

# FRIEDMAN & FEIGER

ATTORNEYS AT LAW

MAKING YOUR INTERESTS OUR BUSINESS

## NOT A BETTER TIME THAN NOW TO REVIEW YOUR ESTATE PLAN

BY: LARRY FRIEDMAN



COVID is real when it hits your family, especially the elderly. It's no longer an esoteric virus, political discourse or newspaper fodder. Once the aged are in the hospital, on the ventilator and intubated there is little the medicine can do and nothing you can do. Under these circumstances, you can't visit, sit bedside or even communicate with your loved one. All you can do is wait for them to pass and hope (but not really know) that they are not in pain.

The COVID-19 pandemic has been a nightmare for all of us. Inadequate estate planning can make it more traumatic. The opportunity to do last minute estate planning is not available when you are hospitalized with COVID. You can't make a new will, you can't make any last-minute changes to your 10-year old will and you can't execute new medical directives to ensure that the right person can make decisions on your behalf if you are unable to do so yourself.

Moreover, no lawyer can visit you in the COVID Ward, no notary can witness and notarize your signature and, of course, there is no one to witness the signing of your will, trust, medical powers or directives, etc. And, your loved ones can't even visit you to find out about your investment accounts, where your money is and what they need to do.

The demand for thorough Estate Planning services has increased due to the devastating impact of the COVID-19 pandemic. Now is the time to consider updating your estate planning documents due to changes in personal or financial circumstances or because your estate planning documents may simply be out-of-date.

Although it is hard to resist the inexpensive and quick solutions that are available online, ensuring that your estate plan truly evidences your intent and that your estate documents are in compliance with Texas statutory requirements can be a challenge. Don't take a chance, contact a lawyer at Friedman & Feiger and make sure your estate plan reflects your intentions and that your documents are properly executed and enforceable. It doesn't matter how much money you save by buying a will form online if that will form is not properly prepared, does not reflect your intentions, is not enforceable, or is declared invalid upon your death.

The new reality in which we find ourselves has prompted questions about whether it is possible to sign Wills digitally in Texas. It is a reasonable question to ask because we have all become accustomed to using services, such as DocuSign, that allow its users to execute digital signatures for use in legal documents digitally.

Although Texas does authorize the electronic execution of certain legal documents through use of the Texas Uniform Electronic Transactions Act, it does not include the execution of Wills, and even goes as far as specifically providing that Wills and Codicils cannot be signed electronically. Accordingly, in Texas, you will have to sign your Will the old-fashioned way – with a pen and on paper.

Contact Joy Phillips at [jphillips@fflawoffice.com](mailto:jphillips@fflawoffice.com) or Robert Feiger at [rfeiger@fflawoffice.com](mailto:rfeiger@fflawoffice.com). We can help.

### INSIDE

T'IS BETTER TO GIVE ...THAN TO GET	2
T'IS BETTER TO GIVE .... (CONT'D)	3
BUSINESS TRANSFORMATIONS	3
NEW ASSOCIATE EMILY HAYES	4

# T'IS BETTER TO GIVE (A RECEIVER) THAN TO GET (A RECEIVER)

BY: SEYMOUR ROBERTS



If the late great Stan Lee, of Marvel Comics fame, had written about a superhero in the law, it would most assuredly had been about a Receiver; a remedy that is often overlooked and under-utilized. That is because a Receiver has enhanced, or super, powers that ordinary parties to a lawsuit don't have. The appointment of a Receiver needs to be in every creditor's toolbox, quiver and/or arsenal.

## WHAT IS A RECEIVER AND A RECEIVERSHIP ESTATE

A Receiver is an independent third-party that is appointed by a court of law over a defendant's property rights, whether the defendant is an individual or a corporate entity. A Receiver is considered to be the arm of the appointing court; an officer of that court.

The Receivership Order not only appoints the Receiver, it also creates the Receivership Estate, which is comprised of all of the non-exempt property of the defendant. All property in the Receivership Estate has a judicial lien imposed on it, and is deemed to be in *custodia legis*, whether or not the property is actually in the possession of the Receiver.

## HOW A CREDITOR GETS A RECEIVER APPOINTED

A Receiver is a statutory and contractual remedy that is made available in several different statutory provisions.

**JUDGMENT COLLECTION.** The TEXAS CIVIL PRACTICE AND REMEDIES CODE entitles a creditor to the appointment of a Receiver to collect a judgment. This can be done on an *ex parte* basis, without notice to, or interference from, the defendant.

