The Strong Firm P.C. Attorneys® StrongPoints

You Did Build That!

Succession Planning to Maximize the Value of Your Small Business

By: Bret Strong

The vast majority of our small business clients have worked very hard to build and grow their diverse and successful businesses. Very few have been handed much of anything. Unlike major corporations that are owned by thousands of shareholders with an active stock market providing liquidity for their shares, the average small business owner has no available market to provide a ready source for the valuation and sale of ownership interests. Accordingly, small business owners must diligently plan for transition of their business for value in order to maximize the investment of many years of hard work. Below are a few tips for privately held business owners to consider in order to maximize the value of their businesses.

Identifying Successor "Owners"

A key ingredient in extracting value from any privately owned business is identifying sources of potential buyers or successor owners/operators of the business and cultivating those sources for the eventual transition. These successors can come from some very diverse groups, including family members, key employees, industry participants, suppliers, customers and even competitors. Business owners need to build relationships in many, if not all, of these potential successor arenas in order to foster interest and knowledge of the value of their business. Then, when the time is right, this will allow a business owner to open dialogue with many trusted sources about the potential of transiting to buying, owning and/or running your company.

Grooming Management to Sustain Value

When trying to transition your business to successors, there is nothing that makes your business more attractive than key management personnel who will assist in transferring value to new management. Therefore, continually identifying, training and retaining key employees that will help sustain value of a business through transition is of the utmost importance. A long-term approach to key employee development is critical to making your business attractive to others.

Keeping the End in Mind

We have found that business owners who have a long-term plan that includes one or more alternatives for succession are the businesses that are best prepared to capitalize on such opportunities. A plan that includes specific goals (both financial and target dates) for a transition event is critical in order to take required interim steps toward making such an event occur. Every small business owner should sketch out a long-range plan and include goals and objectives for cashing in on what they have built through a lifetime of labor and passion.

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 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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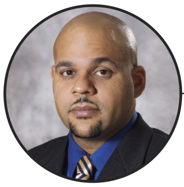
The Texas Series LLC: The New Kid on the Block

By: Eric R. Thiergood, SR.



Eric R. Thiergood, Sr.

Texas Series LLC Background

On Sept. 1, 2009, Texas joined Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee and Utah as the handful of states in the U.S. at the time that permitted the formation of a relatively new entity type known as Series limited liability companies ("Series LLC"). In March of 2012, Kansas also passed legislation permitting the formation of Series LLCs. Wisconsin also has Series LLC legislation in place, however, Wisconsin's Series LLC law are somewhat stripped-down and do not afford the protection provided by the other State's Series LLC laws.

What is a Texas Series LLC?

While a Series LLC shares many of the same characteristics and benefits with its older and more commonly known cousin, the traditional Texas LLC, the Series LLC differs in that it permits you to segregate the assets and liabilities of the company in several separate series. The Series LLC provides a means of isolating the assets of one series from the liabilities of the other series within a single Series LLC. The result is a single entity, an LLC, with a multitude of series, each with its own separate assets, liabilities and management.

Benefits of the Series LLC

The ability to divide assets, liabilities, and even the operation and management of the assets into wholly separate series, under the umbrella of one LLC, can be useful in reducing some of the costs and hassle associated with operating multiple related, but separate, entities. Some Texas real estate investors are beginning to use the Series LLCs to hold and manage multiple rental properties, placing each property in a separate series and all the properties under one series LLC. However, a business with only a single purpose, investment objective or main common asset would likely not be an ideal candidate for a Series LLC.

The Benefits of a Texas Series LLC

One substantial benefit of a Series LLC is that you only incur one state filing fee regardless of the number of series within the LLC. However, since the formation and corporate documents associated with a Series LLC are more complex, the legal fees associated with forming a Series LLC are higher than that of a traditional LLC. Because the series LLC allows you to establish multiple series of assets, members and managers of the debts, the obligations and liabilities of each series will be enforceable only against the assets of that particular series and will not be enforceable against the other series in the LLC or against the LLC as a whole. Each individual series operates essentially as its own company with the ability to enter into contracts, hold title to personal property and real estate, and sue and be sued, completely apart from the other series.

Areas of Concern with a Texas Series LLC

Since the Series LLC is still a relatively new entity type in Texas, the case law and court rulings indicating how a court will treat a Series LLC are not as developed as other entity types, such as the corporation and traditional LLC. As time passes and more cases involving Series LLCs are litigated, we will be able to better analyze how the Texas court systems treat Series LLCs and ensure that the separated assets of each series are truly segregated from the liabilities of another series.

