The Strong Firm P.C. Attorneys

Strong Points

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The Importance of an Active Lifestyle to Self and Community

By: Bret Strong

In The Woodlands, Texas, a master-planned community built around the concept of bringing nature and people together, an active lifestyle is always literally just outside your door. Quoting from The Woodlands Development Company website: "With 131 forested parks and 205 miles of hike and bike trails, you can bike, walk, run, or just take the dog for a leisurely stroll whenever the mood strikes you." However, in today's fast-paced and electronic world, it is becoming very easy for individuals to get "worn out" simply by the pace of the world revolving around them and forget to plan physical activity and communion with nature as part of their lives. It is, and always has been, my strong belief that our community needs to continually support and make available opportunities for its citizens and visitors to become and stay active on all levels for the betterment of the individual and those that live around us.

A report released in April of this year by the Mayo Clinic confirms what is obvious to active individuals. Physical activity has a positive impact on stress by increasing endorphins ("feel-good neurotransmitters"), helping to focus your body on physical movement rather than the day's irritation, and increasing self-confidence.

In a nut shell, physical activity is likely to make you feel better and have a better outlook on life and others. As our community continues to grow, organized athletic activities (e.g. Ironman Texas, The Woodlands Marathon, Ten For Texas, CB&I Triathlon, Muddy Trails Run, Team Never Quit - Marcus Littrell 4 Miler and numerous other charity events) that promote year-round active lifestyles can have a short-term negative impact on getting around our community on the day of the event.

I hope the community will continue to support (and have tolerance for) such short-term inconveniences by not only looking at the good it does for those people who participate, but also the charities that benefit and the economic and image-building benefits for our community. Since its inception, The Strong Firm and our employees have supported an active lifestyle through participation, volunteer hours and sponsorship events and activities. We believe an active community is a healthy community, physically, mentally and economically.

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 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.

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Is Time Really of the Essence?

By: Eric R. Thiergood, Sr.

Eric R. Thiergood, Sr.

"Time is of the essence."

Though many have seen these five words in a contract, few actually understand the legal impact of this provision. Simply put, this provision means that if there are dates or deadlines contained in the contract, those dates are of critical importance and strict compliance is mandatory. Any delay may be grounds for canceling the contract or obtaining other remedies available in the agreement.

A "time is of the essence" provision is often included in contracts where the completion of the obligations is dependent on time or the occurrence of a specific condition or event. "Time is of the essence" clauses frequently appear in contracts regarding the sale of perishable goods or the sale of property where the value of said property can fluctuate rapidly. Other contracts which typically contain this provision include express or rush service contracts, contracts involving performances that are to take place at a specific time and date, and real estate contracts, particularly when market values are fluctuating quickly.

You will usually see a "time is of the essence" provision in situations where performing the contractual obligation after a certain date or time would render such act or the entire contract useless or diminish its value significantly.

Does this mean that if a "time is of the essence" clause is not included the dates will not be mandatory or followed in the contract? Not necessarily, but the parties do run the risk that a court could determine that a "reasonable" compliance with the deadlines is sufficient. This is particularly true if the parties have traditionally been somewhat lax when it comes to the contract dates and deadlines, or if performance of contractual duties does not directly hinge on an important date. While a "time is of the essence" provision can be helpful, we typically advise our clients that if time is truly critical, more specific provisions regarding deadlines or dates be included, such as specifically outlining a "drop dead date" and the specific remedies available (such as termination of the contract or liquidated damages) in the event the deadline is not met.

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Do This, Don't Do That:
Exclusive, Permitted and Prohibited Uses

By: Wendy Lambie

Wendy Lambie

Exclusive use clauses are relatively common during commercial lease negotiations. An exclusive use clause prohibits a landlord from leasing to another tenant for the same business purpose as the existing tenant. For example, a tenant that operates mainly as a seafood restaurant might seek to prohibit the landlord from leasing space to another restaurant tenant offering similar seafood menu items. In order to avoid anti-competition concerns, the general rule is that exclusive use provisions must be reasonable in scope (i.e., geographical area, duration and restricted use).

Permitted use clauses are also common. This type of clause outlines what the tenant is permitted to do in the rental space. By implication these clauses make activities not listed as activities that are not permitted. If drafted thoughtfully it will accurately outline all activities the tenant envisions using the premises for. However, tenants should also be mindful that a narrow permitted use clause can often serve as a restriction on the ability to assign or sublet the space since the assignee of the lease would also be restricted to that permitted use.