**BUSINESS OVERSIGHT.** The TEXAS CIVIL PRACTICE AND REMEDIES CODE as well as the TEXAS BUSINESS ORGANIZATIONS CODE entitles a party to the appointment of a Receiver over a business or corporate entity to remediate the business or prevent the wasting or dissipation of assets. This is done by filing a motion with notice to the defendant, and permitting the defendant to contest the requested relief.

**LOAN DOCUMENTS.** If the creditor is a lender, the appointment of a Receiver should be listed in the loan documents as an available remedy in the event of a default. The loan documents should also permit the creditor to request the appointment of a Receiver on an *ex parte* basis, again, without any notice to, or interference from, the defendant. When a Receiver is requested in this way, it is a pre-judgment remedy.

## WHY A CREDITOR SHOULD WANT A RECEIVER

Plain and simple, a creditor wants, or should want, the appointment of a Receiver because a Receiver has rights, and can do things, that ordinary parties to a lawsuit don't have and can't do.

When a Receivership Order is entered, it can compel the defendant to turnover all of the defendant's non-exempt property to the Receiver by a date certain. It is not uncommon for defendants to be recalcitrant, so the Receiver is imbued with other rights and powers to enable the Receiver to carry out his court-ordered mandate. Set out below is a non-exhaustive list of those rights and powers.

**ENTRY ONTO ALL OF THE DEBTOR'S PREMISES.** Ordinarily, a creditor can only ask a Constable to go to the defendant's premises and enquire about non-exempt property to be liquidated to pay-off the creditor's judgment against the defendant. If the defendant says that he has no available non-exempt property (even if that is untrue), the Constable usually does not press the point and goes away. A Receiver, on the other hand, can go onto the Debtor's premises and determine for himself whether or not the defendant has non-exempt property to be liquidated. In this way, the Receiver can force the defendant to make an election as to what property he claims as exempt and what property will be liquidated to satisfy the creditor's judgment. Once at the defendant's premises, the Receiver conducts an inventory and sets aside the property to be sold for the benefit of the creditor and its judgment. Our firm has access to a cash sniffing dog that we can bring onto a defendant's premises to make sure that the defendant has not hidden his money at that location.

**CHANGE THE LOCKS.** Assuming the defendant's premises are not a homestead, the Receiver may change the locks to the property to exclude all parties except the Receiver. In this way, only the Receiver will have access to the property.

**REDIRECT THE DELIVERY OF MAIL AND EMAIL.** The Receiver has the ability to redirect the delivery of mail and email addressed to the defendant. As to the mail, this is accomplished by giving the post office in the defendant's neighborhood a letter and copy of the Receivership Order explaining the Receiver's powers. For email, this is done by giving the very same documentation to the defendant's internet service provider. Once the Receiver is in possession of this information and reviews it, the Receiver must then give it to the defendant.

**ENDORSE NEGOTIABLE INSTRUMENTS.** If the Receiver comes into possession of negotiable instruments payable to the defendant, such

### · DISCLAIMER ·

The information in this newsletter is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of and access to Friedman & Feiger, LLP's website or any of the e-mail links contained within the site do not create an attorney-client relationship between Friedman & Feiger, LLP and the user.

as checks, the Receiver may endorse them and deposit the funds into a Receivership bank account.

**FINANCIAL RECORDS.** The Receiver is entitled to all of the Debtor's financial records, whether they come from a bank, brokerage account, credit union, savings and loan association, title insurance company or any other institution. The Receiver should provide his Receivership Order to the financial institution to obtain those records.

**RETENTION OF PROFESSIONALS.** The Receiver is given the discretion to employ attorneys, accountants, brokers and other professionals to assist him in his duties.

**ACCESS TO STORAGE FACILITIES.** Sometimes a defendant has storage facilities that are off-site, such as safe deposit boxes. The Receiver is entitled to access to them and to exclude all other parties.

**TERMINATION OF CONTRACTS.** The Receiver is entitled to cancel any contract, account, transaction or agreement of the defendant with any third-party.

**FILING OF NOTICES.** The Receiver is entitled to file notices and lien notices putting third parties on notice of the Receiver's rights. Such notices would be filed with the Texas Secretary of State, Texas Department of Motor Vehicles, County Clerks, Clerk Records, Deed Records, Uniform Commercial Code Records and with any other governmental agency (e.g., federal, state, county, municipal, etc.) used to record records of ownership or an interest in personal property, real property, tangible property or intangible property.

**COLLECTIONS.** The Receiver can collect all accounts receivable and debt obligations owed to the defendant.

**LITIGATION.** The Receiver can initiate litigation to enforce the defendant's rights and defend the defendant's rights in other lawsuits.

