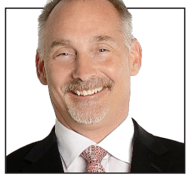
Summer 2017

StrongPoints



Libel Cases Resulting From Social Media:

The New Frontier

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 is a founding board member of The Woodlands Bar Association, former Chairman of The Woodland Area Chamber of Commerce and currently serves on the Board of Leadership Montgomery County.* **bstrong@thestrongfirm.com**

Everyone is a reporter these days. We all carry a recording studio with high-quality video and sound and a printing press in our pocket. We all have the capability to publish current "news" and go live on Facebook at a moment's notice and many do. And once that news hits the airwaves, comments, shares and retweets soon follow, including personal opinions and conjecture. We've all heard the term "fake news" being used in reference to information published by established news sources, but what responsibility and potential liability does the average citizen or business have in exercising their free speech rights by publishing or commenting on social media?

The landmark Supreme Court case New York Times Co. v. Sullivan 376 U.S. 254 (1964) established "actual malice" (very close to actual intent to cause harm) as the standard to pursue a libel or slander case against a publisher for press reports about public officials. The Court's objective was to promote free speech by assuring public persons could not use their power, influence and money to keep papers from publishing information that may be damaging. The problem in today's world is determining who is "the press" and who are the "public" figures. Is everyone with an active social media presence a public figure? As indicated above, is everyone a reporter? Section 230 of the Communications Decency Act of 1996 has insulated internet service from civil defamation suits provided they are not the one producing the disputed content themselves. For the most part, providers of the publishing platforms (Facebook, Twitter, Instagram, etc.) have taken the position they are not liable for information shared by others using their site because they are not creating the content. Companies like Facebook are re-evaluating this stance after recent events involving live streams of shootings and assaults on social media.

In our business practice, we have seen an increase in individuals and businesses being party to controversies associated with information published via social media. Aggrieved people and businesses often take to social media to air their grievances and report the "facts" without regard to potential liability for those statements. The perceived anonymity created by the internet and services that allow nameless posts and communications often embolden action in this arena. On the flip side, valuable information is easily available at your fingertips. It is our belief that in the coming years we are going to see a significant increase in court cases based on social media posts and additional legislation attempting to address responsibility and liability. In the meantime, it is our advice to be careful when commenting or posting online, as well as publishing social media content if the information cannot be verified. It is a wonderful and scary new world, and we are here to help.

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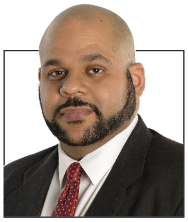


Risk of Buying a Property at a Foreclosure Sale

Eric R. Thiergood, Sr., *Income Shareholder, joined The Strong Firm P.C. in 2005. Eric graduated from South Texas College of Law and is licensed to practice in Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. He lived a large portion of his life in Asturias, Oropesa Del Mar and Madrid, Spain and is fluent in Spanish.* **ethiergood@thestrongfirm.com**

Client: "I'm buying a foreclosure property."
Attorney: "OK, when is the sale?"
Client: "Tomorrow."
Attorney: "Have you completed any due diligence on the property?"
Client: "Well…I drove past the property a couple of times."
Attorney: [after a long pause] "I am going to take that as a no."

What is a "foreclosure sale?"

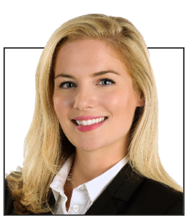
Typically, when a person says they are buying "a foreclosed property" or "a foreclosure property" they mean they are purchasing a property being sold at a foreclosure sale, which is a public auction of commercial and residential properties (either by the bank, the taxing authority or a property owners association), that takes place at the county courthouse on the first Tuesday of each month. However, buying a foreclosure property can also mean buying a property that has already been obtained by a bank at the foreclosure sale, and the property is now privately offered for sale by the bank. A "foreclosure property" can also mean a sale that takes place before the property is actually foreclosed upon in what is typically called a "short sale" or a "pre-foreclosure sale." This article will focus solely on the purchase of a property at a foreclosure sale at the county courthouse.

What are the risks?

