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**BUSINESS
LAW**



**REAL ESTATE
LAW**



**OIL, GAS &
ENERGY LAW**



**ESTATE PLANNING
& PROBATE**



**COMMERCIAL
LITIGATION**



**BUSINESS
MEDIATION**

TABLE OF CONTENTS:

- 02 Strong in Community
- 03 Workplace Loyalty
Written by: Bret Strong
- 04 When Saving a Dime Can Cost You a Dollar
Written by: Eric Thiergood Sr.
- 05a Part IV: The Most Efficient Probate Proceeding
Written by: Royce Lanning
- 05b Strong in Action
- 06 Rent to Own: Too Good to be True?
Written by: Brian Albert
- 07 Justice Court: In, Out & In Between - Part I
Written by: Kristen Bates
- 08 Common Litigation Myths Debunked!
Written by: Laura Dumas

FALL 2018 STRONG POINTS NEWSLETTER

Founded in 2004 by Attorney Bret L. Strong, The Strong Firm P.C. is dedicated to serving the legal needs of The Woodlands, Greater Houston and beyond. Since The Woodlands business attorneys at The Strong Firm understand the business environment at a local, state and national level, we are able to give people practical, knowledgeable advice on all aspects of their business transactions and disputes.

We understand that in a tough, competitive, global marketplace, timely and cost effective legal advice about business transactions and those taking place throughout the state and the world is important. Our business law firm in The Woodlands, Texas stands ready to help you and your business tackle legal issues ranging from the common to the complex every step of the way. We are dedicated to providing you with high-quality, personalized service that is unparalleled in the legal market.

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.

Not certified by the Texas Board of Legal Specialization



EDUCATION FOR TOMORROW ALLIANCE (EFTA)

📅 April 19, 2018

Brian Albert, of The Strong Firm P.C. is proud to volunteer with wonderful organizations such as Education for Tomorrow Alliance (EFTA), a nonprofit organization dedicated to connecting the business and education communities in Montgomery County, Texas. With innovative programs focused on science, technology and career preparation, EFTA has become the portal through which business leaders can access and strengthen local education.



THE MONTGOMERY COUNTY HISPANIC CHAMBER

📅 May 9, 2018

Pictured here is Eric R. Thiergood Sr., Shareholder at The Strong Firm P.C., Dr. Curtis Null, Incoming Superintendent of the Conroe Independent School District, Dr. Don Stockton, Retiring Superintendent of Conroe Independent School District and Bruce Tough, Managing Partner at Tough Law Firm at the Montgomery County Hispanic Chamber May luncheon featuring Dr. Don Stockton and hosted by The Strong Firm P.C.



THE WOODLANDS CHAMBER YPN RECEPTION

📅 April 19, 2018

The Strong Firm's Christina Harugthy, Kristen Bates, Brian Albert and Katherine Wilcox attended The Woodlands Area Chamber of Commerce Young Professionals Network Reception on Thursday, April 19th hosted by GenuWine Tasting Room.



CORKS FOR A CURE FUNDRAISING EVENT

📅 May 10, 2018

Brian Albert & Katherine Wilcox of The Strong Firm P.C. attended Corks for a Cure for the The Leukemia & Lymphoma Society, hosted by Fran & Barry Blanton, Melissa & Jeff Young, and Denna Johnston on Thursday, May 10th. Pictured: Brian Albert, Melissa Young, Katherine Wilcox, Barry Blanton and Michelle O'Rourke.



THE MONTGOMERY COUNTY FAIR- BBQ COOK-OFF

📅 April 21, 2018

Eric R. Thiergood Sr., Royce Lanning and Lisa Prado of The Strong Firm P.C. attended the Montgomery County Fair Association on Saturday, April 21 with friends at Woodforest National Bank as they competed for the 2018 MCFA Bud Light BBQ Cook-Off competition supporting the youth of our community.



