The Strong Firm P.C. Attorneys

Strong Points

Organic Diversity:
The Flaws of Formal Diversity Programs

By: Bret Strong

There has been a lot of talk over the past several years in the United States about diversity in the workplace and its impact on productivity and innovation within organizations. A recent *Harvard Business Review* article (December 2013) concluded that diversity in an organization "unlocks innovation and drives market growth." In our nation's capital, the issue of assuring diversity at work and program implementation is continually discussed and debated. Most major corporations over the past several years have started diversity programs aimed at creating a diverse and fair workplace that values (and equally compensates) people of varying racial, religious, social and economic backgrounds. One of the most global corporations in the world, The Coca Cola Company, states that their Global Diversity Mission is to "mirror the rich diversity of the marketplace we serve and be recognized for our leadership in Diversity, Inclusion and Fairness in all aspects of our business, including Workplace, Marketplace, Supplier and Community, enhancing the Company's social license to operate. Diversity is at the heart of our business." That is a mouthful.

However, recent studies have shown that having a stated diversity program and related training in no way assures the goals (and benefits) of a diverse workplace are being met. The findings of a University of Washington study released in 2013 "suggest that diversity programs can be window dressing—even those that do very little to increase diversity may still be perceived as effective." In other words, lots of companies implement fancy comprehensive policies and programs and then assume they are meeting their goals.

At The Strong Firm we believe hiring intelligent and innovative people with a variety of educational and life experiences increases our ability to relate to clients and help solve their problems. It also makes for a more interesting and dynamic workplace. This has always been our philosophy. By default, this overriding goal has organically led to a very diverse office environment that we believe solves clients' issues very efficiently. We are proud of this not because some external force told us we need a program to ensure diversity, but rather because it helps us better serve our clients and the community in which we live and work. Come meet our wonderful team of professionals and let them help solve your unique legal problems.

Bret Strong

__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 a 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 has achieved the AV® Martindale-Hubbell® Peer Review Ratings™ award and has served as a founding board member of The Woodlands Bar Association.
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Purchasing Pre-Foreclosure Property

Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

If done properly, purchasing a pre-foreclosure property, defined as a property in a distressed or defaulted mortgage prior to the bank actually foreclosing, can result in finding a great property below the fair market value. While locating pre-foreclosure properties can be time consuming as they often are not listed for sale, there are a variety of websites that provide lists of "pre-foreclosure" properties, some for sale and some not. Be cautious, however, as most of these websites require you to pay for the listings and may sometimes contain outdated or erroneous information. There are a growing number of Realtors who now specialize in pre-foreclosure properties and can be an invaluable asset.

Locating Pre-foreclosure Properties

One method of locating pre-foreclosure properties not currently listed for sale is to monitor notices of mortgage default, acceleration of note, and trustee sales (foreclosure) postings at the county courthouse. Lenders are not required to post notices of mortgage default or acceleration of note but are required, under the Texas Property Code, to post the notice of trustee sale. Posting of a notice of mortgage default or acceleration of note is an indication that the mortgage is "in distress" and may mean the property owner is willing to sell the home rather than face a foreclosure and the potential accompanying damages to his or her credit. Approaching the property owner with an offer to purchase, however, could be a sensitive topic, especially if the property is not listed for sale. On the other hand, some owners may be relieved at the opportunity to get out from under a defaulting mortgage and jump at the chance to sell.

Buyer's Due Diligence

Once the lender has approved a purchase, the remaining closing process is similar to a normal property purchase. Accordingly, the buyer should exercise the same due diligence as required in purchasing any real estate to ensure they are sufficiently protected. These steps include:

- Reviewing the sales contract with your attorney to ensure that you are adequately shielded from liability during the sale;
- Verifying the seller is not currently in and does not plan to file bankruptcy prior to the sale;
- Using a title company to perform a thorough search and issue a title policy to the buyer after closing;
- Ensuring the property is thoroughly inspected by a licensed and qualified real estate inspector and discussing any issues the inspector finds or that concern you; and
- Having the property appraised by a qualified real estate professional.

As with purchasing any property, buying a pre-foreclosure property involves some risk, but understanding those risks and using the services of qualified professionals, including an attorney, realtor, title company, inspector and appraiser, as well as thoroughly understanding the purchasing process, can help minimize this risk.