No access for inspection. The potential buyer will likely have little or no access to the property to conduct any type of physical inspection or due diligence. This is particularly true when the owner or tenant is still occupying the property prior to the foreclosure. A buyer may try gaining access to the empty property to conduct a physical inspection, but doing so without the express consent of the owner is not advisable as this is considered trespassing.

The property may still be occupied. As discussed above, the property being foreclosed upon may still be occupied when the foreclosure takes place. Though obtaining the title to a property at a foreclosure sale gives the buyer ownership of the property, the current occupants may not be willing to move out since they are likely occupying the property pursuant to a valid lease. In this case, the new owner may have to go through the courts to obtain a legal eviction.

Potential decrease in property values. Particularly in residential neighborhoods, a foreclosure on a property can decrease the resale values of surrounding properties, especially when there are a number of foreclosures in close proximity around the same time. While this can be good for the buyer by lowering the purchasing price, those same foreclosures will decrease the value of the property in the short term if the buyer tries to sell the property for a quick profit. The decreased values may also negatively impact the property if the buyer intends to hold the property as a long term investment.



Tips for Choosing an Executor

Katherine Wilcox, *Associate Attorney, joined The Strong Firm P.C. as a new associate in 2016. Ms. Wilcox earned her Juris Doctorate from SMU School of Law in 2014, and is licensed to practice law in the state of Texas. Prior to joining The Strong Firm, Katherine worked as the Texas Director of Themis Bar Review.* **kwilcox@thestrongfirm.com**

You have likely put a significant amount of time, effort and money into planning your estate, don't throw it all away by picking the wrong executor. Ideally, your executor will administer your estate honestly, efficiently and in the best interest of your beneficiaries. Bad executors have the potential to waste your estate's funds, destroy family relationships and cause costly legal battles. Here are some tips to help you avoid sabotaging your estate plans:

No Experience Required

While the role of an executor is no easy job, for most estates only common sense and good judgment are required. You should pick someone with a good basic business sense who knows when to ask for professional help. For straightforward wills and small estates, a family member or close friend may be the best choice and could end up saving your estate money since family members are more likely to waive the executor's fees. On the other hand, if you anticipate a will contest, or know that your estate is going to require a significant amount of legal work, hiring an attorney or someone with similar expertise may be the better choice.

Choosing More Than One

For estates with less than half a million dollars in assets, your spouse or a mature child may be the best choice to ensure the probate process goes as quickly and smoothly as possible. Naming more than one person means that tough decisions are not left in one person's hands, but you should avoid naming all of your children to the role. Family squabbling can slow the probate process

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Four Reasons to Fund your Business Succession Plan

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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It is an incredible accomplishment for business owners to develop a succession plan establishing the structure that will transition the business out of the hands of the current owner(s). However, even the best business succession plan will be considered a failure without a proper funding mechanism. The considerations in support of setting up a method to fund your business plan are easily overlooked.

First, it should come as no surprise to anyone that the death of a family member is a disruptive and costly event. This issue is compounded when the family member is the sole or primary provider. An established source of liquid funding will provide for expenses and meet your family's daily needs while they sell the business or transition control of the business.

Second, a business has ongoing obligations that must be met regardless of the owner's passing (e.g., payroll). Generally, meeting these obligations is important whether you intend to sell the business or continue to operate it as a going concern. However, the business may suffer a severe lag in income for the first six to nine months after an owner's passing because the business' work flow is driven by that owner's relationship and/or reputation. Accordingly, a liquid source of funding may be essential to keeping the business operational or marketable during that time period.

Third, liquid funds may be necessary to finance the Buy/Sell Agreement between business owners. Many companies have multiple owners that do not want to be in business with a co-owner's spouse or children. A Buy/Sell Agreement is a valuable tool for determining who will own the business if one co-owner dies. However, a Buy/Sell Agreement is much less useful if there are no funds available for the company (or other owner(s)) to exercise their rights to purchase under the Buy/Sell Agreement. An established source of funding will ensure that the owner(s) can use the Buy/Sell Agreement for its intended purpose.

