

## The Rising Cost of Going Bankrupt

Bankruptcy is the last lifeline for consumers facing insurmountable debts, but it still comes at a price. Between 200,000 and one million American consumers are estimated to be unable to afford the cost of filing for Chapter 7 bankruptcy

, according to new research released by the National Bureau of Economic Research.

The research also reported the average cost for filing Chapter 7

as more than \$1,500, including attorney's fees. The court costs associated with filing a petition account for about \$300 of that total.

The cost of bankruptcy rose sharply following passage of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, which introduced sweeping reforms to the bankruptcy process. These changes include mandatory credit counseling and financial education courses, additional legal documents, increased filing fees and an updated "means test" to determine bankruptcy eligibility. The burden of paying for all of these added requirements, including the increased attorney hours needed to prepare the filing, falls to the debtor.

The legislation was designed to discourage abuse of the bankruptcy system by adding more obstacles to it. It appears to be working, albeit slowly, in reducing the bankruptcy rate; 1.3% of consumers filed for bankruptcy last year, compared with 1.4% in 2004.

But it also puts the greatest squeeze on the most cash-strapped consumers. Eligible debtors with higher incomes and greater assets are more likely to be able to afford the \$1,500 price tag than those with lower incomes and fewer assets.

"In virtually any type of program, there are going to be those who fall between the cracks," said Robert J. Rock, a bankruptcy

attorney with Tully Rinckey. "I would suspect that this group was made larger by the most recent bankruptcy amendments."

"The two counseling courses that need to be taken before and after a Chapter 7

filing do add some expense, and the filing fee has risen even faster than the associated legal fees. And that filing fee is the key to the courthouse."

### Going it Alone

Hiring an attorney, which is the most expensive part of the bankruptcy process, is not technically a necessity. But filing for bankruptcy is more complex than ever, and the consequences of even innocent mistakes can be severe.

Still, more consumers are making bankruptcy more affordable by representing themselves. Last year, 8% of Chapter 7

filings were completed without the help of an attorney, up from 6% in 2007.

The worst-case scenario in any bankruptcy filing is for the petition to be dismissed by a judge, which is likely if the petition contains errors or omissions. A dismissal brings no financial relief, but it can damage a debtor's credit just as much as a successful bankruptcy.

"Perhaps you didn't take the financial management course, or maybe you haven't provided all the required documents," Rock said. "These mistakes can certainly result in a dismissal. It can be a very complicated procedure for people who are coming into it for the very first time."

Under the revised bankruptcy law, dismissals can also haunt debtors by affecting the automatic stay provision. An automatic stay is an injunction that prohibits unsecured creditors from suing or seizing property from the bankruptcy petitioner, and it kicks in as soon as the petition is filed. But if you've had a dismissal in the past year, the automatic stay will expire after one month unless you can get a judge to extend it.

## **When You Can't Afford to File**

Debtors who just don't have the cash on hand to file a petition have several options. For those who can prove they can't afford the costs, seeking a pro bono lawyer is a worthwhile approach.

"If a person is truly indigent and needs relief, there is the ability to get pro bono assistance," Rock said. "There are agencies in virtually every area that exist to help connect legal services with those who can't afford it."

The American Bankruptcy Institute, a bankruptcy research and education organization, maintains an interactive map that can be used to locate pro bono bankruptcy resources throughout the U.S.

If you can't find free legal aid, you may be able to gather the necessary funds by stopping payments on your unsecured debts.

"If you are paying on a credit card or some other unsecured debt that is dischargeable in bankruptcy, and you're paying just enough to keep the wolves at bay, you're probably getting deeper and deeper in the hole," Rock said.

A successful bankruptcy will wipe out unsecured debts anyway, so it's a sound strategy if you can save enough money for attorney fees by skipping a few payments. Just remember that you're not protected against legal action or repossession until you actually file your petition, so it's important to raise the necessary funds quickly if you take this approach. It may be helpful to limit your spending to the bare necessities or to ask family or friends for financial aid to reach this goal as soon as possible.

As for court fees, you or your attorney can request that they be waived or that you be allowed to pay them in installments. A judge will typically rule on this request based on your income and ability to pay the fees.

Attorneys may also offer other solutions to manage or minimize costs. Some may accept payment plans or offer discounted rates in need-based cases. When contacting law offices, it's important to ask about these possibilities and any pro bono services offered.

"Most competent bankruptcy attorneys will go out of their way to increase access to those debtors who truly need to file bankruptcy to get their financial house in order," Rock said.