

Rule 4008 - 1

Reaffirmation

An individual not represented by an attorney during the course of negotiating a reaffirmation agreement shall file the agreement with the Court along with a request that the agreement be approved, prepared as prescribed by the appropriate local or national form. The request shall contain information describing the collateral that is the subject of the agreement, including a statement as to its fair market value ~~be signed under oath or under penalty of perjury and shall state that the agreement does not impose an undue hardship on the debtor or any dependant of the debtor and is in the best interest of the debtor.~~ The Court may approve the agreement without an actual hearing or may schedule a hearing.

Note: For cases filed after October 16, 2006, this local rule perhaps should be revisited. 11 USC 524 (k)(7) describes a motion that may be used by the unrepresented debtor when asking the court to approve a reaffirmation agreement. The national reaffirmation agreement form, Form B240, at Part E contains a form motion for approval of the agreement. This form is not a mandatory official form.

The local form we have used for years requires the debtor to not only address the issue of undue burden, but also address the “best interests” of the debtor, when the debtor is required to comment on the value of the collateral in relation to the amount to be reaffirmed.

A modification to the LF 4008 might be in order, or a requirement that either the local form or the national form be used, but that comment concerning the value of the collateral be required.

The reason why the rule required the statement made by the debtor be under penalty of perjury was to permit the agreement to be approved without the need for an actual hearing.

If the practice is that the court will approve a “pro se” agreement without an “actual” hearing, then the “under penalty of perjury” should be retained. Under 11 USC 524(m)(1) a reaffirmation agreement may not be disapproved without a hearing with notice and hearing to the debtor and the creditor. If the court plans to hold a hearing even to approve the agreement, then it would not seem to be a requirement that the representations in the request be under penalty of perjury pursuant to 28 USC 1746. The national form only requires that the statements be “affirmed” as being true and correct.