



## PRACTICE AREAS

### SERVING NORTH CENTRAL TEXAS

Since 1985, the law offices of Hayes, Berry, White & Vanzant, L.L.P., provide individuals, families, and business owners premium client services and legal representation. With more than sixty combined years of sophisticated legal experience and name recognition, the partners of HBW&V are equipped for a broad spectrum of legal arenas.

### EFFICIENT AND EFFECTIVE LEGAL COUNSEL AND REPRESENTATION

Discover how important it is to have an experienced attorney on your side. Contact the Denton law firm of Hayes, Berry, White & Vanzant, L.L.P., to schedule an opportunity to meet with one of our attorneys about resolving your specific legal matter.

- Business Litigation
- Bankruptcy
- Municipal Law
- Real Estate
- Condemnation & Eminent Domain Law
- Family Law
- Employment Law

# BRIEFLY speaking

## PARTNER'S PERSPECTIVE



## Don R. White, Jr.

Board Certified in Commercial and Residential Real Estate Law by the Texas Board of Legal Specialization

### FAMILY MATTERS

His? Hers? Untangling business and property during divorce.

#### PHILIP FURLOW

Divorce is a tough situation. Having a business, property, and/or oil and gas interests create significant issues to consider. Who gets control of the business while the divorce is pending? How do we value a business, property, or oil and gas interest? Does it matter if the business was started prior to marriage? The business was incorporated after the marriage, does that change things? Is my gas well separate property or community property? Are the royalties separate property or community property? The real estate purchased during the marriage is supposed to be subdivided and sold off in lots later on, but now it is just pasture. Does that affect the value for divorce purposes? These are just some of the questions often asked by people who have a lot at risk during a divorce. The answers to these questions involve detailed research and analysis of business documents, real estate documents, accounting information, bank records, deed records, and similar critical documents in conjunction with the ever changing Texas Family Code and existing case law. Being able to review good records that are organized and up to date give an attorney a head start in analyzing business and property issues during a divorce.

### FORECLOSURES IN THE FUTURE

Denton County has noted that foreclosures have reached their highest level in decades. This creates a problem for some and an opportunity for others. The Texas Property Code provides that minimum notices must be sent and certain procedures must be followed before a homestead may be foreclosed upon. Generally, to properly foreclose, the lender must provide at least 20

days written notice by certified mail that the debtor is in default and that debtor has that 20 day period to cure or remedy the default. If the default is not cured in that time period, the lender may post the property for foreclosure by posting the sale at least 21 days before the date of the sale. All foreclosures must take place on the first Tuesday of the month. Notice there is no requirement

that the debtor actually see either of these two notices; they just have to be sent by certified mail. So whether the debtor actually goes and retrieves the certified mail or not, the notices will still comply with the Property Code. These are the general rules, and circumstances that may arise which call the default or the notices into question.

**"...foreclosures have reached their highest levels in decades."**



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ASSOCIATE  
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## CONSUMER LAW

The Texas Deceptive Trade Practices Act ("DTPA") protects consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty.

Claims under the DTPA may arise through an individual or entity's breach of express or implied warranties, unconscionable conduct, violation of a "tie-in" statute, and/or violations of the statutory "laundry list" of actionable practices.

It is important to note that twenty-five (25) of the twenty-six (26) laundry list violations do not require proof that the defendant acted knowingly or intentionally. However, if it can be established that the defendant acted with knowledge or intent, then the plaintiff could be entitled to recovery of additional damages of up to three (3) times the plaintiff's actual damages. A successful DTPA plaintiff may also recover court costs, reasonable attorney's fees, and interest on the principal amount of damages.

Before a plaintiff may proceed with his or her claims under the DTPA, they must first provide the defendant sixty (60) days advance written notice of their claims which describe the asserted false, deceptive, or misleading actions giving rise to plaintiff's claims, expressly state the dollar amount of damages and attorney's fees being claimed, and otherwise comply with the express statutory requirements of the DTPA.

**Business Law Update** The Texas Legislature has tweaked the Franchise tax again. This area has seen changes in 2006 and then again in 2007. In 2006, the legislature passed HB 3 which called for a new "Margin tax" to take effect January 1, 2007, with the first Margin tax returns due in 2008. In the past, a common tax scheme was to set up a limited partnership (not subject to Franchise tax) consisting of limited partners, and then a general partner that owned 1% of the limited partnership and which was a Corporation or LLC. As a result, the Franchise tax would only apply to essentially 1% of the earnings of the enterprise. That loophole has now been closed as limited partnerships are now subject to the Franchise tax. In 2007, HB 3928, effective January 2008, increased the exemption for small business from \$300,000 to \$600,000. Another change that is of interest to persons that receive royalties from mineral production is the passive entity exception. This generally provides that if 90% or more of the entity income is from royalties, the entity is exempt from the Franchise tax. Talk to your Certified Public Account to see if you are taking advantage of the recent changes in this area. If an entity change is needed, we can assist you in that process.

