



The  
**Strong Firm**  
Attorneys P.C.

## STRONG • POINTS • NEWSLETTER

Summer 2010



### A Time to Take Charge

By: **Bret L. Strong**

#### The Certainty of Uncertainty

As we are all made well aware by the media, these are interesting political and economic times. It seems that almost on a daily basis in conversations with our clients and community leaders we are asked for our opinion on the local and national business environment. Based upon what we have observed in supporting various businesses the last several months, uncertainty, or at least the perception of such, has become much more certain. Due to the vast increase in instant access to tons of information through streaming communication tools now available to a large percentage of the world, information comes at you at every turn. Filtering through the facts and the spin to determine reality can become overwhelming. It can also tend to create an overall negative perspective on life because sensationalism and negative news based on limited facts seems to permeate and capture the public's attention.



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#### Advocates for Positive Change

With all of this information flying at us every day, it's very easy to allow negativity to impact, and even paralyze, our daily actions. It is our belief that corporate and financial leaders of today need to simply focus on the basics of building entrepreneurial spirit and making incremental positive change to create wealth, growth, and jobs. The people and businesses remaining successful through these troubled economic times have taken complete charge of the matters under their control with a conservative and planned approach to fiscal matters, and active advocacy of positive change in the world around them.

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### Borrowing for Your Business Deal Who Will Show You the Money?

By: **Eric R. Thiergood, Sr.**

Thinking about starting or buying a new or existing business? How to fund the start-up or purchase of a business is a question that we help clients with every day at The Strong Firm. This article will examine the basic options of buyer borrowing to fund the creation or acquisition of a business.

#### SBA Loans

Small Business Association (SBA) loans are a viable option for some new

small business owners, and recent federal stimulus money has provided some additional incentive for lenders to make these types of loans. One common misconception about SBA loans is that they are very easy to obtain because they are "guaranteed" by the federal government. While it is true that the SBA loan program may provide an opportunity for an individual or small business to obtain funding

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### The Strong Firm in the News

**The Strong Firm Sponsors Interfaith of The Woodlands Five Who Share Luncheon.** The event honors residents who have made a difference in health and wellness in The Woodlands community.

**Melissa Proctor of The Strong Firm** has been re-elected as The Woodlands Bar Association's Vice President of Membership.

**The Strong Firm is an official finish line sponsor of the 2010 Muddy Trails Bash and CB&I Triathlon** held on April 3rd at Rob Fleming Park and May 1 at Northshore Park, respectively.

**The Strong Firm represents a national energy company in a \$300 Million transaction** as borrower in renegotiating and memorializing an amendment and restatement of credit facilities.

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# Borrowing for Your Business Deal

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**ERIC R. THIERGOOD, SR.**

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

that it would not normally be able to procure through traditional channels, the process is generally far from “easy.” To secure an SBA loan the lender will generally focus on the strength of the business and the strength of the borrower/owner. To this end, borrowers will find it much easier to obtain funding for the acquisition of an existing business with a proven record rather than attempting to fund an unproven “start up company” with no financial history. For the business, the lender will typically require: 1) a formal business plan describing the business, historical and projected sales, number of employees, length of time in business, and proposed ownership structure; and 2), financial statements for the past three years and current interim financial statements. In evaluating the strength of the borrower, banks will require and will examine the personal financial statements of the owners generally holding 20% or more of the business. Contrary to the beliefs of many new business owners, it is almost impossible to establish “business credit” for your new business that is not directly and heavily tied to your personal finances. A lender will also typically further require a personal guaranty of any loan from any and all owners of the company.

## Traditional Loans

Traditional bank financing is an alternative for acquiring or starting a new business, but in today's tough financial market, many new business owners find the borrowing requirements difficult to meet. If the business does not have significant tangible assets that the bank can utilize as collateral, it has become near impossible to obtain a traditional business loan. Traditional lenders look to similar factors as with under an SBA loan; however, the requirements are much more subjective based on historical relationships between the borrow and the bank, and new business owners are advised to work closely to establish relationships with their banks and banker.

## Seller Financing

Having the Seller of the business finance all or part of the purchase price of an existing business to be acquired may be an option that is becoming more commonplace and is often more favorable to both buyer and seller if traditional or SBA funding is not available. The upside for the buyer is that it would allow them to purchase a business that they would otherwise not have been able to purchase, and they can be creative in structuring repayment terms. For the seller, a seller financing option may be attractive, especially if it is a type or nature of business that is traditionally not able to fund through third party financing. The drawback to the seller, obviously, is that the purchase price is paid out over time and that the buyer's ability to pay back the seller is often contingent, in part, on the success of the business and the ongoing ability and willingness of the buyer to continue to pay. If seller financing is to be utilized, it is critical that both the buyer and seller be protected by utilizing appropriate security documents and other contractual techniques to ensure the ongoing transition and viability of the business.

## Government Grants

Contrary to the claims of many late night infomercial pitch men and stimulus touting politicians, generally the government is not bending over backwards to give entrepreneurs free grant money that does not have to be paid back to start a business. While it is true that there are some government grants available to assist a very limited number of new business owners, the reality is that these funds are very difficult to acquire and the process in applying for and obtaining these grants is often prohibitively arduous and time consuming. Pass over the infomercials and other pamphlets and visit the official US Government website outlining available government grants, [www.grants.gov](http://www.grants.gov).

If we can help you with your start-up or acquisition of a business and the financing thereof, please give us a call.

## The Strong Firm Welcomes Rachel Nazareth as Intern

Rachel Nazareth has joined The Strong Firm as a summer intern through her law school program with the Thomas M. Cooley Law School in Lansing, Michigan. She is anticipating to graduate with a Juris Doctor degree in August of 2010.

