

## HOW A CHAPTER 7 DEBTOR CONTINUES A LEASE OF PERSONAL PROPERTY

Section 524( c) reaffirmations do not apply to leases of personal property, such as automobiles. Section 365(p)(1)-(2) addresses the means by which a chapter 7 debtor may assume a lease of personal property in chapter 7.

First, the lease must be either rejected, or not assumed (and therefore rejected as a matter of law after the time limits stated in §365), by the chapter 7 trustee. If the trustee assumes the lease, then the Debtor has no right to assume the lease.

To assume a lease, a chapter 7 debtor must engage in a dance not unlike the jitterbug. First, the Debtor must notify the lessor that the debtor desires to assume the lease. The creditor may then, at its option, notify the debtor that it is willing to have the lease assumed and may condition assumption on the cure of any outstanding default on terms set by contract. If, not later than 30 days after notice is provided under §365(p)(2)(A), the debtor then notifies the lessor in writing a second time, this time stating that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

There is an explicit requirement that the debtor notify the creditor in writing both times, but no such explicit requirement that the lessor notify the debtor in writing. There is an explicit requirement that the second notice must be provided by the debtor within 30 days after “notice” is provided according to subsection (A), but no explicit statement whether the “notice” provided is the debtor’s initial notice provided to the lessor or the Lessor’s notice provided to the debtor.

Several courts have held that an assumption under §365(p) does not trump the discharge under §524. Absent a reaffirmation approved under §524( c), in addition to the assumption procedure specified in §365(p), assumption under §365(p) entitles the debtor to possession and use of the property leased but does not impose liability on the debtor. *E.g. Thompson v. Credit Union Financial Group*, 453 B.R. 823, (W.D. Mich. 2011). However, it does not appear that any courts in the 9<sup>th</sup> Circuit have addressed the issue.