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The Strong Firm P.C. Attorneys StrongPoints

Why Do People Dislike Lawyers?
"We Only Have Ourselves to Blame"

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By: Bret Strong

I am often told "lawyer jokes" by friends, business associates, mere acquaintances and even a client or two. We've all heard them:

Q: What's the difference between a good lawyer and a bad lawyer?

A: A bad lawyer makes your case drag on for years. A good lawyer makes it last even longer.

As is the case with all humor, there has to be a little bit of truth to make a joke funny. That being said, have we as lawyers contributed to making ourselves the butt of jokes? I have found there are three activities that lead to the distaste for lawyers:

1. Taking Advocacy Too Far – Attorneys are trained advocates. The way they are educated and trained breeds an argumentative approach to matters. When taken to an extreme, this approach can cause a "win at all cost" attitude that can be destructive, creating a poor image in the minds of those observing this behavior.

2. Not Communicating "Value" of Services – My experience is that attorneys can often lack good business sense. Attorneys must be able to communicate a value proposition to the client related to their services. I have trained myself and our attorneys to continually communicate the value of our involvement; and if the value is diminished to find a way to resolve that conflict as any good business person would. If you are not adding value, you are subtracting and people do not like it or you.

3. Arrogance – Very frankly, attorneys can have egos. After all the years of hard work and schooling, they can feel they have earned that right. Attorneys need to be able to keep their egos in check and become more approachable to assure they are a valued member of the team.

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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I Hereby Waive And Release...
Waivers and Releases: Are They Even Binding?

Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

We have all seen them: a sign that reads, "We are not responsible for any accidents..." or a waiver that reads, "I hereby release XYZ Company for any damage or injury..." The fact is, we live in very litigious times and we see these types of waivers and releases every day. If you are like most people, you probably spend as much time reading the sign or the release as you do reading the pages and pages of legalese required before clicking "I accept" when registering on a website or installing new software. As any good attorney would tell you (whether we heed our own advice or not), you should always read everything before you sign it, especially if it is an agreement attempting to or purporting to cause you to waive rights that you would otherwise have or release the other party from liability that they would otherwise shoulder.

As a rule of thumb, a business cannot be absolved from all liability by posting a sign, having you sign a contract, or having you click that you "agree," particularly if the opposing party is injured due to the gross negligence or willful misconduct of the company or business. However, waivers and releases generally can serve to limit the liability of a business if they are property drafted, do not violate public policy, statutes, rules, regulations or laws and unambiguously and conspicuously express to the party signing that he or she is waiving damages or releasing the business from liability.

As with any contract or legal document, it is critical that a company wishing to use a waiver or release ensure it is properly drafted and legally binding. At the Strong Firm, we help hundreds of clients each year draft waivers and releases that will stand up to the scrutiny of a legal review, and we would love to do the same for you and your business.

***Eric R. Thiergood, Sr.**, 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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Help Wanted:
Counsel's Assistance for Probate

Royce Lanning

By: Royce Lanning

Texas has taken great efforts to make the probate process as quick and affordable as possible while still maintaining the integrity of the system. As part of this overall theme, Texas recognizes several abbreviated probate processes (e.g. independent administration, muniment of title, small estate affidavits) that require only limited filings and usually a single brief hearing in order to transfer property out of the decedent's name and into the name of the decedent's beneficiaries or heirs.

While Texas has created these abbreviated probate processes, Texas does not recognize a "do it yourself" probate. [http://www.mctx.org/courts/county_courts/county_court_at_law_2/docs/PROSEFAQ.pdf] [http://www.harriscountytx.gov/cmpdocments/48/home/pro_se.pdf]. Rather, an attorney is required to initiate the probate process because only a licensed attorney may represent a third-party in court. Steele v. McDonald, 202 S.W.3d 926 (Tex. App.Waco2006) [http://caselaw.findlaw.com/tx-court-of-appeals/1105249.html].

Therefore, an attorney is required in all probate proceedings because the person applying to open the decedent's estate is not actually representing *themselves*. Instead, the applicant is representing the estate of the person that died and the applicant's actions can impact the rights of others (e.g. other heirs or creditors). Therefore, Texas law requires all applicants to obtain the assistance of an attorney in order to open a probate estate as part of the probate system established to offer each heir and creditor a fair opportunity to claim their interest in each estate probated.

