



**UPDATED: New Reaffirmation Agreement B240A (12/09)**

Bradley Halberstadt to: Rules\_Support

Cc: james\_wannamaker, RKilpatrick

12/16/2009 06:15 PM

**09-BK-L**

In reviewing the new B240A (12/09), I noticed there were a number of omissions or changes to the mandated statutory language under Section 524(k). Since Section 524(c)(2) requires that the debtor receive the disclosures under 524(k), I am concerned that the new B240A (12/09) will result in agreements that may not be enforceable - as well as contrary to the statute.

There is no doubt that some of the disclosures in Section 524(k) are not the most artfully drafted provisions in the Code. However, Congress did go out of its way to mandate certain disclosures in the reaffirmation agreement - in very specific language. The new form, however, omits certain language and also changes certain language. Both of these result in major problems for debtors and creditors.

I have attached a quick summary of the differences between the statutory disclosures and those made in the new B240A (12/09). Each of the disclosures were in their original statutory form under each of the previous versions of the federal reaffirmation form - as mandated by Section 524(k). I believe that, in an effort to clarify the disclosures, certain changes were made that really cannot be done without first changing Section 524(k).

For example, Section 524(k)(3)(B) requires a heading of "Summary of Reaffirmation Agreement" and the statement "This Summary is made pursuant to the requirements of the Bankruptcy Code." This language is not in the new B240A.

Pursuant to Section 524(k)(3)(D)(ii), there must be a statement that says "Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement." The new B240A changes this and says (under V.C.1) "Your credit agreement may obligate you to pay additional amounts that arise after the date you sign this agreement. You should consult your credit agreement to determine whether you are obligated to pay additional amounts that may arise after the date of this agreement." Not only is this language at odds with the mandatory statutory requirement, it changes the potential accounting, etc.

Moreover, there is changed language with respect to the effective date of a reaffirmation agreement. Section V.A.6.a.i. states that "if the creditor is not a credit union, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship in which case the agreement becomes effective only after the court

approves it." Section 524(k)(3)(J)(i) requires the following statement "6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D." Part D makes no mention of a court approval. Instead, Part D only says that the court must review the undue hardship. Section 524(m) continues the presumption for 60 days and allows the court to disapprove a reaffirmation agreement if the court is not satisfied with a rebuttal. Many courts don't have hearings or enter orders if the debtor's attorney makes the statutory certifications. Even the form Order allows courts to "not disapprove" versus "approve." So, not only does this change fail to include the statutorily required disclosure - it really alters the way Congress set up the presumption and timing in Section 524(m).

I could go on, but I have done my best to highlight a few of the changes/omissions to the mandated statutory disclosures in the attached document. I appreciate the efforts to try to make the reaffirmation agreement a simpler form and to clarify some of the less than artfully drafted provisions. I am afraid, however, that these changes and omissions can't be accomplished without changing the legislation itself. The reaffirmation process is too difficult the way it is - to insert further uncertainty in the process because of failing to follow a statute that clearly sets forth what must be in the agreement will only make the process more problematic.

I have been told by a few creditors that the new B240A (12/09) has already been in ND OH, ND IL and ND AL. I urge the IMMEDIATE WITHDRAWAL of the new reaffirmation forms B240A, B and C until further review is undertaken. Please let me know if there is anything I can do to assist in this process. Thank you for your consideration.

Bradley Halberstadt  
Stewart, Zlimen & Jungers  
2277 Highway 36 West, Suite 100  
Roseville, MN 55113  
Telephone: (612) 870-4100  
Facsimile: (612) 870-8758

The information in this email and any attachment is private and confidential and is intended for the addressee(s) only. The information may be protected by attorney-client privilege, work product doctrine, or other legal rules. If you are not an addressee, you are not authorized to read, copy or use the email or any attachment, and are notified that any retention, dissemination, distribution, or copying of this email is strictly prohibited. If you received this email in error,



please notify the sender by return email and then destroy it. B240A\_1209\_SidebySide.doc B\_240A\_1209f.pdf

**(k)**

**(1)** The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

**(2)** Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms "Amount Reaffirmed" and "Annual Percentage Rate" shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases "Before agreeing to reaffirm a debt, review these important disclosures" and "Summary of Reaffirmation Agreement" may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms "Amount Reaffirmed" and "Annual Percentage Rate" must be used where indicated.