TEXAS MARINER CLASSIC GOLF TOURNAMENT

📅 April 26, 2018

Brian Albert of The Strong Firm (left middle) along with friends Griffin Randle of Merrill Lynch (far left), Zach Richmond of The Richmond Group RE/MAX (right middle), and Trent Eckel of Frost Bank (far right) teamed up at the Ninth Annual Texas Mariner Classic Golf Tournament benefiting the Maine Maritime Academy Athletics and it's student-athletes.

STRONG POINTS: FALL 2018 WORKPLACE LOYALTY

There have been all sorts of reports and literature published in the last decade telling the young millennial professional they should be prepared to change jobs every few years. A LinkedIn study referenced in a Nov. 10, 2017, Forbes article indicated twenty-somethings are not afraid to "job hop" (and have an average of 15-plus employers in their careers) because (1) they're selfish, (2) money is not that important, (3) relocation is appealing and (4) there is no longer stigma from changing jobs often. However, from an employer's perspective, high employee turnover is very costly. At The Strong Firm, we see how we can leverage the above four attributes to create a positive and successful working environment for us and our employees for decades to come.

Selfishness: We like to find out what the young professionals selfishly like doing and turn them loose building valuable relationships doing those things. If its volunteering, sports, charity endeavors or travel, we like to support those "selfish" endeavors to help build a community of mutual value.

Quality of Life: Who doesn't like to improve work/life balance? Many firms have used that idea to get what they can out of young professionals in the short term with the understanding they probably will quit. We try to communicate often both short (one- to two-year horizon) and long-term (five- to 10-year horizon) plans and goals for them and the firm so our young people clearly understand what it means to stay here, whether it be a year or a decade. This helps them make informed decisions when faced with the prospect of moving on.

Creating a Sense of Community Here: Relocation is often appealing to young people because they are looking for community and purpose. We encourage creating that in our office and in our community so you can find your place in the world right here and relocation is of little value.

Loyalty is Still Valuable: In the end, I believe all humans want to be in a place where they feel wanted and want to be. My belief is that while there may not be a stigma with multiple changes in employment, employers and employees still believe in committing to something and seeing it through is admirable and desirable.

Bret Strong is the founder and Managing Shareholder of The Strong Firm P.C. His areas of practice include oil, gas and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned his Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law in Texas, Colorado and before the United States Supreme Court. Bret is a founding board member of The Woodlands Bar Association, former Chairman of The Woodlands Area Chamber of Commerce and four time Ironman Triathlete.



Bret Strong
Managing Shareholder

STRONG POINTS: FALL 2018

WHEN SAVING A DIME CAN COST YOU A DOLLAR



Eric R. Thiergood Sr.
Shareholder

While most of our clients recognize the value of having quality legal services early in their business endeavours, some have learned the lesson of not having good legal counsel the hard way. At least a couple times a month, I have the unenviable job of telling a potential client seeking legal services, that their choice not to utilize legal counsel from the beginning of their business endeavor will likely cost them much more money on the tail end. Sometimes the problem can be remedied, but there is always a cost associated with "cleanup". Other times, the matter can not be fixed and the potential client is left with a "mess" on their hands that will cost much more than they would have paid in legal fees had they done it "right" from the beginning. Below is a summary of an actual call I had with a potential client early this spring:

Prospective Client: *I need help. The landlord on my commercial warehouse lease has increased my rent by over 25% in one year! That will cost me an extra \$30,000 per year, and I have nine more years left on my lease! They can't do that... can they?*

Attorney: *I would hope not, but it depends entirely on what your lease says. Does your lease limit increases in additional rent such as operating expenses and common area maintenance ("CAMs")?*

Prospective Client: *I don't know. Should I know that?*

Attorney: *Ideally yes, you should know that. Did your attorney include any caps on increases of these expenses when he or she was negotiating the lease?*

Prospective Client: *I didn't use an attorney. The landlord provided me with a lease and, I looked it over. It looked good, so I signed it. Am I in trouble?*