Fourth, business owners may face uncertain estate tax obligations. Estate taxes may be owed at the time of the business owner's death. An established source of funding may be invaluable for the purpose of paying those taxes without having to liquidate assets to generate revenue.

The best way to fund your business succession plan will depend on your business, its operational requirements, the structure of your succession plan and your ultimate goals. Take some time to discuss these ideas with your planning professional to make sure you have a plan in place that maximizes the benefits provided by these tools.

The Importance of Commercial Title Review

Wendy Lambie, *Senior 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.* **wlambie@thestrongfirm.com**

The process of a title search is a fascinating puzzle. It is so interesting to see the history of ownership and the different burdens and benefits related to a property. Even more so is the value a title search can bring to a client, especially in relation to a parcel of commercial land.The thorough examination of title should be a part of due diligence for any deal to gather vital property information. Generally, a title commitment will provide the current owner of record, a legal description of the property, any easements, restrictions or covenants which would apply to the property and exceptions to the title policy. It also will show any liens, mortgages or tax issues. In other words, the title search gives you a better understanding of the history of the property, the chain of title and what issues could impact the transaction.

One of the major misconceptions buyers have about title policies is that as long as the purchase of land is insured nothing further is needed. Unfortunately, this is not the case. Title insurance is a policy purchased to protect the buyer from defects in the chain of title. The title company is promising that the seller has the right to sell the property to the buyer and there are no major debts prohibiting that sale. If the title company makes an error, the policy covers the legal fees over the dispute and/or reimbursement of the policy amount in the event the title company cannot prevail.

What title insurance does not automatically cover is any encumbrance that is an exception to the policy. This can be anything from a gas pipeline easement running through the middle of the tract to a restriction against building height or a particular use. Title attorneys assist in this area by carefully reviewing every detail of the policy and making objections to potential issues or

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In Litigation, Realistic Expectations are Crucial

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

As a litigator, every client I meet asks me at some point during the case whether he or she is going to "win." While reasonable, this question is difficult to answer, particularly when a client appears to have the facts or the law substantially on his side. If a client believes he has a strong case, he develops unrealistic expectations about its outcome and discounts the often unpredictable nature of litigation. This is not a strike against him or her. The unrealistic expectations these clients develop are merely the result of a justifiable belief that they ought to win in such cases. I agree, with the facts and law on your side, you ought to win. Unfortunately, it doesn't mean you will.

Let's consider the term "win" for a moment. If a defendant must fight a frivolous lawsuit, even if a judge or jury decides wholly in her favor, has she really won? Her position in the lawsuit may have been vindicated, but chances are she has spent significant time and money to get there–money that may not be recoverable. Similarly, a plaintiff who is forced to file suit to recover damages may win, but what will the judgment look like? There is no guarantee a defendant will ultimately be able to pay damages or that the plaintiff can recover his attorney's fees. Moreover, it is a fact of the legal system–necessarily administered by fallible humans–that sometimes judges or juries get it wrong. While there may be an opportunity to appeal, you are looking at yet more time, money and uncertainty.

There is no such thing as a slam-dunk case or an iron-clad defense. Those are, for the most part, legal unicorns. To believe otherwise is to risk being blind to the weaknesses of your case, which may cloud your judgment or cause you to reject reasonable settlement offers, even when settlement is the most economical and expeditious resolution to the case. In short, clients need lawyers who will remind them that risk is an inherent trait of litigation and even the best cases have potential downsides. Only then can clients and lawyers determine the best course of action in a case, be it settlement or trial.

If you are considering a lawsuit, or are already involved in one, we would be happy to help you determine the best course of action in your case.

Tips for Choosing an Executor

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to a crawl and end up depleting the estate's assets. Rather than worrying about being fair to your children, focus on preventing family conflict after you are gone.

Naming multiple parties may be the best choice if you have a large estate or if your estate includes a small business. Naming co-executors allows you to name a person with business expertise alongside a friend or family member, and you can specify which executor will be responsible for which duties.

Review Your Choice

Circumstances change and your perfect pick today may not be so perfect down the road. First, consider the age and health of any potential executors and the likelihood they will be around to administer your estate after you are gone. Next, make sure the person you name is willing to serve. Finally, your choice of executor may change due to shifting family dynamics and friendships, and you should dust off and revisit your estate planning documents every couple years and after major life events.