**PAYMENT OF DEBTS.** A defendant will, most likely, incur debts in its day-to-day affairs and business operations. The Receiver should be able to make such ordinary and necessary payments, distributions and disbursements as the Receiver deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Estate. Included within this power, is the ability to compromise and settle claims.

This is just a sampling of what a Receiver can do. Prevailing in your lawsuit is not enough. Besides winning, the plaintiff needs to get paid. It is not uncommon for losing defendants to spend just as much time and energy, if not more, in attempting to avoid payment, as they did in defending against the original litigation. That is when and where the remedy of a Receiver should make its appearance. The plaintiff, proverbially speaking, passes his baton to the Receiver, and the Receiver takes over with his enhanced powers. This firm has attorneys with lot of receivership experience both in being a Receiver and representing Receiver, and would enjoy putting that experience to work for your benefit.

Seymour Roberts can be reached at 972-450-7340 or at [sroberts@fflawoffice.com](mailto:sroberts@fflawoffice.com)

## NOW IS THE TIME: BUSINESS TRANSFORMATION ENABLED BY LEGAL SERVICES BY: LUCIANO OLIVEIRA

Tesla has recently purchased 1.5 billion dollars in Bitcoin. Purchasing \$100 of bitcoins back in 2010 would mean an investment worth about \$72,000,000 today. Ten years ago, few people thought that a digital currency created by geeks as an algorithm experiment would become an investment of such magnitude. However, when we reflect on the last ten years, we realize that almost every industry was disrupted to some degree. The lesson here is that your business is destined to be transformed no matter which industry you are in.

Now, the real news is that the pandemic has expedited such transformation exponentially. The abrupt replacement of a substantial part of our daily live interactions with technology-based equivalents has caused and will continue to cause business to change faster and deeper. Think about how business and life, in general, have changed in the last year. Doesn't it feel like a decade has passed? And, chances are this will not end anytime soon. Consider the latest news from the vaccination front. COVID-19 mutations tend to reduce the effectiveness of vaccines around the world. South Africa recently suspended AstraZeneca's COVID-19 vaccine rollout after new data showed that the vaccine provided only "minimal protection" against the new variant. Unfortunately, instead of the pandemic ending, there is growing consensus that COVID-19 will become an endemic disease just like flu and measles.

Ready or not, the future is here. You can keep your head down and hope for the best or you can join us and fight to emerge from this pandemic with a leaner and more effective business than before. Our firm can help you envision and implement strategies to benefit your business from such transformations from legal and technology perspectives. And, our legal services can help you, among other things:

- a. form spin-off and startup business entities;
- b. register trademarks and copyright to protect your ideas;
- c. draft agreements to keep web developers and vendors in general under control;
- d. structure funding to keep you afloat and expand, and
- e. draft key internet documents such as privacy policies and terms of service so you can thrive in the ever-expanding online frontier.

Luciano Oliveira can be reached at 972-450-7317 or at [loliveira@fflawoffice.com](mailto:loliveira@fflawoffice.com)



# FRIEDMAN & FEIGER

ATTORNEYS AT LAW

5301 Spring Valley Road, Suite 200  
Dallas, Texas 75254

Telephone (972) 788-1400  
Facsimile (972) 788-2667

Please visit our award-winning website!

[www.fflawoffice.com](http://www.fflawoffice.com)



## In The Spotlight



### Emily Hayes

We are pleased to announce Attorney Emily Hayes has joined the Firm as a Family Law Associate. Emily received her Juris Doctor from SMU Dedman School of Law in August 2015 and her Bachelor of Science in Philosophy and Psychology from SMU in May 2012.

Emily was the Co-Founder and Vice President of the Tax Law Society and Treasurer of the Women In Law organization while in law school. She is a member of the State Bar of Texas and the Dallas Bar Association, Family Law Section.



Emily is a native of the DFW metroplex and grew up in McKinney. Welcome to the Firm Family Emily!

### PROPERTY TAX RELIEF FOR STORM DAMAGE

We know many of you in Texas suffered property damage due to the Winter Storm of the Decade. If you did, this article is a "must read"! You can find the complete article here:

<https://www.fflawoffice.com/media/26619/ref-eblast-february-2021a.pdf>

### PROPERTY TAX RELIEF FOR STORM DAMAGE TO TEXAS PROPERTY OWNERS



February 2021 E-Alert from Robert Feiger



For additional information, please contact Janelle Friedman via email at: [JFriedman@FFLawOffice.com](mailto:JFriedman@FFLawOffice.com).