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Limited Liability Company Member Disputes in Texas

Adam Looney

By: Adam Looney

Shareholder oppression lawsuits brought by minority shareholders in Texas corporations are nothing new. In recent years there have been an increasing number of similar suits filed in a slightly different context: limited liability companies, or "LLCs." An LLC, like a corporation, is a separate legal entity that can own property and conduct business in Texas. However, while the rights of shareholders in corporations are largely governed by statute, the rights of shareholders in an LLC (who are typically referred to as "members") are governed by a company agreement.

The variability and flexibility afforded by company agreements is one of the primary reasons why LLCs have gained such popularity in the past decades, especially among smaller companies. However, the company agreement is typically written by the person with the largest stake in the new company (or his attorney), and, as you might expect, it often contains more beneficial terms for the majority owners than those provided by statute in traditional corporations.

Inevitably, conflicts have arisen between members of LLCs and the question is: What kind of legal remedy do minority members of LLCs have? In Texas the answer to that question is still evolving. The standard set forth by the courts so far is that majority members cannot "substantially defeat" a minority member's "reasonable expectations" so long as those expectations were "central to the minority shareholder's decision to join the venture." The case law that exists suggests the standard is very fact specific, and depends heavily on the individual circumstances of the particular investor. One thing that is clear: Texas courts will not allow majority owners of LLCs to use company agreements to deprive minority owners of their fundamental rights as investors.

***Adam Looney**, Associate Attorney, joined The Strong Firm P.C. as in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a litigation associate at the law firm of Baker Botts L.L.P.*

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Office Buildings vs. Oil Wells

By: Wendy Lambie

Wendy Lambie

For several years now The Woodlands, Texas, has been a booming market for real estate in general and commercial development in particular, but even before then it was an active area for oil and gas exploration. These two markets converging on one area can cause commercial developers significant issues not typically encountered elsewhere.

In the state of Texas, mineral ownership is referred to as the "dominant estate," with surface ownership conversely the "servient estate." What this means for property owners is mineral owners have the right to use as much of the surface land as reasonably necessary to explore for and develop minerals.

Fortunately, Texas does provide some protections for surface owners, including some municipal and statutory ordinances, with the most heavily debated protection being the accommodation doctrine. The accommodation doctrine first came into existence in a 1971 lawsuit and, despite multiple legal cases attempting to solidify its application, has generally been narrowly defined and difficult for surface owners to use to their benefit. In 2013, the Texas Supreme Court revisited this doctrine, resulting in only slight clarifications.

Under the current interpretation of the accommodation doctrine, the surface owner must provide evidence that (1) the mineral owner's use completely impairs the existing surface use and (2) there is no reasonable, alternate method for the mineral owner to access the minerals and still permit the existing surface use. Unfortunately, for commercial developers purchasing an empty tract without an established "existing use" clause, there is no protection from the accommodation doctrine. In addition, it has become the burden of the surface owner to prove these arguments in order to have the protection of the accommodation doctrine.

Fortunately, commercial developers performing due diligence at the time of purchase have several options that provide a more solid solution than the accommodation doctrine. These options include securing surface waivers from the mineral estate owner and/or specific title policy endorsements, which insure against the risk of surface damage by a mineral estate owner. Completing proper title due diligence costs a tiny fraction of the purchase price for a multimillion-dollar development and can mean a huge difference in the commercial outcome.

Mineral rights in Texas can present unique challenges for commercial developers. Understanding the scope of the mineral owner's rights to use the surface estate and taking the actions necessary to mitigate potential risks should be part of every developer's due diligence activities.

***Wendy Lambie**, Associate Attorney, joined The Strong Firm, P.C. in 2013. Wendy received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in-depth experience in oil and gas matters, with special emphasis on title issues.*
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Will v. Living Trust (Part II): Common Uses for Living Trusts

By: Royce Lanning

Royce Lanning

If living trusts are not always cheaper and faster in Texas, why would you use one? To understand the common uses for living trusts, it may be helpful to understand some basic concepts for how one works. First, a trust expressly states who will control the property held in trust. Second, a trust should set forth the basic rules for how property will be managed and the extent of the trustee's powers to control that property. Third, the trust should set forth the conditions and procedures for when control of the property will be transferred from the current trustee to a successor trustee. Fourth, and finally, a trust works like a contract; therefore, a properly drafted trust does not require a court order to transfer control of property. From these principals we can extrapolate some instances in which a living trust will be a useful and cost-effective estate-planning tool.

