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# How do i write a debt settlement agreement

Image Source: This article is written by Muskaan Aggarwal who is pursuing a Diploma in Advanced Contract Drafting, Negotiation and Dispute Resolution from LawSikho. Introduction Lending someone money, irrespective of them being a corporate entity, an individual, or any other entity capable of taking a loan, is always filled with risks. In spite of doing everything in your power to minimise the risk factor, there is never a guarantee that the entire amount would be returned. This is because the external factor attached to the entity or the individual, complements the risk involved, and hence, does not make the task easy for the creditor. Often is the case that the loan amount given becomes difficult to recover, and it becomes important to explore ways to regain the loan amount from the debtor, in a timely manner. This is where the concept of 'Debt Settlement' is used by creditors, and hence, a debt settlement agreement is often executed. This article aims to understand the concept of debt settlement along with providing ways for efficient drafting of a debt settlement agreement between the creditor and the debtor. Debt settlement Debt settlement can be understood as the process through which the parties negotiate with each other and try to reach a middle ground with a reduction in the outstanding debt of the debtor. This is often done through the acceptance of a lump sum amount by the debtor to the creditor (or lender) after the negotiations are completed. The entire process of debt settlement is held to be completed once the lump sum payment is accepted by the creditor. The amount that is reduced is dependent on the negotiations between the parties, keeping in mind the financial situation of the debtor. It is important to note that parties engage in a debt settlement mostly for unsecured loans, which are loans where no guarantee has been provided by the debtor to the creditor, which can be used by the creditor in case of default by the debtor. This is because, for secured loans, such as home loans, study loans, etc., which are taken by banks, security is kept in exchange for the loan which is credited by banks in case of defaults. Hence, it becomes difficult to negotiate the pre-mediated terms and conditions of secured loans, and settlement is not a process that the parties engage in. Hence, for unsecured loans, debt settlement is the best scenario for the parties to have some advantages on their side. For the debtor, the court trials and other legal hassles are saved, and the debtor gets free of the debt by making a reduced payment than the actual debt amount. On the other hand, the creditor also gains an advantage by gaining whatever the debtor is able to give at that point, and hence, bankruptcy chances are taken care of. Advantages of debt settlement Some of the advantages of engaging in a debt settlement are: Single Payment - Through this process, multiple bills and transactions between the creditor and the debtor may be combined in a single payment, and the stress of repaying the amount over a period of time, with timely payments and rate of interest, is avoided. Bankruptcy is avoided - Through this process, the debt burden on the debtor is reduced by a great amount, and the debtor is now capable of paying the debts in a more comfortable fashion, as they have to pay only what they are able to pay. This avoids extreme situations of sale of assets by debtor for the repayment of loan, and hence, avoids situations of bankruptcy or insolvency. Elimination of extra charges - With the amount being payable in a single payment, monthly interest rates are avoided. Moreover, late payment fees are excluded or often negotiated between the parties. Unfair collection practices are not engaged into - Creditors often engage in unfair practices of harassment, to make the debtor pay the amount in a timely manner. This often leads to losses to debtors, not only in the financial sense but also in a mental sense. Therefore, such a situation is also avoided, as parties mutually negotiate the terms of the settlement. Legal Actions and lawsuits are avoided - Default in the repayment of the loan leads to lawsuits being filed or appropriate legal actions being taken by the creditors against the debtors. This not only leads to a lengthy dispute resolution process but also deteriorates the working relationship of the parties. Hence, this situation is also avoided by engaging in the process of debt settlement. Disadvantages of debt settlement Some of the disadvantages of engaging in a debt settlement are: Fall in credit score - Engaging in a debt settlement often leads to a fall in the credit score of the debtor. This is because debt settlements with banks or any other financial institution are reported to credit rating agencies like CIBIL (Credit Information Bureau India Limited) and others, which results in a decrease in credit score. The debtors are then likely to face rejections for engaging in any future loan transaction, as they are viewed to be less reliable for the timely repayment of the loan, or the repayment of the loan according to prior terms agreed between the parties. Increased payment of tax - The waived balance of the debtors, through negotiations with the creditor, is often included as the income, within the balance sheets. This leads to a situation where the debtor has to pay taxes for the waived amount as well, and hence, increased payment of taxes. Prior planning required - It is important for the debtors to not default in the payments of the debt settlement, and hence, the debtors must engage in prior