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STRONG • POINTS • NEWSLETTER

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Inside This Issue

Commercial Development Remains Strong in The Woodlands	1
Death and Taxes - The Uncertain Certainties of the 2010 Tax Act	2
Investments and Related Estate Planning for Foreign Nationals	2
Purchasing Real Estate Prior to Foreclosure	3

The Strong Firm in the News

February 8, 2011 – The Strong Firm Finalizes Equipment Financing Workout For Large Construction Service Company. After many months of negotiation, The Strong Firm attorneys finalized a workout plan and restricting of debt for a large local company providing equipment and services in support of commercial and residential construction, lowering their debt servicing costs to nearly half of that prior to negotiation.

February 1, 2011 – The Strong Firm Renews its Commitment to Sponsorship of The Woodlands Township Events for 2011 as the “Official Law Firm” of Muddy Trails 5k/10k, CB&I Triathlon and Ten For Texas . The Strong Firm continuing its long-term commitment to local athletic events renewed its sponsorship commitment to be the Official Law Firm of the three local running and triathlon events. In addition to providing monetary support and ongoing risk management guidance for the events, The Strong Firm will be providing water and water bottles to encourage proper hydration for all participants.

December 15, 2010 – Dispute Related to Louisiana Oilfield Settled. In association with Louisiana counsel, the attorneys at The Strong Firm successfully mediated a settlement on behalf of an independent oil and gas producer in a multi-million dollar, multi-defendant (including two major oil and gas companies) lawsuit in Louisiana related to historical oilfield operations.

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Commercial Development Remains Strong in The Woodlands

By: Bret L. Strong

While the commercial real estate market throughout the country continues to struggle, as evidenced by The Wall Street Journal reporting on February 1, 2011, that the delinquency rate for commercial mortgage-backed securities reached a record 9.34% (as reported by Trepp, LLC), The Woodlands area continues to defy the odds as commercial development, activities and growth continue at a pace which is the envy of the region and the country.

Medical Office Market Thriving

Medical office and facility development in and around the area, especially near the campuses of Memorial Hermann and St. Luke’s campuses continues to thrive. A publicly-traded healthcare real estate investment trust recently acquired a number of existing medical buildings, and additional developable land, near each of the campuses from a local developer, showing the solid investment value held in the area’s medical real estate. Several of our developer clients are discussing medical office building acquisition and/or development in various areas throughout both southern and northern portions of Montgomery County.

Tourism and Nationally-Recognized Events Abound

With infrastructure and facilities that are beautiful, inviting and unique on a world-wide scale, we are seeing, and are providing legal support for, more and more regional, state-wide, national and international conventions and events bringing thousands of visitors to the area to shop and stay in local accommodations. On May 21, 2011, Ironman® Texas (our firm having represented The Woodlands Township in the host sponsorship) will be held in The Woodlands and throughout Montgomery County, bringing 2,200 participants and their families, along with tens of thousands of visitors and world-wide television coverage, with an estimated \$16.9 million dollar local impact. The recently announced Woodlands Marathon is likely to attract thousands more participants and untold amounts of visitors and dollars for an extended weekend the first weekend in March of 2012. It seems that on an ongoing basis, more and more events are announced being brought to the area by both public and private ventures. With events such as The Woodlands Crawfish Festival (March), Muddy Trails 5k/10k (April), CB&I Triathlon (May), the Red Hot and Blue Festival (July), October Fest (September), Dragon Boat Festival (September), Ten For Texas (October), Haunted Trail (October), Lighting of the Doves (November), International Winter On The Waterway (November), The Ice Rink at Town Center (November-January), and new events soon to be announced soon over both Memorial Day (May) and Labor Day (September) weekends, The Woodlands has placed itself on the map on a world-wide basis as an attractive destination year-round.

General Office Development Still Solid

While The Woodlands is no longer experiencing the blistering pace of 2008, where general office development was at an all-time high and resulting vacancies in The Woodlands were practically at zero quality Class “A” and “B” office buildings are continuing to be constructed and profitably leased in the area, at a time when many commercial areas have seen rising vacancy and lower rental rates. For example, 4 Waterway, a nine-story, two hundred plus thousand rentable square foot building, built on The Woodlands Waterway by The Woodlands Development Company opened in 2010, and is now over one-half occupied.



