The Texas Two Step: What's all the Fuss About?

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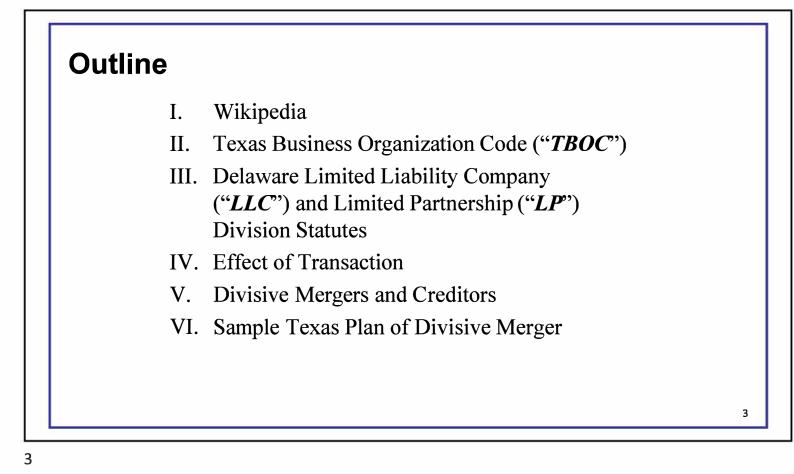
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Byron F. Egan

Byron F. Egan is a partner of *Jackson Walker LLP* in Dallas and is engaged in a corporate, partnership, securities, mergers and acquisitions (M&A) and financing practice, and his extensive experience in these matters. In addition to handling transactions, he advises boards of directors and their audit, compensation and special committees with respect to fiduciary duty and other corporate governance issues, special investigation and other issues. https://www.jw.com/people/byron-egan/

Mr. Egan regularly writes and speaks about the areas in which his law practice is focused, and is the author of *EGAN ON ENTITIES: Corporations, Partnerships and Limited Liability Companies in Texas* (4th Ed. 2023), which addresses the formation, governance and sale of business entities, including an analysis of the fiduciary duties of their governing persons in a variety of situations, and numerous other publications and is available <u>here.</u>

Divisive mergers are discussed in *EGAN ON ENTITIES Corporations, Partnerships and Limited Liability Companies in Texas* (4th Ed. 2023) § 1.4.3 on pages 29-37 and fraudulent transfers are discussed in § 2.6.9(g) on pages 263-266.

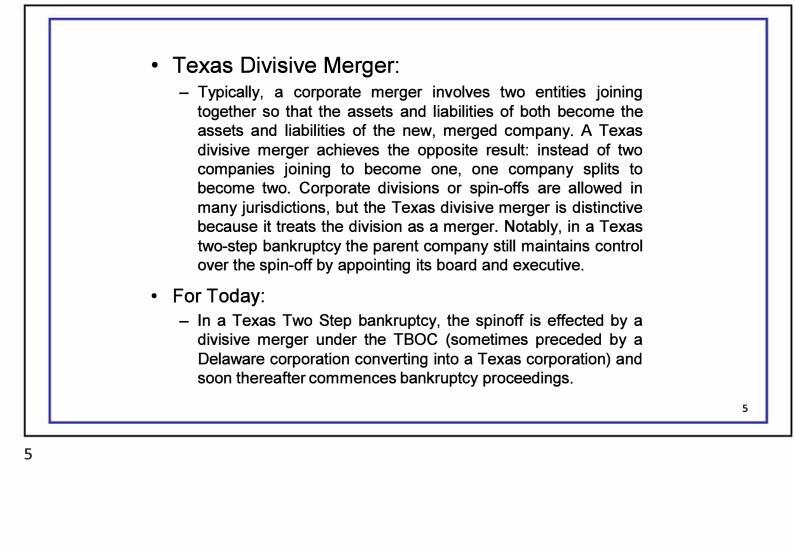


I. Wikipedia

Texas Two Step Bankruptcy:

A Texas two-step bankruptcy is a two-step bankruptcy strategy under US bankruptcy law in which a solvent parent company spins off liabilities into a new company, and then has that new company declare bankruptcy. In the first step, the parent company undergoes a Texas divisive merger, which allows companies to split off their liabilities from their assets. In the second step, the newly created spin-off declares a chapter 11 bankruptcy, usually in North Carolina, where bankruptcy courts are perceived to be more open to this scheme. The Texas twostep allows solvent companies to shield their assets from litigants using protections that are normally reserved for bankrupt companies. The goal of a Texas two-step is for the parent company to gain a third-party release of all liabilities it assigned to its spinoff, thus preventing litigants from pursuing those claims against the parent.

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II. Texas Business Organization Code

- Overview:
 - Divisive mergers of corporations, LLCs and partnerships have been permitted under Texas law since 1989.
 - TBOC governs mergers, including divisive mergers, and applies to corporations, partnerships and LLCs. A divisive merger under the TBOC can include entities organized under the laws of another state so long as such state permits divisive mergers.
 - TBOC § 1.002(55): Defines "merger" to include "(A) the division of a domestic entity into two or more new domestic entities or other organizations or into a surviving domestic entity and one or more new domestic or foreign entities or non-code organizations."

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