Multi-State Property Owners
Living trusts can help to avoid probating an estate in multiple jurisdictions, which can incur added court costs, attorney fees and delays. Probates are a state court proceeding that are only valid in the state in which they are filed. Therefore, if a descendent owns property in multiple states, it may be necessary to probate that will in multiple states in order to transfer the property owned in each state. A living trust valid in all states does not require court action to transfer property that is owned in multiple jurisdictions.

Issues of Looming Incapacity
These types of trusts can also effectively manage the transfer of assets in cases of looming incapacity. Because trusts can transfer property without court intervention, we can fund a living trust prior to the onset of a disease, disorder or genetic predisposition that may impair your (or a loved one's) cognitive abilities. The living trust will allow the property owner to control his or her own property while their cognitive abilities remain and provide for a transition of control of that property once they are no longer capable of making their own financial decisions.

Privacy Issues
Living trusts also maintain a measure of privacy. Although recent changes to Texas law have improved on the privacy afforded in probate proceedings, an inventory of property owned by the decedent is still required. This inventory must (at a minimum) be provided to the decedent's designated beneficiaries and heirs and may need to be filed as a matter of public record. However, property held in living trust is not subject to the same disclosure requirements, so a living trust allows the owner to privately pass on specific belongings or property without publicly disclosing an itemized list.

***Royce Lanning**, 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 and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas.*
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To Sue or not to Sue?
A 3-Step Approach to Answering the Ultimate Question

Kyla Wilder

By: Kyla Wilder

For me, one of the drawbacks of practicing law, namely civil litigation, is I am no longer able to watch legal television dramas or movies without pointing out the multitude of inaccuracies and ultimately ruining the viewing experience for everyone else. While television and the internet are vital components of our society, they do us a disservice by misrepresenting litigation as being glamorous, humorous, and a solution to any dispute. Moreover, the internet is riddled with questionable online blogs and websites containing do-it-yourself legal information, which leads people to believe they can do just as good a job, if not better, advocating their case as a licensed attorney. Albeit, I have seen some incredible non-lay advocates put on their case in a justice or county court, but the risk in going forward with your case pro se (without a licensed attorney) is far too great.

Two sad realities I have come to learn as a young litigator are: (1) trials can go on for months, even years, and (2) the cost of trying a case can, and usually does, end up being more than what you initially sought to recover. A good lawyer will not ignore these realities and should counsel you on all settlement options available prior to resorting to filing a lawsuit. Before you or anyone you know considers filing suit, please consider the following three-step analysis I've learned to live by as a result of trial and error (no pun intended):

Step 1: Who am I suing, and what is my potential recovery? Factors to consider: Big companies hire big law firms who will spend as much time and money as necessary to advocate for their client. Try to take emotion out of the equation as much as possible, and focus on the fiscal aspect. Always consider settlement offers and other remedies available, such as mediation.

Step 2: How do I find an attorney to represent me, and what should I be looking for in my potential lawyer? Factors to consider: You hopefully are not filing lawsuits every day, so take your time and consult with several law firms. Make sure the firm has sufficient manpower to handle your type of case, and know how much you are looking to spend assuming you have to take your case all the way through the appeal process. It is far easier to get into a lawsuit than out of one.

Step 3: Am I emotionally and financially ready for a lawsuit? Factors to consider: Be educated about the realities ahead, both time and money-wise. Once you have filed your lawsuit, you are at the mercy of the court, so be ready to exercise patience.

Obviously this 3-step analysis would make for awful television, but the truth of the matter is that litigation is not as glamorous as it looks on television or the internet. Do not get me wrong—I absolutely love litigation and believe in the importance and value of the judicial system, but it is only fun and effective when all parties involved know what they are getting into.

***Kyla Wilder**, Associate Attorney, joined The Strong Firm in 2013. A Texas native, she spent 8 years of her childhood living in Dubai. In 1999, Kyla's family relocated back to the U.S. in The Woodlands where she attended The John Cooper School. She received her undergraduate degree from Texas A&M University and earned her law degree from South Texas College of Law. During her 2nd summer of law school, she studied abroad at Charles University School of Law in Prague, Czech Republic.*
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Corporate Name v. Trademark

Brian Albert

By: Brian Albert

For many businesses, both big and small, a day may come when you receive some bad news — you've been sued. Whether you're being sued by a customer for a transaction gone bad or by a business partner looking for a bigger piece of the pie, a lawsuit is often an open-ended affair with unknown requirements of time, energy, and (most importantly) money. While this isn't always the case, one legal alternative that can sometimes help to minimize the costs and efforts of full-blown litigation is mediation.