Among her many accomplishments, she is on the accelerated two-year program, serves as the secretary for Phi Alpha Delta, and is a member of the Business Law Society. She holds a Bachelor of Science in Criminal Justice from Roger Williams University in Bristol, Rhode Island, and has held internships with law firms serving clients in the areas of elder law, estate planning and divorce, and government relations.

We welcome Rachel to our team!



**MELISSA R. PROCTOR**

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Melissa is licensed to practice law in both Texas and Colorado.

She began her practice in Denver, Colorado in 2002, and joined The Strong Firm P.C. in 2006 as its first associate after graduating from The University of Texas Law School. Melissa enjoys various team sports and is an avid skier. She is residing and raising her family in Conroe, Texas.

# Mediation

## A Commonly Utilized Process for Dispute Resolution

By: **Melissa R. Proctor**

In today's complicated and litigious world, contracts are more often including terms requiring that the parties "mediate" any disputes. These provisions are a simple agreement between the parties to attempt to work out the differences through a non-binding formalized process involving a trained neutral third-party through a process called "mediation," before resorting to the court system. Even if you run to the courthouse, more and more often, judges are mandating mediation prior to any trial.

### A Glimpse at the Mediation Process

So what exactly does mediation look like? It can vary in format. The mediator's personality, as well as their experience and success with particular mediation techniques will play a large role in how the process will unfold. The parties themselves can also suggest or agree upon creative variations for their mediation customized to their controversy.

The mediation process always begins with the selection of a neutral third party to act as the mediator (either agreed upon or court appointed). Once selected, the parties submit mediation "packets" to the mediator, including relevant documents, pleadings, case law, and arguments as a way to familiarize the mediator with the dispute. A date and a location are then agreed upon for mediating the matter (generally mediations last between one-half to a full day or two).

The mediation usually begins with the parties gathering in the presence of the mediator and jointly listening to the specific rules and process for their mediation as presented by the mediator. The counsel for each side may then present an opening statement to briefly argue their relative position. Thereafter, the mediator may allow for a joint session to pinpoint issues, or may choose to immediately separate the parties and begin the process of attempting to help the parties come to agreement. Once the parties are separated in their respective "caucus," the mediator moves freely between the parties acting as a liaison for all settlement offers. The mediator meets privately with each caucus, pointing out strengths and weaknesses in their positions and alternately attempting, if possible, to move each side toward common ground and resolution.

### The Mediation Distinction

The most important distinction of mediation is the fact that the mediator has no authority to make a ruling or decide a case on behalf of the parties, and if resolution is to be reached, the parties must creatively and cooperatively reach an agreement themselves with the mediator's guidance. If a mutually satisfactory solution is reached at mediation, the parties will sign a term sheet outlining the basics of their agreement. Definitive settlement documents will later be drafted by counsel for the parties to memorialize the full scope of agreement. If no agreement is reached, the parties are then free to embark upon or continue down the road which leads to the courthouse. In that event, the content of their settlement discussions at mediation will remain completely confidential.

### Why Mediate?

There are many advantages and benefits to mediation. When compared to litigation, mediations are generally much cheaper and much faster. They also provide a format that is more likely to preserve existing relationships between close parties (neighbors, family members, business partners) than a contentious lawsuit. There is the opportunity to choose a mediator who has a background and expertise in the industry or area of law at play who can provide real insight into the strength of your case, and also the opportunity to obtain objective feedback on each side of the case. Mediated settlements are also open for creative resolutions, payouts, bartering of goods and services, and other unconventional resolutions, whereas litigation simply leads to winners and losers. There are few downsides to mediation; even if settlement is not ultimately reached, the mediation process provides insight into weaknesses in your case and a glimpse at the opposing party's arguments and sticking points in advance of trial.

The attorneys at The Strong Firm include trained mediators ready to mediate any business case and counselors well versed in representing parties to mediation. If we can help you mediate a matter, please give us a call.



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# The Strong Firm



From left: **Melanie Edleston**, office manager; **D. Joe Griffin**, law clerk; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, associate attorney; **Melissa R. Proctor**, associate attorney

**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**
- **Commercial Disputes**
- **Wills, Probate, Trusts, and Estates**



**D. JOE GRIFFEN**

Joe is currently a law clerk with the firm planning on joining the firm as an associate upon passing the Texas Bar Exam and his licensure to practice in The State of Texas. He will receive his Juris Doctorate from the University of Houston Law Center in May 2010. He received his undergraduate degree from Brigham Young University in Provo, UT, in International and Latin American Studies. He and his wife have three children

## Clerk's Corner – Law Stranger than Fiction

**By: D. Joe Griffin**

Did you know that in Utah, birds have the right of way on any public highway and that in Kentucky it's the law that a person must take a bath once a year? My personal favorite is the 1925 California law which made it illegal to wiggle while dancing, and another California law which guarantees sunshine to the masses (Does this mean Californians are entitled to a sunshine bailout when it rains?). Apparently the Washington State legislature was under the impression that their state was filled with giants when they enacted a law which made it illegal to carry a concealed weapon that is over 6 feet in length—seriously, everything is bigger in Texas, not Washington State! And of course, in our own beloved State a strange Ozian type rule exists in which people argue being legally married due to public introduction as husband or wife three (3) times or more (I think you may have to tap your heels together as well). For those of us who find entertainment in grantor retained annuity trusts, and combing through complex contracts, these laws show that the law can be humorous, even if we are laughing at it!

## A Time to Take Charge

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It is these same innovative people who will find positive ways to provide effective health care for their families and employees, and find innovative ways to navigate and influence changing tax structures and the inevitable growth of federal government. There has never been a better time to take charge and become an advocate for positive change, and we hope to help those of you ready to be such advocates. Thank you in advance for the opportunity to work with each of you.