



**United States Bankruptcy Court**  
Middle District of Florida  
Sam M. Gibbons United States Courthouse  
801 North Florida Avenue  
Tampa, Florida 33602

**MEMORANDUM**

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To: Debtors' Attorneys Appearing Before Judge McEwen

From: Hon. Catherine Peek McEwen

Subject: Best Practices for Reaffirmation Agreements

Date: November 2, 2020

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All debtors' attorneys appearing before me should consider the following guidance as "best practices" for filing reaffirmation agreements.

Under 11 U.S.C. § 524(c)(3), if a debtor's attorney represents a debtor in the negotiation of a reaffirmation agreement, the agreement should be accompanied by a declaration or affidavit signed by the attorney (the "Attorney's Certification") declaring, if appropriate, that: (A) the agreement represents a fully informed and voluntary agreement; (B) the 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 the agreement in the event of a default.

In instances where a reaffirmation agreement raises a presumption of "undue hardship," i.e., when a debtor's monthly expenses exceed the debtor's monthly income (*see* 11 U.S.C. § 524(m)), the attorney should also, if appropriate, check the box provided in the Attorney's Certification that reads as follows: "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." Even in instances when this particular box is checked, I will normally direct that the agreement be set for hearing if the debtor is significantly "upside down" with respect to the debt owed versus the fair market value of the collateral securing the debt and/or the agreement reflects an unusually high interest rate (over 10 or 12%). The purpose of such hearing is to determine if the debtor's attorney:

- 1) attempted to negotiate a reduction in principal or in the interest rate; and/or
- 2) considered redemption and, if appropriate, provided the debtor with information about redemption lenders.

A hearing for this purpose may be avoided if the debtor's attorney will include this information together with the Attorney's Certification.

However, even as to reaffirmation agreements that do not raise a hardship presumption, I find that best practices require attorneys to take the actions described above before signing off on any agreement whereby the debtor is agreeing to reaffirm an otherwise dischargeable debt.