



Column: Bankruptcy a viable option for some

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BY STEPHEN P. WRIGHT

Declaring bankruptcy is a wrenching resolution for most people, necessitating uncomfortable and typically unpopular decisions — decisions that nonetheless must be considered when deciding whether to proceed, especially in a period of snail-like economic recovery.

The majority of cases filled by individuals under Chapter 7 of the Bankruptcy Code are from people experiencing a financial crisis that prevents them from meeting their current obligations.

Despite common negative assumptions about the character of people filing for bankruptcy, they are for the most part honest, hardworking people who have experienced unexpected and unavoidable hardship.

Many people who contemplate filing for bankruptcy also fear that their financial affairs will become widely known. That is unlikely. While bankruptcy proceedings are open for public review in court records, they are not published. In addition, the Chapter 7 process rarely involves a court appearance.

Typically, after the case is filed in the federal district in which the debtor resides, a meeting is conducted by a nonjudicial officer, known as a trustee. Since the meeting is recorded and testimony is taken under oath, debtors are allowed to have an attorney present to counsel them through the process. Unless you are a prominent public figure, this record is rarely sought by the media or the curious observer — least of all by creditors.

Although many individuals fear they will lose everything they possess in a bankruptcy filing that is not the case. Many assets are exempt and can be kept by the filer. As well, unfortunately, by the time an individual seeks relief under Chapter 7, most of his or her assets have been depleted and typically those that remain are exempt by law.

In Connecticut, exempt property includes \$75,000 per person of equity in the debtor's home (\$150,000 per married couple), household goods, clothing, engagement and wedding rings and \$1,000 per person in cash and other property. A Chapter 7 trustee will not sell a home simply

because the mortgage loan is in default and will have little interest in a residence unless it has a market value exceeding the mortgage and other liens by more than \$75,000.

Those filing under Chapter 7 also may retain their retirement accounts, social security benefits and most other government-subsidized benefits. Properly funded college accounts for the debtor's children are also beyond the reach of creditors in Chapter 7. Personal injury claims and payments also can be protected with proper pre-bankruptcy planning and through exemption.

In addition, all debts or claims existing at the time of filing are immediately affected by an automatic stay that prevents creditors from contacting the debtor, enforcing a judgment or continuing a lawsuit. The annoying calls and letters from creditors stop.

Before the Chapter 7 process is successfully completed, the debtor(s) will receive an order of discharge, representing a permanent injunction against the collection of a discharged debt. Legally, the creditor has no enforceable right to collect the discharged debt although the debtor may choose to selectively pay discharged debts with the advice of counsel.

Finally, the law prevents all forms of discrimination against individuals who seek bankruptcy protection — employers cannot fire or discriminate against employees who have filed under Chapter 7.

Nevertheless, there are areas where bankruptcy can have a negative impact.

Private employers can refuse to hire a person who filed for bankruptcy. Landlords can refuse to lease to a Chapter 7 debtor, and private colleges can deny transcripts. There are other issues that may arise and it will be a wise move to determine all the benefits and drawbacks before deciding to file.

Attorney Stephen P. Wright is a principal with Norwalk-based law firm Goldman, Gruder & Woods L.L.C. He has been in the practice of debtor/creditor rights for more than 25 years and has written and lectured on the subject of bankruptcy. He can be reached at swright@goldmangruderwoods.com.