Attorney: *You might be, especially if the lease does not limit the landlord's ability to increase CAMs.*

Unfortunately for this prospective client, the lease did not limit increases in controllable CAMs, and the Landlord was able to triple its expenditures in certain areas such as landscaping, exterior painting, and upgrading the entire lighting for the property all on the Tenant's dime. It was later learned that the purpose of these "upgrades" was to increase the curb appeal and ultimately the value of the property as the landlord was preparing to put the property up for sale. In discussing the matter with other tenants of this commercial warehouse center, the prospective client learned the tenants who utilized attorneys to negotiate the terms of their lease were able to cap CAMS to a maximum increase of 3% annually. This prospective client became a perfect example of a situation where "saving a dime, cost him a dollar" as over the term of his 10 year commercial lease, the prospective client will be paying in increased rent in one year alone, more than 10 times the amount of legal fees that it would have cost him to retain an attorney to review the lease and potentially negotiate a cap on CAMs. Unfortunately, this was a terribly expensive lesson for the potential client to learn. At the Strong Firm, PC, we have the experience and legal foresight to see potential problem areas in commercial leases and other business agreements. We are able to identify these risks to you and negotiate to lessen your potential costs long term, and we would be glad to do the same for you.

Eric R. Thiergood, Sr., Shareholder, joined The Strong Firm P.C. in 2005 as a law clerk and was promoted to associate attorney upon being licensed by the Texas State bar in 2007. In 2015, Eric was promoted to income shareholder. Eric has served as lead counsel for borrowers in successfully negotiating and closing complex commercial loans ranging from \$10 million to \$2.1 billion. Eric is fluent in Spanish and uses his skill in his work with some of the firm's international Spanish-speaking clients.

STRONG POINTS: FALL 2018

PART IV: THE MOST EFFICIENT PROBATE PROCEEDING

In last month's article we discussed a proceeding to declare heirship, generally used when a person dies (the "decedent") without a will (or some other planning document) but has a complex or large estate. For someone who dies without a will but has a small estate, the legislature has authorized the heirs to file a Small Estate Affidavit.

To be eligible to file a Small Estate Affidavit, the decedent must have \$50,000 or less in his or her estate. Neither the decedent's house nor their other exempt property (cash, household furnishings, etc. up to \$60,000) are counted toward the \$50,000 limitation. If the decedent is eligible, the decedent's heirs and two disinterested witnesses will need to prepare, sign and file a Small Estate Affidavit with the Court for approval. The Small Estate Affidavit will identify the decedent's family and attest to the decedent's heirs, the property in the decedent's estate, and the debts and liabilities of the decedent's estate. The Small Estate Affidavit must show that the assets of the estate exceed its liabilities.

Using a Small Estate Affidavit should be carefully considered. A Small Estate Affidavit is not recognized in all states; therefore, it is often a mistake to use this procedure if there is property (a) located outside of Texas, or (b) held by financial institutions not familiar with Texas' Small Estate Affidavit proceeding. In those circumstances, heirs may successfully file a Small Estate Affidavit only to have to pay for a second probate proceeding to obtain something suitable for their circumstances. An attorney knowledgeable about the various probate procedures will be able to hone in on the most cost-effective proceeding.

Royce Lanning, Senior Associate Attorney, joined The Strong Firm P.C. in 2013. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law in 2003 and moved to Spring, TX in 2006. Royce's practice focuses primarily on oil & gas transactions, general and complex business transactions, corporate transactions, corporate formation and administration, estate planning, probate and real estate development and financing.



Royce Lanning
Senior Associate



\$1.5M

The Strong Firm provides legal counsel to national lender in \$1,500,000 loan for the rehabilitation of commercial property in Harris County.



\$1.1M

The Strong Firm assists national lender in \$1,100,000 loan for the acquisition of commercial property in Harris County.



HOA

The Strong Firm assists local land owner reach a resolution with the HOA allowing client to build out its property for a commercial use.