Conclusion

Choosing whether a Series LLC, traditional LLC, corporation, or limited partnership is the best entity for you and your business is not a decision to be taken lightly and without substantial forethought and planning. The Strong Firm has helped thousands of clients choose and form the right entity for their new business venture. We would be happy to assist you in such endeavors.

Eric, Senior Associate Attorney, 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 fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.

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Clerk's Corner

By: Brian Albert

As a rising third-year law student, spending the summer with The Strong Firm P.C. has provided me with an enormous amount of hands-on experience within a variety of legal areas. The attorneys at the firm have amazing relationships with their clients, and this was evident every time I had the opportunity to take part in a client matter. Because of my interest in business law, my summer clerkship will unquestionably provide enduring dividends as I take one step closer to the start of my own career.

From big oil and gas transactions to trademarks and beyond, I have gained an incredible amount of legal understanding in my short time with the firm. I can only hope that all of my hard work has made an impact on the firm and that the attorneys here have benefited as much as I have from my summer clerkship experience. Whether there are future opportunities here or if I ultimately go in another direction, I will always be grateful for the opportunity I had to work at The Strong Firm P.C.

Help, I've Been Sued! What To Do when You are Served with a Lawsuit

By: Adam Looney

Adam Looney

Being on the receiving end of a lawsuit can be intimidating: You are served with a legal document, called a citation, informing you that someone has sued you. Attached to the citation is another document, called a petition in Texas courts but known as a complaint in other jurisdictions, setting out all of the plaintiff's claims against you (or your business)—usually in the most unfair and unflattering way possible. So, the question that naturally arises is: What now?

First, take a deep breath and say to yourself, "Don't panic." While being served with a petition does start the clock for you to file an answer, you typically have at least three to four weeks to do so, which is usually plenty of time to contact a lawyer to help you respond. Second, although it can be easy to take the plaintiff's allegations personally, you should avoid trying to solve the dispute by calling the plaintiff or her attorney directly to argue about the fairness of the allegations. In general, anything you say to the plaintiff can be used as evidence against you at trial, and you could end up inadvertently doing permanent damage to your case.

The very next thing you should do is hire an attorney. If you simply ignore the lawsuit and fail to file an answer within the deadline, the judge could order entry of a default judgment against you. If that happens, you automatically lose. Even if the claims are entirely unfounded, the plaintiff will typically be awarded whatever damages she asked for in her petition. It can be incredibly difficult, if not impossible, to reverse a default judgment. And you could end up permanently losing your right to defend yourself in the lawsuit! This is just one of the reasons why it is imperative that you hire an experienced attorney as quickly as you can.

After your lawyer has filed an answer for you, the real business of litigation begins. Contrary to how it is often portrayed on television, most civil suits are dealt with entirely outside of the courtroom. In fact, only about 2 to 3 percent of civil cases ever go to trial. The rest are resolved through settlement, alternative dispute resolution (ADR), or through procedural mechanisms, such as motions for summary judgment.

Even cases that never go to trial, however, can be complicated and time-consuming, especially the discovery process, which is when parties to a lawsuit request and exchange evidence prior to trial. What is more, the exponential increase in the use of electronic forms of communication and data has created additional pitfalls for the unwary party who fails to preserve electronic information that could be relevant in the case.

So, if you find yourself served with a lawsuit, take a deep breath, pick up the phone, and give us a call. Our legal system is designed to give everyone the opportunity to tell his side of the story because every story has (at least) two sides, and we here at The Strong Firm, P.C. are eager to help you tell yours.

Adam Looney *joined The Strong Firm P.C. as Of Counsel 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. During his career, Adam has zealously advocated in the courtroom, through alternative dispute resolution, and before administrative agencies to achieve creative and advantageous solutions to his clients' most complicated legal issues.* alooney@thestrongfirm.com

Death and Digital Assets: Who Will Inherit the Digital Me?

By: D. Joe Griffin

D. Joe Griffin

From email and online banking to business accounts and Facebook, almost everyone has some kind of digital or electronic footprint. This online life is often an afterthought when individuals contemplate their various assets and where they would prefer these assets go upon their passing. However, the transfer of our digital assets at death, and the problems inherent in this transfer, has also been an afterthought for the majority of lawmakers in the United States, so only five states currently have laws which deal with death and digital assets.

