



The Strong Firm
Attorneys

STRONG • POINTS • NEWSLETTER

Fall 2009

Welcome

By: **Bret L. Strong**

I wanted to personally take this opportunity to welcome readers to the first of what we know will be many issues of our law firm's newsletter. In this ever-changing business environment, we feel it is important for our firm to keep our current and prospective clients and business associates up-to-date with legal trends which affect their businesses and their lives.

We hope you find the information contained in this newsletter informative and timely. Due to space limitations, we will only be able to cover topics on a general level, so if you have any questions associated with the articles or topics contained in this newsletter, please give us a call or drop us a line. If there is a topic you are interested in learning more about, call us and we'll be happy to do our best to answer your questions or cover a topic in a future newsletter.

We hope you find our newsletter insightful and helpful. We look forward to serving you for many years to come.

Bret Strong



BRET L. STRONG

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The founder and managing shareholder of The Strong Firm P.C., Bret has been a resident and an active community leader in The Woodlands, Texas for over 20 years, establishing his practice in The Woodlands over 13 years ago after graduating from South Texas College of Law, cum laude. Bret enjoys participating in all sorts of outdoor sporting activities, including skiing, running, biking and swimming. He competes in triathlon and is a two-time Ironman triathlon finisher.

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The Strong Firm in the News

The Strong Firm selected as **finalist** for **Small Business of the Year** by Lone Star College – Montgomery.
Full Story:
www.lonestar.edu/12760.htm

The Strong Firm sponsors for the fourth year running the opening night **Sponsors' Party for The Woodlands Ice Rink**.
Full Story:
www.thewoodlandscvb.com/woodlandsicerink/

The Strong Firm is a proud supporter of the #3 in the State of Texas (5A) and #11 in USA Today **Woodlands Highlander Football** program.
Full Story:
www.youtube.com/watch?v=r48fRycxME&feature=player_embedded#

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Planning for Death in Texas Why and How

By: **Tracey L. Johnson**

In a world where it is said that nothing can be certain except death and taxes, it makes sense to plan thoughtfully for both. While it is easy to delay the tough decisions that a comprehensive estate plan requires, you owe it to yourself and those who depend on you to have your affairs in order. Careful preparation in the present can give you the peace of mind that

comes with knowing that your family, wealth, or business are all protected in this uncertain environment.

Protecting Your Family

Many people are unaware that if you do not create your own estate plan, the state of Texas has already made a default plan for you that may not be in line with what

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What's in a Name?

Protecting Your Valuable Trademark

By: **Robin N. Boyles**

When starting a business, many decisions must be made, including decisions regarding type of entity, management, and capital structure. But, what about deciding to protect a business name? The name of a business can be more than just a name. When your business name is used in the marketplace, the association made by consumers between the goods or services a business offers and the business name can have intangible value. It is this association or branding that leads some consumers to purchase a brand name product over another, or choose a specific website over another that offers the same services on a daily basis.

When to Protect a Business Name

A main consideration in deciding whether it would be worthwhile to protect your business name is whether the name is or will be used in a marketing strategy to identify the goods and services that the business offers or will offer. If so, protection of the business name could be a beneficial option, since intangible value can be obtained through the use of the business name.

How to Protect a Business Name

One option to protect a business name is through the use of a trademark. To protect a business name through a trademark, the name must be distinctive and not merely descriptive, such as "Healthy Food." If a business wants to protect its name through a trademark, a business can simply put a "TM" mark if the business sells goods or a "SM" mark if the business offers services behind the business name when used for advertising purposes to claim the name as a trademark. For additional protection, a business can register its name as a trademark with the U.S. Patent and Trademark Office or with the state. Many businesses choose to register their name with the U.S. Patent and Trademark Office because they offer their goods and services on the Internet or across state lines, and federal registration provides protection on a nationwide basis. The purpose of trademark registration is to show that a business has ownership rights in the trademark for those certain goods and services for which it identifies that an individual or entity would have to overcome in the event of a dispute over the use of a name. The registration process entails first determining if the trademark has already been registered for those goods and

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Robin joined The Strong Firm P.C. as a law clerk in the summer of 2008 and became an associate with the firm in November of 2008 after graduating cum laude from Southern Methodist University Dedman School of Law. Prior to attending law school, she worked at a national full-service law firm as a para-legal clerk in the litigation section. In her free time, Robin enjoys playing tennis and spending time on the lake.



