

THE ROADMAP TO REAFFIRMATION FOR DEBTORS' ATTORNEYS

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“...the care and feeding of reaffirmation agreements has moved from the realm of simplicity to the kingdom of complexity.” *In re Minardi*, 399 B.R. 841, 843 (Bankr. N.D. Okla., 2009)

1. Protect Your Client
 - a. Personal Property – You cannot “ride-through”
 - i. Begin the discussion at the initial consultation
 - ii. Remind your client
 - iii. Check the numbers on the reaffirmation agreement
 - iv. Summarize their rights to rescind the agreement and events of default
 - b. Real Property - You can “live-through”
 - i. Home mortgage
 - ii. No need to reaffirm a home equity loan
2. Protect Yourself
 - a. Know the deadlines
 - b. Attorney Certification
 - c. Filer Certification requirements
3. Know Your Court
 - a. Rebuttal of presumption of undue hardship
 - b. Setting aside the discharge order or reopening the case

There is a balancing of interests required in the reaffirmation process. As the Court stated in *In re: Salas*, 431 B.R. 394, 396 (Bankr. W.D. Tx 2010) citing *In re Herrera*, 380 B.R. 446, 450-451 (Bankr. W.D. Tx. 2007), “Because reaffirmation agreements are effectively waivers of discharge with respect to a particular creditor, they are exceptions to the “fresh start” policy of the bankruptcy process.” The result of this delicate balancing act is the attendant burden on debtors’ counsel to shepherd the process and ensure compliance with the relevant provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

1. Protect your Client

a. Personal Property – No “ride through” for vehicles

Bankruptcy can be a difficult and overwhelming journey for most debtors. At the initial consultation, I require individuals to bring a number of documents—pay stubs, tax returns, bank statements, recent statements and correspondence from creditors and the monthly household budget at a minimum—so that we can have a meaningful discussion with respect to their financial situation. In addition to providing an overview of the bankruptcy process, we begin the discussion of the difference between secured and unsecured obligations and their responsibilities with respect to these debts, in the event they elect to move forward with a bankruptcy filing. After the case has been filed, I send a follow-up letter reminding the debtors that if they intend to keep the collateral associated with their secured obligations, they are required to maintain current payments. Bankruptcy does not provide a temporary break from paying those obligations, contrary