\$23M

The Strong Firm represents borrower in \$23,000,000 commercial mortgage back security loan for multifamily development in Brazos County.



\$1.2M

The Strong Firm represents regional lender in \$1,185,000 commercial acquisition and construction loans.



\$4.1M

The Strong Firm represents regional lender in \$4,100,000 commercial acquisition and construction loans.

STRONG IN ACTION

STRONG POINTS: FALL 2018

RENT TO OWN: TOO GOOD TO BE TRUE?

Texas lease-options, or “rent-to-own” contracts in layman’s terms, are often looked at as a simple solution to a common problem, but prospective tenants/buyers too often pursue lease-options without understanding what they are signing up for.

In its simplest form, a lease-option is a standard lease of real property coupled with an option to purchase the property at a later time and under specific terms and circumstances. In theory, this presents an extremely attractive opportunity to prospective homeowners that desire to purchase a home and require immediate housing, but otherwise are not in a position to immediately purchase the home for one reason or another. So, why fear lease-options?

To begin with, tenants/buyers need to understand that lease-options are essentially two separate contracts (even if combined into one signed form), and there are separate terms and conditions governing each of the separate contracts. The lease-option is a lease that requires the tenant/buyer to consider all the standard terms governing a landlord/tenant relationship (e.g., term, rentals, responsibility for repairs, etc.), but it’s also an option agreement to purchase the property, which entails separate consideration and benefits. The option agreement typically includes a standalone option fee, which must be paid upfront and is generally nonrefundable, and the amount of which is credited against the ultimate purchase price of the property should the tenant/buyer exercise the purchase option. However, if the tenant/buyer breaches the lease or fails to exercise its purchase option, the landlord/seller is usually entitled to keep the entirety of the option fee. Without understanding all the terms of the lease-option, a tenant/buyer could easily find himself without a house and having received zero benefit for the option fee.

That being said, the tenant/buyer is not the only one that should be concerned with lease-options. In most lease-option scenarios in Texas, the landlord/seller must also think twice before entering into a lease-option as they could run afoul of the “executory contract” provisions of Texas Property Code, Sec. 5.061 et seq. In short, these statutes dictate specific requirements (i.e., terms, documentation, disclosures, etc.) for lease-options to be legal and enforceable, and violations of these requirements can be devastating to a landlord/seller by way of fines and personal claim liability.

Therefore, while the rent-to-own model may appear to be a two birds, one stone solution, think twice before pursuing this real estate alternative.

Brian Albert, Shareholder, originally joined The Strong Firm P.C. in 2012 having prior experience with multiple Fortune 500 companies. After a brief departure from the Firm to spend time working for a large, publicly-traded waste management company as in-house counsel handling a variety of commercial and municipal transactions and litigation matters, Brian rejoined the Firm as a Shareholder in 2018. Brian’s practice focuses on the Firm’s corporate and business transactions practice groups where he utilizes his skills and experience in representing clients in a variety of business transactions and counseling on general corporate, real estate, and other business matters.



Brian Albert
Shareholder

STRONG POINTS: FALL 2018

JUSTICE COURT - IN, OUT & IN BETWEEN - PART I

Justice court, formerly known as small claims court in Texas, is a low cost, simple, and speedy litigation process for individuals and companies to pursue legal claims for monetary damages. Although it provides a simple venue to resolve small disputes, a party must still be aware of the in's, out's and in-between's of litigating in justice court.

Who can file a claim in justice court? Any person over the age of 18 or a corporate plaintiff may file suit in justice court. A corporate plaintiff may find justice court advantageous because it can sue for small debts without the need for attorney representation, which is required in other courts. A plaintiff may sue for monetary damages up to \$10,000 or the recovery of specific property. If the damages are more than \$10,000, or if they are non-monetary (for example, an order from the court determining title to real property or an order to stop someone from doing something), then justice court is not the proper place to bring suit and an attorney should be consulted about the proper court to file suit.