MELISSA R. PROCTOR
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Melissa is licensed to practice law in both Texas and Colorado. She began her practice in Denver, Colorado in 2002, and joined The Strong Firm P.C. in 2006 as its first associate after graduating from The University of Texas Law School. Melissa enjoys various team sports and is an avid skier. She is residing and raising her family in Conroe, Texas.

So You're Not Getting Paid?

Collecting Money in Hard Times

By: **Melissa R. Proctor**

Collecting the money owed to your company for the sale of its products and/or services is a vital aspect of ensuring the long term success and viability of your company. Below we discuss some practical collection tips to focus on in a tough economy.

Preliminary Steps

Stopping bad debt before it happens is the most important step you can take in reducing your company's overall debt picture. Be wary of extending credit, ask for deposits, check customer references, memorialize agreements in writing (including terms surrounding payment requirements), and obtain any appropriate guaranties. Simply recording accurate vital customer contact information is an extremely helpful and all too often overlooked step.

Managing Receivables

Taking immediate action on past due accounts dramatically increases your chances of recovery. According to the Commercial Collection Agency Association, waiting even three months reduces the probability of collecting on a debt to 70 percent. After six months past due, the probability of collecting on the debt drops to only 52 percent. A year after the due date, the probability of collecting the debt plummets to only 29 percent. Being on top of the aging of receivables and taking prompt action will decrease debt write-offs and collection costs in the long run.

Collection Efforts

Develop a system for notifying customers in writing once a payment is past due. Often a gentle and friendly telephone reminder in follow-up to the written notice will encourage payment and preserve customer relationships. Once any grace period has expired, follow-up with a second written notice. Establish a set timeline for these notices so that your employees consistently administer the procedure and customers can expect your prompt attention to late accounts.

Awareness of Collection Laws

Be aware that when you are collecting on delinquent accounts, you must comply with both Texas and federal collections laws which make it illegal to use unfair or deceptive practices to collect a debt. Failure to comply with the collection laws exposes your company to liability to the debtor. When in doubt, be sure to consult with your attorney.

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Characterizing the Deal

Stock Purchase vs. Asset Purchase

By: Eric R. Thiergood, Sr.

As the stability of the stock market fluctuates, more and more people are deciding to invest their money and retirement savings in “active” investments, such as buying a business, over more “passive” traditional investments, such as stocks, bonds, and mutual funds. However, the decision of whether or not to buy a business is only the first step. Once the decision has been made to purchase or sell a business, a number of factors must be addressed to ensure that the purchase or sale of the business accurately and completely incorporates the intent of the buyer and the seller. While the complexity will vary significantly depending on the size and nature of the transaction, there are some elements of a business purchase and sale that are consistent regardless of the type and scope of the transaction.

The State of Texas recognizes a number of legal entities, the most common being corporations, limited liability companies, and limited partnerships. The “ownership” of each of these entities differs in that corporations are owned by shareholders holding stock or shares in the corporation, limited liability companies are owned by members who hold membership interests or units in the company, and limited partnerships are owned by partners (both general and limited) who own partnership interests. In this article, the entity will be referred to as the “company” and the ownership interest in the company as the “stock,” since these are the vernacular with which most people are familiar.

Stock Purchase vs. Asset Purchase

One of the first decisions a buyer and seller must make once the choice to buy and sell a business is made is if the buyer will acquire the assets of the business or the stock of the company. A number of pros and cons are associated with both of these options. In an “asset only” sale, the buyer generally purchases the equipment, inventory, and other goods of the business. Alternatively, a stock purchase involves a sale of all of the company’s stock. Typically, asset purchases allow the buyer the flexibility to “pick and choose,” or to obtain only the assets and obligations they wish to acquire. Conversely, all of the company’s liabilities, including potential unknown liabilities, are assumed in a stock purchase. There may also be significant tax ramifications for choosing between an “asset

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Eric joined the Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is completely fluent in Spanish and uses these skills in his work with some of the firm’s international Spanish-speaking clients.



TRACEY L. JOHNSON
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Tracey joined The Strong Firm P.C. upon licensing in 2008 after graduating magna cum laude from South Texas College of Law. While at South Texas, she served on the editorial board of the South Texas Law Review, the flagship legal publication of the college, as an articles editor. Tracey enjoys reading, travel, and keeping up with her dogs.

