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Increased Access to Capital and Cheaper Capital Will Transform the Legal Field in Texas

A Texas roadmap for lawful, lower-cost lending against law firm fee receivables

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The single biggest constraint on the legal industry today

The single biggest constraint on the legal industry today is not talent, and it is not demand. It is capital. Lawyers across the country are sitting on billions of dollars in strong cases and earned but unpaid fees, real value that exists on paper and does nothing in practice, because there is no reliable way to borrow against it. Change that, and the industry changes with it. Firms stop turning away good cases they cannot afford to carry. They stop settling strong claims early because payroll is due Friday. They hire the experts, take the depositions, and try the cases that produce honest verdicts instead of discounted ones. They compete for clients against the biggest advertisers in their markets. And they show up in legislatures and appellate courts with the resources to match institutional defendants who have never once had to wonder where the money was coming from. This is not a technical improvement in law firm lending. It is the difference between an industry that runs on whatever it can scrape together and one that runs on what it can raise.

Introduction: Capital Follows the Exit

Capital goes where it can get out. It seeks security and predictability. That single principle has governed secured lending for centuries, and it explains both why money flows freely into some industries and why it stays away from others. A lender advances money today against property that already exists, property it can value, take, and sell if the borrower does not pay. The mortgage on land, the lien on a car, the security interest in inventory: each works because the lender knows, in advance, how it gets its money back. The exit is clear, so the capital comes, and because the capital comes, it comes cheaply.

One asset class breaks this pattern. Over roughly the last two decades, lending against a law firm's contingency-fee revenue has grown into a business measured in the billions of dollars. But it lends against something no other lender has ever had to reckon with: a stream of attorney fees that the firm has not yet earned, tied to cases the lender may never touch. This article is about that revenue stream, and it is important to be precise from the first sentence about what is and is not on the table. What a law firm can pledge, and all this article ever discusses, is the firm's own right to be paid its fees, an account receivable that belongs to the lawyers. Nothing here concerns the client, the client's claim, or the client's case. Those are not the firm's to pledge and never will be. The only thing that is delegable is the lawyers' earned fee.

The problem here for capital is the exit and ability to come back. In every mature lending market, there is a well-worn path for the day the borrower cannot pay, a way to step in, preserve the value, and get the capital back without destroying the thing that secured it. For law firm fee lending, that path is in its infancy. The legal components exist and have occasionally been enforced, but they have never been assembled into a standard, repeatable process, and most lenders do not know they are there. In practice, then, a law firm lender is close to unsecured. Litigation or forced bankruptcy becomes the only enforcement mechanism, and both are terrible ways to recover money: slow, expensive, adversarial, and unpredictable. Because the only familiar exit is a bad one, capital treats law firm lending as high-risk and prices it accordingly, or stays away entirely. The thesis of this article is simple: if the industry assembles a lawful, orderly way for capital to be repaid when a loan goes bad, more capital will come in, at cheaper rates, and it will transform how law firms fund the pursuit of justice. Capital follows the exit, the ability to be repaid. This article also proposes a lawful and creative solution to properly value and secure the underlying assets.

Most industries long ago rationalized their capital: manufacturers, retailers, real estate, and technology all borrow against defined assets through defined processes, with well-understood rules for what happens when a borrower fails. The legal industry is different. It is, in many ways, still limited, inefficient, and undefined in exactly the place where every other market has matured, in the financing of its own work. Lending against legal fees today is close to the Wild West: little settled practice, no standard documents, no orderly way to unwind a deal that sours. The solution is not exotic. It is normalcy, the ordinary cycle of lending that governs every other industry, brought at last to law: clarity at the outset, risk mitigation along the way, and a defined process of repayment when a loan is repaid in the normal course and, just as important, when it is not, including when the underlying assets and cases are themselves disputed. Bringing that cycle to legal fees is the whole project of this article.

The payoff of that normalcy is measured in liquidity, and liquidity, in this industry, converts directly into reach and voice. The more capital a firm can access, and the cheaper it is, the more it can spend on advertising and media, the engine of client acquisition for personal injury firms, mass-tort practices, and consumer litigators alike. But the effect runs past marketing. A capital-starved bar is a politically weak bar. When firms must marshall every dollar for the next case, they have nothing left for the longer contest, the advocacy, the public-policy work, the legislative fights over damages caps, tort reform, and the rules of funding itself, that shapes the ground on which they practice. Institutional-grade capital changes that footing. It gives the plaintiff's bar the resources to meet well-funded institutional defendants not only case by case but in the arenas where the rules are written. In that sense the need for capital is not a weakness to be managed but a lever to be pulled: the industry that solves its capital problem is the industry that can finally compete for influence on equal terms.

The stakes here are not academic, and they land hardest on the lawyers who can least afford it. Consider what cheaper, more available capital actually does for a personal injury firm. Contingency practice is a capital-starved business: a firm fronts case costs for years, experts, depositions, medical workups, trial preparation, and waits, sometimes half a decade, to be paid. The firms that can carry that burden are the ones with capital, and today capital is scarce and expensive. Change that, and you change who can compete. A firm with reliable, reasonably priced funding can take on the catastrophic case against the well-defended corporate defendant, invest in the marketing that brings clients through the door, hire and keep talent, and refuse the lowball settlement that a cash-strapped firm is forced to accept. The availability and price of capital is not a back-office detail. It quietly determines which injured clients get first-rate representation and which do not, and it will reshape the balance of power between the plaintiff's bar and the institutional defense in ways that are only beginning to come into view.

This article proceeds in five parts:

- Part I describes the ordinary lifecycle of a secured loan and the single feature that makes legal fees different.
- Part II examines what happens when a workout is attempted without any real process, using the collapse of Girardi Keese and a striking recent New York predatory-funding case as bookends.
- Part III maps the Texas rules that make the crude “take over the cases” strategy not just impractical but unlawful, and shows how a firm working alongside the lender can add value while staying inside them.
- Part IV argues that the market's missing institution is a neutral advisory and consulting function that occupies the space between default and the two value-destroying endpoints of litigation and bankruptcy.
- Part V offers concrete drafting for the next loan, including a lawful mechanism for the one thing lenders most need: a way to be paid back first, out of the fee receivable, without crossing the lines Texas draws.

I. The Lifecycle of a Secured Loan, and the One Thing That Makes Legal Fees Different

Every secured loan ends one of two ways. Either the borrower pays and the lien is released, or the borrower cannot pay and the lender attempts to turn the collateral into cash. The whole law of secured lending exists to make that second ending work. For ordinary collateral it is routine: the car is repossessed and auctioned; the building is foreclosed, with a receiver collecting rents in the meantime so the value does not bleed away while ownership changes hands.[1] The asset barely notices who holds it. Its value survives the handoff.

A portfolio of contingency-fee cases is the opposite. Its value depends entirely on who is doing the work, because the work is the practice of law and only licensed lawyers may do it. Here is the difference in one line: a building keeps earning rent no matter who owns it, but a case earns nothing unless a lawyer keeps working it, and the lender is not allowed to be that lawyer. A missed deadline, a botched filing, a lawyer who walks out when the loan is called: any of these can turn a hundred-million-dollar case into nothing, permanently, and no sale can bring it back. A receiver can run a hotel. A receiver cannot try a lawsuit.

There is a second, subtler point, and it is the key to everything that follows. What the lender is actually lending against is not the case. It is the law firm's fee, the money the firm will earn if the case succeeds. The client owns the claim; the firm owns only its contractual right to be paid for its work. And that right is defeasible in a way no other receivable is: Texas public policy strongly favors a client's freedom to discharge a lawyer at any time, for any reason or no reason at all, and any fee provision that penalizes the client for doing so is unconscionable and void.[2] So the collateral is narrow, specific, and fragile: the firm's account receivable for its own attorney fees, subject at every moment to the client's absolute right to change counsel. That is the piece that can be pledged. Framing it correctly is not a technicality. It is what makes the whole transaction workable, and it is why a particular kind of professional is needed at the table: a firm with a legal advisory, consulting, and restructuring practice, one that understands both secured lending and the disciplinary rules, and that can structure, monitor, and, if necessary, stabilize these deals from inside the practice of law. Such a firm can do the things the lender may not do, because it is the lawyers, not the lender, making every judgment that touches a client matter. The fee is delegable. The case is not.

It is worth pausing on why this narrow, technical point carries such weight. The fee receivable is the one lawful bridge between the capital markets and the contingency practice. Every dollar a lender can safely advance against that receivable is a dollar a firm can deploy today rather than years from now, on the next

[1] In commercial mortgage practice the path to repayment on default is longstanding and codified: assignment of rents keeps income flowing to the lender, and a receiver preserves the property, so that repayment proceeds in an orderly way rather than through a value-destroying scramble. The point of the analogy is the defined process of repayment, which legal-fee lending presently lacks.

