

**Reaffirmation and Redemption - Keep Your Car Through Bankruptcy**  
**by**  
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Most, if not all clients ask me whether they can keep their vehicle when filing bankruptcy. The answer is a resounding YES!

There are two ways to keep a vehicle in bankruptcy. Reaffirmation and Redemption.

**1. Reaffirmation**

Bankruptcy Code Section 524(c) discusses reaffirmation. It states in pertinent part,

An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

- (1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;
- (2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;
- (3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—
  - (A) such agreement represents a fully informed and voluntary agreement by the debtor;
  - (B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and
  - (C) the attorney fully advised the debtor of the legal effect and consequences of—
    - (i) an agreement of the kind specified in this subsection; and
    - (ii) any default under such an agreement;

Reaffirmation means that you agree to take the debt out of bankruptcy protection and continue to make payments pursuant to your original loan terms (although sometimes these terms can be modified. Sometimes principal can be reduced and/or interest rates can be lowered). It is as if the bankruptcy never existed as it relates to your automobile loan.

As described above, reaffirmations are voluntary, must be in writing and must be approved by the bankruptcy court (either through your lawyer or a judge) to be effective. Generally, lenders are willing to allow you to reaffirm if you are current with your loan payments. If you aren't current and you have a good lawyer, your lawyer can, most of the time, negotiate a reaffirmation agreement that can roll in your back payments.

However, there is a risk to reaffirmation. If you reaffirm a \$19,000 debt on a car worth \$10,000, you would still be obligated to pay the additional \$9,000 above the value of the car. This means that if you decide to surrender the vehicle (or if your vehicle gets repossessed), the lender can and will sue you for the

deficiency, in this case \$9,000.

## **2. Redemption**

Bankruptcy Code Section 722 authorizes a concept called “redemption.”

Section 722 states in pertinent part,

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.”

To simplify the above paragraph, redemption means that a debtor can “buy back” the vehicle from the bankruptcy estate for an amount equal to the secured portion of the loan. To say it differently, if your vehicle is worth \$10,000 and you have a \$19,000 loan, the secured portion of the loan is \$10,000 and the unsecured portion is \$9,000. You can therefore redeem (buy back the vehicle from the bankruptcy estate) the vehicle for \$10,000.

There is a catch... these redemption lenders (as they like to call themselves) charge a very high interest rate to take on these types of loans. You and your lawyer should carefully examine the terms of redemption loans. In some cases, you can save money but in other cases, the cost of a redemption loan might cancel out the savings you might see from a reaffirmation.

I have one client who has a late model Mercedes E Class. If I recall correctly, the loan was about \$60,000. Because of the number of miles on the vehicle, it was now only worth about \$25,000. I advised him to redeem the vehicle. This allowed him to keep the vehicle and save \$35,000. That was a good day.

Many of my clients are being solicited by these lenders via direct mail after they file bankruptcy... Keep in mind that the rates will be in the high teen double digits and sometimes in the 20% double digits. It simply becomes a math calculation to make the decision to reaffirm or redeem.

My general opinion is that one should always try to redeem a vehicle first rather than reaffirm the automobile loan. However, it all depends on the facts and circumstances.

What if you choose neither option? Then the bankruptcy court deems that your intention is to surrender your vehicle... which means the lender can repossess the car... and they do.

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