**(3)** The disclosure statement required under this paragraph shall consist of the following:

**(A)** The statement: "Part A: Before agreeing to reaffirm a debt, review these important disclosures:";

**(B)** Under the heading "Summary of Reaffirmation Agreement", the statement: "This Summary is made pursuant to the requirements of the Bankruptcy Code";

**(C)** The "Amount Reaffirmed", using that term, which shall be—

**(i)** the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and  
**(ii)** the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

**(D)** In conjunction with the disclosure of the "Amount Reaffirmed", the statements—

**(i)** "The amount of debt you have agreed to reaffirm"; and

**(ii)** "Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.".

**(E)** The "Annual Percentage Rate", using that term, which shall be disclosed as—

No "Summary of Reaffirmation Agreement" in B240A(12/09)

No Part A

No Summary of Reaffirmation Agreement  
No statement

Not under Disclosure Statement – under Instructions  
Incorrectly says arising on or before the date you sign this agreement  
Missing Date of Disclosure

Doesn't exactly say this

Says "that arise after the date you sign this agreement"

**(i)** if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

**(I)** the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

**(II)** the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

**(III)** if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II); or

**(ii)** if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

**(I)** the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

**(II)** the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

**(III)** if the entity making the disclosure elects, to

None of this is disclosed in the new form

disclose the annual percentage rate under (I) and the simple interest rate under (II).

**(F)** If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating "The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower."

**(G)** If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

**(H)** At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

**(i)** by making the statement: "Your first payment in the amount of \$XXX is due on XXX but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.", and stating the amount of the first payment and the due date of that payment in the places provided;

**(ii)** by making the statement: "Your payment schedule will be:", and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

**(iii)** by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

**(I)** The following statement: "Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held."

Doesn't say exactly this

None of these elections are available

- .
- .
- .
- .
- .
- .
- .
- .
- .
- .
- .
- .
- .
- .
- .
- .

Not separate but incorporated into V.A.7.

Different language

Missing language

Not in the same section

**(J)**

**(i)** The following additional statements:

"Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

"Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your

"Review" instead of "Read". No Part A.

"Review and complete the information contained in"  
Missing and adds joint case information

Signed and dated

Missing "during the negotiation of your reaffirmation agreement"

Missing

Adds To have the court approve your agreement, you must file a motion. See Instruction 5 below.

Missing

"at which time"

"If the judge decides that the reaffirmation agreement is in your best interest, the agreement will be approved and will become effective. However, if your reaffirmation agreement is for a consumer debt secured by ..., you do not need to file a motion or get court approval for your reaffirmation agreement."

reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

"What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

"Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court."

**(ii)** In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective

Missing sentence – replaced with "Can you cancel"  
"your discharge"  
"during"

"Your reaffirmed debt is not discharged in your bankruptcy case"

Adds comma after "agreement"

Missing  
missing  
adds may permit the creditor to change

Adds sentence: "the property subject to a lien is often referred to as collateral.

Under the lien to take the collateral  
"it" replaced with "the debt"  
"collateral"

"collateral"  
Different language

upon filing with the court.”.

**(4)** The form of such agreement required under this paragraph shall consist of the following:

“Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

“Brief description of credit agreement:

“Description of any changes to the credit agreement made as part of this reaffirmation agreement:

Date:

“Signature:

“Borrower:

“Co-borrower, if also reaffirming these debts:

“Accepted by creditor:

“Date of creditor acceptance:”.

**(5)** The declaration shall consist of the following:

**(A)** The following certification:

“Part C: Certification by Debtor’s Attorney (If Any).

“I hereby certify that

**(1)** this agreement represents a fully informed and voluntary agreement by the debtor;

**(2)** this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and

**(3)** I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

Date:”.

“Signature of Debtor’s Attorney:

**(B)** If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

**(C)** In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

**(6)**

**(A)** The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

“Part D: Debtor’s Statement in Support of Reaffirmation Agreement.

