

## IT'S YOUR BUSINESS



MARK RIGHTMIRE, THE ORANGE COUNTY REGISTER

"This year will be horrible for the local economy and bankruptcies," says Ron Rus of Rus Miliband & Smith.

# Bankruptcy attorneys see busy year ahead

Lawyers have advice for businesses trying to weather the downturn.

When **Lehman Brothers**, **Circuit City**, **IndyMac Bank** or **Mervyns** file for bankruptcy, it makes big headlines.



**JAN  
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What didn't get such big headlines were 8,983 individuals and businesses that filed for bankruptcy in Orange County in 2008. That's a 93.8 percent increase from 2007, according to the U.S. Bankruptcy Court. Most experts expect 2009 to be worse, so *It's Your Business* asked Orange County bankruptcy lawyers

for insights and advice for small-business owners and entrepreneurs.

### WHAT'S HAPPENING

First, a brief description of local bankruptcy activity.

- The majority of bankruptcies – 7,635 individuals and businesses – were Chapter 7 liquidations: Divide unprotected assets among the creditors.
- Chapter 11 reorganizations for businesses were the most – 162 – since at least 2000.
- An additional 1,186 individuals filed Chapter 13 reorganizations.

What you don't see are the three to four individuals and businesses quiet-

ly working out some debt relief and restructuring for every one who actually files, said Foothill Ranch bankruptcy attorney Jim Bastian, partner at **Shulman, Hodges & Bastian**.

"We're pretty busy; the attorneys on the consumer side are out of control," said Irvine lawyer Ron Rus, partner at **Rus Miliband & Smith**, a 30-year bankruptcy specialist known for handling more complex, high-profile cases. He believes that the early 1980s were tougher for Orange County, not that 2008-09 won't be legendary in its own right.

Jack Williams, of the American

# BANKRUPTCY: You can stay afloat despite a much tougher '09

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Bankruptcy Institute and a law professor at Georgia State University, said: "What makes this different is that it is an across-the-board recession. Other recent ones were sector crashes: technology, real estate."

## WHY IT'S HAPPENING

This meltdown started with real estate: the housing and mortgage bubble. For Orange County that was bad enough. Some of the nation's largest subprime mortgage companies were here. So were some of the largest run-ups in housing prices.

As mortgage woes spread, the credit markets evaporated for business, observed Costa Mesa business bankruptcy lawyer Evan Smiley, partner at **Weiland, Golden, Smiley, Wang, Ekvall & Strok**. Companies that had automatically renewed their credit lines every year suddenly had credit cut and couldn't get financing even for good deals.

Rus said: "I see this as a result of blinded euphoria. Now we're experiencing the ultimate economic hangover. It's close to what alcohol poisoning is to a drinker. Lenders still don't know what they have. How do they price a loan or piece of property whose value has been artificially inflated?"

## WHEN WILL IT END?

Instead of the huge increase in bankruptcies cleaning out the system for a fresh start in 2009, Rus said, "This year will be horrible for the local economy and bankruptcies."

Those questioned by The Orange County Register said 2011 will be the year bankruptcies recede.

"The first two quarters of 2009 will be the worst (for bankruptcy filings), then it will level off but not necessarily improve," ABI scholar Williams said.

He lists the most vulnerable industries as real estate (yes, there's still more to flush out); retail, especially apparel and jewelry; and restaurants.

"If one of the Big Three automakers goes bankrupt, we'll see a 50 percent increase in

bankruptcies among their suppliers. If all three go out, the increase will be 70 percent," Williams said.

## WHAT TO DO

Every surviving business owner must be asking how to survive this recession that is claiming so many professional friends and neighbors. While each business is different, every one should be looking carefully at its finances, Rus said.

"You should talk to your landlord early," he said. "Landlords typically would rather help you than have space sitting empty. You should also talk to your lender early."

"Also pay attention to your receivables," he added. "If you believe you are providing value, you have a right to be paid. Don't say to a customer, 'It's OK not to pay me.'"

Smiley recommended: "Expect the unexpected. Don't assume your lending facilities will be renewed every year. Do a lot of 'what if' planning, as in 'What if my loan is called?'"

Like Rus, Smiley recommends open and frequent communication with creditors.

Bastian urges clear, realistic thinking about your business. "You can't assume there will be a turnaround," he said.

Therefore, don't tap personal resources to keep an unsustainable business afloat. "Business owners are faced with 'Should I shut down the business or take money out of my house, my 401k and try to save the business?' But there's no business there and they will have nothing to start over with personally," he said.

"And the worst thing you can do is defer payment of payroll and property taxes," he added. "Those are personal obligations that can't be discharged in bankruptcy."

While Williams acknowledged that conservative budgets and skepticism are important business practices right now, "Remember that every recession is a golden opportunity for people who think smart and work smart. Don't cut your sales and marketing. Get your name out there. Go and visit your customers."

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