[2] Hoover Slovacek LLP v. Walton, 206 S.W.3d 557, 561, 565–67 (Tex. 2006) (public policy strongly favors a client’s freedom to discharge counsel “for any reason or no reason at all”; termination-fee provision requiring immediate payment of the present value of a contingent interest held unconscionable and void, and an impermissible proprietary interest under Rule 1.08(h)); Mandell & Wright v. Thomas, 441 S.W.2d 841 (Tex. 1969) (attorney discharged without good cause before completing the work may recover on the contract); the alternative of quantum meruit recovery is set out in Hoover Slovacek, 206 S.W.3d at 561; Rocha v. Ahmad, 676 S.W.2d 149 (Tex. App. 1984) (discharge for good cause bars contract recovery). On the lender’s position, the security interest follows into the quantum meruit or contract claim as proceeds. Tex. Bus. & Com. Code § 9.203(f).

case, the next expert, the next client. The entire argument of this article is, at bottom, about widening that bridge, because the wider it gets, the more capital crosses it, and the more capital crosses it, the more the practice of plaintiff's law is transformed.

II. What a Workout Looks Like With No Process: Two Cautionary Tales

The collapse of the Los Angeles firm Girardi Keese is the industry's most complete autopsy. The firm borrowed from four separate litigation lenders, at times pledging overlapping collateral, and by 2018–2019 was in default on some $28 million in funder loans. When other funders moved to collect, one lender's principal personally stepped in and pushed the firm to install a chief restructuring officer of the lender's choosing, exactly the kind of informal, lender-directed control the ethics rules forbid, and which the bankruptcy trustee later used against the lenders.[3]

The ending shows why process matters. There was no orderly workout. In December 2020, after an Illinois federal judge held the firm and its principal in contempt and froze their assets for failing to turn over $2 million in client settlement funds, counsel for one of the litigation lenders told the court that creditors would file involuntary bankruptcy petitions within forty-eight hours, and on that representation the judge declined to appoint a receiver and let the bankruptcy take over. The involuntary Chapter 7 petition was filed December 18, 2020; the firm was defunct within weeks. More than $495 million in claims were filed against the firm, and the trustee then sued the litigation lenders themselves, alleging their capital-for-fees arrangements were unlawful fee-sharing and that the funders were partners-in-fact who breached fiduciary duties.[4] Two lessons: by the time the formal tools were used, the collateral was already destroyed; and the lenders' informal control did not protect them, it became the theory of liability against them.

If Girardi shows the danger of a lender grabbing too much control, a second, very recent case shows the danger the whole market poses when lending is predatory and there is no lawful structure to channel it. In New York Marine & General Insurance Co. v. Case Cash Funding, filed in the Southern District of New York on June 12, 2026, an insurer alleges that a consumer litigation funder advanced small sums to injured claimants and turned them into vastly larger demands. In one matter the funder had advanced $76,500; when the claimant's own lawyer and the mediators all agreed that $750,000 was a fair settlement, the funder allegedly refused and asserted a lien of more than $1.4 million, forcing the case to continue purely to chase its own return.[5] The complaint alleges the advances were marketed as “non-recourse” while the funder in fact ran the life of the claims and blocked settlements everyone else had accepted, the very control that, as Part III explains, the law does not permit.

The two cases frame the argument. Girardi is what happens when a lender reaches for control it may not have. Case Cash is what happens when capital enters this space through predatory side doors because the front door, ordinary, transparent, well-regulated lending, is not open. Both are symptoms of the same underlying gap: there is no mainstream, lawful, value-preserving way to lend against legal fees and to recover when a deal goes wrong. Build that, and the Girardi-style scramble and the Case Cash-style predation both lose their oxygen. The point of making this lending look boring and bank-like is precisely to crowd the predators out. One distinction should be stated rather than glossed. Case Cash concerns consumer litigation funding, advances made to individual claimants, while this article concerns lending to law firms against their own fee receivables. They are different markets with different regulators and different abuses. They are cited together here for a narrower reason: both illustrate what fills a vacuum when the mainstream, regulated channel does not exist.

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[3] In re Girardi Keese, No. 2:20-bk-21022-BR (Bankr. C.D. Cal.) (involuntary Chapter 7; Elissa D. Miller, Chapter 7 Trustee).

[4] The Recorder/Law.com (Dec. 18, 2020); Bloomberg Law (Dec. 17, 2020 hearing; Nov. 2022 claims totals); ABA Journal (Sept. 2022, trustee suit).

[5] New York Marine & Gen. Ins. Co. v. Case Cash Funding, S.D.N.Y., filed June 12, 2026.

III. The Texas Rules, and How a Firm Adds Value Inside Them

A lender who tries to solve a bad loan by interfering with the borrower's cases runs into five independent Texas rules. Understanding them is not just about what a lender cannot do. It is about how a law firm working alongside the lender can protect the loan lawfully, by handling everything that touches the practice of law, so the lender never has to.

A. What May Lawfully Be Pledged: Proceeds, Defined

Start with the collateral, because the whole structure depends on getting it right. The client owns the cause of action, and Texas bars assigning several categories of claims outright: legal-malpractice claims, Deceptive Trade Practices Act claims, Insurance Code Chapter 541 claims, and pre-adjudication assignments of an insured's claims to the plaintiff suing him.[6] A lawyer may not take a proprietary interest in the client's claim, and the Professional Ethics Committee has squarely held that a contractual security interest in the client's cause of action to secure a fee is impermissible because it is not a lien granted by law.[7] What is left, and what the market actually finances, is proceeds. It is worth defining the word plainly for the reader, because loose usage is where deals go wrong. By proceeds we do not mean the client's recovery. We mean the law firm's own contractual fee: the portion of a successful result the retainer agreement entitles the firm to be paid for its work, after the client is made whole on their share. That interest is assignable. Texas law treats a law firm's right to its own earned fees as an ordinary property right, distinct from the client's underlying claim and freely pledgeable as collateral.[8] Texas authority is directly supportive. In Counsel Financial Services, L.L.C. v. Leibowitz, a law firm that had pledged its legal fees, accounts, and intangibles to secure a multimillion-dollar loan sought summary judgment declaring the security agreement unenforceable as contrary to the public policy expressed in the disciplinary rules. The court of appeals reversed, holding the firm had not established that defense as a matter of law, and noting that Texas case law allows an attorney to assign accounts receivable consisting of current or future, earned or unearned attorney fees as property securing a transaction.[9]

Getting the Article 9 label right matters more than it sounds. The instinct is to call a contingent fee a “payment intangible,” and that instinct is wrong. Texas defines an account as a right to payment of a

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[6]Legal malpractice: Zuniga v. Groce, Locke & Hebdon, 878 S.W.2d 313, 318 (Tex. App.—San Antonio 1994, writ ref’d) (assignment of a legal malpractice action arising from litigation is invalid); the “writ refused” notation gives Zuniga the precedential weight of a Texas Supreme Court opinion, Baker v. Mallios, 971 S.W.2d 581 (Tex. 1998). DTPA: PPG Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd. P’ship, 146 S.W.3d 79, 87 (Tex. 2004). Insurance Code ch. 541: Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc., 620 S.W.3d 458, 465 (Tex. App.—Dallas 2021). Pre-adjudication assignment of an insured's claims to the plaintiff, where the insurer has tendered a defense and either accepted coverage or made a good-faith effort to adjudicate coverage before the adjudication of the plaintiff's claim, and the judgment was not obtained in a fully adversarial trial: State Farm Fire & Cas. Co. v. Gandy, 925 S.W.2d 696, 705–11, 714 (Tex. 1996); see Great Am. Ins. Co. v. Hamel, 525 S.W.3d 655 (Tex. 2017) (clarifying the fully-adversarial-trial requirement). Note that Tex. Prop. Code § 12.014 permits the sale of an interest in a filed cause of action but is a notice statute only; it neither validates nor invalidates an assignment. Mallios v. Baker, 11 S.W.3d 157 (Tex. 2000).

[7]Tex. Disciplinary R. Prof’l Conduct 1.08(h) (lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation, excepting a lien granted by law and a permissible contingent fee); Tex. Comm. on Prof’l Ethics, Op. 610 (2011) (a contractually agreed security interest in the client’s cause of action to secure the lawyer’s fee is not a “lien granted by law” and is therefore impermissible). Compare In re Slusser, 136 S.W.3d 245 (Tex. App.—San Antonio 2004, no pet.), and Gillespie v. Hernden, 516 S.W.3d 541 (Tex. App.—San Antonio 2016, pet. denied) (lien on property to secure a contingent fee permissible). Note that a federal court has found Opinion 610 difficult to reconcile with earlier Opinion 449 and declined to treat it as dispositive, observing that Committee opinions are advisory and not binding on the Supreme Court of Texas. Mount Spelman & Fingerman, P.C. v. GeoTag, Inc. (E.D. Tex. 2014); see Tex. Gov't Code § 81.092.