“1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$XXX, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$XXX, leaving \$XXX to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does

Now Certification by Debtor(s) and Signatures of Parties

Omits credit agreement and any changes to credit agreement – much less reaffirming the unmodified terms and conditions of the credit agreement.\*\*

Adds the word “required” payment

Not in Statement of Support (in cover sheet)



not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: XXX.

"2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."

**(B)** Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."

**(7)** The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

"Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

"I am not represented by an attorney in connection with this reaffirmation agreement.

"I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

"Therefore, I ask the court for an order approving this reaffirmation agreement."

**(8)** The court order, which may be used to approve such agreement, shall consist of the following:

"Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above."

Not in Statement of Support

First 2 sentences in Statement of Support

<p>Check one.</p> <p><input type="checkbox"/> <b>Presumption of Undue Hardship</b></p> <p><input type="checkbox"/> <b>No Presumption of Undue Hardship</b></p> <p><i>See Debtor's Statement in Support of Reaffirmation, Part II below, to determine which box to check.</i></p>
--

## UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_,  
*Debtor*

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

### REAFFIRMATION DOCUMENTS

Name of Creditor: \_\_\_\_\_

Check this box if Creditor is a Credit Union

#### I. REAFFIRMATION AGREEMENT

**Reaffirming a debt is a serious financial decision. Before entering into this Reaffirmation Agreement, you must review the important disclosures, instructions, and definitions found in Part V of this Reaffirmation Documents packet.**

1. Brief description of the original agreement being reaffirmed: \_\_\_\_\_  
*For example, auto loan*

2. **AMOUNT REAFFIRMED:** \$ \_\_\_\_\_

The Amount Reaffirmed is the entire amount that you are agreeing to pay. This may include unpaid principal, interest, and fees and costs (if any) arising on or before the date you sign this Reaffirmation Agreement.

*See the definition of "Amount Reaffirmed" in Part V.C below.*

3. The **ANNUAL PERCENTAGE RATE** applicable to the Amount Reaffirmed is \_\_\_\_\_%.

*See definition of "Annual Percentage Rate" in Part V.C below.*

This is a (check one)  Fixed rate  Variable rate

If the loan has a variable rate, the future interest rate may increase or decrease from the Annual Percentage Rate disclosed here.

4. Reaffirmation Agreement Repayment Terms:

If fixed term, \$ \_\_\_\_\_ per month for \_\_\_\_\_ months starting on \_\_\_\_\_.

If not fixed term, describe repayment terms: \_\_\_\_\_.

5. Describe the collateral, if any, securing the debt:

Description: \_\_\_\_\_  
 Current Market Value \$ \_\_\_\_\_

6. Did the debt that is being reaffirming arise from the purchase of the collateral described above?

Yes       No

If yes, what was the purchase price for the collateral? \$ \_\_\_\_\_  
 If no, what was the amount of the original loan? \$ \_\_\_\_\_

7. Detail the changes made by this Reaffirmation Agreement to the most recent credit terms on the reaffirmed debt and any related agreement:

	Terms as of the Date of Bankruptcy	Terms After Reaffirmation
Balance due ( <i>including fees and costs</i> )	\$ _____	\$ _____
Annual Percentage Rate	_____ %	_____ %
Monthly Payment	\$ _____	\$ _____

8.  Check this box if the creditor is agreeing to provide you with additional future credit in connection with this Reaffirmation Agreement. Describe the credit limit, the Annual Percentage Rate that applies to future credit and any other terms on future purchases and advances using such credit:

**II. DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT**

1. Were you represented by an attorney during the course of negotiating this agreement?

Check one.     Yes       No

2. Is the creditor a credit union?

Check one.     Yes       No

3. If your answer to EITHER question 1. or 2. above is “No” complete a. and b. below.

a. My present monthly income and expenses are:

