

BUSINESS NEWS ESSENTIAL TO BOSTON'S LEADERS.

Chapter 7 filings decline sharply in Mass.

By Eric Convey
econvey@bizjournals.com

Filings under Chapter 7 of the federal bankruptcy code, the law often used by individuals or businesses at the end of their financial ropes, fell dramatically in Massachusetts in 2011. Lawyers who specialize in the field offered a range of explanations for the 18 percent

decline, including reduced layoffs — a major cause of household financial collapse — and financial belt-tightening by families.

Meanwhile, Chapter 11 filings — usually employed by businesses to hold creditors at bay — rose slightly year over year after a big jump from 2009 to 2010. Bankruptcy lawyers nevertheless cautioned that many businesses still face tough reckonings in 2012.

The steep decline in Chapter 7 filings in U.S. Bankruptcy Court for Massachusetts is without recent precedent. When considered in conjunction with Chapter 13 filings, which often are used by households to work their way out of trouble over three-to-five years, filings still were off 14 percent in 2011 compared with 2010.

See **BANKRUPTCIES**, Page 28

'MANY BUSINESSES HAVE BEEN DOING WHATEVER THEY CAN TO WEATHER THE STORM OF THE CURRENT ECONOMIC TIMES AND TO STAY OUT OF THE BANKRUPTCY COURTS. THESE EFFORTS MAY NOT BE SUSTAINABLE.'

HUGH J. GORMAN | Partner at Prince Lobel Tye

BANKRUPTCIES: Fewer households liquidate to address debt woes

FROM PAGE 1

"In the consumer area, bankruptcy filings are driven by loss of employment — so the unemployment rate becomes pretty critical — and in Massachusetts, we enjoy a rate that's better than most of the country and seems to be on the decline," said Mark Berman, a partner at **Nixon Peabody** who focuses on financial restructuring and bankruptcy. The unemployment rate in Massachusetts is 7.3 percent, compared with 8.6 percent nationally.

Changes in behavior also are playing a role, Berman said. After consumers were "decimated" from 2008 through 2010, many "learned a lot of lessons, including lowering their spending, increasing their savings; conserving."

Lynne Riley, of the **Riley Law Group** in Boston, serves as a trustee in Chapter 7 cases. Her job is to help work through a household's assets and debts.

Increasingly, Riley said, she is seeing Chapter 7 cases that began as Chapter 13 cases, meaning families are liquidating their assets after failing to satisfy deals that were intended to let them work through financial troubles.

SURGE STALLED

Bankruptcies filed in Massachusetts (2011 numbers are through Dec. 28)

Chapter 7 filings, statewide:	Chapter 11 filings, statewide:
2011: 14,644*	2011: 210*
2010: 17,997	2010: 201
2009: 17,101	2009: 152

SOURCE: Business Journal Research

*through Dec. 28

"Oftentimes," she said, "they just can't do it."

A number of lawyers attributed household problems to the residential real state collapse. Families, especially after a blow such as unemployment, are left with bills they can't pay and homes they can't sell.

Riley doesn't expect any resolution to the housing mess until 2013. "These properties will ultimately be foreclosed (upon)," she said. "I don't think these modification programs are working."

Chapter 11 filings in Massachusetts were relatively flat in 2011 compared to 2010.

There were 174 filers, mostly business-

es, under Chapter 11 in the Boston bankruptcy session during 2011 — a 6 percent increase over 2010's figure. Statewide, Chapter 11 filings were up 4.5 percent in 2011 compared with 2010's volume. In Boston and across the state, Chapter 11 filings had surged dramatically from 2009 to 2010.

Hugh J. Gorman, a partner in the litigation department at **Prince Lobel Tye** who focuses on creditor's rights and commercial litigation, said the economy will determine whether the number of Chapter 11 filings stays flat in 2012 or surges.

"Many businesses have been doing whatever they can to weather the storm of the current economic times and to stay out of the bankruptcy courts," he said. "These efforts may not be sustainable. In the event positive economic changes fail to take hold in the first quarter of 2012, you will see additional business failures and Chapter 11 filings."

Gorman said tough underwriting standards at banks are making it harder for struggling companies to address problems servicing debt.

"Because the banks are reluctant to lend in this economic climate, those with challenged balance sheets — together with

real estate real with little or no equity — will not be able to take advantage of lower interest rates and refinancing," he said.

While banks are reluctant to lend, they also are reluctant to force borrowers into bankruptcy, lawyers said.

"Banks still have their hands full with a lot of problem loans, with an economy that is still quite flat and that doesn't present meaningful exit strategies," said Michael Goldberg, a bankruptcy partner at **Casner & Edwards** in Boston. "We see a continuation of the pattern of — put off the day of decision until tomorrow." There have been "a lot of loan extensions and modifications and restructurings."

When smaller companies do fail, he said, lenders often turn to options other than forcing borrowers into bankruptcy because there's "nothing to save in Chapter 11 ... there's no value left."

Berman, of Nixon Peabody, said one reason for a relatively flat number of Chapter 11 filings is that "the local economy ... has been able to sustain businesses a bit better than you had before."

Nevertheless, Berman said he remains worried about three sectors — real estate, energy and health care — going into 2012.