[8]Texas treats a cause of action as a property right generally assignable absent statute or public policy to the contrary. Valero Eastex Pipeline Co. v. Jarvis, 990 S.W.2d 852 (Tex. 1999). On the distinct question of a law firm's own earned fees, Texas authority confirms that an attorney may assign accounts receivable consisting of current or future, earned or unearned attorney fees as property securing a transaction. Counsel Fin. Servs., L.L.C. v. Leibowitz, No. 13-12-00103-CV (Tex. App.—Corpus Christi–Edinburg July 25, 2013) (mem. op.) (reversing and remanding), citing Hennigan v. Hennigan, 666 S.W.2d 322, 325 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.). As an unpublished memorandum opinion the decision is persuasive rather than binding, and because the court reversed a summary judgment rather than rendering judgment, it establishes that the firm failed to carry its burden rather than that the agreement is enforceable.

[9]Hennigan v. Hennigan, 666 S.W.2d 322, 325 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.); Counsel Fin. Servs., L.L.C. v. Leibowitz, No. 13-12-00103-CV (Tex. App.—Corpus Christi–Edinburg July 25, 2013) (mem. op.).

monetary obligation, whether or not earned by performance, for services rendered or to be rendered, and "general intangible," which is the parent category of "payment intangible," expressly excludes accounts. A law firm's contractual attorney-fee receivable is therefore an account, even when the fee is contingent and unearned.[10] The correct language for every document in this space is: a security interest in the firm's own contractual attorney-fee receivables, an account under Article 9, perfected by filing a UCC-1 with the Texas Secretary of State. The rule of thumb is one line long: pledge the fee proceeds, never the claim, and never anything that lets the lender steer the case.

B. Unauthorized Practice of Law

If a lender starts weighing in on how cases are run, pressing for a quick settlement to get paid, vetoing a strategy as too expensive, it is not just overstepping the contract. Texas defines the practice of law broadly enough to reach it. The statutory definition covers the management of an action on behalf of a client and the giving of advice or rendering of any service requiring the use of legal skill or knowledge, and it is expressly non-exclusive, leaving courts free to find that other conduct qualifies.[11] Advising on litigation strategy, settlement timing, or case selection falls within it, and the Unauthorized Practice of Law Committee has statutory authority to investigate and to sue in its own name to stop it. This is precisely where a specialty legal-advisory firm adds value: the advisory firm's lawyers, not the lender, make every judgment that touches a client matter. The lender monitors its receivable; the lawyers practice law. Keeping that line bright protects everyone.

C. Tortious Interference

An attorney-client relationship is a contract, and pushing clients to switch firms, or conditioning forbearance on moving matters to a lender-chosen lawyer, could be viewed as tortious interference. Texas has long held that the terminable-at-will status of a contract is no defense to such a claim, which matters here because every attorney-client engagement is terminable at will.[12] The Girardi trustee's partners-in-fact theory shows the next step: a lender enmeshed too deeply in firm operations can be recast as a fiduciary of the very firm it was trying to collect from.

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[10] Tex. Bus. & Com. Code § 9.102(a)(2) ("account" means a right to payment of a monetary obligation, whether or not earned by performance, for services rendered or to be rendered); § 9.102(a)(42) ("general intangible" expressly excludes accounts); § 9.102(a)(62) ("payment intangible" is a subcategory of general intangible). Because a contingent fee is a right to payment for services, it is an account, not a payment intangible. Attachment: § 9.203(b); collateral description by statutory type is sufficient, § 9.108(b)(3). Perfection by filing: § 9.310(a). Automatic perfection exceptions: § 9.309(2), (3). Attachment requires that value be given, that the debtor have rights in the collateral, and that the debtor authenticate a security agreement describing it. § 9.203(b). A debtor's rights in collateral need not be full or unencumbered; interests that are "slight or tenuous or marginal" suffice to satisfy that element. Borg-Warner Acceptance Corp. v. C.I.T. Corp., 679 S.W.2d 140 (Tex. App. 1984). A firm executing a written contingent-fee retainer therefore has sufficient rights in the resulting receivable for attachment, provided the remaining statutory elements are met. Contingent-fee contracts must be in writing and signed. Tex. Gov't Code § 82.065(a); Tex. Disciplinary R. Prof'l Conduct 1.04(d). On choice of law, a Texas-organized firm is located in Texas, so Texas law governs perfection and priority and the financing statement is filed with the Texas Secretary of State regardless of where matters are pending; a contractual choice-of-law clause cannot alter perfection or priority as against third parties. Tex. Bus. & Com. Code §§ 9.301, 9.307; Fishback Nursery, Inc. v. PNC Bank, N.A., 920 F.3d 932 (5th Cir. 2019).

[11] Tex. Gov't Code § 81.101(a)–(b) (definition of the practice of law, expressly non-exclusive); § 81.102 (practice restricted to State Bar members); §§ 81.103–.104 (Unauthorized Practice of Law Committee); In re Nolo Press/Folk Law, 991 S.W.2d 768 (Tex. 1999); Crain v. Unauthorized Practice of Law Comm., 11 S.W.3d 328 (Tex. App. 1999) (practice of law embraces all advice to clients and all action taken for them in matters connected with the law). The criminal statute, Tex. Penal Code § 38.123, is considerably narrower than the civil definition: it reaches five enumerated activities, most tied to personal injury or property damage claims, and requires intent to obtain an economic benefit. General advice by a creditor to a law firm borrower falls outside it. The civil definition, not the criminal one, is what makes lender involvement in case decisions hazardous.

[12] Sterner v. Marathon Oil Co., 767 S.W.2d 686, 689–90 (Tex. 1989) (terminable-at-will status is no defense; justification is an affirmative defense on which the defendant bears the burden). Sterner remains good law on the at-will point, but the standard formulation of the elements has since been restated. Holloway v. Skinner, 898 S.W.2d 793, 795–96 (Tex. 1995); Tex. Beef Cattle Co. v. Green, 921 S.W.2d 203, 210 (Tex. 1996). See also Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc., 29 S.W.3d 74, 77 (Tex. 2000) (justification not established as a matter of law where the interference was accomplished by independently tortious means). Damages are measured by the loss proximately caused by the interference. Palla v. Bio-One, Inc., 424 S.W.3d 722 (Tex. App. 2014). Note that an attorney acting to protect the attorney's own client is privileged as a matter of law. Maynard v. Caballero, 752 S.W.2d 719 (Tex. App.—El Paso 1988, writ denied).

D. The Rule 5.04 Wall

Texas forbids a lawyer from sharing fees with a non-lawyer, and from practicing in any entity in which a non-lawyer owns an interest, serves as an officer or director, or has the right to direct or control a lawyer's professional judgment. The Professional Ethics Committee has repeatedly confirmed that a financing arrangement giving the lender a percentage of a contingent recovery or of firm revenue is prohibited fee-sharing, whatever it is labeled, and has closed the out-of-state workaround.[13] So the usual creditor moves, taking equity, a board seat, or management control, are simply unavailable here. The loan itself is fine: the Committee has drawn a clean line between repaying principal and interest on a loan, which is permitted, and promising the lender a percentage of the fee, which is not.[14] Texas courts have drawn the same line and stated it more plainly than the opinions do. There is a significant difference between sharing legal fees with a non-lawyer and paying a debt with legal fees; a wage earner who pays rent from a paycheck is not sharing wages with the landlord.[15] The danger is not necessarily in the lending. It is mostly in the collecting.

E. Client Confidentiality: The Constraint Most Deals Miss

There is a fifth wall, and it is the one most likely to be overlooked by a lender and its advisors, because it has nothing to do with money. Rule 1.05 defines confidential information to include not only privileged material but all unprivileged client information, everything relating to a client or furnished by the client, acquired during or by reason of the representation. In 2022 the Professional Ethics Committee confirmed that this duty applies with full force to third-party funding organizations and monitors; they are not exempt.[16] That has a direct and inconvenient consequence for the structure this article proposes: an advisory firm cannot simply open the file drawer and value the portfolio. Reviewing active client matters to assess collateral requires either informed client consent after consultation, or a narrowly drawn court order, and the disclosure must go no further than the order or the consent allows. Any workout design that ignores this is unworkable in practice, however elegant it looks on paper. The consent and court-order mechanics in Parts IV and V are built around this constraint, not bolted onto it.