***Royce Lanning**, Associate Attorney, joined The Strong Firm, P.C. in 2013 as an experienced associate. 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 has parleyed his courtroom skills into private practice, focusing in the areas of corporate formation and administration, general and complex business transactions, real estate development and financing, estate planning, probate, guardianship and commercial litigation, with special emphasis on suits against international entities. 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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Litigation and the Recovery of Attorney's Fees:
What to Reasonably Expect

By: Adam Looney

Adam Looney

The general rule in Texas is that each party to a lawsuit pays their own attorney's fees, win or lose. There are, however, numerous exceptions. For instance, in lawsuits involving a breach of contract, rendered services, or (because this is Texas) killed or injured livestock, the law says that if you win, you are entitled to recover the fees paid to your attorney. Further, most modern commercial contracts include a "loser pays" attorney's fees provision, meaning that the losing party to a lawsuit arising out of the contract must pay the winner's attorney's fees in addition to any award of money damages.

However, even if the lawsuit involves a claim where the recovery of attorney's fees is allowed, recovery of the full amount of your attorney's fees is not guaranteed. Instead, the law requires that the attorney's fees are "reasonable." This has understandably caused some confusion. One judge may see a $50,000 legal bill and find it to be a bargain. Another judge may look at the same bill and find it far too high. While the Texas Supreme Court has attempted to clear things up by providing factors and formulas to guide judges in determining what is "reasonable," there are few hard and fast rules.

As such, it is impossible to predict with any degree of certainty not only whether attorney's fees will ultimately be recoverable but also what amount the judge will find is "reasonable." At the beginning of any lawsuit, you should carefully consider whether litigation makes economic sense given the amount in controversy, the estimated amount of attorney's fees, and the likelihood that you may be entitled to recover your attorney's fees (or possibly be forced to pay the opposing party's attorney's fees). However, the ultimate decision to pursue litigation should never be driven by whether you may have the right to recover attorney's fees. Instead, the question you should ask yourself is "does this lawsuit make good business sense even if I ultimately foot the bill for all of my own attorney's fees?"

__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.
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Estate Tax in 2014

By: Wendy Lambie

Wendy Lambie

First let's do a quick review and summary of the past few years. The federal estate tax exemption amount for tax years 2010-12 was based on a piece of legislation signed by President Obama in December 2010. This law was drafted to end on Dec. 31, 2012, which would have caused the federal estate tax exemption and rate to default to 2001/2002 amounts which were drastically lower exemption amounts. To resolve this, Congress passed the American Taxpayer Relief Act in January 2013, which made the laws surrounding federal estate taxes, generation skipping taxes and gift taxes permanent changes and subject to increases with inflation.

There were more than 40 tax provisions adjusted for annual inflation this year, including the $5.34 million federal tax exemption amount for 2014. The tax rate remains at 40 percent for those estates that are beyond the exemption amount. Also, the gift tax amount has remained static at $14,000 per individual.

We are fortunate that right now these issues seem to have more permanence, and this allows us to have more confidence in how to plan. Unfortunately, we still cannot predict the future to know what Congress may change up later, when someone could become disabled or when someone will die. So, in order to avoid court supervised proceedings and regardless of the fairly high exemption amount, it is smart to have an estate plan is in-line with your current needs.

__Wendy Lambie__, Associate Attorney, joined The Strong Firm, P.C. in 2013 as an experienced associate. Ms. Lambie 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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Landlords Beware of the Tenant Bankruptcy Scare

Kyla Wilder

By: Kyla Wilder

For one landlord fighting a long-term legal battle to regain possession of his property from a nonpaying tenant, hindsight is 20/20.

In this case, the tenant strategically filed a bankruptcy action the day before the landlord was set to regain possession of his property. The result? Possibly having to wait six months to get possession of his house from the tenant during the pendency of the bankruptcy action. This landlord was dealing with a serial bankruptcy filer, someone who knows how to use the system to their personal advantage, and once a bankruptcy action is filed, an automatic stay goes into effect which essentially stops ("stays") all pending actions, including eviction.

If a nonpaying tenant files bankruptcy while living in your home, they will be able to continue living there without paying rent until the bankruptcy case is resolved. Below are three ways a landlord can protect themselves from the tenant bankruptcy scare in the future:

(1) Creditworthiness and financial stability are crucial aspects for a landlord to consider when evaluating a potential tenant. Ask yourself: Can this tenant afford these monthly rental payments based on their past financial history? There should be no hesitation here. Making this determination early on will save you a lot of time, money and the value of your property in the future.

(2) Actually conduct comprehensive background searches. A one-page credit inquiry or, even worse, a tenant's "word" on their financial soundness will simply not suffice when you are considering putting your property in a stranger's hands. Also, conduct a search on any person that is going to be residing at the property for more than two weeks. This is an important procedure that must be done prior to tenants or occupants residing at your property.

