

The Strong Firm[®] Strong Points

Attorneys P.C.

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Christmas in The Woodlands Means Community

By: Bret Strong

As I enter my 25th year and the firm's 10th year in The Woodlands, I cannot help but look back fondly on how much The Woodlands community has become a part of my personal and work family's celebration of the season. When I first arrived in The Woodlands, it was a sleepy little bedroom community that celebrated the "Lighting of the Doves" on the heliport on Woodlands Parkway (now the Grogan's Mill Overpass on Woodlands Parkway), and we attended our small Woodlands United Methodist Church Christmas service to celebrate the amazing birth of Christ. I have fond memories of those times when The Woodlands "ended" at Shadowbend Drive. Now, tens of thousands of people celebrate "Lighting of the Doves" at multiple locations in The Woodlands. The Ice Rink at Town Center and International Winter on The Waterway (iWow), and hundreds of Christmas services abound throughout the community. What a tribute to an awesome God who has blessed a wonderful community. The Woodlands has successfully grown to have a "big city" holiday celebration with a hometown feel, retaining the importance of family and community in celebrating our blessings.

Because the community is such a part of our firm and the firm a part of the community, we love kicking off our holiday season, for the seventh year running, hosting the Sponsor Party opening The Ice Rink at Town Center. It warms my heart to be blessed to have been a part of this community for yet another year. Please join us in celebrating the season and how blessed we are to be a part of The Woodlands, Texas! Merry Christmas and Happy New Year!

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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Electronic Discovery and Social Media: A Nightmare for Digital Sinners

By: Kyla Wilder

These days most people spend hours hunched over their smartphones texting, emailing, checking Facebook, tweeting, retweeting, posting, blogging, commenting, chatting. As our society becomes increasingly dependent on technology, individuals and business owners must remain mindful of electronic discovery laws and their broad-sweeping reach and harsh consequences for noncompliance. Electronic discovery laws focus on the preservation, production, and requests of

electronically stored information (ESI) during a lawsuit; any data that is stored in electronic form that is relevant to the case is discoverable. Before computers or smartphones, information was more tangible and easier to manipulate in the sense that it was easier to destroy, edit, misplace, or erase. Now with technology commonplace in our daily lives, the amount of information stored within each device is enormous.

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The articles and other information contained in this newsletter are not legal advice, and this letter is not a solicitation for legal employment if you are currently represented by an attorney in a given matter. You should consult with an attorney of your choosing for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and emails. Your receipt of this newsletter and/or contacting our firm does not create an attorney-client relationship.

To retain our services, please contact us and we will send you a written engagement letter for your consideration and execution in order to hire our firm and create the attorney-client relationship. Please do not send confidential information to us until such an attorney-client relationship has been established.
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The Statute of Frauds: When a Verbal Contract Isn't Enough



Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

"Is a verbal contract or agreement valid?"

It's a common question we hear at The Strong Firm P.C. and, like many other legal queries, there is no simple "yes" or "no," but rather "sometimes" or even more accurately, "it depends." In many instances, Texas contracts or agreements do not have to be in writing to be legally binding. However, Texas contract law, known as the "Statute of Frauds," does require that some promises, agreements or contracts be signed and in writing to be valid and enforceable. The more common types include:

1. Agreements to pay off someone else's debts
2. Agreements concerning a marriage or non-marital cohabitation
3. Contracts for the sale of real estate
4. Real estate leases for a term longer than one year
5. Contracts that cannot be performed within one year
6. Loan agreements involving more than \$50,000
7. Certain medical care contracts
8. Contracts for commissions from certain oil, gas or mineral sales

Texas courts recognize certain limited exceptions to the Statute of Frauds when used to avoid an unfair legal result. The Texas Supreme Court requires compelling evidence that strictly enforcing the Statute of Frauds would deliver a fraudulent outcome before triggering the exceptions. Circumstances that could warrant an exception to the Statute of Frauds include situations where either or both parties to the oral agreement have already partially performed the promise or agreement or an agreement

involving promissory estoppel, meaning when an individual makes a promise on which the other party justifiably relies on to their detriment and acts on or take steps to act on the promise.