The consequence of getting this wrong is not merely a disclosure problem. A Texas bankruptcy court has treated a firm's failure to obtain individualized client consent as a breach of fiduciary duty warranting fee forfeiture, and held that the firm's financial distress did not excuse the omission.[17]

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[13] Tex. Disciplinary R. Prof'l Conduct 5.04(a) (no sharing legal fees with a non-lawyer), 5.04(c) (no person who pays the lawyer may direct or regulate the lawyer's professional judgment), 5.04(d) (no non-lawyer ownership interest, directorship, or right to direct or control professional judgment). Tex. Comm. on Prof'l Ethics, Op. 558 (2005) (lawyer violates Rule 5.04(a) by agreeing to pay a litigation finance company a percentage of a contingency fee in addition to principal and interest); Op. 576 (2006) (same conclusion for a funding fee equal to a percentage of net recovery); Op. 467 (1990) (percentage-of-receipts lease with a landlord is impermissible fee-sharing); Reich & Binstock, LLP v. Scates, 455 S.W.3d 178 (Tex. App. 2014).

[14] The Committee has distinguished repayment of "principal and interest on the loan," which is permitted, from a promise of a percentage of the contingency fee, which is not. Op. 576 (2006); Op. 558 (2005). Texas has also recognized that ordinary non-recourse litigation funding in which the funder exerts no control over the litigation does not offend public policy. Anglo-Dutch Petroleum Int'l, Inc. v. Haskell, 193 S.W.3d 87 (Tex. 2006). On the statutory picture: proposed disclosure bills S.B. 1567 (86th Leg. 2019) and S.B. 3025 (89th Leg. 2025) each expressly excluded ordinary attorney credit not contingent on case outcome, and neither was enacted. Texas has no general third-party litigation financing disclosure statute; the one codified provision is narrow, requiring disclosure of funding from individuals, entities, or governments affiliated with sanctioned or embargoed nations. Tex. Civ. Prac. & Rem. Code § 28.003 (tied to Tex. R. Civ. P. 194). Texas courts have also held that a court may deem the disciplinary rules an expression of public policy such that a contract violating them is unenforceable. Garcia v. Garza, 311 S.W.3d 28, 43 (Tex. App.—San Antonio 2010, pet. denied); Cruse v. O'Quinn, 273 S.W.3d 766, 775 (Tex. App.—Houston [14th Dist.] 2008, pet. denied); see Johnson v. Brewer & Pritchard, P.C., 73 S.W.3d 193, 205 (Tex. 2002) (fee-sharing agreement between lawyers not in the same firm is unenforceable unless the client is advised of and consents to the arrangement). The question is therefore not foreclosed, and the protective and severability clauses discussed in Part V are what have carried the day in practice.

[15] Counsel Fin. Servs., L.L.C. v. Leibowitz, No. 13-12-00103-CV (Tex. App.—Corpus Christi–Edinburg July 25, 2013) (mem. op.), quoting State Bar of Tex. v. Tinning, 875 S.W.2d 403, 410 (Tex. App.—Corpus Christi 1994, writ denied). The same opinion holds that the disciplinary rules do not define civil liability and do not render an otherwise valid contract void, and that a protective clause may be severed rather than voiding the agreement.

[16] Tex. Disciplinary R. Prof'l Conduct 1.05(a)–(b) ("confidential information" includes both privileged information and all unprivileged client information acquired during or by reason of the representation); Tex. Comm. on Prof'l Ethics, Op. 695 (2022) (the duty of confidentiality applies to disclosures to third-party funding organizations and monitors). Disclosure may be made where the client consents after consultation, Rule 1.05(c)(2), or where the lawyer reasonably believes it necessary to comply with a court order, Rule 1.05(c)(4).

[17] In re Rosenthal & Watson, P.C., 612 B.R. 507 (W.D. Tex. 2020).

IV. The Missing Exit: Between Default and the Two Bad Endings

In every mature lending market there is an institution for the hard interval between default and payoff, something that preserves value while control is sorted out. Real estate has the rents receiver and the special servicer. Troubled companies have the turnaround advisor and Chapter 11. Even a repossessed car has a regulated auction. The premise is always the same: litigation and bankruptcy are the last resort, not the first, because they are slow, adversarial, and destroy value. Rational parties reach them only after orderly, intermediate steps have failed.

For law firm fee lending, those intermediate steps are not missing so much as unassembled. Every component exists in Texas law, and courts have used several of them. What does not exist is the practice: a standard sequence, standard documents, and a professional class whose recognized business it is to stand between the lender who may not control, the firm that cannot pay, and the clients who must not be harmed. So distress jumps straight from quiet trouble to catastrophe, and the only exit anyone can find is the courthouse. That is the void this article says the market must fill, and Texas law already supplies the materials to fill it: chief among them the turnaround advisory or consulting firm, a neutral professional engaged to preserve value, that can do the stabilizing work no lender lawfully can.

The Components, and What Courts Have Actually Done With Them

Begin with the strongest and least appreciated piece. It is sometimes assumed that no court would ever put a receiver over a law practice. Texas courts already have. In Hennigan v. Hennigan, the Houston Fourteenth Court of Appeals affirmed the appointment of a post-judgment receiver over an attorney's law practice assets, expressly reaching the attorney's fees and accounts receivable, on the reasoning that attorney fees are inherently difficult to reach to satisfy a judgment, which is exactly why a receivership is the appropriate tool.[18] Nor is enforcement against law firm fee collateral hypothetical elsewhere. In Cadle Co. v. Schlichtmann, the First Circuit enforced a lender's security interest in a law firm's accounts receivable, including an account arising from a contingent fee agreement, and held that the interest survived both the firm's dissolution and a partner's bankruptcy to attach to the eventual fee payment.[19] Closer to home, a Texas court of appeals has declined to hold such an arrangement void, reversing a summary judgment that had declared a lender's security interest in a law firm's legal fees unenforceable under the disciplinary rules, and observing that the agreement's essential purpose was simply the pledge of collateral to secure a loan.[20] The claim this article makes is therefore not that the law forbids this or that no one has done it. It is that it has been done ad hoc, case by case, without a repeatable process, which is precisely why capital still prices the asset class as if no process existed.

The statutory core is receivership. Chapter 64 of the Civil Practice and Remedies Code authorizes appointment in an action by a creditor to subject property or a fund to the creditor's claim, in an action between persons jointly interested in a fund, and for an entity that is insolvent or in imminent danger of insolvency; Chapter 11 of the Business Organizations Code supplies parallel and more demanding standards for domestic entities, including professional entities such as a law firm PLLC or PC; and the

[18] Hennigan v. Hennigan, 666 S.W.2d 322, 323–24 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) (affirming post-judgment receivership over an attorney's law practice assets, reaching attorney fees and accounts receivable, on the reasoning that attorney fees are inherently difficult to reach to satisfy a judgment); see also Hennigan v. Hennigan, 677 S.W.2d 495, 496 (Tex. 1984). See also Ross v. 3D Tower Ltd., 824 S.W.2d 270 (Tex. App. 1992) (attorney's accounts receivable, including future unearned fees, subject to turnover; not protected by wage exemptions because attorneys are independent contractors rather than employees).

[19] Cadle Co. v. Schlichtmann, 267 F.3d 14 (1st Cir. 2001) (security interest in a law firm's accounts receivable, including an account arising from a contingent fee agreement, survived firm dissolution and a partner's bankruptcy and attached to the post-bankruptcy fee payment). Compare Wiener, Weiss & Madison v. Fox, 971 F.3d 511 (5th Cir. 2020) (contingency fee agreement assigning an interest in a client's recovery held unenforceable as a business transaction with a client violating the professional conduct rules), a reminder that the lawyer-client side of these arrangements is governed by different and stricter rules than the firm-lender side.

[20] Counsel Fin. Servs., L.L.C. v. Leibowitz, No. 13-12-00103-CV (Tex. App.—Corpus Christi–Edinburg July 25, 2013) (mem. op.). The court held the objectionable provisions "tangential to the main or essential purpose of the agreement, which is the pledge of collateral to secure the loan," and noted that the security agreement's own protective clause, limiting the exercise of remedies so as not to require the debtor to violate any ethical or disciplinary rule, together with a savings clause, permitted severance rather than voiding the whole. See Part V.

turnover statute permits a post-judgment receiver to reach nonexempt property including contractual rights and receivables, a route the Legislature made materially easier in 2017 by removing the requirement that the creditor prove the property could not readily be reached by ordinary process.[21] The receiver is an officer of the court, the medium through which the court acts, and not the agent of any party, and that is exactly what makes the mechanism lawful. Control routes through a neutral under judicial supervision rather than to the non-lawyer creditor. The court may define and limit the receiver's powers in the order of appointment and may enlarge or reduce them at any time, and the receiver may retain attorneys and other professionals to carry out the estate's work.[22]

Two limits must be stated plainly, because they define the shape of any workable design. First, receivership is an extraordinary remedy. A Chapter 64 applicant must show a probable interest in property that is in danger of being lost, removed, or materially injured, and a Business Organizations Code receivership additionally requires the court to find that all other legal and equitable remedies are inadequate. Texas courts describe it as harsh and drastic and are reluctant to use it.[23] Second, and more fundamentally, a receiver's status as an officer of the court does not exempt anyone from the unauthorized practice of law. A court cannot authorize a non-lawyer receiver or advisory firm to represent the firm's clients, advise them on the merits of their cases, or select successor counsel for them.[24] What a neutral lawfully can do is financial, ministerial, and administrative: value the portfolio on financial rather than merits grounds, audit deadlines as a calendaring exercise, monitor the trust account, negotiate with the lender, and coordinate the physical transfer of files. Everything requiring legal judgment stays with licensed lawyers.