At the heart of the issue are the myriad of licensing and user agreements which we agree to with the swift click of the mouse when we set up various accounts online. These licensing and user agreements vary from site to site and often contain policies against the assignment or transfer of your rights to use of the site, meaning that the license is personal to you and essentially dies with you, absent a court order granting an executor or personal representative access. Some think this is the right approach and that privacy is paramount in this area, even for the dead.

On the other hand, some believe digital assets are no different than other personal assets; they are simply stored in a different medium. Is there really any difference between a kind and thoughtful email to someone you care about and a printed letter with the same message, or an actual print photograph and its digital counterpart? Most sites are used for the storage of documents, photos, and videos, as well as email and personal communications, but are they really anything more than a digital "Self-Storage" of these assets? These are difficult questions and there are examples on both sides of the issue relative to these intangible

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ROFOs and ROFRs as Related to Real Estate Transactions

Mariana Grijalva

By: Mariana Grijalva

As many of our clients involved in the purchase and sale of Real Estate know, a Right of First Offer ("ROFO") is essentially a contractual right created when the owner of a specific property grants a person or entity (the "ROFO Holder"), for a specific period of time, the right and option to make an offer to buy the subject property before the owner offers the property to any other party. Accordingly, as its name suggests, it gives such ROFO Holder the right to make the first offer to purchase such property from the Owner.

A Right of First Refusal ("ROFR"), on the other hand, is, in basic terms, a contractual right created when the owner of a particular property grants a person or entity (the "ROFOR Holder"), for a specific period of time, the right to match any offer received by the Owner from a third party for the purchase of the subject property before the owner accepts such offer from the third party.

The existence of ROFO or ROFR rights affecting a specific property usually becomes apparent for a Buyer during the title review process. Accordingly, as a Buyer in a Real Estate Transaction, it is important to conduct a thorough title search to ensure that the property being purchased is not subject to any ROFO or ROFR rights. In the event that the property is subject to such restrictions, it is imperative that such ROFO or ROFR rights be waived or released by the holder of such right prior to the closing of the transaction to prevents any issues associated with the validity of the transfer and ensures that the Buyer is receiving the property free of such encumbrances.

As a Seller, it is important to be aware of any ROFO or ROFR agreements or rights affecting the property and make sure to comply with the necessary procedures required by such agreements. This ensures that the sale of the subject property is a smooth transaction and avoids any potential claims from damages of any ROFO or ROFR holder.

Because of the potential title issues and liabilities that may arise in connection with a Real Estate Transaction, it is recommended to enlist the help of an experienced attorney to perform an adequate title review and address and resolve title issues (such as those associated with the existence of ROFO or ROFR rights) prior to closing.

Here at The Strong Firm P.C. our attorneys are familiar with the title review process and the conditions and procedures typically associated with ROFO and ROFR rights. Our attorneys have successfully assisted Buyers and Sellers alike in the process of resolving such issues associated with these encumbrances in order to facilitate a seamless transaction. It is our experience that the time and expense invested in legal services for the resolution of these matters is invaluable as it will ensure, for Buyers and Sellers, that the sale or purchase of a specific property will not bring with it unnecessary obligations and liabilities associated with ROFO or ROFR Rights.

***Mariana Grijalva** became an Associate Attorney in 2011 after graduating from South Texas College of Law. Her areas of practice include international business investment and transactions; business law and contracts; corporations, LLCs and partnerships; and real estate. She holds a BBA in International Studies and Business Administration from the University of St.Thomas. She is fluent in Spanish and conversational in French.*

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Death and Digital Assets: Who Will Inherit the Digital Me?

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assets as compared to others. With very few case law on this subject, and a lack of real legislative guidance here in Texas, the transfer of digital assets should be planned for carefully.

Some estate planners are suggesting the use of a Digital Asset Trust, with the trust named as the account holder of these various digital assets. While this strategy appears to work, most people are either unwilling or unable to go down this road. Alternatively, others have suggested the use of the common ancillary document to a Last Will, known as the "Personal Property Memorandum," to accomplish this purpose. This can be done by listing the accounts with passwords and logins and designating an individual who shall take control of these accounts at death, often the executor of the Last Will. From a practical perspective this approach should at least grant someone access for a short period of time following the individual's death, absent being locked out by the website administrator.

