



# The Summons



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February 2011

## P r e s i d e n t ' s M e s s a g e

C h r i s t y C o a t s , P L S

### OUR ADDRESS:

SALSA

P.O. BOX 367

SAN ANTONIO, TX



Happy February! In addition to celebrating Groundhog Day, we have a lot going on this month with our gearing up to put in place a new slate of officers, the TALP CLE event in Austin on Saturday, February 19, and your filling out the form to nominate this year's Member of the Year. **Don't forget...the submission deadline for the Member of the Year form is March 1, which is right around the corner!** You will find the form with submission instructions in this edition of the news-

letter, as well as a link to it on our website.

Speaking of our website, we may be looking for assistance with some major renovations on our website very soon. If you have any experience with designing web pages, please let me or Janet Brown, our webmaster, know. Further discussion is forthcoming.

In addition to helping with our website, there are numerous committees that need chairpersons or just additional members that are willing to help share the workload. You should see more information in upcoming editions of the newsletter. Please consider chairing or volunteering to help where you are able. We need everyone's help in order to continue to put on the programs that are so valuable to our members, including CLE events, educational programs, and our annual Day-in-Court Luncheon.

I'm not sure about the rest of you, but despite the fact that spring has not yet begun, and the temperatures were below freezing barely over a week ago, I have a terrible case of Spring Fever. With outside temperatures in the seventies, I can't help but daydream about floating down the Guadalupe, or hanging out at South Padre, or hiking through Lost Maples. There are so many outdoor activities that you can participate in here in South Texas. On that note, don't forget to RSVP to Joani Burdine, our Vice President and Membership Chairperson, if you would like to join us on Saturday, February 26 for lunch followed by a trek to the Japanese Tea Gardens. Come out and enjoy the spring-like weather with us! One last thing while I'm on the subject of the outdoors and all things green...if you have not yet checked out the NALS' *Law Office Green Guide, tips for creating a greener office space*, please do so. It is chock full of ideas for following more environmentally sustainable practices in the office, and they're all very practical. Check the guide out yourself at [www.nals.org](http://www.nals.org).

### INSIDE THIS

Officers and Chairpersons	2
"For Members Only"	5
Meeting Notice	9
Legal "Ed"	11
Calendar	14

## 2010—2011 Leadership Roster

Office	Name	Email Address
<b>President</b>	Christy Coats, PLS	ccoats@coxsmith.com
<b>Vice President/ Membership Chair</b>	Joanie Burdine	joani77@hotmail.com
<b>Recording Secretary/ Corresponding Secretary</b>	Karen Branigan, PLS	kbranigan@mcreynolds-tye.com
<b>Treasurer/Roster</b>	Aurora R. Cavazos, PLS, CLA,CPS	rorycavazos@ymail.com
<b>Director</b>	Bette A. Tower, PLS	btower@mdtlaw.com
<b>Parliamentarian</b>	Cheryl Allen, PLS	callen@epc-law.com
Committee	Chairperson	Email Address
<b>Attendance/ Reception/ Reservations</b>	Michele Harmon	mrharmon@satx.rr.com
<b>Auditor</b>	Connie Harris, PLS, TSC	charris@duncanlaw.com
<b>Award of Excellence</b>	Kim Busch	kbusch@coxsmith.com
<b>Certification/ Legal Education/ Historian</b>	Cheryl A. Wenzel, PP, PLS	cwenzel@coxsmith.com
<b>Community Service Projects/Speakers/ Vendor of the Month</b>	Anne Hoover, PLS	ahoover@epc-law.com
<b>Employment</b>	Sharon Todd, PLS	stodd@ccn-law.com
<b>Scholarship</b>	Vickie Flores	vflores@coxsmith.com
<b>Summons/Website</b>	Janet Brown, PLS	jbrown@kjlawpc.com



# January 2011 Membership Meeting Earl Able's



**MEMBER OF THE YEAR NOMINATION FORM**

Any member may nominate another member for Member of the Year. Any person nominated must be an active, participating member of San Antonio LSA and must be a regular attendee at membership meetings. The nominee shall have performed her elected or appointed duties (if any) diligently; additionally, she shall have rendered outstanding service to San Antonio LSA above and beyond her duties. All nominations will be accepted on **this form only** and shall be provided to the President no later than **March 1, 2011**. The President shall prepare ballots for vote and forward same to a sister chapter in Texas ALP for selection. The winner shall be known only to the President until the award is presented at the Meeting in April.