The Custodian Attorney: The Vehicle Texas Already Built

There is a piece of Texas machinery designed for precisely this situation that almost no one outside disciplinary practice discusses. Under Rules 13.04 and 13.05 of the Texas Rules of Disciplinary Procedure, a Texas lawyer ceasing practice may designate a licensed Texas custodian attorney in good standing to assist in winding the practice down. The custodian attorney may examine client files and records, notify clients that the practice is closing and suggest they obtain other counsel, apply to courts for extensions of time to prevent prejudice, and, with the client's prior consent, file necessary motions and pleadings. The custodianship ends when active files and client property have been transferred to the client or to successor counsel.[25]

[21] Tex. Civ. Prac. & Rem. Code § 64.001(a)(2), (3), (5), (b) (grounds; applicant must have a probable interest in property in danger of being lost, removed, or materially injured); §§ 64.021 (qualifications), 64.031 (powers). Tex. Bus. Orgs. Code §§ 11.403 (specific property), 11.404 (rehabilitative), 11.405 (liquidating); a professional entity such as a law firm PLLC or PC is a domestic entity subject to these provisions. Spiritas v. Davidoff, 459 S.W.3d 224 (Tex. App. 2015). Turnover: Tex. Civ. Prac. & Rem. Code § 31.002(b)(3) (receiver may take possession of nonexempt property, sell it, and pay proceeds to the judgment creditor); the 2017 amendment (H.B. 1066, 85th Leg.) removed the requirement that the creditor show the property could not readily be attached or levied on by ordinary process. Turnover relief requires an existing judgment.

[22] Security Trust Co. of Austin v. Lipscomb Cnty., 180 S.W.2d 151, 158 (Tex. 1944) (receiver is an officer of the court, the medium through which the court acts, and a disinterested representative of all interests); Rich v. Cantilo & Bennett, L.L.P., 492 S.W.3d 755, 760–61 (Tex. App.—Austin 2016, pet. denied). Tailoring of powers: Tex. Bus. Orgs. Code § 11.406(a)(5); Norem v. Norem, 105 S.W.3d 213, 216 (Tex. App.—Dallas 2003, no pet.); Clay Exploration, Inc. v. Santa Rosa Operating, LLC, 442 S.W.3d 795, 798–99 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Retention of professionals: Tex. Bus. Orgs. Code § 11.406(a)(4).

[23] In re Estate of Price, 528 S.W.3d 591, 593 (Tex. App.—Texarkana 2017) (quoting § 64.001(b)); In re Estate of Trevino, 195 S.W.3d 223, 231 (Tex. App.—San Antonio 2006, no pet.); Elliott v. Weatherman, 396 S.W.3d 224, 228 (Tex. App.—Austin 2013, no pet.); see also N. Side Bank v. Wachendorfer, 585 S.W.2d 789, 793 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ). Note the asymmetry: a receiver appointed on the specific statutory grounds of § 64.001(a) and (b) need not show that no other adequate remedy exists, while a Business Organizations Code receivership requires the court to find all other legal and equitable remedies inadequate. Tex. Bus. Orgs. Code § 11.403(b)(4).

[24] Section 81.102 restricts the practice of law to members of the State Bar, subject only to exceptions the Supreme Court may promulgate, and contains no exception for receivers or other court-appointed officers. No Texas case appears to have decided directly whether a receiver's status as an officer of the court alters the unauthorized-practice analysis; the conclusion in the text follows from the absence of any statutory exception and from the general rule that non-lawyers may not perform acts constituting the practice of law. See Drew v. Unauthorized Practice of Law Comm., 970 S.W.2d 152 (Tex. App. 1998); Brown v. Unauthorized Practice of Law Comm., 742 S.W.2d 34 (Tex. App. 1987). Nor may a receiver select or direct successor counsel for a client, since the client retains the exclusive right to choose counsel. Client trust funds are not firm property and remain subject to Rule 1.14 regardless of the receivership.

[25] Tex. R. Disciplinary P. 13.04 (custodian attorney may examine client files and records, notify clients of the cessation of practice and suggest they obtain other counsel, apply for extensions of time, and, with the client’s prior consent, file necessary motions and pleadings); Tex. R. Disciplinary P. 13.05 (custodianship terminates on transfer of active files and client property to the client or successor counsel). The custodian must be a Texas attorney in good standing and is bound by the Disciplinary Rules, which is what

This solves several problems at once. The custodian is a lawyer, so the file review and any court appearances are not the unauthorized practice of law. The custodian is bound by the Disciplinary Rules, which addresses the Rule 1.05 confidentiality problem in a way that an outside advisory firm cannot. And because the custodian mechanism is a rule of court, conduct authorized by it sits inside the express exception the barratry statute provides for conduct authorized by the Disciplinary Rules or any rule of court. The sensible architecture, then, pairs the two: a turnaround advisory and consulting firm doing the financial, valuation, and lender-facing work, and a designated custodian attorney, or the borrower firm's own remaining lawyers, doing everything that touches a client file. Texas practice has long favored the custodian route over an ordinary equity receivership for a closing practice, and lenders drafting for this asset class should build toward it rather than around it.

Two limits on the mechanism deserve stating. The custodian designation is voluntary: Rule 13.04 contemplates a lawyer who is ceasing practice designating a custodian, which means the tool is available when a borrower cooperates and unavailable when one does not. In a contested default, precisely the case for which a workout framework exists, the borrower may simply decline to designate. A credit agreement can require designation as a covenant, but a covenant breach yields damages, not a custodian. The second limit is that a court-appointed receivership, the natural fallback, has in practice been a post-judgment enforcement remedy in the reported Texas cases, available to a creditor who already holds a judgment rather than to a lender at the first sign of distress. Both limits argue for building the advisory and consent machinery into the loan documents at origination, when the borrower's cooperation can still be purchased, rather than relying on remedies that arrive only after the value has gone.

Around that core there is real market demand for private neutral advisory firms: outfits engaged at the first sign of distress, before any filing, to value the fee portfolio on financial terms, reconcile trust accounts, negotiate standstills among multiple funders (the Girardi overlapping-pledge pattern will recur), and coordinate the consent processes that any transition of matters requires, and, if stabilization fails, to serve as or support a receiver. The model is the corporate restructuring-advisory industry that grew up around distressed companies a generation ago. Lenders gain because value is preserved; lawyers gain because the process keeps the firm ethical rather than desperate; and clients gain most of all, because their cases are the whole substance of the collateral. This is the opportunity hiding inside the risk, and it is the business a turnaround advisory and consulting firm is built to provide.

And the second-order effects are larger than the workout itself. When a functioning exit lowers the cost of capital across the plaintiff's bar, the change does not stay contained to balance sheets. Marketing budgets expand, because client acquisition is capital-intensive and suddenly fundable, which shifts who dominates the airwaves, the search results, and the billboards. Firms consolidate or scale, because growth no longer depends solely on cases already in hand. And the political economy moves with the money: a better-capitalized plaintiff's bar is a more powerful voice in the fights over tort reform, damages caps, and the rules of litigation funding themselves. Capital reshapes not just individual firms but the field on which the whole contest between plaintiffs and defendants is waged. These are seismic shifts, and they follow, quietly and inevitably, from the unglamorous work of building a lawful way for money to get back out.

V. Drafting the Next Loan: A Lawful Path to Getting Paid First

The lender's best moment is before funding, when the covenants are written. The next generation of law firm credit agreements should build the exit into the documents. The goals: early warning before trouble is fatal; a standstill-and-advisory period as the first response to default; a pre-agreed path to a neutral advisory or consulting firm and, if necessary, a court-appointed receiver; and, most important to lenders, a lawful way to be repaid first out of the fee receivable. The mechanics below borrow from tools that already work in ordinary finance, the standstill from intercreditor agreements, the consent-to-receivership from commercial real estate loans, adapted to the ethical limits of legal fees.[26] A sample clause set implementing them appears at the close of this Part.

distinguishes the mechanism from an ordinary equity receivership for purposes of both the unauthorized-practice and confidentiality analyses.