In this growing digital age, these issues will eventually have to be addressed by lawmakers everywhere, especially as the majority of individuals passing away today are holders of digital assets of some form or fashion. In the interim it is important that we take the time to contemplate this issue and plan for it as we make or update our estate planning documents.

***D. Joe Griffin** became an Associate Attorney in 2010 after graduating from the University of Houston Law Center. His areas of practice include business law and contracts; corporations, LLCs and partnerships; business and investor immigration; real estate; trademarks; and estate planning and probate. Having lived in Argentina, as well as in Mexico City D.F., Joe is fluent in Spanish and conversational in Portuguese.*

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The Strong Attorneys in Action

May 2012 - **The Strong Firm** represented the seller in the $6 million stock sale of a local engineering company.

May 2012 - **The Strong Firm** represented an international company in the negotiation and closing of $6.75 million revolving line of credit and term loan.

June 2012 - **The Strong Firm** represented the seller in the asset sale of local restaurant.

July 2012 - **The Strong Firm** represented the building owner in the negotiation of a $1.5 million contract for the installation of commercial solar panels.

August 2012 - **The Strong Firm** represented the lender in a $3 million renewal and amendment of commercial loan.

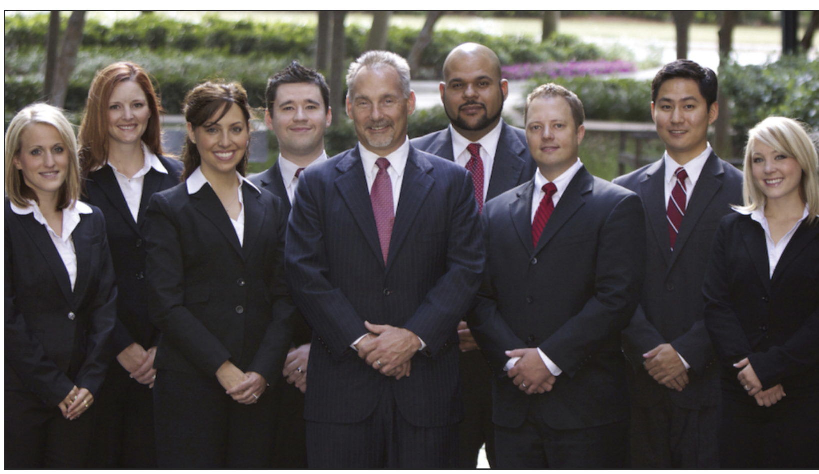
August 2012 - **The Strong Firm** represented the borrower in negotiation and closing of a $12.4 million renewal and amendment of commercial loan.

August 2012 - **The Strong Firm** represented the borrower in a $2.125 million commercial real estate loan.

September 2012 - **The Strong Firm** represented chemical company in negotiation of use of new product in clothing line.

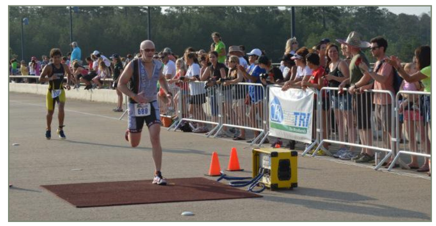
We provide legal services in the all of the following areas:

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



From left: **Laura Junek**, paralegal; **Melanie Edleston**, office manager; **Mariana Grijalva**, attorney; **Adam Looney**, associate attorney; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, senior associate attorney; **D. Joe Griffin**, associate attorney; **Brian Albert**, law clerk; **Bethany Kovacs**, legal assistant.

The Strong Attorneys in the Community



At the popular CB&I Triathlon held in The Woodlands on May 5, 2012, **The Strong Firm** served as the "Official Law Firm" of the race and supplied race belts with logo for all participants.

On October 13 at the Memorial Hermann 10 for Texas-The Woodlands race, **The Strong Firm** will serve as the "Official Law Firm" of the event.

From left: Bret Strong is thanked by Bruce, Tough chairman of board of directors of The Woodlands Township

The Strong Firm will serve as a sponsor and a participant in the 3rd Annual iGoPink Stiletto Sprint on Sept. 15th, Market Street–The Woodlands, benefiting Breast Cancer Charities of America. Pictured is **Joe Griffin** running in the entertaining Men's Stiletto Sprint last year.