I nominate \_\_\_\_\_ as member of the year for the 2010-11 fiscal year of the San Antonio Legal Secretaries Association. I feel that this person is qualified and worthy of this award because (100 words or less):

Submitted by: \_\_\_\_\_

Date Received: \_\_\_\_\_

Submit by mail or e-mail to:

Christy L. Coats, PLS  
San Antonio LSA President 2010-2011  
c/o Cox Smith Matthews Incorporated  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205

ccoats@coxsmith.com



*For Members Only*

Hi, Members!!

For those who didn't get to join us in January, you missed a fun time!! We met at Mi Tierra for a delicious Mexican meal and then enjoyed shopping in the numerous shops at the Mercado.

Please continue to e-mail me with any suggestions or questions that you might have with regard to membership or with something fun that you have been wanting to do.

**Please join us on Saturday, February 26<sup>th</sup>** for a fun Japanese day. We are going to eat at Benihana at 11:30 a.m. and then go to the Japanese Gardens next to the zoo and see the waterfall, ponds, tropical plants, etc. To see a menu for Benihana: [www.benihana.com](http://www.benihana.com). The hostess told me they have the same lunch menu on Saturday as during the week. The price range is \$7.95 to \$18.00. Please RSVP to me, if you would like to attend this fun event -- ([joani77@hotmail.com](mailto:joani77@hotmail.com)) I need to give the restaurant a head count.

Hope you will join us!!

See you at the next SALSA function!

– joani

御案内



## Texas Association of Legal Professionals

*Affiliated with NALS . . . the association for legal professionals*

**Office of:**

Jane Harrison, PLS  
Texas ALP 2010-11 Secretary  
510 Wedgewood Way  
Devine, Texas 78016

Telephone: 830/665-5234  
janeharrison30@yahoo.com

January 22, 2011

Re: President Betty's Gift

Dear Friends:

Not many members realize the effort and hours Betty has given to and the sacrifices she has made for the Texas Association of Legal Professionals, not only as President, but throughout her years as a member. As the newest officer, I have personally witnessed her dedication, commitment, and perseverance to do what is right for the Association while striving to continue the outstanding leadership that has guided this Association. Betty has been multi-tasking this year - not only has she managed to keep the Association on course while holding down a very busy job, she has been playing nursemaid to her husband.

All leaders have different leadership styles and strengths. Her ability to work through issues and continue to keep the Association's best interests foremost is remarkable.

I encourage you to reflect on Betty's achievements throughout her years of service to the association. For her tireless efforts, unfading loyalty, and valuable services to Texas ALP, I am asking you to contribute to the President's gift fund and to please encourage members of your chapter to contribute as well.

Please also consider this your invitation to join us in Midland and share in the celebration of Betty's year as we honor her and present her with a gift for her distinguished year as President.

Thank you for your consideration of this special request. You may send your check, before April 1, 2011, made payable to Jane Harrison, to 510 Wedgewood Way, Devine, Texas 78016. Please reference President's Gift Fund on your check.

