

‘Economic root canal’ — personal bankruptcy primer



Attorney Steven Weiss

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NORTHAMPTON — Personal bankruptcy filings continued to decline statewide last year after peaking in 2010, a trend some say signals an improved economy. Other bankruptcy experts paint a more cautious picture and say many Valley residents face significant money problems fueled, in part, by the Great Recession.

In Massachusetts, Chapter 7 bankruptcy filings, also known as a liquidation proceeding or “straight bankruptcy,” were down in 2012 nearly 19 percent over the previous year, and by 32 percent compared to 2010, according to figures tracked by the Warren Group in Boston.

The number of personal bankruptcy filings in Hampshire, Franklin and Hampden counties nearly mirrored those figures, and the decline reflects a national trend.

The reorganization of debt, another type of personal bankruptcy known as Chapter 13, also declined for the second year, but remained relatively unchanged in Hampshire County with around 40 or so filings in each of the past three years.

Last week, Timothy M. Warren Jr., chief executive officer of the Warren Group, described the statewide drop in bankruptcy filings as an “encouraging sign” when the organization released new annual data.

“It indicates that consumers are more optimistic about their ability to pay off debt and clean up their financial situations,” Warren noted. “If the housing market and overall economy continues to improve, we are sure to see even better results in 2013.”

Others in the bankruptcy field said the numbers can be deceiving, however.

The economy, at least in the western part of the state, appears to be at a crawl and the unemployment rate has been ticking up in recent months. Credit has been harder to attain, and some people who are in financial holes either aren’t motivated enough to pursue bankruptcy or may not have the money to pay an attorney to initiate the process, they say.

“It can be puzzling,” said David W. Ostrander, a Northampton bankruptcy attorney and one of a handful of trustees who oversees the administration of bankruptcy cases in the region. “You scratch your head as to why because I don’t think the economy is doing any better.”

Ostrander is one of several area bankruptcy attorneys who say the U.S. bankruptcy courts may see more filings at the end of 2013, a result of an eight-year waiting period for second-time filers.

The eight-year-period was one of many changes put on the books when bankruptcy laws were revised in October 2005.

In addition, it remains to be seen whether the student loan debt crisis, which is the largest source of consumer debt in the country at nearly \$1 trillion, will result in more personal bankruptcies as some borrowers turn to credit cards or other means to cover student loans.

Most student loans cannot be wiped out in a bankruptcy proceeding and delinquencies on these loans are rising, particularly among subprime or the riskiest borrowers, credit bureaus are reporting.

“It is a huge problem, and it’s going to be getting bigger,” said Steven Weiss, a bankruptcy attorney and trustee with the law firm Shatz, Schwartz & Fentin in Springfield and Northampton.

Reasons remain

The main reasons that drive personal bankruptcy remain constant.

Unemployment, divorce, exorbitant or unexpected medical expenses, or caring long-term for an elderly family member are among the scenarios that can kick off a downward financial spiral leading to bankruptcy.

Greta LaMountain Biagi, an Amherst bankruptcy and real estate attorney, said 99 percent of her clients who file for bankruptcy are decent, hard-working people who have come across tough times.

“Most people call me very confused and freaked out,” she said. “My job is educating people and clarifying how the law works.

“It’s a very personal decision,” she added. “It’s a very big decision and it has to be done at the right time.”

For individuals, Chapter 7 bankruptcy involves the liquidation of all non-exempt property, which is handled by a trustee who distributes the proceeds to creditors. Those liquidated assets can run the gamut, from investment property and stocks to jewelry, artwork and copyrights, to name only some examples.

Several exemptions allow Massachusetts residents to protect their property, including up to \$500,000 of equity in the house one lives in — a homestead — and \$7,500 of equity in a vehicle, for example.

“It’s society’s way of dealing with people who have debts, a way of providing someone with a so-called fresh start,” said Ostrander. “It’s not economically productive to have you in debt.”

The entire process takes about four months and triggers what is known as an “automatic stay” which halts creditors from seeking the collection of debts.

The bankruptcy process discharges many unsecured debts like credit card and medical bills, though not all such as taxes, child support or student loans. If a person wants to keep a home, he or she must continue to pay a mortgage and other secured debts after bankruptcy.

“The vast majority of people who file for Chapter 7 bankruptcy are going to get rid of all their debts and keep all of their assets,” said Elizabeth D. Katz, a bankruptcy attorney also with the Ostrander Law Office.

For those not eligible to file for Chapter 7 bankruptcy because of their level of income, a partial three- to five-year debt-repayment plan under Chapter 13 becomes an option, particularly if assets are worth more than debts and those assets are not going to be exempt.

This type of filing is often geared toward those seeking to avoid a foreclosure and repay past mortgage payments. Chapter 13 debtors also receive a discharge of most unsecured debts after completing the repayment plan.

Typical misstep

Bankruptcy attorneys say one of the worst things someone swimming in debt can do is tap into assets like retirement savings or home equity to pay off debts that would otherwise be forgiven in a bankruptcy proceeding. These actions can also bring additional tax liabilities, compounding one's financial woes.

Weiss noted that he had one client who prior to filing for bankruptcy had cleaned out \$70,000 in retirement savings to pay off credit card bills. A year later, the man was still unemployed and reeling in tens of thousands of dollars in new credit card debt.

"I've had a number of clients exhaust exempt assets that they didn't have to use to pay credit card bills and it just doesn't do any good," said Weiss, who likened the bankruptcy process to "economic root canal" for some.

One downside to filing for bankruptcy is that it may be reported on a person's credit record for as long as 10 years, limiting one's ability to receive credit in the future.

However, bankruptcy attorneys say that for many people, their credit is already so low there's only one way to go — and that's up after a bankruptcy filing.

Obtaining a credit card and making steady monthly payments is one way that someone who has filed a bankruptcy can begin to restore credit.

For someone with an income, the process can typically take about two and a half years and it can be as long as three years before they could qualify for a mortgage.

"After a few years, it's almost like ancient history in today's world of finance," Ostrander said.

For others though, bankruptcy merely provides a short-term solution to larger financial difficulties, particularly if they remain unemployed or underemployed after having most of their debts wiped out.

"It's very hard to know how quickly one recovers from bankruptcy," Biagi said.

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