

I have a loan on my automobile and no equity in the vehicle will I lose it in a Chapter 7 Bankruptcy filing?

If your goal is to keep your vehicle when you file a Chapter 7 bankruptcy case it is an attainable goal. You need to keep in mind that the lender on your automobile will receive notice of your bankruptcy filing and will closely monitor your bankruptcy case as it proceeds through the process. Either because you were behind on payments or because the vehicle is uninsured your lender may well have wanted to repossess your automobile. If you file a Chapter 7 bankruptcy case and want to keep your car, you will have to reaffirm the debt which means that in spite of the fact that this debt could have been discharged in the bankruptcy you will agree to pay the debt in full after the bankruptcy process has completed.

Tell the Court what you wish to do with the vehicle

As part of your Petition filing you will be asked to state your intention as to whether you want to surrender your car, reaffirm the debt or redeem the vehicle. If you fail to state your intention you may well expect that the lender will promptly file a Motion to Lift the Automatic Stay which once granted will mean that despite the protection initially afforded by the Automatic Stay the lender may move to repossess your car. You have to act on your statement of intention promptly – within 45 days.

Prerequisites to signing a reaffirmation agreement

In a Chapter 7 bankruptcy in order to be eligible to enter into a reaffirmation agreement you must be current on your car loan payments. You also must be able to prove to the Court that you can afford to make the loan payments on the vehicle after you emerge from bankruptcy. You will need to do this by calculating for the Court that your post-bankruptcy income exceeds your post-bankruptcy expenses to the extent that you now can afford to make the reaffirmed loan payments.

Consequences of signing the reaffirmation agreement

If you sign a reaffirmation agreement you are entering into a new contract with the lender to pay the remaining balance of the car loan in full after bankruptcy even though you would have received a discharge from this debt if you had not signed the reaffirmation agreement. If you fail to pay the debt in the future, you will be personally liable for the debt and the lender may repossess the vehicle.

The decision to sign a reaffirmation agreement should not be taken lightly

As demonstrated above there are major ramifications to signing a reaffirmation agreement. You will be liable for the repayment of the full amount of the reaffirmed debt and if you default on the loan you will not be able to have the debt discharged in bankruptcy since you have already filed bankruptcy and will not be able to file again for many years. You should fully discuss with your attorney the consequences of the reaffirmation agreement before you sign.

If you are in need of immediate legal information, you may find the content located at <http://www.rkenneylaw.com/bankruptcy.html> helpful or you may contact me by email at ray@rkenneylaw.com or call the office at (623) 234-3536.