Mediation is a form of alternative dispute resolution (ADR) whereby two or more parties attempt to resolve their conflicts without going through the time and expense of trial. Mediation is extremely common in today's civil disputes, and oftentimes judges will require parties to go through mediation prior to proceeding to trial. The main objectives of mediation are to gather information, learn about the strengths and weaknesses of your case, and possibly come to a resolved settlement between you and your adversary, all the while without the formalities and consequences of pursuing a lawsuit.

In mediation, the mediator, typically a professional agreed to by both sides, plays the role of an impartial, unbiased fact-seeker who helps guide the discussion. The mediator has no judicial powers, and nothing they say can be used in court. The mediator tries to elicit information from both sides while highlighting important facts, questions and answers. While a negotiated settlement of the matter is not always feasible, mediation provides an opportunity for both sides of a dispute to hear each other and decide whether or not the costs of going to trial will be worth it. By including mediation provisions in your company's contracts, you may be able to avail yourself of this alternative process before being forced into trial and all of the consequences that come with it. Mediation is not a fix-all solution, but it is a very strong tool that opposing parties should consider before taking on the headaches that can come with formal litigation.

***Brian Albert**, Associate Attorney, joined The Strong Firm P.C. in 2012. His areas of practice include oil and gas, commercial real estate, business law and contracts, and trademark law. He received his Juris Doctorate from the University of Houston Law Center and a B.S. in Business Administration with a specialty in Finance from American University in Washington, D.C. He has previously worked for Baker Hughes, Inc.'s and Hewlett-Packard's in-house legal departments.*
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The Strong Attorneys in Action

July, 2014

The Strong Firm assisted local energy company in the purchase of producing oil and gas assets of $5.6 million in Kansas and structuring a special purpose entity to allow multiple owners on the project.

The Strong Firm assisted multi-national energy client to extend its available equity financing.

The Strong Firm is appointed guardian ad litem representing two minors in obtaining a favorable settlement.

The Strong Firm found settlement on a breach of contract case in favor of retained clients.

The Strong Firm represented Buyer in negotiating purchase price, terms and drafting amendments to the contract in furtherance of purchasing residential real estate property in The Woodlands.

The Strong Firm represented Borrower in complex $2 billion syndicated credit facility negotiation and closing.

The Strong Firm assisted Developer in the formation of four new office condominium projects in Harris, Ft. Bend, and Montgomery Counties.

June, 2014

The Strong Firm represented Buyer in purchase of residential real estate property in The Woodlands.

The Strong Firm assisted client in eviction of commercial tenant.

The Strong Firm represented developer in the closing of $2.1 million loan for the acquisition of real property in Harris County.

The Strong Firm represented Borrower in $2.4 million construction loan closing for construction of a medical surgical center in Montgomery County.

We provide legal services in all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Commercial Litigation
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment

From left: **Adam Looney**, associate attorney; **Royce Lanning**, associate attorney; **Wendy Lambie**, associate attorney; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, senior associate attorney; **Kyla Wilder**, associate attorney; **Brian Albert**, associate attorney.

The Strong Attorneys in the Community

Bret Strong – 2014 Hometown Hero

Bret Strong (center) was congratulated on being a 2014 Hometown Hero by his wife, Angela (left), and Dr. Ann Snyder, President and CEO of Interfaith of The Woodlands. He will be recognized for his many contributions to the community at *The Woodlands Celebration of Excellence Gala*, benefiting **Interfaith of The Woodlands**. Hometown Heroes are positive role models in The Woodlands who demonstrate dedication, volunteerism and compassion in the community.

Left.
Sarah Rhea, executive director of **Leadership Montgomery County (LMC)**, welcomes Bret Strong to the LMC board of directors.

Right.
The Strong Firm P.C. supported and contributed to the **Campaign for Change** drive organized through Strike, LLC. Seen from left to right are Kristin Pierce and Tony Caldwell of Strike, LLC and Jessica Caldwell of The Strong Firm P.C.