to chambers for review. If the debtor rebuts the presumption before the hearing and the agreement is approved by the court, the hearing is then cancelled. Alternatively, some courts forward reaffirmations with the presumption of undue hardship case to chambers and only set it for hearing if the court disapproves the agreement.

The presumption of undue hardship and the requirements of 11 U.S.C. § 524(m) do not apply where the creditor is a credit union.

³ As in pre-BAPCPA cases, all post-discharge pro se motions on reaffirmation agreements must be set for hearing. 11 U.S.C. 524(d).