However, as a rule of thumb, courts are generally hesitant to apply the exemptions too liberally because doing so indiscriminately could render the Statute of Frauds meaningless. Remember, the Statute of Frauds is the Texas Legislature's mandate that courts enforce agreements covered by the law if those agreements are in writing.

When determining if your particular agreement should be in writing to be enforceable, you should apply the old adage, "It's better to be safe than sorry," and put the agreement in writing and have both parties sign and date it. When entering into any business contract, it is critical that you have the agreement drafted and reviewed by competent legal counsel to ensure you are protected to the maximum extent permitted by law. At The Strong Firm P.C., we have helped thousands of clients navigate the often difficult and confusing path of contract negotiation, drafting, execution and enforcement and would love to assist you in your next business contract.

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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Premises Liability: Let the "Experts" Fix It

By: Royce Lanning

When commercial property owners need to make improvements or repairs, using a contractor rather than their own employees may provide more protection from premises liability claims. In 1995, the Texas Legislature enacted Chapter 95¹ granting commercial property owners extra protections against claims brought by contractors (or their employees) for injuries received while constructing or modifying improvements to property. However, the protections do not extend to work being performed by employees of the owner, even if the owner's employees are equally qualified or performing work traditionally performed by an outside contractor.

In earlier decisions, the Texas courts appeared to reconcile the different treatment between employees and contractors by noting that the contractors are often hired to repair dangerous conditions, making their work potentially hazardous. However, the Eighth Court of Appeals recently adopted this counsel's argument and declined to include a danger or expertise requirement in the protections provided to commercial property

owners by Chapter 95. Instead, in *Montoya v. Nichiren-Flex U.S.A., Inc.*, No. 08-12-00070-CV, (Tex. App.—El Paso August 7, 2013), the court upheld the dismissal of the plaintiff's claim, finding that Chapter 95 applied when the work was performed by an outside contractor regardless of expertise, and the type of work being performed is properly characterized as "construction, repair, renovation or modification" to the property.

However, the *Montoya* decision went on to state they would not extend Chapter 95 to an injury suffered by an outside contractor while changing an air filter on an air conditioner because that would not constitute "construction, repair, renovation or modification" under Chapter 95. This presumably signals the court's willingness to consider a "maintenance" exception to the protections offered by Chapter 95. In *Montoya*, the court was faced with an injury that occurred during the application of an elastomeric sealant that plaintiffs alleged could be used for flat roof maintenance. Therefore, plaintiffs argued that the work being performed was maintenance, not



Royce Lanning

Introduction to Alternative Dispute Resolution

Part II: Binding Arbitration



Adam Looney

By: Adam Looney

This article is the second in a two-part series designed to provide a general overview of the two most common forms of alternative dispute resolution (ADR). In the first article, I discussed non-binding mediation. Now, I will focus on the second most common form of ADR – arbitration.

At its core, arbitration is best understood as a kind of private lawsuit. Similar to a typical lawsuit, the parties engage in discovery, draft motions, and proceed to a final trial hearing. However, instead of the court system, arbitrations are administered by private entities, the most common of which is the American Arbitration Association (AAA). Instead of a judge or jury, arbitrations are presided over by individuals known as arbitrators, typically former judges or attorneys. Unlike mediation, arbitration is “binding,” meaning the award rendered by the arbitrator is final and can be enforced by a court of law.

There are many advantages to arbitration over a typical lawsuit. First, arbitration is usually cheaper because the rules are less formal than the Texas Rules of Civil Procedure, so you end up spending less money on attorneys’ fees by reducing the number of briefs, notices, and other formalistic tasks that accompany standard litigation. Similarly, the discovery process, where each side collects and exchanges documents with each other, also is more informal, resulting in significant savings over court-supervised discovery. A word of caution, though – because arbitrations are administered privately, the initial filing fees tend to be much higher than in a typical lawsuit.