(3) Lastly, consider having an attorney review or draft your Residential Lease Agreement to assist in protecting your interests before permitting a tenant to move in. Trust me, hiring an attorney to do an initial review on your lease in the early stage is far more cost effective than having to retain an attorney after the tenant stops paying rent or, even worse, files bankruptcy.

So how does this story end? With a lot of lessons learned and, with our firm's assistance, a new, suitable tenant to lease the landlord's property.

***Kyla Wilder** 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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What's in a Name?

Brian Albert

By: Brian Albert

So you've decided to go into business. You've locked down your startup funds and laid out the perfect business model. But what are you going to call yourself? You want something catchy and distinctive, and you want people to like it, but can you call your business anything you want? The answer is simple (no), but figuring out exactly what you can and cannot use as your company name is a little more challenging.

The first step in choosing a name is to decide whether or not you are going to form a registered entity or act as an unincorporated individual or entity. If your business will be run as a sole proprietorship or a general partnership, you will want to file an assumed name certificate in each county in which your business operates. If you are going to register your entity, your name must include certain words or acronyms in the name, known as organizational identifiers.

Once you've settled on a name, you need to find out if this name is distinguishable from other businesses in Texas. The main idea here is you cannot give your company a name that is the same or deceptively similar to an existing business. Because of trademark registrations and other common-law protections, certain names are so established and well recognized that using them would likely confuse customers. For example, you would most likely be unable to use "Nike" as the name for your business because Texas does not want consumers to be confused as to what company they are doing business with.

Ultimately, you and your company will be better off using a unique name that allows customers to identify you. The more common your name, the more difficulty you will have getting it registered with the state. Starting a new business is exciting, but take the time to make sure you end up with a good, acceptable name for your company.

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. While at UHLC, he served as the Editor-in-Chief of the Houston Business and Tax Law Journal and was awarded the 2012-2013 Hofheinz Advocate of the Year Award for excellence in intramural advocacy competition. Having previous experience working with various multinational companies, including Baker Hughes, Inc.'s and Hewlett-Packard's in-house legal departments, he leverages his skills and knowledge to assist the Firm's business clientele.*
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The Strong Attorneys in Action

December, 2013

The Strong Firm assisted Client in their role as named executrix and trustee during contentious period with beneficiaries.

The Strong Firm represented Buyer in the multimillion dollar acquisition of a Harris County manufacturing company.

The Strong Firm represented Developer in the formation and development of four new office condominium projects in Harris, Montgomery, and Fort Bend counties.

January, 2014

The Strong Firm assisted in the formation of a nonprofit entity focused on providing assistance to terminally-ill children.

The Strong Firm represented three Sellers in the multimillion dollar sale of four tracts of unimproved real property in Harris County to Commercial Developer.

The Strong Firm represented Buyer in $800,000 acquisition of commercial property in Travis County.

The Strong Firm represented local technology business in negotiations to sell its software package to a nationwide vendor.

The Strong Firm provided legal counsel regarding the financial structuring, purchase and development of a multi-level office building in West Houston.

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: **Bradley Shaughnessy**, law clerk; **Royce Lanning**, associate attorney; **Laura Junek**, paralegal; **Wendy Lambie**, associate attorney; **Bret L. Strong**, attorney, founder, and managing shareholder; **Brian Albert**, law clerk; **Bethany Kovacs**, legal assistant; **Eric R. Thiergood, Sr.**, senior associate attorney; **Renee Glazer**, paralegal; **Adam Looney**, associate attorney; **Lisa Prado**, paralegal; not pictured, **Kyla Wilder**, associate attorney.

The Strong Attorneys in the Community

The Woodlands Marathon

At the recent **Woodlands Marathon**, The Strong Firm was the VIP sponsor and participated in the various races.

Left. Pictured are some members of The Strong Firm's team (from left) Brian Albert and his wife Angelina, Tony Caldwell (Jessica's husband), Jessica Caldwell, and Laura Junek. Bret Strong and Beth Kovacs also participated.

Right. The Strong Firm's VIP hospitality tent overlooked the finish line.

Above. Bruce Tough, chairman of The Woodlands Township, Montgomery County Precinct 3 Commissioner James Noack, and Bret Strong mingle with a team of elite marathoners.

Right. Bruce Tough, chairman of The Woodlands Township, congratulated Bret Strong as he finished his race.

In February we served as a sponsor of the **Meet the Candidates/Whistle Stop Tour Luncheon**, presented by **The Woodlands Area Chamber of Commerce**.

We sponsored the January luncheon meeting of the **Commercial Real Estate Association of Montgomery County (C.R.E.A.M.)**.

Stepping Up

Jessica Caldwell (2nd from right) participated in the Step Out – Walk To Stop Diabetes last December, which benefited the **American Diabetes Association**.