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Lawyer Bill Clark of Jeffrey Freedman Attorneys at Law said his firm is seeing filings from people who thought they were financially set as well as those in low-paying jobs.

# What's driving people to file for bankruptcy, what's not to blame

BY MATT CHANDLER  
Buffalo Law Journal

Bankruptcy lawyers may differ on what's causing a spike in Chapter 7 and Chapter 11 filings, but they all agree on this: It is going to get worse before it gets better.

Over the last 12 months, U.S. bankruptcy courts processed 1.04 million filings, a 30 percent increase over the previous year. Locally, the numbers are much better, though Western New York still saw a 6 percent increase.

Those aren't record filing numbers, but experts say the increase is significant, particularly in light of 2005 legislation expected to drive down the numbers of bankruptcies. And they expect the trend to continue.

As for what's driving the increase in filings, the easy answer may be to blame the economy. Are personal filings driving small businesses to the brink of collapse? Are business layoffs driving people living paycheck-to-paycheck over the edge? Are those looking to liquidate what may be a lifetime of assets victims of tough times or of their own inability to control the urge to spend beyond their means? Or, has a combination of all of these factors led to astronomical increases in bankruptcy filings?

## Foreclosures not a key factor

Brian Shaw, who serves on the board of directors of the American Bankruptcy Institute, said that

bankruptcy filings are being driven primarily by nonsecured consumer debt, not home foreclosures.

"People are not filing bankruptcy to save their house," said Shaw, a lawyer with Shaw Gussis Fishman Glantz Wolfson & Towbin LLC in Chicago. "The foreclosures are a symptom, not the cause.

"People overextended themselves in large part because of the availability of cheap credit," Shaw said, "and now, with that credit gone, they have nowhere to turn."

Although consumer debt may be behind many of these filings, one lawyer cautions against drawing any stereotypes about who is vulnerable.

"We are seeing a pretty big cross-section of people come through the doors," said Bill Clark, a bankruptcy lawyer with Jeffrey Freedman Attorneys at Law.

"A lot of them are people who had good jobs and thought they were set financially, but lost their jobs. Others are people earning a low income, just getting by, who get injured or who lose their job and can't afford to pay their bills."

Clark said many of his clients come in looking to avoid filing bankruptcy, hoping they can pay their debt back, but that increasingly is not a viable option. He echoed Shaw's comments, saying he helps many people saddled with excessive unsecured consumer debt, such

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as credit-card debt or medical bills. While some experts have pointed nationally to the housing crisis as a cause for the bankruptcy boom, Clark said in Western New York, that isn't a factor.

"Here, I see one of the reasons our numbers are lower than the national statistics is because of the housing prices staying lower here," he explained.

## Many businesses may close

People filing for bankruptcy protection are one part of the equation, but equally troubling is the rise in businesses filing for bankruptcy, said Gary Graber, a partner at Hodgson Russ LLP who heads the firm's bankruptcy, restructuring and commercial litigation practice group.

"There has definitely been an increase in business filings," he said. "Especially in the middle market, where we see a lot more businesses with decreased sales, that translates to the bottom line."

Graber said those businesses are often highly leveraged and under increased pressure from the banks holding their notes. Though he says banks seem to be working



Graber

more with their corporate clients to avoid pushing them into bankruptcy, he still projects a difficult year ahead for Western New York businesses.

"I believe retail will be especially hard-hit," he said, citing recent filings from retail giants

Circuit City and Steve and Barry's, each of which has three locations in Western New York. "That tends to have a ripple effect

*'The foreclosures are a symptom, not the cause.'*

## Brian Shaw

Director, American Bankruptcy Institute

across the region when one industry is in trouble."

Raymond Fink says the cost of filing for bankruptcy is an obstacle many businesses won't even attempt to overcome in the coming months.

"I think as we head into 2009 we will see a greater number of business insolvencies, and a lot of them won't even bother to file for bankruptcy because there isn't any purpose

## How the numbers stack up

■ **New York is 38th in the nation in bankruptcies per capita**, with 2.34 filings per 1,000 residents. Tennessee leads the nation with 7.27 filings per 1,000 residents.

■ **Of the more than 45,000 bankruptcies filed in New York** between October 2007 and September 2008, 9,113 were filed in the Buffalo and Rochester areas. Of those, 8,841 were personal filings and 272 were by businesses.

■ **Out of 1,042,993 filings nationwide during those 12 months**, 38,651, or 4 percent, were business filings.

■ **Since hitting a peak of 881 filings in April 2008**, Western New York bankruptcies have declined. The region ended the fiscal year with 799 cases filed in September.

to it," explained the Harter Secrest & Emery LLP partner. "They will just close their doors and hand over the keys."



Fink

Fink said that the formal bankruptcy process doesn't do much to assist small businesses with revenues of \$1 million or less, given the high costs of completing the process. He also said that filing for bankruptcy protection doesn't change underlying

regional and national economic woes. "Bankruptcy will never help a business that isn't generating sales," he said. "If a car dealer isn't selling cars because no one can get the credit, filing isn't going to help him sell any more cars."