Planning for Death in Texas

Why and How

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you would have intended. All too often these issues are pushed to the back-burner while everyday life gets in the way, leading frequently to unfortunate and unintended consequences.

Deciding for yourself in advance who will make medical decisions on your behalf or care for you in the event you are incapacitated, who will raise your children if you are not able, and how your estate will be distributed will afford you the level of control that these extremely personal and vital decisions merit.

Protecting Your Wealth

The government taxes transfers of wealth, be they made during your lifetime, or at the time of your death. The current rate of estate taxation is 45 percent. As you can imagine, this high rate of taxation can severely impact the goals of an individual to provide for their family and manage their wealth transfer to the next generation. Working with a professional to create a comprehensive estate plan, there are many different techniques that can be employed to minimize the tax burden on your estate and maximize the resources that can be left to your loved ones.

Protecting Your Business

Planning for corporate succession is an oft-forgotten but extremely important component of a complete estate plan. Through the execution of buy-sell agreements, you can contractually determine in advance what will happen to your interest in a business before you pass away. You can pre-determine the mechanisms by which your survivors will be bought out of the business, or you can ensure that the management of the company is left to your hand-picked successor. Additionally, it is imperative that your business have enough insurance to carry out the terms of any buy-sell agreements that may be in place. Proper planning in this arena can do much to help a family business survive into the next generation.



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The articles and other information contained in this newsletter are not legal advice, and this letter is not a solicitation for legal employment if you are currently represented by an attorney in a given matter. You should consult with an attorney of your choosing for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and emails. Your receipt of this newsletter and/or contacting our firm does not create an attorney-client relationship. To retain our services, please contact us and we will send you a written engagement letter for your consideration and execution in order to hire our firm and create the attorney-client relationship. Please do not send confidential information to us until such an attorney-client relationship has been established.

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The Strong Firm



From left: **Tracey L. Johnson**, associate attorney; **Robin N. Boyles**, associate attorney; **Eric R. Thiergood, Sr.**, associate attorney; **Bret L. Strong**, attorney, founder, & managing shareholder; **Katy Justice**, legal assistant; **Melissa R. Proctor**, associate attorney; **Melanie Edleston**, office manager

We provide legal services in the all of the following areas:

- **Business Law and Contracts**
- **Financing, Trademarks, and General Corporate**
- **Corporations, Partnerships, and LLCs**
- **Real Estate**
- **Commercial Disputes**
- **Wills, Probate, Trusts, and Estates**

What's in a Name?

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services, and then submitting an application to be processed through the U.S. Patent and Trademark Office. The general filing fee for trademark registration ranges from \$275.00 to \$325.00 per class of goods and services for which the trademark is registered.

Characterizing the Deal

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only” purchase verses a stock purchase. This highlights the importance of seeking the advice of a competent small business CPA who can line out the different ramifications of the two types of purchases.

Generally stock sales result in smoother and more efficient transactions, especially when there is one or only a few shareholders. By purchasing all of the stock in a company, the buyer automatically acquires all of the assets and liabilities of the company. This can be particularly attractive because the buyer, via the purchase of the stock of the company, may directly acquire otherwise non-assignable contracts, licenses, and government permits without the issuer’s consent, as well as title to any vehicles and equipment titled to the company. Be advised, however, that certain licenses (i.e. liquor licenses) and certain contracts (i.e. some leases and service contracts) will require that the company provide notice of the sale and that the buyers apply to transfer the license or seek consent to assign the contract.

So You're Not Getting Paid?

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Imminent Deadlines

Take note of applicable lien laws. For construction projects, you have until the middle of the third or fourth calendar month (depending on whether the project was commercial or residential) from the last day on which labor was performed or materials were delivered to a customer in order to file any applicable mechanic’s or material man’s liens. Similarly, you have

six months to file a mineral lien related to oil and gas activities. Securing the debt by lien increases your bargaining position as well as your creditor status. It is critical not to let lien deadlines pass.

When to get your Attorney Involved

Implementing some of these simple techniques should go a long way toward reducing past due receivables and making

outstanding debt easier to collect. As soon as any of your initial notices fail to illicit a payment response, consider contacting your attorney for collection assistance. Remember, the longer a debt sits outstanding, the likelihood of collection decreases, so swift action is key. Moreover, make sure to discuss liens with your attorney before the statutory deadline to file has elapsed.