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Chapter 11 filings down in 2008

Experts: Bankruptcies should shoot up in ’09

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The bankruptcy craze hasn’t hit Austin — yet.

In contrast to many other markets, Austin saw a decline in its number of Chapter 11 bankruptcy filings — or filings seeking to reorganize, the most common type for businesses — last year. In 2008, there were 32 Chapter 11 filings docketed for the Austin area at the U.S. Bankruptcy Court for the Western District of Texas. That’s compared with 43 filings in 2007 and 36 in 2006.

Meanwhile, Chapter 7 bankruptcy filings — or filings to liquidate, the most common type for individuals — in Austin went up. In 2008, there were 1,647 filings, compared with 1,465 in 2007. But filings in 2008 were well below the 7,370 filings in 2005 just before comprehensive bankruptcy reform took effect.

Austin, which saw modest to healthy growth in its job and housing markets last year, has been spared the bloodbath liquidations of places such as Boston and South Florida, which have buckled under the pressure of hyperinflated home values and tightened lending. But experts said that’s about to change.

“I think [the increase] will be dramatic,” said Patricia Tomasco, a partner in Brown McCarroll LLP’s bankruptcy and specialty litigation section. “The broader economic issues didn’t really hit Austin in 2008. Most of the local credit squeeze happened late in the year, so we won’t see the effects until right about now.”

Nationwide, all types of bankruptcy petitions totaled more than 1 million through September 2008 — inching up to the number of filings recorded before bankruptcy reform in 2005 made it harder to file. In the federal Western District, a region that includes Austin, San Antonio, El Paso, Midland and Waco, bankruptcy filings in 2008 surpassed 10,000 for the first time since 2005. Filings are expected to continue increasing to where they were pre-reform, said George Prentice, bankruptcy clerk for the Western District.

Locally, commercial real estate and related industries will be particularly hit hard, bankruptcy attorneys said, as large loans become due this year and an increasing number of distressed retailers pull out of their leases.

“The construction industry and anyone else that does asset-based lending with real estate being a component as collateral for a loan will be hurt,” said Marvin Sprouse, a partner in the bankruptcy and litigation section at Jackson Walker LLP. “A lot of folks were trying to get things done before the end of the year. There’s uncertainty in the local economy as to whether there is liquidity to do deals.”

More cases filed as Chapter 11 reorganizations will turn into liquidations or sale-based cases, with assets being monetized wherever possible, since failing companies, without rapid capital infusions, can't operate or wait for a suitor.

"In your happy Chapter 11 stories there is typically new financing that comes in, but if you don't have available credit those reorganizations are going to be harder to come by," Tomasco said.

Still, lenders and banks, who are also feeling the pinch, may be less inclined to take possession of collateral and foreclose when values are so depressed, Sprouse said. "That may lead to unexpected workout opportunities for distressed companies."

Courtesy of JB Goodwin