

## A NEWSLETTER OF CURRENT BUSINESS AND LEGAL MATTERS



### *People First Approach in Business Leads to Success*

By James R. Vann



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Ask almost any successful business owner about their success and most will agree that putting others first is a big part of their success. Putting employees, customers, vendors and those you interact with first creates a positive environment. This positive environment creates a desire for others to do business with you.

I have seen this first hand with many of our clients as well as business owners and businesses we deal with on a regular basis. Treating people with respect, dignity and kindness always creates an environment that people enjoy. Even if the parties disagree on terms or issues, putting people first always pays off in the end.

**Employees:** Ask almost any employer and they will report that their greatest asset is the quality of the employees they hire. Hiring employees who are talented, intelligent, and eager to learn and serve is so important for any business. Most business owners are looking for excellence and have high expectations of employee performance. Hiring employees that match that desire will more often than not create an environment of success. Do not settle for employees who deliver mediocre results. If an employer determines that an employee is delivering mediocre results, honesty and integrity with that employee will result in either improvement or allowing that employee to find employment elsewhere.

**Positive People Create Positive Energy:** positive people are fun to be around and create an environment for positive energy and results. Surrounding yourself with positive people often

times connects you with other positive people. I have witnessed this with many clients and business owners who have positive attitudes. They often time introduce me to people with equally amazing positive attitudes and whose businesses are thriving!

**Customer relationships:** We all know, “the customer is always right”. At least most of the time, that is correct. Regardless of who is right, putting your customer first in service will always prove to be beneficial. I recently met with a client who was trying to decide how to handle a large customer that was breaking the written contract they had entered. This breach of the contract was costing our client a lot of money. Our client could have hired us to write a demand letter to collect the money they were not paying and to put the customer on notice of their breach. We brought it to our client’s attention that if that happened, our client would likely recover the money not paid but may not get any future business from that client at all. We decided that the best approach would be for our client to outline the issues and to talk with the CEO of her customer to create a conversation. The relationship between our client and their customer is still a good one. Thus, having a firm, honest and open conversation with the customer will more than likely result in a positive outcome.

We all could name companies that put their employees first. Think of a few. You can tell in how the employees treat you and others. Those same companies almost always value their employees and treat them with respect. Treating others with respect and kindness generally produces great results in business.



# Common Landlord Misconceptions

By Joseph A. "Joe" Davies



Mark Twain once said that "It ain't what you don't know that gets you into trouble. It's what you know for sure that just ain't so." While I would certainly disagree with the first part – there are plenty of times where what you do not know as a landlord can get you into plenty of trouble – there are a few things that every landlord seems to know, that just ain't so. Fortunately, the two that I'll describe in this article will not necessarily hurt you in terms of additional legal exposure, but they can hurt your ability to manage your properties in the way you determine is best.

So, the first common misconception – the five day grace period for paying rent. What's the misconception, you might ask? That the grace period exists at all! There is no statutory right in North Carolina to a grace period in which to pay rent, nor is there such a grace period in most leases (of course, every lease is different, so please consult with a lawyer as to exactly what is required under your lease). This misconception stems from Section 42-46(a) of the North Carolina Statutes, which limits the late fee that a landlord can charge, and allows for such a late fee to be charged only if any rental payment is five or more days late. Most leases contain a late fee provision that charges the highest fee allowed once the rent is five days late. What this statute does not provide, and what the most common lease provisions do not say, is that the rent is not late if paid by the 5th (assuming it is normally due on the 1st). The rent is late if not paid on the day it is due, and a late payment is a breach of most leases that would allow you to evict the tenant. This is confusing for many landlords, which gives rise to the belief of a five day grace period. The problem with that belief is two-fold – first, if your pattern and practice is

to act as though there is a grace period, you could be considered to have effectively waived any breach of a late payment, so long as it is paid by the fifth. In this case, you would need to affirmatively inform your tenants that going forward you expect rent to be paid on the first. The other problem is that many landlords believe they have no choice but to wait until the rent is five days late to begin eviction proceedings, delaying the time until they are awarded possession.

The second common misconception is that North Carolina requires a ten day notice to all tenants before beginning eviction proceedings. This misconception stems from Section 42-3, which provides for an implied forfeiture of the lease upon failure to pay rent within ten days after receiving a demand from the landlord. However, this provision is merely a "safe harbor" for landlords that do not have a specific provision in their lease allowing them to terminate the lease or the tenant's right to possession upon a failure to pay rent. In other words, if your lease provides that a failure to pay rent is a breach, and that you are entitled to seek possession upon such a breach, then you do not need to resort to this section to file an eviction. Rather, you simply must abide by the requirements of your lease – whether that's five days' notice, three days' notice, or no notice whatsoever. The problem with this misconception is similar to the previous – you could be waiting ten days more than necessary!

Of course, every lease and situation is different, so please contact us with any questions regarding your particular situation.



# Celebration of Life of Susan (Rudy) Worsley

By Vann Attorneys, PLLC



Dear Friends,

It is with a sad heart that we let you know Susan (Rudy) Worsley passed away on New Year's Day, January 1, 2018, after a courageous battle with cancer. Rudy worked with our law firm for seventeen years as a paralegal. She loved her profession and was a dedicated part of the Vann Attorneys family.