Second, arbitration is faster than a typical lawsuit. Most lawsuits do not proceed to trial for nearly two years. Furthermore, even after the trial, the verdict is subject to an

automatic appeal, a process that can take another two years or more. Arbitrations, on the other hand, are often completed less than a year after filing, with awards only appealable in very limited circumstances.

Finally, arbitration is more predictable than a typical lawsuit. The arbitrator, usually an expert in the dispute’s subject matter, has many years of training and experience overseeing and resolving disputes. Therefore, the risk of a “runaway verdict” by individuals unfamiliar with the topic is greatly reduced.

While arbitration can be an excellent alternative to a lawsuit in resolving disputes, it is not necessarily appropriate in every case. Unless the parties have a pre-existing agreement to arbitrate (standard language in many contracts these days), all parties to the dispute must agree to the arbitration – a party cannot be forced to arbitrate without an agreement.

If you have any other questions about arbitration and how it might help you or your business resolve a potential dispute, please feel free to give us a call for advice tailored to your situation.

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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Wendy Lambie

By: Wendy Lambie

Very simply, probate is the procedure by which a handwritten or typewritten will is proved in court to be valid and enforceable. This often includes appointing someone to handle the estate’s affairs and eventually distribute the estate to the heirs or beneficiaries. This procedure must take place within four years of death, and it is the attorney’s responsibility to establish to the court that the will meets certain execution requirements and was not previously revoked.

There are certain assets that do not pass through probate proceedings, such as items that are titled to automatically pass to a particular person upon death of the owner, like a joint tenancy with right of survivorship, or assets with beneficiary designations, such as life insurance policies or IRAs. However, it should be noted that even these types of assets can sometimes become probate assets if the beneficiaries die before the owner or if the beneficiary forms are not completed properly.

Probate: What You Should Know

There is no requirement that a will be probated if the property in the estate can be transferred without a probate proceeding. However, this lack of need should not be confused with the requirement for the filing of a tax return and payment of taxes. The federal estate tax laws usually provide that a certain amount of property in an estate will be exempt from any estate taxes. This amount varies from year to year, so it is important for you to contact an attorney or accountant to verify whether any filings or payments are due for the estate.

The obvious question then is, “What do I need to do first?”

1. Locate the original will. This is not always as easy as it sounds but is the obvious first step.
2. Consult with a probate attorney. Even if you don’t think probate will be necessary, it is a good idea to consult with an attorney who can professionally evaluate your situation and who can answer your questions.

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Electronic Discovery and Social Media: A Nightmare for Digital Sinners



Kyla Wilder

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In some instances, ESI can be a shield, and in others, a sword. For instance, think of the overwhelming relief you once felt when you were able to recover documents after a computer crash, or how easily you can search through thousands of emails to locate the exact message you need in seconds. Alternatively, imagine how damaging a text message confirming a fraudulent agreement would be for a jury to consider, or how a hard-partying photograph from your distant past could destroy a hopeful future in politics or a potential employment opportunity. Social media outlets are an incredibly useful way to stay connected to loved ones or effectively market a business, but from a practical standpoint, you must always be mindful of what you share on the Internet. Think twice before sharing something you may want to retract later because the Internet neither forgets nor forgives.

When a company receives notice it is being sued, it is obligated to put a formal litigation hold in place. A litigation hold prohibits employees or agents of the company from deleting any data that may be relevant to the pending lawsuit. It is imperative that business owners effectively communicate with their IT department, legal counsel, and employees to ensure compliance with the litigation hold to avoid destroying potentially relevant documents. Destroying documents that a litigation hold would have preserved can

result in huge fines, court costs, attorneys' fees, and a big headache. Bottom line: if you are a business owner, make sure you are familiar with your IT infrastructure accessibility and knowledgeable about the storage and retrieval mechanism for each particular system. Many larger corporations have designated a portion of their in-house counsel solely to ensuring compliance with electronic discovery requests.