Every provision that follows has a single animating purpose beyond protecting one lender on one loan: each is a small piece of the infrastructure that, once standard, will make this capital cheap and ordinary, and cheap, ordinary capital is what ultimately reaches the client through the firm.

The Payment-Priority Mechanism: A Bank-Style Right to Collect First

Here is the crux for a capital-markets audience, and it must be drafted with more care than instinct suggests. A bank that lends against receivables expects to be paid out of those receivables before the borrower takes its profit. A law firm fee lender can have substantially the same expectation, but only if the obligation is structured as a fixed debt serviced out of the firm's general funds, not as a claim on any particular fee. Texas authority draws that line sharply. Paying a non-lawyer out of the firm's legal fees is improper when the payment is a share of a specific fee, but permissible when it is a legitimate firm overhead or debt expense paid from general operating funds; and the Committee has warned that an arrangement violates the rule when it is, in practical effect, a split of the fees earned by the law firm.[27]

The drafting consequences are concrete. Repayment should be a fixed periodic obligation of principal and interest, paid from the firm's operating account ahead of partner distributions in the ordinary way any secured business debt is serviced before owners take profit. It should not be triggered by the collection of a particular fee, should not be described as a percentage of anything, should not accelerate on settlement of an identified case, and should never reach client trust funds. The security interest attaches to the firm's attorney-fee receivables as a pool of accounts; the repayment obligation runs against the firm as an enterprise. A lender wanting tighter control of the cash should reach for a deposit account control agreement, which perfects by control under Article 9 and is a familiar, ethically neutral device, rather than for a fee-by-fee waterfall that invites recharacterization.[28]

One objection deserves a direct answer, because a critic will raise it. A plaintiff's firm funds its operating account almost entirely from contingency fees, so any debt it services from that account is, in an economic sense, paid with legal fees. Texas courts have on occasion looked through indirect payment structures to reach the substance of an arrangement.[29] The answer is that the distinction Texas draws is not about the ultimate source of the dollars but about whether the non-lawyer's entitlement varies with the fees. A wage earner pays rent from wages without sharing wages with the landlord. A fixed obligation that does not rise when a case settles well, does not fall when one settles badly, and is owed whether or not any particular matter resolves is a debt, not a share. What converts it into a share is variability tied to outcome, which is exactly what the drafting above removes.

One further caution belongs in the documents rather than in a footnote discovered later. A pre-petition contractual consent to the appointment of a receiver does not survive a bankruptcy filing. The Bankruptcy Code provides that a debtor's interest becomes property of the estate notwithstanding any provision conditioned on insolvency or on the appointment of a custodian, which makes such consents unenforceable once a petition is filed.[30] The consent is still worth having, because it works in the far more common scenario

[26] Standstill provisions are standard in first-lien/second-lien intercreditor agreements (see filed examples on SEC EDGAR; Practical Law's Intercreditor Agreements Toolkit). Borrower consent to receiver appointment on default is standard in commercial real estate loan documents. The integrated structure described here is original drafting adapting those mechanics to the constraints of legal fees.

[27] Reich & Binstock, LLP v. Scates, 455 S.W.3d 178 (Tex. App. 2014) (payment to a non-lawyer out of legal fees is improper fee splitting where it is a share of a fee, but disbursements for legitimate client expenses or general business overhead are not); Tex. Comm. on Prof'l Ethics, Op. 706 (an arrangement violates Rule 5.04(a) where it is "in practical effect" a split of the fees earned by the law firm); Op. 576 (2006); Op. 558 (2005).

[28] Tex. Bus. & Com. Code § 9.203(b)(3)(D) (control of a deposit account as a basis for attachment); § 9.104 (control of deposit accounts). Practical enhancements to a structurally fragile collateral position include deposit account control agreements, covenants requiring every contingent fee contract to satisfy Tex. Gov't Code § 82.065(a) and Rule 1.04(d), portfolio diversification requirements, and covenants requiring immediate notice of any client discharge together with diligent prosecution of the firm's resulting quantum meruit or contract claim.

[29] See O'Sullivan v. Countrywide Home Loans, Inc., 319 F.3d 732 (5th Cir. 2003) (looking through an indirect payment structure where a borrower paid a prohibited fee to a law firm which remitted it to the lender). The distinction drawn in the text is supported by Counsel Fin. Servs., L.L.C. v. Leibowitz, No. 13-12-00103-CV (Tex. App.—Corpus Christi–Edinburg July 25, 2013) (mem. op.), and Reich & Binstock, LLP v. Scates, 455 S.W.3d 178 (Tex. App. 2014).

[30] 11 U.S.C. § 541(c)(1)(B) (debtor's interest becomes property of the estate notwithstanding any provision conditioned on insolvency or on the appointment of a custodian), which renders a pre-petition consent to receivership unenforceable once a petition is filed. On the more favorable side: fee collections subject to a perfected security interest are cash collateral; § 547(c)(5) protects transfers

where no one files and the parties are negotiating in the shadow of what a court would do. But it should be drafted, and explained to the credit committee, as a pre-bankruptcy tool rather than a bankruptcy-proof one. The better news is that a properly perfected lender fares reasonably well inside bankruptcy on the questions that matter most: fee collections are cash collateral, and pre-petition sweeps against a perfected receivables interest are protected from preference attack except to the extent the lender improved its position during the preference window.

Bringing In Subject-Matter Expertise: How the Referral Chain Must Actually Run

Sometimes the right move on a troubled matter is to add a lawyer with expertise the original firm does not have, or the resources the original firm no longer has. This can be done lawfully in Texas, but the chain of who recommends what to whom is not a detail, it is the entire difference between a legitimate association of counsel and major penalties. Texas barratry law is among the most aggressive in the country. It is a third-degree felony to solicit employment for oneself or for another with intent to obtain an economic benefit; it is a separate offense to knowingly finance such conduct; and it is a separate offense for a professional to knowingly accept employment resulting from it. The civil statute lets a client void the contract and recover every fee paid plus a statutory penalty, and a person merely solicited who never signs can recover a larger one. Critically, barratry is complete at the moment of the improper solicitation, so client consent obtained afterward does not cure it.[31]

That is why the structure matters so much, and why it must be described precisely. The lender does not recommend counsel. The lender does not contact clients. The lender does not select, approve, or veto any lawyer on any matter. What the lender does is engage, at arm's length, an advisory and consulting firm with subject-matter expertise in valuing and liquidating legal claims and receivables. That advisory firm's counterparty is the law firm, not the client. Working alongside the borrower firm, the advisory firm may identify attorneys with particular subject-matter expertise, in a specific tort, industry, or trial posture, and recommend them to the firm. The firm then exercises its own independent professional judgment about whether associating that lawyer would serve the client. If the firm concludes it would, the firm, not the advisory firm, and certainly not the lender, presents the association to its own client and obtains the client's informed written consent under Rule 1.04(f), disclosing the identity of every participating lawyer, the basis of the division, and the share each will receive.

Every link in that chain runs between professionals until the last one, which runs between a lawyer and that lawyer's own existing client. No one solicits a prospective client, because there is no prospective client: the person is already represented by the firm making the decision. Association of counsel on those terms is conduct the Disciplinary Rules expressly authorize, which matters directly, because the barratry statute contains an exception for conduct authorized by the Texas Disciplinary Rules of Professional Conduct or by any rule of court.[32] The guardrails that keep the structure inside that exception should be written into the engagement documents rather than assumed. The advisory firm must be compensated by fixed fee for advisory services, never per placement and never as a share of any resulting legal fee, because a lawyer

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creating or enforcing a perfected security interest in receivables except to the extent of an improvement in position during the preference period; and repayment of a pre-existing debt constitutes reasonably equivalent value against a fraudulent transfer claim under § 548 and Tex. Bus. & Com. Code § 24.005. A lender should nonetheless police its level of operational involvement to avoid the partners-in-fact, fiduciary duty, and aiding-and-abetting theories asserted in the Girardi litigation.

[31] Tex. Penal Code § 38.12(a)(2) (soliciting employment for oneself or another with intent to obtain an economic benefit), (b)(1) (knowingly financing the commission of an offense under subsection (a)), (b)(3) (professional knowingly accepting employment resulting from unlawful solicitation); third-degree felony under § 38.12(f). “Economic benefit” is broadly defined. Tex. Penal Code § 38.01. Civil remedies: Tex. Gov’t Code § 82.0651(a)–(b) (client may void the contract and recover all fees and expenses paid, actual damages, a $10,000 penalty, and attorney’s fees), (c)–(d) (a person solicited who did not contract may recover a $50,000 penalty and actual damages). Barratry is complete at the moment of the prohibited solicitation, so subsequent consent does not cure it. Nguyen v. Watts, 605 S.W.3d 761 (Tex. App. 2020); Brumfield v. Williamson, 634 S.W.3d 170 (Tex. App. 2021).

