The "B" Word: Debunking the Bankruptcy Myth

With the rising cost of food and fuel, the fallout from the sub-prime market and a continuing unstable economy, more and more people are finding themselves struggling to provide for their families. The impact of the current circumstance has resulted in a 40% rise in bankruptcy filings nationwide. The people of Maine are no exception. Due to the economic reality of trying to live in this state, the percentage of bankruptcy filings here will pass the national average.

The bottom line is that, over the past twenty years, lenders have substantially extended credit to significantly increase their own profits with little or no regard for the economic impact on the consumer. America runs on credit. This assault starts early and is evidenced by young college students, who are barraged by promises of credit long before they understand the financial ramifications and find themselves with credit scores that require years to repair.

College students are certainly not the only victims in this culture of credit. As people struggle to maintain basics, credit limits are increased exponentially. No matter what the circumstance, one missed payment often results in numerous fees, possible rate changes and a subsequent drop in your credit score. The recent sub-prime mortgage fiasco is evident of lending institutions self-serving methodology. As another wave of adjustable rate mortgages come due in 2008, an increasing number of foreclosures will correspond to those adjustments.

A lot of people are uncomfortable talking about the "B" word. For many people, it continues to have some stigma attached to it. However, the significant rise in bankruptcy filings statistically acknowledges that more and more people are utilizing this option. For years, large corporations, advised by a bevy of lawyers, have sought protection from their creditors under the federal Bankruptcy Code for years. It is time for consumers to understand that they are afforded that same protection under the same law.

The Bankruptcy Code has two main objectives. The first objective is to provide debtors with a fresh start in their financial lives. Whether it is the crushing interest, late or over-limit fees of credit cards or mounting arrearages from adjustable rate mortgages, there comes a point where it is virtually impossible to overcome that mountain of exponential debt. The second objective of the Bankruptcy Code mandates an equitable return to the creditor and is evident in the Code's recent changes.

There are two options available to individual consumer debtors under the Bankruptcy Code. The first is Chapter 7, which is a complete liquidation or what is termed as a straight bankruptcy. The second is Chapter 13, which is a reorganization of your debt. In both Chapter 7 and Chapter 13, Maine has opted out of the federal bankruptcy Code and has its own homestead exemptions. Contrary to public opinion, it is not the intention of the federal Bankruptcy Code to leave you without a home or a vehicle to get to work. Many times, depending on your circumstances, those items, as well as others, fall within Maine's exemptions and are retained by the debtor.

There is a significant emotional component when facing bankruptcy. The stress of constant worry eventually takes its toll. People believe that they have somehow financially failed. Nothing could be further from the truth. Those individuals who contemplate filing bankruptcy often do so out of necessity and are held to a federal standard that attempts to mitigate abuse of the system. When the new bankruptcy laws were implemented in the fall of 2005, it included a new "means test." This "means test" was a formula designed to keep debtors with higher incomes from filing for Chapter 7 bankruptcy. Under the reorganization scheme of Chapter 13, debtors repay a portion of their debts, but may not use Chapter 7 to discharge their debts altogether.

Many people mistakenly believe that they must be completely penniless in order to seek protection from their creditors under Chapter 7. This is not true. People can earn significant monthly income and still qualify for Chapter 7 bankruptcy. Many people who qualified for bankruptcy under the old law still qualify for those same protections under the new law. Chapter 13 involves maintaining your assets in exchange for paying some or all of what you owe your creditors over either a thirty-six or sixty month plan depending on the amount of your debt and your income. Chapter 13 provides more flexibility in a consumer's protection under the Bankruptcy Code.

Another concern for people is the impact that a bankruptcy filing has on your credit report. However, if you are not making your credit card payments, behind in your mortgage or facing repossession of your vehicle, your credit score has already taken a significant hit. After two years, the impact of a bankruptcy filing on a credit report begins to wane and rebuilding your credit is much easier when you are not longer liable for mountains of debt.

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