Rudy's memorial service was held on Sunday, January 21st at 2:00 at Brown-Wynne Funeral Home, 300 St. Mary's Street, Raleigh, NC.

We thank God for the wonderful memories of Rudy and her years of devotion to our firm.



## Collections Techniques in Bankruptcy

By James A. "Jim" Beck

There exists a common misconception that bankruptcy is the end of the road for a creditor's collection efforts against a debtor. Certainly there are many instances where this holds true, but there are also numerous situations in which a bankruptcy is either beneficial to a creditor or only a mild hindrance to collection. Creditors should actively seek out opportunities to use the bankruptcy laws to their benefit and make sure there are no available recovery options prior to ceasing collection activities.

The first step in analyzing the collectability of an account after a bankruptcy is filed is to determine which individual or entity actually filed bankruptcy. Was it a personal guarantor or the spouse of a guarantor? Was it a corporate debtor or a related entity of the debtor? It is possible that a similarly named or related entity filed bankruptcy, but the debtor did not. After making this determination, there are additional considerations. In particular, it is important to note which type of bankruptcy was filed. A debtor may file a liquidation (Chapter 7) or a reorganization (Chapter 11/Chapter 13). In a liquidation, the debtor's assets are sold and the funds are distributed to creditors. In a reorganization, the debtor pays creditors over time in a structured plan.

Creditors should pay close attention to the how their claim is treated (whether it is secured, unsecured, priority, or administrative). The treatment of the claim will govern if, how, and when a creditor will get paid through the bankruptcy. Other tools to be used by creditors in bankruptcy include obtaining priority status for goods sold within twenty days of the bankruptcy filing, the right to reclaim goods delivered in the 45 days period prior to the bankruptcy filing, and retaining certain lien rights despite the bankruptcy filing.

Another consideration is the manner in which the debt was incurred. Certain debts are not dischargeable, such as funds obtained from a creditor via fraud or false pretenses. Creditors may pursue a non-discharge action these debts, which means the debt would survive the bankruptcy and would not be wiped out.

Regardless of the collectability of a debt through the bankruptcy or how a creditor's claim is classified, a creditor should review its file to determine whether any non-bankrupt individuals or businesses share liability for the debt.



# Succession Plans for Your Family Business How to Build Consensus for Success

By James R. Vann



Owning and running a family business is generally a joy filled with long hours, short and long range planning, many benefits of ownership and determining the best way to plan for succession of the business. Working with business owners as they plan for succession is always exciting and challenging. There always seems to be elements that create a challenge while other areas fly by with little issue. One thing is certain, if the business is going to stay in the family, building consensus within the family will always be a factor.

Some business owners realize that keeping the business in the family is not an option given the lack of interest or lack of ability for family members to run the business. This realization often times proves to be beneficial in planning for the sale or transfer of the business. This realization also provides for greater clarity as to how the sale or transfer may be planned.

Where other family members are involved in running the business or want to be involved in ownership, determining the best method of going forward can be a challenge. Many times, family members struggle with the notion of trying to treat children fairly while also planning for the success of the business. The following are common issues we have seen in businesses but possibly more so in closely held family businesses: loss of income generation, control issues, self-identity, pride, taxes, how to invest sales proceeds, how to fund the purchase by family members, owner impairment and health, forced fit of family members, etc.

One family in particular comes to mind when it comes to building consensus. This family had enjoyed great success in their business and industry. The business had been started by Dad and he was ready to get out of the business. Two children had been involved in the operation of the business and both children were adults but Dad owned a large majority of the business. Dad saw the industry changing and thought the best option would be to sell the business while there was still value left. The valuation of the business had decreased considerably due to industry changes. Dad had been in conversations with his family about selling the business and most agreed with him. Dad engaged their accountants, attorneys and other financial advisors to put the sale of the

business in motion. However, at the last minute, one of the children decided they would like to buy the business. Everyone was shocked! This last minute decision changed the whole conversation, created anxiety in the family and business and delayed a buyout for all involved.

As business owners prepare for a sale, a wide variety of documents come into play such as insurance packages, buy-sell agreements, appraisals, non-compete agreements, lease agreements, real property and personal property ownership records and others. All these and others are important to consider and necessary. However, planning for a smooth transfer among family members is also important. So as a business owner, should you prepare for a smooth transfer having all the legal and accounting issues resolved first or reach an agreement and consensus among family members?

It is wise not to wait to determine how the transfer should occur. Waiting until significant health issues arise, untimely death or other unanticipated emergencies occur often cause major issues in the transfer of ownership, especially if the transfer is to outside family members. Consider the family dynamics and business operation issues ahead of time as much as possible.

Another factor to remember is to have documentation in order, signed and saved, even if the transfer is among family members. We have seen more than one family business where they had all issues resolved and agreed to among the family members but no supporting documents. Then the untimely death occurs and a contentious family member causes issues. Even family owned businesses should have the documentation regarding the transfer well documented and supported.

Preparing for the success of the business and ownership transition is a complex and time consuming process. Beginning the process early increases the success rate of the transaction. As Alexander Graham Bell said, "preparation is the key to success". Prepare early.

If you have questions about the transfer of family owned or closely held businesses, please feel free to contact us.