[32] Tex. Penal Code § 38.12(c) (“It is an exception to prosecution under Subsection (a) or (b) that the person’s conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.”). Association of counsel on written client consent is authorized by Tex. Disciplinary R. Prof’l Conduct 1.04(f)–(g). On the compensation guardrail, Rule 7.03(e) prohibits a lawyer from paying or giving anything of value to a person not licensed to practice law for soliciting or referring prospective clients; an advisory firm compensated by fixed fee for advisory services, rather than per placement or as a share of any resulting fee, is outside that prohibition. Rule 7.03(b) governs solicitation of prospective clients and is not implicated where the communication runs to a lawyer rather than to a prospective client.

may not give anything of value to a non-lawyer for referring prospective clients. The advisory firm must not communicate with the borrower firm's clients. Incoming counsel must pay nothing for the introduction. The borrower firm's judgment must be genuinely its own, which means the credit agreement may obligate the firm to consider a recommendation and to cooperate in a transition the client approves, but may never obligate it to associate any particular lawyer. And the client retains, as always, the absolute right to decline, to keep existing counsel alone, or to hire anyone else.

It is worth being clear about why adding a lawyer helps, because the reason is not merely an extra set of hands. Additional or associated counsel almost always arrives with capital, and capital is frequently the thing a struggling case most needs. When the firm that originated a matter is running low on funds or capacity, the expert witnesses go unretained, the depositions go untaken, and the case stalls short of its real value. Associating a lawyer who can fund and staff the matter, the subject-matter experts, the additional paralegals, the trial consultants, the sheer cost of taking a catastrophic case to verdict, is often what unlocks the better outcome for the client. In other words, the purpose of adding counsel is a better result, and a better result takes resources; adding counsel is one of the principal ways those resources reach the case. Financing that flows in through a well-chosen co-counsel is capital reaching the client by another name.

Two further rules govern the mechanics. First, if the lender or the advisory firm pays or compensates the incoming lawyer, that lawyer's duty still runs solely to the client: compensation from someone other than the client is permitted only with the client's consent, with no interference in the lawyer's independence of professional judgment, and with client confidences protected.[33] Second, and this is the rule to cite directly, when lawyers in different firms divide a fee, the client must consent in writing, before the association, to the identity of every participating lawyer, the basis of the division, and the share each will receive; the division must track proportional work or joint responsibility; and the aggregate fee must remain reasonable. Consent given without knowledge of those specifics is not consent at all under the rule, and a lawyer who fails to obtain it is limited to the reasonable value of services rendered.[34] The formula is easy to remember: the advisory firm may recommend to the firm; the firm must independently agree; the client, fully informed and in writing, decides.

What follows is a sample clause set drawing the foregoing together. It is offered as a starting point for in-house counsel and not as a finished instrument; it must be tailored to the transaction, conformed to the balance of the credit agreement, and reviewed by qualified Texas counsel before use. Several provisions are novel, and the bracketed items require business decisions. The subsections are ordered as a lender's document would order them, grant, exclusions, payment, monitoring, then the default cascade, rather than in the order the discussion above takes them up.

Sample Clause Set

(a) Grant of Security Interest; Collateral Description. As security for the Obligations, Borrower grants Lender a continuing security interest in all of Borrower's right, title, and interest in and to Borrower's contractual rights to payment of attorney's fees earned or to be earned by Borrower for legal services rendered or to be rendered, whether now existing or hereafter arising and whether or not earned by performance (collectively, the “Fee Receivables”), together with all proceeds thereof. The parties intend that the Fee Receivables constitute “accounts” within the meaning of Section 9.102(a)(2) of the Texas Business and Commerce Code. Solely to avoid any question of characterization, the foregoing grant extends as well to any portion of the Fee Receivables that may be determined to constitute payment intangibles or general intangibles. Borrower authorizes Lender to file

[33] Tex. Disciplinary R. Prof’l Conduct 1.08(e) (a lawyer shall not accept compensation for representing a client from one other than the client unless the client consents, there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship, and information relating to the representation is protected as required by Rule 1.05); Rule 5.04(c). See Tex. Comm. on Prof’l Ethics, Ops. 532, 533, 542, 552, 559, 633, 687 (third-party payors may not receive confidential billing or case information without client consent, and payor litigation guidelines that interfere with independent judgment violate the rule). The rule does not by its terms require written consent, but written consent is the prudent practice.

[34] Tex. Disciplinary R. Prof’l Conduct 1.04(f) (division between lawyers not in the same firm permitted only if the division is proportional to services performed or made between lawyers assuming joint responsibility, the client consents in writing to the terms before the association or referral, including the identity of all participating lawyers, the basis of the division, and the share each will receive, and the aggregate fee is not unconscionable), 1.04(g) (consent without knowledge of those specifics is not a confirmation, and an attorney who fails to comply may collect only the reasonable value of services and necessary expenses); Tex. Comm. on Prof’l Ethics, Op. 688 (2020) (pure referral fees prohibited; proportional division requires substantial legal services); Op. 616 (2012); Johnson v. Brewer & Pritchard, P.C., 73 S.W.3d 193, 205 (Tex. 2002); Gillespie v. Hernden, 516 S.W.3d 541 (Tex. App.—San Antonio 2016, pet. denied).

one or more financing statements describing the Collateral as set forth herein with the Texas Secretary of State, and shall cooperate in all acts reasonably necessary to maintain perfection.

(b) Excluded Property. Notwithstanding anything in this Agreement to the contrary, the Collateral does not include, and Lender expressly disclaims any security interest in: (i) any client's cause of action, claim, or recovery, or any portion of any recovery belonging to a client; (ii) any funds or property held by Borrower in trust for clients or third parties, including all amounts held in any IOLTA or other trust account; and (iii) any client file, attorney work product, or confidential information. Lender acknowledges that the property described in this subsection is not property of Borrower and is not available to satisfy the Obligations.

(c) Repayment; Payment Priority. Borrower shall pay the Obligations in fixed periodic installments of principal and interest, on the dates and in the amounts set forth in Schedule [__], from Borrower's general operating account and as an ordinary expense of Borrower's business, in each case before any distribution of profits to Borrower's partners, members, or shareholders. The Obligations are absolute and unconditional; are not contingent upon the outcome, settlement, or collection of any client matter; and are not measured by, calculated as, or payable as a percentage of any legal fee, any client recovery, or Borrower's revenues or profits. No installment shall be triggered by, accelerated upon, or attributed to the collection of any particular fee.

(d) Deposit Account Control. Borrower shall maintain its general operating account at [__] and shall execute and maintain a deposit account control agreement in favor of Lender in accordance with Sections 9.104 and 9.203(b)(3)(D) of the Texas Business and Commerce Code. No trust or IOLTA account shall be subject to any control agreement, and Lender shall have no right of setoff, sweep, or offset against any such account.

(e) Information Covenants; Early Warning. Borrower shall deliver to Lender: (i) monthly, a Fee Receivable Certificate in the form of Exhibit [__], stating aggregate values by practice category, matter age, and stage, without disclosing client identities or any confidential information; (ii) monthly, a certification by a licensed attorney of Borrower that all docket deadlines in Borrower's matters have been calendared and are current; (iii) monthly, trust account reconciliations sufficient to certify compliance with Rule 1.14, redacted of client-identifying detail; and (iv) prompt notice of any of the following: the discharge of Borrower by any client whose matter constitutes more than [__]% of the Fee Receivables by value; the departure of any attorney responsible for matters constituting more than [__]% of the Fee Receivables; any disciplinary grievance, trust account irregularity, or malpractice claim; and any default under any other financing arrangement.

(f) Limitations on Lender. Nothing in this Agreement grants, and Lender expressly disclaims, any right to: (i) direct, control, or influence the professional judgment of any attorney with respect to any client matter, including case selection, litigation strategy, staffing, settlement, or settlement timing; (ii) receive any portion of any legal fee other than in repayment of the fixed Obligations; (iii) communicate with any client or prospective client of Borrower regarding any matter; (iv) select, approve, recommend, or veto counsel for any client; or (v) access any client file, work product, or confidential information. Lender is a creditor only and is not a partner, joint venturer, member, or fiduciary of Borrower. Borrower's clients retain at all times the unconditional right to retain and discharge counsel of their own choosing. Each right and remedy of Lender under this Agreement may be exercised only to the extent that the exercise thereof does not (i) violate applicable law, or (ii) if requiring Borrower to take any action, require Borrower to violate any ethical or disciplinary rule, regulation, or law governing non-disclosure of confidential information by an attorney or prohibiting the unauthorized practice of law.

