

Keeping a car in Chapter 7 bankruptcy

Debtor's Question: After filing bankruptcy, is it more beneficial to get a new car *loan* (not new car) versus reaffirming the one you presently have? I have a 2004 Acura MDX, fully loaded with 50,000 miles and owe \$26,000.

Answer: There is no perfect answer because each case is unique. Some people believe it is simply wrong to allow someone to eliminate all other debts, but keep the one item that he or she "really wants." I somewhat agree with this statement. Unfortunately, depending on where you live, you might not have access to good, reliable used cars after filing bankruptcy.

Generally, there are 3 options available to you after a Chapter 7 filing: (1) Surrender the vehicle, (2) Reaffirm your current car loan, and (3) Redeem your car loan with a new lender

The type of car and the payment should be the key determining factors. For example, owning a Toyota or Honda with high mileage is a better decision than keeping a luxury car or a car with the high likelihood of pending repairs. I also believe that your car payment should be in the \$200 to \$300 range. More valuable cars usually mean higher car registration costs, insurance and repair costs. After bankruptcy, you should try to decrease your monthly expenses. And keeping a high payment, high balance car loan will increase your chances of falling back into financial turmoil. Please note that this analysis applies mainly to people filing a Chapter 7 bankruptcy case. While the law is comparable in Chapter 13 cases, there are other issues to address beyond the scope of this column.

You have three options available after you have filed your Chapter 7 bankruptcy case.

1. Surrender the vehicle. Contact the lender and say that you want to turn in the car. Make sure to make your auto insurance payments until you drop the car off at the local dealer. Get something in writing to prove you surrendered the vehicle. Don't compound your financial troubles with a post-bankruptcy filing car accident. That debt will not be dischargeable in your bankruptcy if it occurs after the filing. Once you surrender the vehicle, the lender will sell it, usually for less than the amount you owe. The remaining balance, called the "deficiency balance," should be eliminated in your bankruptcy. Sometimes, you should turn the car in right away. However, most people need a car to get to work or pick up the kids from soccer. Used car lots might not be willing to sell you a car while you are still in bankruptcy. Trying to line up a new(er) car after filing can be frustrating; but you will be able to find a used, reliable car after your case is closed.

2. Reaffirm your current car loan. Most lenders will give you the choice to reaffirm your current car loan or surrender the vehicle. Reaffirming a loan means that if you fail to make payments after your bankruptcy is closed, and the lender repossesses the vehicle, you can be sued for the deficiency balance. However, to keep receiving statements and balance updates, lenders require you to reaffirm the debt. Unfortunately, some people have told me that some lenders do not report the reaffirmed loan to the credit bureaus after completing the court-approved reaffirmation agreement. You ought to ask whether your lender will report your post-bankruptcy payments because this is one way you can start to rebuild your credit.

In some cases, when the car balance is very low, you can keep the vehicle, continue making payments and not have to reaffirm the loan. You will not receive monthly statements, so it will be up to you to call the lender and determine when the balance is paid off.

3. Redeem your car loan with a new lender. Bankruptcy law permits a car owner to reduce the current car balance to the fair market value. For example, if you owe \$15,000 and the car is worth only \$10,000, then you may be eligible to reduce the car balance by \$5,000 with a new, post-bankruptcy loan. The code

section is 722 Redemption. However, the current understanding in the bankruptcy community is that you must own the car for at least 910 days before filing bankruptcy to qualify for a car redemption loan.

Recently, I had a very enlightening conversation with in-house counsel at a large car loan redemption company. This company works out deals with you and a new lender to refinance your car post-bankruptcy. I was told that the 910-day rule is not regularly enforced by the original car lender - meaning, you can qualify for a new car loan with a balance at the current fair market value even if you bought it one day before filing bankruptcy!

The original lender can object to your attempt to strip down the balance, pay off a portion of the loan and eliminate the deficiency. However, very few lenders have been objecting. You may be able to keep your current car, reduce the balance and get a new loan that will report your new payment history to the credit bureaus.