What if someone is sued in justice court? The most important tip for anyone involved in a justice court suit is to read all of the paperwork from the court, including the citation. In justice court, a defendant must file an answer on or before the 14th date after served with the citation. An answer should be in writing and filed with the court. A copy should also be mailed to the plaintiff. After an answer is filed, the parties will be notified by the court of a trial date.

Is there an opportunity to settle the case before trial? Yes. In the Texas judicial system, courts generally prefer for the parties to try to work out a resolution before the time of trial. Parties to a dispute have the opportunity to work out the disagreement informally or formally—they can talk to each other directly or through a third-party mediator. The parties can settle the case with each other any time before or during the lawsuit. Settlement is not an admission of guilt, but rather an opportunity for both parties to come to an agreement that does not require court intervention. Some courts require that the parties attend mediation before trial. At mediation, a neutral third party will assist the parties in negotiating an agreement, but the mediator will not make any determination about the case or force either party to settle.

Kristen Bates joined The Strong Firm P.C. as an experienced associate in August 2017. Prior to joining The Strong Firm P.C., she was an associate attorney at Hughes Watters & Askanase, L.L.P. in Houston where she represented business clients in civil litigation, real estate and bankruptcy matters. She received her Juris Doctorate from the University of Houston Law Center. Kristen is licensed to practice law in the State of Texas and in the U.S. District and Bankruptcy Courts for the Northern, Western, Southern, and Eastern Districts of Texas.



Kristen Bates
Associate

STRONG POINTS: FALL 2018

COMMON LITIGATION MYTHS DEBUNKED!

In the final segment in this series, we tackle one of the most pervasive myths surrounding litigation.

Myth #4: If I have a good lawyer, my lawsuit should be resolved quickly (and inexpensively). This is a particularly tricky myth for lawyers, given that would-be clients who consult with litigation attorneys are already unhappy. After all, if they must rely on the courts to resolve a dispute, it probably means negotiations have already broken down, they or their businesses have been damaged or another party has already filed suit against them. The last thing these clients want to do is spend considerable time and money to vindicate their position when they believe they have been wronged in some way. Unfortunately, litigation will almost always take longer and cost more than you anticipated but often for reasons beyond your attorney's control. It is best to know what you are getting into from the outset.

Many delays in litigation can be attributed to the procedural rules applicable in the court's jurisdiction, and the number of cases on the docket. For example, when you file a petition in Texas, the opposing party is allowed at least 20 days (and sometimes more) to respond. If the other party files a motion in response to the petition rather than an answer, often a hearing must be set on the court's calendar, which may be scheduled several weeks later, depending on the number of cases currently pending in that court. Once the parties move out of the initial pleading stage and into the discovery phase of litigation, other mandatory time periods come into play. Attorneys must take time to draft appropriate discovery requests, and then the responding party is generally given 30 days to serve formal answers to those requests, including relevant objections. If the responding party objects and your attorney believes the objections are invalid, she must file a motion to compel a response. Again, that motion must be set for hearing, often several days or weeks later. Parties typically exchange several distinct requests for information over the course of discovery, meaning the process can consume several months or even years, depending on the complexity of the case.

In short, even good lawyers cannot always predict how long a lawsuit will take nor always resolve a case as efficiently as they would like despite their best efforts. Effective lawyers will help manage clients' expectations while guiding them through the process using a thorough knowledge of the substance and procedure applicable to the case and an openness to practical and creative solutions.

Laura F. Dumas, Associate Attorney & Litigation Lead, joined The Strong Firm P.C. in 2016 after practicing in San Francisco/Silicon Valley since 2006. She graduated from the University of the Pacific, McGeorge School of Law, and has a wide variety of experience in real estate and commercial litigation. Laura also handles corporate governance and business disputes. She is licensed in Texas and California, and in Federal Court for the Northern District of California.



Laura Dumas
Associate & Litigation Lead