(g) Standstill; Neutral Advisory Period. Upon the occurrence and during the continuance of an Event of Default, and before exercising any other remedy with respect to the Fee Receivables, Lender shall deliver a Protective Process Notice. For a period of [forty-five (45)] days thereafter (the “Advisory Period”), Borrower shall engage, at Borrower's expense, an independent advisory or consulting firm reasonably acceptable to Lender (the “Neutral Advisor”) from the panel attached as Schedule [__], and shall cooperate with the Neutral Advisor's preparation of a Fee Portfolio Valuation and Stabilization Report. The Neutral Advisor's scope is limited to financial, valuation, accounting, and administrative functions. The Neutral Advisor shall not practice law, render legal advice, direct any client matter, or communicate with any client of Borrower. Access to information concerning client matters shall be provided only (i) in aggregated or anonymized form; (ii) with the informed consent of the affected client after consultation; or (iii) pursuant to an order of a court of competent jurisdiction, in each case consistent with Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. The Neutral Advisor shall be compensated by fixed fee for advisory services and shall receive no compensation contingent upon any case outcome, any legal fee, or the placement or association of any attorney.

(h) Custodian Attorney. If Borrower ceases or determines to cease the practice of law, Borrower shall designate a custodian attorney licensed in Texas and in good standing pursuant to Rule 13.04 of the Texas Rules of

Disciplinary Procedure. Any examination of client files, notice to clients, application to any court for extension of time, or filing of any motion or pleading shall be performed by the custodian attorney or other licensed counsel, and in no event by Lender or the Neutral Advisor.

(i) Association of Subject-Matter Counsel. The Neutral Advisor may identify and recommend to Borrower attorneys possessing subject-matter expertise relevant to Borrower's matters. Any such recommendation shall be made solely to Borrower and not to any client of Borrower. Borrower shall consider any such recommendation in good faith but retains sole and independent professional judgment as to whether association would serve the client, and nothing in this Agreement obligates Borrower to associate any particular attorney. If Borrower determines in its independent professional judgment that association would serve the client, Borrower, and not Lender or the Neutral Advisor, shall present the proposed association to its client and obtain the client's informed written consent in accordance with Rule 1.04(f), before the association, disclosing the identity of all lawyers and firms who will participate in the fee-sharing arrangement, whether fees will be divided in proportion to services performed or by lawyers assuming joint responsibility, and the share of the fee each lawyer or firm will receive. The client may decline. Neither Lender nor the Neutral Advisor shall pay, receive, or be promised anything of value for or on account of any such recommendation or association.

(j) Consent to Appointment of Receiver. If the Events of Default are not cured or waived by the end of the Advisory Period, Borrower consents, to the fullest extent permitted by applicable law, to the appointment by a court of competent jurisdiction of a receiver over Borrower's non-client property, Fee Receivables, and accounts pursuant to Chapter 64 of the Texas Civil Practice and Remedies Code, Chapter 11 of the Texas Business Organizations Code, and/or Section 31.002 of the Texas Civil Practice and Remedies Code, and agrees not to oppose such appointment. Any receiver so appointed shall be an officer of the court, shall not be the agent of Lender, shall not practice law or direct the practice of law, and shall act with respect to client matters only through duly licensed counsel and consistent with Rules 1.05, 1.14, and 1.15. The parties acknowledge that this subsection is not enforceable in a case under the Bankruptcy Code by reason of 11 U.S.C. § 541(c)(1)(B), and this subsection shall be construed to apply only outside of such a case.

(k) Client Discharge; Preservation of Successor Claims. The parties acknowledge that a client may discharge Borrower at any time, with or without cause, and that no provision of this Agreement shall be construed to restrict, penalize, condition, or discourage the exercise of that right. Upon any such discharge, Borrower shall promptly notify Lender and shall diligently pursue its resulting claim in quantum meruit or on the contract against any subsequent recovery, and Lender's security interest shall attach to such claim and its proceeds as proceeds of the Fee Receivables under Section 9.203(f) of the Texas Business and Commerce Code.

(l) Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision is prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or, if not so modified, shall be prohibited or invalid only to the extent of such prohibition or invalidity, without the remainder of that provision or any other provision being prohibited or invalid. The parties agree that the essential purpose of this Agreement is the pledge of collateral to secure the Obligations.

Conclusion: Build the Exit, and the Capital Will Come

Capital markets run on a single expectation: money that goes in must have a way to come back. Where the exit is clear, capital floods in and competition drives the price of it down. Where the exit is murky or missing, capital either demands a steep premium or stays home. Lending against law firm fees sits today on the wrong side of that line. The collateral is sound, real fees, earned on real work, but the way back when a loan sours has never been standardized, and the only path most lenders can point to is litigation, which is no one's idea of a reliable exit. That single gap is why this lending is scarce and expensive, and why the capital that does come sometimes comes through predatory doors.

In Texas we learned early that oil in the ground is worth nothing until somebody brings the capital to drill it. The same is now true of the Texas legal market. The reserves are already proven: Texas lawyers hold billions of dollars in meritorious claims and earned but unpaid fees, sitting in the ground exactly like crude before Spindletop, valuable in principle and inert in fact. What has been missing is the derrick and the pipeline, the ordinary infrastructure that turns a proven reserve into a working asset. Build it, and nearly everything changes at once: firms stop turning away good cases they cannot afford to carry, and stop settling strong ones early because payroll is due; they retain the experts and try the cases that force honest verdicts; they compete for clients against the best-funded advertisers in the state; and they arrive at the Legislature and the appellate courts with resources to match the institutional defendants who have never lacked for either.

It is worth being explicit about what is really at stake, because it is much larger than any single loan. Capital is the hidden variable in the practice of plaintiff's law. When it is scarce and dear, the firms that can afford to fight are few, marketing is rationed, and the injured client's leverage against a well-funded defendant is thin. When it is abundant and cheap, all of that inverts: more firms can carry more cases further, invest in reaching the clients who need them, and hold out for the fair result instead of the fast one. The consequences ripple outward, into how legal services are marketed, into which firms rise and which fade, and into the political fights over the future of the civil justice system itself. Building a lawful exit for capital is therefore not a plumbing problem for lenders. It is the quiet lever that moves the whole industry, and the lawyers who understand that first will be the ones who shape what comes next.

There is also a larger, structural prize that is easy to miss from inside a single transaction. An industry that cannot finance itself cannot fully advocate for itself. So long as legal-fee lending remains the Wild West, the plaintiff's bar competes against institutional defendants who enjoy every advantage of mature capital markets, while starving for the same. Normalize the cycle, define the process of repayment and loss mitigation, and capital flows in at scale, and with it comes the institutional footing to invest not only in cases but in advertising, in client access, and in the legislative and public-policy arenas where the future of civil justice is actually decided. The need for capital, met at last through ordinary and lawful means, is what lets an entire field graduate from improvisation to influence. There is precedent for how quickly that can happen once the channel is built.[35]

The fix is not to give lenders control they may not have. It is to assemble the missing exit out of tools Texas already provides: the neutral advisory and consulting firm, the designated custodian attorney, the court-appointed receiver as a backstop, the client-consent transition, the standstill, and a narrow, bank-style right to be repaid first out of the firm's own fee receivable. None of this touches the client's claim or the client's case. All of it concerns only the lawyers' delegable fee. Put that architecture into the loan documents, and law firm lending starts to look like every other well-functioning credit market: transparent, orderly, and safe enough that capital competes to provide it. When it does, the rates fall, more money flows into the pursuit of legitimate claims, and the industry is transformed, not by lenders reaching into cases, but by capital finally having a clean way back.

> *This is not a marginal improvement in law firm financing. It is the difference between an industry that runs on what it can scrape together and one that runs on what it can raise. Build the exit, and the capital will come, and with it, a transformation of the plaintiff's bar that the profession has not yet begun to reckon with.*

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[35] The cannabis industry shows what happens to an entire market when lawful financial channels are missing, and what happens when they open. Because marijuana remained a Schedule I controlled substance federally even as states legalized it, financial institutions faced money-laundering and forfeiture exposure and many refused to serve the sector; congressional researchers found that this left marijuana businesses unable to accept card payments, run electronic payroll, or maintain checking accounts, forcing many to operate exclusively in cash. Capital that did enter did so at punishing rates and against hard physical security. The turning point was regulatory clarity rather than legalization: FinCEN's guidance, BSA Expectations Regarding Marijuana-Related Businesses, FIN-2014-G001 (Feb. 14, 2014), told institutions how to serve state-licensed businesses consistent with Bank Secrecy Act obligations. That guidance did not legalize anything; it built a lawful channel, and participation followed. The parallel to law firm fee lending is close: the collateral is legitimate, but capital stays scarce and expensive so long as the lawful channels and exits are underbuilt.