- i. Monthly income from all sources after payroll deductions  
(take-home pay plus any other income) \$ \_\_\_\_\_
- ii. Monthly expenses (including all reaffirmed debts except  
this one) \$ \_\_\_\_\_
- iii. Amount available to pay this reaffirmed debt (subtract ii. from i.) \$ \_\_\_\_\_
- iv. Amount of monthly payment required for this reaffirmed debt \$ \_\_\_\_\_

*If the monthly payment on this reaffirmed debt (line iv.) is **greater than** the amount you have available to pay this reaffirmed debt (line iii.), you must check the box at the top of page one that says “Presumption of Undue Hardship.” Otherwise, you must check the box at the top of page one that says “No Presumption of Undue Hardship.”*

b. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or on me because:

Check one of the two statements below, if applicable:

- I can afford to make the payments on the reaffirmed debt because my monthly income is greater than my monthly expenses even after I include in my expenses the monthly payments on all debts I am reaffirming, including this one.
- I can afford to make the payments on the reaffirmed debt even though my monthly income is less than my monthly expenses after I include in my expenses the monthly payments on all debts I am reaffirming, including this one, because:

Use an additional page if needed for a full explanation.

4. If your answers to BOTH questions 1. and 2. above were “Yes,” check the following statement, if applicable:

- I believe this reaffirmation agreement is in my financial interest and I can afford to make the payments on the reaffirmed debt.

*Also, check the box at the top of page one that says “No Presumption of Undue Hardship.”*

**III. CERTIFICATION BY DEBTOR(S) AND SIGNATURES OF PARTIES**

I (We) hereby certify that:

- i. I (We) agree to reaffirm the debt described above.
- ii. Before signing this reaffirmation agreement, I (we) read the terms disclosed in this Reaffirmation Agreement (Part I) and the Disclosure Statement, Instructions and Definitions included in Part V below;
- iii. The Debtor's Statement in Support of Reaffirmation Agreement (Part II above) is true and complete;
- iv. I am (We are) entering into this agreement voluntarily and fully informed of my (our) rights and responsibilities; and
- v. I (We) have received a copy of this completed and signed Reaffirmation Documents packet.

SIGNATURE(S):

Date \_\_\_\_\_ Signature \_\_\_\_\_  
*Debtor*

Date \_\_\_\_\_ Signature \_\_\_\_\_  
*Joint Debtor, if any*

If a joint reaffirmation agreement, both debtors must sign.

**Reaffirmation Agreement Terms Accepted by Creditor:**

Creditor \_\_\_\_\_  
*Print Name* *Address*

\_\_\_\_\_  
*Print Name of Representative* *Signature* *Date*

**IV. CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY)**

*To be filed only if the attorney represented the debtor during the course of negotiating this agreement.*

I hereby certify that: (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

*Check box, if the presumption of undue hardship box is checked on page 1 and the creditor is not a Credit Union.*

Date \_\_\_\_\_ Signature of Debtor's Attorney \_\_\_\_\_

Print Name of Debtor's Attorney \_\_\_\_\_

## V. DISCLOSURE STATEMENT AND INSTRUCTIONS TO DEBTOR(S)

**Before agreeing to reaffirm a debt, review the terms disclosed in the Reaffirmation Agreement (Part I) and these additional important disclosures and instructions.**

**Reaffirming a debt is a serious financial decision.** The law requires you to take certain steps to make sure the decision is in your best interest. If these steps, detailed in Part B below, are not completed, the reaffirmation agreement is not effective, even though you have signed it.

### A. DISCLOSURE STATEMENT

- 1. What are your obligations if you reaffirm a debt?** A reaffirmed debt remains your personal legal obligation. Your reaffirmed debt is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Your obligations will be determined by the reaffirmation agreement, which may have changed the terms of the original agreement. If you are reaffirming an open end credit agreement, that agreement or applicable law may permit the creditor to change the terms of that agreement in the future under certain conditions.
- 2. Are you required to enter into a reaffirmation agreement by any law?** No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments that you agree to make.
- 3. What if your creditor has a security interest or lien?** Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage, or security deed. The property subject to a lien is often referred to as collateral. Even if you do not reaffirm and your personal liability on the debt is discharged, your creditor may still have a right under the lien to take the collateral if you do not pay or default on the debt. If the collateral is personal property that is exempt or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the collateral, as the parties agree or the court determines.
- 4. How soon do you need to enter into and file a reaffirmation agreement?** If you decide to enter into a reaffirmation agreement, you must do so before you receive your discharge. After you have entered into a reaffirmation agreement and all parts of this Reaffirmation Documents packet requiring signature have been signed, either you or the creditor should file it as soon as possible. The signed agreement must be filed with the court no later than 60 days after the first date set for the meeting of creditors, so that the court will have time to schedule a hearing to approve the agreement if approval is required.
- 5. Can you cancel the agreement?** You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters your discharge, or during the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled). Remember that you can rescind the agreement, even if the court approves it, as long as you rescind within the time allowed.