Lastly, a restrictive use clause states what a tenant is prohibited from doing. These are most commonly designed as a long list of what the landlord believes is a nuisance to the other tenants or uses that would reduce the overall value of the property. Examples are restrictions against resale shops, adult video stores, bowling alleys, dry cleaning plants and/or firework sales. In addition, logically, if one tenant has an exclusive use (such as the seafood restaurant example above) then other tenants on the property will be restricted from engaging in that use through the drafting of a restrictive use clause.

Ultimately it is the landlord's objective to design a successful shopping center or building with the right tenant mix. For those tenants to each be successful in their operations, these different use provisions must work together

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To Trademark, or Not to Trademark...

Brian Albert

By: Brian Albert

Clients commonly ask, "What do I need to do to trademark _____?" Almost instantly our response is, "Why do you want to trademark _____, and what are you hoping to achieve by doing so?" While almost everyone in the general public is somewhat familiar with the term "trademark," many individuals and businesses do not actually know what a trademark is, what it does and what value it provides. So, before ever getting to the answer of "how," we must first answer the "what" and "why."

Generally speaking, a trademark is simply a word, phrase, symbol, design or a combination thereof that identifies and distinguishes the source of the goods or services of one party from those of others. Trademarks are sometimes confused with copyrights and patents, which are entirely separate forms of intellectual property – a copyright protects an original artistic or literary work, such as a painting or the lyrics to a song; a patent protects an invention, such as the iPhone. It's important to realize these are separate legal concepts and while they may all be important, they are not all related to trademarks, which begs the question, "What do trademarks do?"

In most circumstances regarding trademarks, clients are seeking federal registration with the United States Patent and Trademark Office. The first important point here is that federal trademark registrations are not required to create a trademark. Under common law principles, a trademark is created simply by using a distinctive mark attached to a good or service in commerce. The legal protection of common law trademarks may not be very strong, but they are still technically trademarks. This is why many people seek a federal registration, which provides several advantages, including constructive notice to the public of your claim of ownership of the mark; a legal presumption of your ownership of the mark and your exclusive right to use the mark nationwide; the ability to bring a lawsuit concerning the mark in federal court; and a basis

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The Carrot is Mightier than the Stick:
Using Incentives in Your Trust

Royce Lanning

By: Royce Lanning

Frequently, people approach estate planning with their most challenging child in mind. This is a natural and integral approach to developing estate planning documents. It allows parents to consider their specific circumstances and goals and steer planning in that direction. However, it is important to remember that many times the positive motivation of a carrot can succeed where a conditional stick may fail.

Trusts exist as a set of rules for how assets are to be managed and distributed among beneficiaries. Accordingly, the very nature of trusts requires they have conditions governing when distributions can and should be made. The challenge is avoiding the natural inclination toward using a condition to plan for a potential problem when an incentive may be the better alternative.

For example, many parents are concerned with their children obtaining a college degree, staying off drugs or avoiding teen pregnancy. A common approach is to withhold distributions if the beneficiary fails in any one of these areas. In fairness, this may be the best approach to motivating a beneficiary toward the desired results, but it may also have some unintended negative consequences. A child that wants to weld or fix cars for a living may expend tens of thousands of dollars to earn a college degree she/he never intends to use just to qualify for distributions. Likewise, a child with a drug problem may delay seeking assistance for fear of losing their trust distributions.

By contrast, the trust could provide various levels of incentives for different variations of educational success. A trust provision could be drafted to modify distributions to cover the costs of beneficiaries that attend a rehabilitative facility, or provide a yearly gift to a beneficiary for attending educational events or joining groups that combat teenage pregnancy.

In short, a well-designed trust should generally be a mix of condition and incentive because most beneficiaries are not entirely motivated by either stick or carrot. A well-thought-out estate plan should use all of the tools at your disposal to develop a tailored trust that motivates rather than penalizes beneficiaries.

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Employers:
Do Not Let an Employee's Smartphone Outsmart You

By: Kyla Wilder

Kyla Wilder

Today's technological advances allow an employee to work remotely from anywhere. As this practice has become more commonplace, employers typically provide an employee with a smartphone or laptop in order to conduct business-related activities. As a business owner, you must consider the repercussions of your employees handling client information while using work or personal devices, especially when it concerns sensitive and potentially confidential client information.