It is imperative that businesses facing a lawsuit seek competent representation as soon as possible. While the intricacies of electronic discovery laws are invaluable in the right hands, failure to comply with the rules or with a litigation hold can lead to serious fines, penalties, and sanctions. There will never be a possibility of digital retraction, but it is definitely possible to be digitally proactive. Starting today, think twice before posting something on the Web. Remember: once something is on the Web, it is permanent.

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. kwilder@thefirm.com

Premises Liability: Let the "Experts" Fix It

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"repair" under Chapter 95 and that Chapter 95 did not apply. However, there was no dispute that the roof was leaking or that the work was being performed to restore the roof to proper functionality. Accordingly, the *Montoya* court looked to the purpose of the work rather than the expertise of the worker or the complexity of performing the work in order to determine that the work was a "repair" and fell within the protection of Chapter 95.

Although the *Montoya* decision lends some authority to the idea that certain types of work may fall outside of the protections of Chapter 95, the court's decision provides support to commercial property owners seeking to limit their liability by using outside contractors without regard

for the contractor's level of expertise or the danger of the work being performed.

¹ TEXAS CIVIL PRACTICES AND REMEDIES CODE.

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 parlayed 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. rlanning@thefirm.com

Probate: What You Should Know

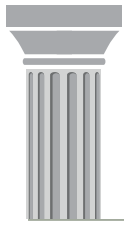
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3. File Application for Probate. If probate will be necessary, start the proceeding. There are a number of stages to the process, but if there is a properly drafted will, the probate process is frequently relatively short and inexpensive.
4. Unfortunately, not all probate proceedings are easy. For instance, you may find yourself in the middle of a will contest, or the will may have defects or other issues complicating probate.

The important thing is to have a probate attorney who can put your mind at ease and assist you through whatever

processes are required to ensure the final distribution of the estate's assets.

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. wlambie@thefirm.com



The Strong in the Community

Attorneys



Ice Rink Preview Party

For the 7th consecutive year, The Strong Firm P.C. served as the presenting sponsor for the recent Preview Event held to debut **The Ice Rink** in The Woodlands Town Center. From left, thanking founder Bret Strong (2nd left) are Kelly Ingram, Casey Snyder, and Nick Wolda of The Woodlands Convention & Visitors Bureau.

Future Focus Program

Kyla Wilder served as a volunteer presenter for the **Education for Tomorrow Alliance** "Future Focus Program," speaking to students at Washington Jr. High.



Connoisseurs for Charity

Bret and Angela Strong are pictured at the **Woodforest Charitable Foundation's** 7th annual Connoisseurs for Charity event which raised \$300,000 for Boys & Girls Country.



Sworn in and Working Up a Sweat

Having passed the bar, Brian Albert is sworn in by The Hon. Judge Lori Chrisman Hockett of the 255th Family District Court moments before the **"Family Law Cares Pro Bono 5K"** race at Fair Park in Dallas of which they both participated. Directed by the Family Law Section of the State Bar, the event raised money and awareness for the need to organize and coordinate pro bono services for indigent Texans.



The Strong in Action

Attorneys

September 2013 - **The Strong Firm** assisted buyer in closing of \$3.7 million commercial property in Harris County.

September 2013 - **The Strong Firm** assisted creditor in placing lien on oil and gas properties located in Jefferson County.

September 2013 - **The Strong Firm** represented seller in \$4 million real property sale in Montgomery County.

October 2013 - **The Strong Firm** represented client in drafting a multi-company exploration agreement.

October 2013 - **The Strong Firm** assisted in the negotiation of a multi-million dollar master service agreement for oil & gas service company.

October 2013 - **The Strong Firm** represented client in the formation of new office condominium in The Woodlands.

November 2013 - **The Strong Firm** sponsored the 17th annual Employment Law Update Conference, presented by The Woodlands Area Chamber of Commerce. Bret Strong made a presentation. (Presentation can be downloaded on web site.)

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.