

Bankruptcy is easier now — maybe too easy?

By RICK SLUDER

She was just out of the hospital, her small business had just failed, and she had just found herself liable for a loan she had co-signed. Mary was drowning in debt, and she reached for the only life preserver she saw. She filed for bankruptcy.

"It was the only way I could see to keep my house," she said. "I didn't know much else about it. I didn't know it would go against my credit the way it has . . ."

"I did some more checking about it now that I've already done it. I thought I could get credit after (filing bankruptcy) — some anyway. Then I put in applications at one or two stores — couldn't get anything, couldn't get a half dollar's worth."

In one sense, Mary, a Garner resident who now assembles electronic circuit boards for a living, has had a terrible financial burden lifted from her. She is paying the bills she otherwise could not have met, a total of about \$2,000, under an arrangement worked out in court. In a few years, she will be debt-free.

In another sense, Mary is a victim of a federal law designed to help people like her, the Bankruptcy Reform Act of 1978. Had Mary filed before the law went into effect Oct. 1, 1978, she would have lost almost all her possessions. But the act liberalized the rules of bankruptcy and allowed debtors to keep more property than before.

The result, say some critics of the law, is that today bankruptcy is too easy, too inviting. It is no longer a last resort. And debtors are blindly rushing in, not thinking about what it will mean next year, the next time a car loan is sought, the next time a new job beckons.

Some state legislators, with an nod to creditors who complain they lose money with each bankruptcy, apparently agree. Two bills were introduced in the Legislature last week that would exempt North Carolina from the liberal federal law. Unless new state bankruptcy rules are enacted, that would mean a return to the strict state law that strips debtors of almost all their assets.

A probable factor in the bills' fates is the soaring number of bankruptcies in the 44-county Eastern District of North Carolina since the federal law has been in force. In 1979, bankruptcies numbered 1,830; in 1980, the number was 2,993.

Under the state law in effect before the federal code pre-empted it, debtors filing personal bankruptcies were allowed to keep only \$1,000 in real property and \$500 in personal property. Everything else went to pay bills.

Now, under what's known as Chapter 7 of the bankruptcy code — the section covering so-called "straight" personal bankruptcies — the debtor can keep \$7,500 in home equity, \$1,200 in car equity, \$500 in jewelry, \$750 in tools (generally those needed for work) and all clothes and household items not exceeding \$200 in current market value. Each debtor is allowed these exemptions, which means if a husband and wife filed for bankruptcy, the values would double.

Under Chapter 13, perhaps better known as "the wage earner plan," the debtor repays all or a percentage of his debts over an extended time worked out by the bankruptcy court. He is allowed to keep all the personal property necessary to make the plan work, which courts frequently interpret to mean all property, period.



Economy forces many to file

Who files bankruptcies these days?

Gregory B. Crampton, a Raleigh attorney who has represented creditors and debtors in bankruptcy cases, says it's mainly persons who have become victims of a stagnant economy.

The stereotype of bankruptcy court as a haven for deadbeats doesn't hold nowadays, Crampton said. "Interest rates what they are and the economy as sick as it is — those things impact a lot of people over all income levels," he said.

People in small businesses are particularly vulnerable, he said. Owners of construction companies or restaurants, or anyone who has had to guarantee a corporate debt, may have to turn to bankruptcy in poor economic times.

A. Thomas Small, vice president and counsel at First Union National Bank, also thinks the profile of a candidate for bankruptcy has changed.

"It used to be, a person would be past due (in bill payments) for a few months, and you could see a bankruptcy petition coming," Small said. "But now it's people

who are current on their debts, people with terrific credit ratings."

That's had a stunning effect on banks, he said. At First Union, for example, 43 percent of the money lost on installment loans in 1980 was attributed to bankruptcies. In 1979, Small said, "the percentage was so insignificant we didn't keep a record."

Merchants who extend credit have noted a change, too. Ronald J. Johnson, assistant credit manager for Hudson-Belk, said, "It used to be apparent that an individual was in financial trouble before he filed for bankruptcy. Now the accounts are not delinquent in any respect, and many make purchases a few weeks before (filing)."

In one case, Johnson said, a person charged a purchase the day after the court received his bankruptcy papers.

What accounts for the change? Different people have different theories. Some blame the liberalized federal bankruptcy law. Some blame the economy. Some blame attorneys' advertising that tempts a debtor into bankruptcy

before he considers other options. Some blame more sophisticated consumers who now know the bankruptcy option is there.

Edmund D. Aycock, N.C. Bankers Association attorney, said he thinks it's probably a combination of factors.

"The means are available and you can protect more property," Aycock said. "People are more knowledgeable now . . . and you can't really blame them or the lawyers for taking advantage of a law that's in place."

But if the law isn't a good one, as the bankers' group contends, it should be replaced, he said.

Bankers, merchants and credit counselors also pointed out that bankruptcies affect everyone.

Because of economic uncertainty and the high number of new bankruptcies, lenders are getting more edgy about who receives their money. A person who might have marginally qualified for a loan five years ago may be turned down today.

Also, merchants must recoup money lost to bankruptcies. That means higher prices.

— RICK SLUDER

Edmund D. Aycock, counsel to the N.C. Bankers Association, said the state's bankers realize the old \$1,000 and \$500 exemptions are too low, but they also believe the federal exemptions are too high.

"It's almost an incentive to go into bankruptcy," Aycock said.

The exemptions are excessive. The exemptions have no economic or realistic base in North Carolina . . . They literally let a person file bankruptcy yet remain very comfortable, or more comfortable than he should be at the expense of legitimate creditors."

That's what irks bankers and other creditors: The idea that the small percentage of debtors who are trying to beat the system — the deadbeats — aren't paying as much as they are able on legitimately incurred debts, or are totally released from them.

But that is seldom the case, said Frank Allen, a Raleigh attorney who handles bankruptcy cases. Far from rushing into bankruptcy, Allen said, "quite the opposite is true; they are pushed into it. "Most of the people I talk with want to pay their debts. They've done everything they can do, but they can't work it out."

Their plight usually results from many factors, he said. Among them are the poor economy, easy credit

and uncooperative creditors who won't bend rules or repayment schedules. They turn to bankruptcy only after other options fail.

Even then, Allen said, the majority of his clients file under Chapter 13 and repay what they can.

For people who truly have no choice but bankruptcy, that course may be a good one, said Doloris Evans, supervisor of the consumer credit counseling division of Family Services of Wake County. But overlooked in the creditors' and bankers' arguments against bankruptcy is the devastating and, to many, surprising social effects stemming from a ruined personal credit rating.

For example, the counseling service's debt management program, which disburses a client's available funds to creditors over time, sometimes gets a client who is unwilling to budget or make the sacrifices he must to become debt-free.

"They say, 'Why should I bother when I can file

bankruptcy?'" Ms. Evans said. But to anyone familiar with financial workings, the reason they should bother is clear.

"As the squeeze is put on . . . to try to get inflation under control, loans in general will be harder to get," she said. "If you declare bankruptcy, you'll never get a loan. You'll probably never buy a house. You might get relief right now, but how will it affect you five years down the road when you try to rent a place or try to get a job?"

Since family troubles often follow financial troubles, it's not unusual for a bankruptcy to spark a marital split, too, she said.

And the trouble often follows a person for a long time. A straight bankruptcy remains on an individual's credit record for 10 years, said a spokesman for the Credit Bureau of Raleigh. A Chapter 13 action is reported for seven years from the time the debtor settles with creditors.



March 4 1981



Clipped By:
tsasser
Thu, Dec 23, 2021