planning, where they make sure that they have enough funds available for the debt settlement beforehand. Debt settlement agreement A Debt Settlement Agreement is a written agreement of the negotiated debt settlement between the debtor and the creditor for the loan amount. Through this document, the parties are legally bound, and therefore, have proof about their negotiations. A debt settlement can be legally enforced through the attachment of the non-judicial stamp paper, the cost of which is dependent on the state laws related to the stamp duty and charges for various court documents and agreements. It is important to note that the debt settlement agreement must have the signatures of both the parties involved, i.e., the debtor and the creditor. In case any of the entities is a company, the representative of the company must affix their signatures on the document. Important contents of a debt settlement agreement For undertaking the proper execution of a debt settlement agreement, the agreement must be submitted by and between the parties and must specify the details of the parties to the agreement. All details of the creditor and the debtor must be included at the very start of the agreement, and specific terms must be used to refer to them throughout the document, such as "Debtor" or "Creditor". This helps in making the agreement less confusing and more concise in its reading. This should be followed by a brief account of the facts leading to this agreement. Only the relevant facts related to the transaction between the parties must be added to the agreement, in a neutral manner. Considering that the agreement is entered into by both parties, the clauses should not be biased towards any one party, unless both the parties agree to such an arrangement. The main content necessary for adding to the debt settlement agreement are as follows: Date of the Agreement - The execution date of the agreement is important to be included, as this helps in avoiding any future conflicts between the parties. Details of the original loan amount and the agreement between the parties - considering that a debt settlement agreement is executed after a loan agreement is already in place between the parties, it is important to give details of the previous agreement as well. Therefore, the details of the original loan amount given by the creditor to the borrower must be added, along with the execution date of the loan agreement. The loan agreement might also be annexed to the debt settlement agreement, for convenience, however, the same is not necessary to be done. Original due date of the loan amount - This is again in relation to the loan agreement between the parties. The original due date of the loan amount must be added to provide clarity on the negotiations undertaken by the parties. Settlement amount decided - This clause shall refer to the final settlement amount that has been mutually agreed by both the parties within the debt settlement agreement, after the waiving off of the decided debt amount. Settlement of Debt - It is important to state that the payment of the settlement amount shall complete the payment and settle the debt once and for all. Representations and Warranties - This clause shall include the representations made individually by the debtor and the creditor to the respective other party, where they also warrant that the representations made are true to the best of their knowledge. Governing Laws and Jurisdiction - considering that this agreement is legally enforceable, the agreement shall have clarity on the court having the jurisdiction to decide on this agreement, if need may be. Any other clause as the need maybe - most of the clauses in a debt settlement agreement are dependent on the type of transaction between the parties. This includes the date of repayment, mode of repayment, details of notices pertaining to the agreement, severability of clauses within the agreement, etc. These clauses are subject to the decisions mutually made by the parties. Therefore, any clause which the parties think should be added to the agreement for further clarity, should be included in the Agreement as well. Finally, the agreement, as discussed before, should be concluded with the signature of both the parties, along with witnesses. Conclusion Debt Settlement Agreements are an effective way for the repayment of the loan amount if the debtor is unable to pay the entire loan amount. However, it is important to note that these agreements are entered into only for unsecured loans, where the parties have not made any prior agreement on the guarantee or security to the loan amount. Otherwise, for secured loan amounts, the debt settlement agreements have no use. References Students of Lawsikho courses regularly produce writing assignments and work on practical exercises as a part of their coursework and develop themselves in real-life practical skill. LawSikho has created a telegram group for exchanging legal knowledge, referrals and various opportunities. You can click on this link and join: TAGSdebt settlement agreement Get an expert at affordable price For ITR, GST returns, Company Registration, Trademark Registration, GST Registration The Debt Settlement Agreement is a contract signed between a creditor and debtor to re-negotiate or compromise on a debt. This is usually in the case when an individual wants to make a final payment for a debt that is owed. The debtor offers a payment that is less than the outstanding due (usually between 50% to 70%) if the payment can be made immediately. After Payment - After the last payment is complete the Creditor will agree to remove all harmful postings from the Debtor's credit