In friendship,

Jane Harrison, PLS

[www.texasalp.org](http://www.texasalp.org)

**INTENT TO RUN**

To: The Nominations and Elections Committee

I, \_\_\_\_\_, intend to run for the office of \_\_\_\_\_ for the 2011-2012 fiscal year of the San Antonio Legal Secretaries Association.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

## SAN ANTONIO LEGAL SECRETARIES ASSOCIATION FEBRUARY 2011 MEMBERSHIP MEETING

- Speaker:** Justice Marialyn Barnard, Fourth Court of Appeals
- Topic:** Judicial Structure and Updates
- Location:** PLAZA CLUB  
100 West Houston Street  
21<sup>st</sup> Floor of the Frost Bank Tower  
(Parking is available in the Frost Bank garage)
- Date:** Wednesday – February 23
- Time:** 12 Noon
- Cost:** \$18
- RSVP:** Please email Michele Harmon [mrharmon@satx.rr.com](mailto:mrharmon@satx.rr.com)
- Menu:** Plaza Club Lunch Buffet

*Cancellations must be made no later than **FRIDAY** prior to the meeting for you and/or your guests or you will be billed for the meal.*

**LEGAL "ED"**

By Edward M. Lavin, Attorney

January 2011

## **The Fraudulent Transfer**

### **Background**

Frequently in collection cases, or in tort cases where the defendant lacks insurance, getting a judgment against the defendant is the easy part. It's collecting that can be the most difficult part.

Don't overlook the Texas Fraudulent Transfer Act, Section 24.001 Texas Business & Commerce Code, as a possible means to recover assets the defendant may have placed with someone else as a means to keep them out of your hands. When you are doing your post-judgment asset investigation don't just look for what the defendant current owns, also look for what he or she has transferred, especially since your claim has been pending.

### **Definitions**

The Act applies to virtually any type of claim your client may have, including unliquidated and contingent claims. Any type of property the defendant owns or has transferred is covered. You do not have to have reduced your claim to judgment to begin a fraudulent transfer claim, and it can be included in the same lawsuit filed on the underlying claim, although the defendant may be entitled to a separate trial of that claim.

Insolvency of the defendant is not always necessary but can create some presumptions in your favor. See Section 24.003 of the Act for definitions. The Act also takes a dim view of transfers by the defendant for less than fair market value. See Section 24.004 for definitions about this issue which may help you.

### **Grounds**

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and at the time the debtor:
  - (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
  - (B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

The intent of the debtor is always a fact question. In determining intent consideration may be given, among other factors, to whether:

- (1) the transfer or obligation was to an insider (see Section 24.002 for definition);
- (2) the debtor retained possession or control of the property transferred after the transfer;
- (3) the transfer or obligation was concealed;
- (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) the transfer was of substantially all the debtor's assets;
- (6) the debtor absconded;
- (7) the debtor removed or concealed assets;
- (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

In addition to the above grounds, a transfer made or obligation incurred by a debtor is fraudulent only as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. A transfer made by a debtor is also fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an alleged debt owed to the insider, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

When the transfer occurs can be important for statute of limitations purposes, which is generally, four years from the date of the transfer unless fraudulently concealed, which can extend the statute. It can also be important if your claim arose after the transfer and the issue of whether it arose a reasonable time after is disputed.

A transfer of real property is deemed to have occurred when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee. In other words, usually when the deed is recorded.

A transfer of other assets such as personal property and fixtures is deemed to have occurred when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee. If the law permits recording of the transfer, such as of a motor vehicle or UCC property, and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action, which works in your favor. In other cases the transfer is made when it becomes effective between the debtor and the transferee, i.e. the date on a bill of sale or the actual date the property changes hands.

### Remedies

If you have a valid claim as described above under the Act, you have the right to seek to have the transfer or obligation set aside to the extent necessary to satisfy your claim. You also have the right to ask that the property be attached or otherwise restricted from further transfer while your rights are adjudicated, such as by injunction or appointment of a receiver. If you already have a judgment on your underlying claims the court may order a levy of execution on the asset transferred or against its proceeds.

### Defenses

What if you represent the defendant in a fraudulent transfer claim, or the recipient of a transfer? There are defenses available against such claims as well as protective provisions for the transferee in appropriate cases.

A transfer or obligation may not be set aside as to a transferee who took in good faith and for a reasonably equivalent value, or against any subsequent transferee or obligee. A transfer is may not be set aside if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest held by the transferee, i.e. repossession of a motor vehicle

A transfer to an insider may not be set aside to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien; or if made in the ordinary course of business or financial affairs of the debtor and the insider; or if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. An example of this might be a limited partner injecting new cash or property into the partnership.