**Civil Litigation News** In the last legislative session, the jurisdiction of Justice of the Peace Courts has doubled from \$5,000.00 to \$10,000.00, or SB 618. There is also a change in the minimum amount in controversy from \$20.00 to \$250.00. Such a change should help to reduce the case load of our District Courts. Note this is concerning the "Justice Court". J.P. Courts actually have three levels of concurrent jurisdiction, one is for Small Claims suits, one is for Justice Court suits, and yet another for Forcible Detainer suits. In fact, the J.P. Court has exclusive original jurisdiction for forcible detainer suits (evictions). A problem with commercial properties frequently arises where the amount of unpaid rent exceeds the jurisdictional limits of the Court. In that case, the Forcible Detainer suit is still filed in J.P. Court but only for possession and not for unpaid rent. The unpaid rent suit would need to be filed in County or District Court, and preferably County Court because if the Forcible Detainer suit is appealed, it ends up going to the County Court. Another change as a result of SB 618 is that a corporation need not be represented by an attorney in Justice Court. Note that does NOT mean that a person who is not a lawyer may practice law. This change has already caused confusion and will need to be addressed in the future.

## Gas Pains? BARNETT SHALE BOOM

For almost a century in Texas, oil and gas developers, carpet baggers, and speculators have traversed this great state and preyed upon land and mineral owners in an attempt to lease, develop, and/or sell their minerals, primarily oil and gas. The Barnett Shale gas formation is currently the second largest gas formation in the United States and covers Denton, Cooke, Wise, Tarrant, Montague, and 11 other counties within North Texas. With the Barnett Shale boom, many people have been approached by oil and gas companies to sign a gas lease and many have signed without reservation. However, historically, many who have signed leases without really thinking through the terms of the lease or seeking professional advice have later regretted signing a mineral lease. The standard lease form, known as the Producer's 88, is not drafted to benefit the mineral and land owner. While it is tempting to sign the Producer's 88 in hopes of receiving bonus money and royalties, those are only a fraction of the total equation. Surface use provisions, term, drilling operations definition, method and timing of royalty payments, shut-in provisions, and many other terms of the lease warrant careful negotiation and drafting to promote good stewardship of the land and minerals.

## Bankruptcy

*Bankruptcy is Still an Option in Texas*

### Common Myths

**Myth 1.** Bankruptcy was outlawed due to the changes in Bankruptcy laws which became effective October of 2005.

Not true. There has emerged a common misconception that alleviating the burden of debt through filing Bankruptcy is no longer an option. The changes that were put in place require more forms to be filed as well as the enactment of certain failsafe procedures that help weed out fraudulent filings. The avenue of bankruptcy, however, is still available to honest debtors who need relief.

**Myth 2.** If I file Bankruptcy, I will lose my home.

Not true. Although limitations were put in place for folks moving to Texas, the average homeowner can still come out of a Bankruptcy filing WITHOUT losing his home.

**Myth 3.** My boss will be notified that I filed Bankruptcy.

Not true. Upon filing a Bankruptcy, only Creditors are notified of your filing. In addition, if you are involved in a collections lawsuit, the court will be notified in order that those proceedings be halted. In essence, only your attorney, your creditors, and you will be informed of your filing.

In short, if you are financially burdened by debt, the alternative of filing Bankruptcy is still an open door in Texas.



## Community Connection

### Dave Tanner performance for School Foundation a Sell Out

On April 8th, noted musician Dave Tanner performed before a standing room only crowd at the First State Bank Center for Performing Arts located on the campus of NCTC. The performance, which had a theme of "A Trip Down Memory Lane", was the last in a series of fundraisers organized to benefit the Gainesville Independent School District's Foundation.

Prior themes have featured Tanner as a solo act and have included "Nashville Greats", "The Luck of the Irish", and "A Tribute to Frank Sinatra". The April cast was a who's who of local talent joining Tanner on stage as his band and backup singers. Performing songs from the 50s, 60s, and 70s provided something for everyone. During the music, Tanner provided a history to the songs and a video presentation

showing musicians of the past who had performed in the North Texas area. The most noted performer was the King himself, Elvis Presley, who performed to a meager crowd in Gainesville during 1958; the concert actually lost money.

Each performance is entirely underwritten by the law firm of Hayes, Berry, White & Vanzant, L.L.P. The generosity of the firm assures that all proceeds raised go to the Foundation, which in turn provides grants and scholarships to programs deemed worthy for the children of the district.

Byron Berry, one of the original shareholders in Hayes, Berry, White & Vanzant, L.L.P., has served on the Foundation board since its inception. Berry reported that the April performance would be hard to top and added, "We are very proud of our association with the Foundation and are pleased to underwrite a fundraising event where the people not only get to contribute to a great cause, but they get their money's worth in entertainment."

For additional information regarding works of Dave Tanner, please visit [www.davetannermusic.com](http://www.davetannermusic.com).