report. Sample DEBT SETTLEMENT AGREEMENT Effective Date: \_\_\_\_\_, 20\_\_ This Agreement is for the negotiation and compromise of a debt under the following terms and conditions: The Parties, \_\_\_\_\_ with a mailing address of \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_ shall be known as the "Creditor". \_\_\_\_\_ with a mailing address of \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_ shall be known as the "Debtor". When mentioned jointly shall be known as the "Parties". Debt Settlement. It is understood amongst the Parties that the Debtor has an outstanding debt with the Creditor. Through the mutual interest of the Parties, they agree that this outstanding debt shall be marked as paid if Debtor shall make payment of \$ \_\_\_\_\_ by \_\_\_\_\_, 20\_\_\_. Post- Payment. After the payment has been made by the Debtor the Creditor shall make any and all efforts to remove the outstanding debt from the Credit Reporting Agencies. Furthermore, the Creditor declares that they will not make additional information that could harm the Debtor's credit report. By signing below, the Parties agree to abide by the terms and conditions of this Agreement. Debtor's Signature \_\_\_\_\_ Creditor's Signature \_\_\_\_\_ Date \_\_\_\_\_ Date \_\_\_\_\_ How to Write 1 - Decide Upon Which Format You Would Like To Obtain Then Download It The Agreement on this page will supply the paperwork required to set a Settlement Agreement in action. Download it using one of the three buttons presented on this page to choose the format you prefer (Adobe PDF, Microsoft Word (.docx), or Open Document Text (.odt)) 2 - Produce The Requested Information Several pieces of information will need be needed to balance the wording in this Agreement. To begin we will solidify the parties that intend to enter this contract. First, we will identify the Creditor. That is, the party that holds the debt. Record the Legal Name of the Creditor on the first blank space in the first paragraph. Then, using the second blank line, document the Creditor's Street Address. Finally, the third and fourth blank spaces will need the City and State associated with the Creditor's Street Address supplied on them. Next, we will identify the Debtor. This is the party obligated to satisfy the debt owed to the Creditor. We will need to document the same information reported on the Creditor in the remainder of this paragraph. Locate the fifth blank space in this paragraph then, document the Full Name of the Debtor on it. Continue the Debtor report with his or her Street Address, City, and State of Residence on the sixth, seventh, and eight blank spaces. Several additional areas will also require information, beginning with "I. Effective Date." This is the Date when the terms of this Agreement will become active or Effective. Record the Month Name, Two-Digit Day, and Two-Digit Year of the first Calendar Day this Agreement becomes active. Next, in "II. Present Debt," we will need to document the Full Current Debt the Debtor is obligated to pay the Creditor. Use the blank line placed after the dollar sign in this statement to record this amount of money. The third item, "III. Settlement Debt," calls for the adjusted Debt Amount set for the purposes of this document supplied to the blank line. This is the amount of money the Debtor has agreed to Pay in the manner defined here in exchange for the Creditor's debt forgiveness. Enter this amount on the blank line following the dollar sign in this section. The section labeled "IV. Payment has been worded to solidify how the Settlement Amount must be paid to the Debtor. A series of checkboxes have been provided so this may be done efficiently. Mark the "Check," "Bank Wire," "Certified Check," or "Cash" checkbox to indicate how the Debtor must pay the creditor. If none of these define how this the Settlement Amount must be paid, then mark the "Other" checkbox and report the Payment Instructions the Creditor expects the Debtor to follow when submitting the required payment. The next sentence in this item will seek to solidify the Date when the Creditor must receive the Settlement Amount from the Debtor. Locate the blank line after the words "...Settlement Debt Amount By" then enter the Month Name and Two-Digit Calendar Day when the Creditor must receive this payment. On the blank line after that, record the Two-Digit Calendar Year for this Date. The next area requiring attention will be "XII. Governing Law." Use the blank line in this item to report the State where the terms of this contract will be governed and enforced. 3 - Both Parties Must Sign This Document To Execute It The final requirement of this contract will be to bind both parties to its terms. This can only be done through the Dated Signatures of both the parties. The Debtor must sign this Agreement to formally enter it. He or she will need to locate the words "Debtor's Signature" then sign the blank line after them. Adjacent to this he or she should enter the current Date. Finally, the Debtor must print his or her Name on the blank line labeled "Debtor's Name." The Creditor must sign his or her Name on the "Creditor's Signature" line, then supply the Date he or she signed this document on the empty line next to it. Below this, the Creditor must sign his or her Name. If the Creditor is a Business Entity, then an individual who is authorized by that Business Entity to sign this document on its behalf must sign his or her Name. When Printing his or her Name, the Signature Party should follow it with the Legal Name of the Business Entity as reported in the first paragraph (i.e. John Doe, 1X Corp.).

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