### Limitations

As noted above there is generally a four year statute to bring a fraudulent transfer claim. If the transfer was concealed, this statute can be extended for up to one year after the transfer or obligation was or could reasonably have been discovered by the claimant. If a creditor entitled to bring an action under this chapter is under a legal disability when a time period prescribed by this section starts, such as a minor or a person of unsound mind, the time of the disability is not included in the period. A disability that arises after the period starts does not suspend the running of the period. A creditor may not tack one legal disability to another to extend the period.

### Attorneys Fees

In any proceeding under the Fraudulent Transfer Act, the court may award costs and reasonable attorney's fees as are equitable and just. This includes, if appropriate, an award of defense costs to a defendant or transferee if the fraudulent transfer claim is denied.



**Corporate Members of San Antonio LSA**

San Antonio LSA appreciates all of its corporate sponsors and the support they provide our Association. There are times when our corporate sponsors go beyond expectations and we would like to give all of our sponsors a big **THANK YOU**.

Alpha & Omega Records Retrieval  
14080 Nacogdoches Road, Suite 281  
San Antonio, Texas 78247  
(830) 714-7575; (210) 797-6254  
Contact: Cheryl Calaway

Complex Legal Services  
3201 Cherry Ridge Drive, Suite B-207  
San Antonio, Texas 78230  
(210) 646-6424  
Contact: Margaret Guevara or Annette Martinez

DEPOTEXAS – San Antonio  
1383 E. Bitters Road, Suite 3  
San Antonio, Texas 78216  
(210) 481-7575  
Contact: Rodney Magee

Law Office of Edward M. Lavin  
8918 Tesoro Drive, Suite 418  
San Antonio, Texas 78217  
(210) 829-1938  
Contact: Edward M. Lavin

Legal Preference, Inc.  
30448 Blueberry Ridge  
Bulverde, Texas 78163  
(210) 867-6426  
Contact: Patty Hall

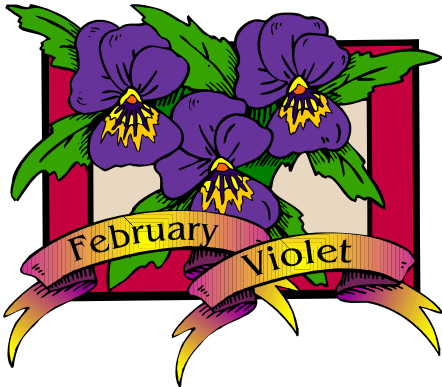
Republic Services San Antonio Records & Reporting  
6391 De Zavala Road, Suite 300  
San Antonio, Texas 78249  
(210) 298-6300  
Contact: Patricia Y. Lira

Special Counsel  
10999 I.H. 10 West, Suite 290  
San Antonio, Texas 78230  
(210) 824-0300  
Contact: Rani Spaulding or Jessica Hernandez (214) 871-0202

Kim Tindall & Associates, Inc.  
5119 Beckwith Blvd., Suite 101  
San Antonio, Texas 78249  
(210) 697-3400  
Contact: Kim Tindall

## February/March

- February 2..... Board Meeting —6:15 pm  
Cox Smith Matthews, 18th Floor**
- February 23..... Membership CLE Luncheon — Noon  
@ Plaza Club—\$18**
- February 26..... Membership Outing—Benihana’s  
and the Japanese Gardens**
- March 1..... Deadline to submit nomination for  
Member of the Year**
- March 2 ..... Board Meeting —6:15 pm  
Cox Smith Matthews, 18th Floor**
- March 26 ..... Membership Meeting—TBD**



### February

- 05 – Rory Cavazos, PLS, CLA, CPS
- 14 – Krystin Pechacek
- 19 – Mary Jo Denman, PP, PLS
- 22 – Sylvia J. Griffin

**HAPPY  
BIRTHDAY!** March

- 11 – Michele R. Harmon
- 11 – Revis N. Leonard, PLS
- 28 – Kim C. Busch

