

LETTER

Last week's bankruptcy article was rife with errors

Editor's Note: The article referenced below was taken from Metro Creative Connections, an online resource for content to be published in newspapers.

To the editor,

As a Mahopac attorney who deals almost exclusively with bankruptcies, I commend Mahopac News for publishing the article, "Is bankruptcy your best option?" (Jan. 1, Page 20). Unfortunately, the article, which was not written by a staff member of Mahopac News, is so misleading and inaccurate that it cries out for correction. For example, the article stated, "Bankruptcy won't wipe your financial slate clean..."

However, most bankruptcy filers are able to get the "fresh start" the bankruptcy laws intend by having their financial slate wiped clean, although certain debts, such as student loans and matrimonial obligations are not discharged. I will address each of the bullet-points in the article.

Eligibility: While there is a means test which prevents high income earners from getting rid of their debts under the basic filing, called Chapter 7, most people

who consider bankruptcy do not have sufficient income to pay off their debts and usually do qualify under Chapter 7, in which the bankruptcy judge signs an order of discharge, not the trustee, as the article stated.

Financial outlook: Although a bankruptcy stays on one's credit report for 10 years after a discharge under Chapter 7 and seven years under Chapter 13 (where one is required to pay back some of the debts if one fails the means test or needs five years to pay off the delinquent amount on a mortgage loan), usually one can get new credit for a car loan or credit card right after the case is over and for a mortgage loan long before the end of the 10-year or seven-year period has elapsed. One can also start rebuilding credit right away by continuing to make car loan or mortgage loan payments in order to reduce the interest rate on new loans. The article also failed to mention that the bankruptcy laws prohibit a current employer or prospective government employer from using a past bankruptcy to demote, fire or prevent someone from being hired.

Types of debt: The article is

incorrect in stating that bankruptcy only gets rid of unsecured debts and not secured debts. If one wants to walk away from a car loan/lease or mortgage loan (secured debts) without worrying about paying later, a Chapter 7 bankruptcy will enable that to happen as long as one understands that the car lender or mortgage lender will eventually be able to repossess or foreclose.

Guilt: How sad that the article writer resorts to embarrassment as the last factor in trying to discourage individuals from getting the "fresh start" the bankruptcy laws are designed to give to the financially needy.

These people are usually buried in financial debt based on circumstances beyond their control, such as a job loss, divorce, or medical expenses from an unexpected illness. Guilt should never be the response to getting rid of most or all of one's debts through a bankruptcy. The more appropriate responses are relief, peace of mind, or the satisfaction that one is regaining control of one's life.

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