Under the theory of respondeat superior, an employer is vicariously liable for the actions of an employee that occur within the scope and course of the employee's employment. From a historical perspective, an employer would not be liable when the employee's actions were motivated purely by personal interest (i.e., actions not within the course and scope of the employee's employment).

However, courts have recently been increasingly willing to expand an employer's liability in situations where the employee acts purely for their own benefit. For example, a court may hold an employer liable when the employee harms a third party while using company Internet or an employer-issued smartphone or laptop. Another risk a business owner faces is a data breach. Not only can this expose a business to bad publicity and customer loss, it could open up the employer to liability for any information that was compromised as a result of the data breach.

The measures outlined below can minimize an employer's exposure and liability related to a data breach or employee misuse of employer-issued equipment.

- Adopt clear, concise company policies regarding employee use of the Internet and employer-issued equipment.
- Train new employees on these policies and provide updates and follow-up training for other employees.
- Adopt and enforce a policy on employee use of personal devices for business purposes, train employees on this policy and provide updated training, if needed.
- Install and monitor filtering and virus protection software (you can either monitor in-house or contract with an IT company for regular monitoring).
- Check your insurance coverage to ensure necessary coverage is in place for employer liability related to illegal or improper Internet and/or email use by employees.

This article merely brushes the surface of this issue, however, I hope these tips provide a good starting point for employers to put policies and procedures in place to protect their business from liability associated with an employee's misuse of company-issued equipment.

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To Trademark, or Not to Trademark

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to obtain registration in foreign countries. Then, the final important question is, "So, why do you want the trademark?"

As stated above, a federal registration provides a host of legal protections for you and your mark. But you have to ask yourself, "Am I going to actually use these protections?" Are you willing to sue someone for infringement? Do you need nationwide exclusive use of the mark? Are you pursuing international registrations? If the answer is no, federal registration may not be worth the time and expense, and that is why it is important to fully understand these legal concepts before making a decision on trademarks.

***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

Fall, 2015

The Strong Firm represented claimant homeowner in residential construction arbitration against builder and obtains a favorable award, including award of liquidated damages and attorney's fees, in client's favor.

The Strong Firm provided legal representation to borrower in a complex $86 million commercial property cross collateralized loan.

The Strong Firm represented borrower in $6.87 million commercial loan.

The Strong Firm represented developer in sale of 3 undeveloped tracts totaling $10.037 million.

The Strong Firm represented client in the development of a high end townhome community in Houston's Heights area.

The Strong Firm represented borrower in complex $60 million commercial loan for the consolidation and refinancing of a 14 medical office building portfolio with properties located throughout, Houston, San Antonio, and the DFW Metroplex.

The Strong Firm represented borrower in the negotiation of $22 million commercial loan for 100,000 plus foot commercial building in Houston, TX.

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.**, Income Shareholder; **Kyla Wilder**, Associate Attorney; **Brian Albert**, Associate Attorney.

The Strong Attorneys in the Community

Above. Kyla Wilder, Wendy Lambie, Lisa Prado & Renee Glazer and company at the **Memorial Hermann The Woodlands Hospital's In The Pink of Health Luncheon** benefiting breast cancer patients and survivors.

Left. Wendy Lambie and her husband John at the **Celebration of Excellence Gala** honoring the 2015 "Hometown Heroes" and benefiting **Interfaith of The Woodlands**. Bret Strong is a 2014 "Hometown Hero."

Mary Kristin Photography

Above. Card tournament winner Brian Albert (left) congratulated by event leader Paco Rivera at **The Woodlands Area Chamber of Commerce's "Cards & Cocktails"** casino event. The Strong Firm was a table sponsor. Brian shared his other area of expertise with 8th graders at York Junior High at the **Education for Tomorrow Alliance's (EfTA) Future Focus program**. The program is a classroom-based curriculum designed to promote positive decision making among junior high school students to help them realize that educational attainment today has lasting impacts on their options later in life.

Above. Cyndi Alvarado, Membership Vice President, thanks Bret Strong for presenting "Connecting with Clients in The Woodlands" at **The Woodlands Area Chamber of Commerce's Young Professionals Network's Lunch & Learn**.