The Importance of Commercial Title Review

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errors on the title commitment. Title attorneys use these objections to basically "clean up" the policy. They also evaluate the property to determine any need for endorsements, which are additional coverages addressing issues such as surface use waivers, boundary discrepancies, zoning and environmental issues.

Large title issues can impact the value of the property, the timeline for project construction and even the ability of the developer to construct what they planned for in the development. While title insurance in a residential purchase is often seen as a formality, title insurance in commercial transactions is an integral part of due diligence and closing. Since commercial deals are frequently a high-stakes proposition, buyers and their lenders have a strong interest in ensuring the title policy issued is the best policy available. Title attorneys are key in obtaining that level of a policy.

Strong in Action

Spring 2017

The Strong Firm negotiates near full-value settlement of client's breach of contract claims.

The Strong Firm represents seller in the settlement of $1.3 million dispute regarding the sale of commercial property.

The Strong Firm advises borrower/developer in the structuring of $13.5 million loan and applicable corporate restructuring for a Harris County long term care facility.

The Strong Firm represents borrower/developer in $9.9 million loan for the acquisition of a skilled nursing facility in Montgomery County.

The Strong Firm assists borrower in the extension and modification of a $14 million commercial loan for Harris County office building.

The Strong Firm represents client in a contract action success fully terminating the existing lease to be replaced by an updated lease.

The Strong Firm serves as the Official Risk Manager of the 10th annual TWFG Muddy Trails Bash.

The Strong Firm represents borrower/developer in the structuring of a $28.5 million commercial construction loan for the development of Hays County Multi Family residential facility.

The Strong Firm negotiates a licensing agreement for client/ software developer with a fortune 100 company.

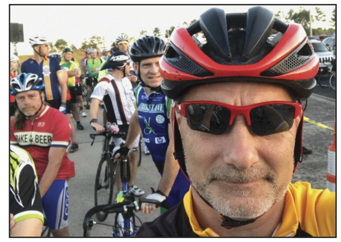
The Strong Firm assists real estate developer in the formation of a property owners association and restrictive covenants for large residential development in The Woodlands, Texas.

We provide legal services in all of the following areas:

- Real Estate
- Mergers, Acquisitions, and Sales
- Business Law and Contracts
- Corporations, LLCs, and Partnerships
- Trusts and Estate Planning
- Business Disputes
- Commercial Disputes
- Lending and Borrowing
- Trademarks
- Oil, Gas and Energy
- Mediation

Bret L. Strong, Attorney, Founder, and Managing Shareholder; **Royce Lanning**, Associate Attorney; **Katherine Wilcox**, Associate Attorney; **Wendy Lambie**, Senior Associate Attorney; **Laura F. Dumas**, Associate Attorney; **Eric R. Thiergood, Sr.**, Income Shareholder

Strong in the Community



Above. The Strong Firm sponsored and Bret Strong participated as a cyclist in the RBC Gran Fondo Texas ride which supports **MS Society** and **Texas Medical Center Orchestra**.

Above. Once again The Strong Firm hosted a VIP tent as part of our sponsorship of **The Woodlands Marathon**. Several of us partici-pated, and our clients and families enjoyed the festival afterwards.

Right. The Strong Firm supported **Children's Safe Harbor's** "Betting On Courage" gala as a Music Sponsor. Shown here are Bart and Courtney West (co-director of Donoho's Jewellers) along with Steve Glazer (co-director of Donoho's Jewellers) and Renee Glazer (paralegal at The Strong Firm.)

Above. The Strong Firm PC participated as a proud sponsor for the 2017 Giving Goes Glam fashion show which benefited **Junior League of The Woodlands** and **Interfaith of The Woodlands**.

Above. The Strong Firm proudly supported the "Run for the Roses - Building Homes and Hope" gala benefiting **Habitat for Humanity Montgomery County.**

Above. The Strong Firm sponsored and attended the 2017 Montgomery County Heart Ball supporting the **American Heart Association of Montgomery County**.