6. **When will this reaffirmation agreement be effective?**

a. **If you were represented by an attorney during the negotiation of your reaffirmation agreement**

i. **if the creditor is not a Credit Union**, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship in which case the agreement becomes effective only after the court approves it;

ii. **if the creditor is a Credit Union**, your reaffirmation agreement becomes effective when it is filed with the court.

b. **If you were not represented by an attorney during the negotiation of your reaffirmation agreement**, the reaffirmation agreement will not be effective unless the court approves it. To have the court approve your agreement, you must file a motion. See Instruction 5, below. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing, at which time the judge will review your reaffirmation agreement. If the judge decides that the reaffirmation agreement is in your best interest, the agreement will be approved and will become effective. However, if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home, you do not need to file a motion or get court approval of your reaffirmation agreement.

7. **What if you have questions about what a creditor can do?** If you have questions about reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement. If you do not have an attorney helping you, you may ask the judge to explain the effect of this agreement to you at the hearing to approve the reaffirmation agreement. When this disclosure refers to what a creditor “may” do, it is not giving any creditor permission to do anything. The word “may” is used to tell you what might occur if the law permits the creditor to take the action.

**B. INSTRUCTIONS**

1. Review these Disclosures and carefully consider the decision to reaffirm. If you want to reaffirm, review and complete the information contained in the Reaffirmation Agreement (Part I above). If your case is a joint case, both spouses must sign the agreement if both are reaffirming the debt.
2. Complete the Debtor’s Statement in Support of Reaffirmation Agreement (Part II above). Be sure that you can afford to make the payments that you are agreeing to make and that you have received a copy of the Disclosure Statement and a completed and signed Reaffirmation Agreement.
3. If you were represented by an attorney during the negotiation of your Reaffirmation Agreement, your attorney must sign and date the Certification By Debtor’s Attorney section (Part IV above).
4. You or your creditor must file with the court the original of this Reaffirmation Documents packet and a completed Reaffirmation Agreement Cover Sheet (Official Bankruptcy Form 27).
5. *If you are not represented by an attorney, you must also complete and file with the court a separate document entitled “Motion for Court Approval of Reaffirmation Agreement unless your reaffirmation agreement is for a consumer debt secured by a lien on your real property, such as your home. You can use Form B240B to do this.*

## C. DEFINITIONS

1. **“Amount Reaffirmed”** means the total amount of debt that you are agreeing to pay (reaffirm) by entering into this agreement. The amount of debt includes any unpaid fees and costs arising on or before the date you sign this agreement that you are agreeing to pay. Your credit agreement may obligate you to pay additional amounts that arise after the date you sign this agreement. You should consult your credit agreement to determine whether you are obligated to pay additional amounts that may arise after the date of this agreement.
2. **“Annual Percentage Rate”** means the interest rate on a loan expressed under the rules required by federal law. The annual percentage Rate (as opposed to the “stated interest rate”) tells you the full cost of your credit including many of the creditor’s fees and charges. You will find the annual percentage rate for your original agreement on the disclosure statement that was given to you when the loan papers were signed or on the monthly statements sent to you for an open end credit account such as a credit card.
3. **“Credit Union”** means a financial institution as defined in 12 U.S.C. § 461(b)(1)(A)(iv). It is owned and controlled by and provides financial services to its members and typically uses words like “Credit Union” or initials like “C.U.” or “F.C.U.” in its name.