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Continued on page 4

Death and Taxes - The Uncertain Certainties of the 2010 Tax Act

By: **D. Joe Griffin**



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Joe became Associate Attorney in 2010 after graduating from the University of Houston Law Center. His areas of practice include: business law and contracts; corporations, LLC's and partnerships; business and investor immigration; real estate; trademarks; and estate planning and probate. Having lived in Argentina, as well as in Mexico City D.F., Joe is fluent in Spanish and conversational in Portuguese.

We are all familiar with the oft quoted phrase by Benjamin Franklin that "in this world nothing is certain but death and taxes" and as our attention turns toward the ritual gathering and filing of tax information, this "certainty" can weigh heavily on us all. On December 17, 2010, the President signed into law the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (the "2010 Tax Act"). The 2010 Tax Act contains extensive provisions which have yet again altered the way in which an appropriate estate plan is designed, including changes to exemption amounts and rate, portability provisions, and gift and estate taxes. This article will provide you with a brief review of some of these provisions.

Exemption Amounts

Many sources have been accurately reporting that under the 2010 Tax Act the exemption from estate taxes has increased to five million dollars (\$5,000,000) for individuals and ten million dollars (\$10,000,000) for married couples. The estate tax rate has also dropped from 45% down to 35%. These exemption amounts, starting in 2012, have additionally been indexed for inflation. Given the size of the exemption amounts, even conservative inflation percentages (annual adjustments to other exemptions have typically been around 4%) will result in significant additional amounts that can be given away without being subject to gift and estate taxes. At a 4% inflation adjustment, the \$5,000,000 exemption will grow by about \$200,000 per year.

Portability

Prior to the 2010 Tax Act, if a spouse with a taxable estate (over \$5,000,000) died without proper estate planning, and left his or her estate outright to the surviving spouse, that deceased spouse's ability to shelter property from estate taxes after both spouses died was lost. Even though the bequest to the surviving spouse did not generate any estate taxes due to the "unlimited marital deduction," it meant the surviving spouse was left with all the property, but with only one person's exemption from

estate taxes. The exemption of the first spouse to die was therefore lost if no "bypass" trust was created.

The 2010 Tax Act has introduced new "portability" provisions which allow married couples to potentially save estate taxes, effective January 1, 2011. The 2010 Tax Act accomplishes this by allowing a surviving spouse to add the unused portion of the deceased spouse's \$5,000,000 exemption amount to his or her own \$5,000,000 exemption amount, creating the potential to significantly increase and even double the amount that can be given away or left tax-free upon the death of the surviving spouse.

Gift and Generation Skipping Taxes

The 2010 Tax Act also substantially altered both gift taxes and generation skipping transfer ("GST") taxes. Gift taxes, as the name suggests, apply to transfers, made while living, in excess of any available exclusions and exemptions. GST taxes apply to transfers made to grandchildren, great-grandchildren and certain other persons and trusts. Under the 2010 Tax Act the annual exclusion from the gift tax, which is the amount that any person can give to any other person each year without using up any part of the lifetime exemption from gift taxes, was not changed. The annual exclusion was \$13,000 per recipient last year, and although it has been indexed for inflation for years, it remains at \$13,000 for gifts made in 2011. However, starting in 2011, the available lifetime exemption from both the gift and GST tax has been increased from \$3,500,000 in 2009 to \$5,000,000 per taxpayer. Importantly, the gift tax exemption had previously been only \$1,000,000 prior to 2009 with no portability. Now, however, when a surviving spouse has unused exemption amounts from a spouse who died, then that carry-over amount can be added to the \$5,000,000 gift tax exemption of the surviving spouse, thus increasing the amount that can be given away gift-tax free during his or her lifetime. With such a significant increase in the exemption amounts now available to individuals and married couples, many additional planning options are now available to people who want to make

Continued on page 4



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Investments and Related Estate Planning for Foreign Nationals

By: **Mariana Grijalva**

The beautiful scenery, quality shopping and many amenities which attract international tourists and visitors to The Woodlands on a regular basis, have now become the basis for many foreign nationals to purchase second homes in the area and take advantage of opportunities to bring their families and establish businesses in The Woodlands and surrounding areas.

As is true with anything else, when making an investment (such as purchasing a primary home, a vacation home, or an investment property) it is always important to plan for the long-term related to that investment. Yet often the

thought of what will happen to these assets at the time of our death does not enter our mind. Planning and preparing the necessary documents to protect our investments in the event of our death is an important matter that should be carefully considered, as it can have significant fiscal and financial effects on our property and estate. As is detailed in Joe Griffin's article in this same issue, the law as it currently stands imposes a 35% estate tax rate. And, while the 2010 Tax Act does provide an exemption from this tax for estates totaling below \$5,000,000 for individuals and \$10,000,000 for married

Continued on page 3

Purchasing Real Estate Prior to Foreclosure

By: Eric R. Thiergood, Sr.

First Installment of a Series "Purchasing Properties in the Various Stages of Foreclosure":

While the fact that it is bad news for those facing or going through the process of a foreclosure of real estate, it can provide a great opportunity for families looking to purchase a residence as well as for investors looking to acquire residential or commercial investment properties. In this article we discuss one of three common ways of purchasing properties in the various stages of the foreclosure process, that being a purchase prior to foreclosure.

Locating Pre-foreclosure Properties

Purchasing a pre-foreclosure property involves locating and purchasing a property in a distressed or defaulted mortgage prior to the bank actually foreclosing. This may be time consuming because often these properties are not listed for sale. There are a variety of websites and services that provide lists of "pre-foreclosure" properties, some for sale and some not. However, be cautious, as most of these websites require you to pay for the listings and may sometimes contain outdated or simply erroneous information. A more common and reliable method of locating pre-foreclosure properties is to monitor any notice of mortgage default, notice of acceleration of note, and notice of trustee sale (foreclosure) postings at the real property department of the county courthouse. Mortgage holders are not required to post the notice of mortgage default or notice of acceleration of note, but are required, under the Texas Property Code, to post the notice of trustee sale (foreclosure) at the county courthouse. Posting of a notice of mortgage default or notice of acceleration of note is an indication that the mortgage is "in distress" or in default. Be sensitive to the situation, because once identified, approaching the property owner of such properties with an offer to purchase, may be a sensitive topic especially if the property is not being listed for sale. On the other hand, some owners may be relieved at the opportunity to get from under a defaulting mortgage and may jump at the chance to sell.

Dealing with the Inevitable "Short Sale"

Obviously, if the purchase price of the home is at or greater than the total amount owed (including fees and

penalties) under the mortgage, the mortgage holder will generally have no objections to permitting the sale of the property to proceed (subject to the mortgage holder being paid). However, when the sales price is less than the amount the bank is owed (commonly referred to as a "short sale"), substantial work with the mortgage holder is generally required. The process of convincing a mortgage holder to approve a short sale will require substantial data showing market values having decreased based upon comparable sales in the area. Patience and diligence from both seller and buyer will be required to convince the mortgage holder to proceed (and take a loss). Keep in mind that the mortgage holder in a short sale is not obligated to halt any foreclosure plans, so you must get the mortgage holder to agree to suspend their foreclosure proceedings, or run the risk of foreclosure on the property before you can make your deal. Furthermore, if the property owner changes his or her mind at any point in the short sale process and decides to file bankruptcy, the short sale will be halted and any time and money you have invested at that point will be lost. Fortunately, once the mortgage holder has approved the short sale, the closing process is relatively the same as a normal closing. A short sale will impact the seller's credit almost as negatively as a foreclosure, and unless the mortgage holder agrees to the contrary, the mortgage holder will usually have the right to collect the difference between the sale price and the amount owed and issue a 1099 to the seller for any amounts of mortgage deficiency that is forgiven. It is important that the seller understand these ramifications prior to commencing the short sale process in order to avoid last minute problems killing a deal at the closing table. As is always the case in any real estate closing, have your attorney review the sales contract prior to execution and verify the potential for bankruptcy of any seller. Additionally, always utilize a reputable title company for title searches and to issue a title commitment and title insurance on the property, as well as qualified appraisers and inspectors to verify the value of the property before purchasing. The Strong Firm can assist you in any stage of this process to help increase the likelihood of a successful outcome.



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Investments and Related Estate Planning for Foreign Nationals

Continued from page 2

couples, it is important for foreign nationals to remember that the protection provided by this exemption is only available to United States citizens. What this means is that, regardless of any will that a foreign national may have executed in his/her home country, at the time of his death, any property that he/she has in the United States will generally be subject to the 35% estate tax. Therefore, it is crucial for non-citizen foreign nationals purchasing assets (including businesses or real estate) in the United States to invest in a proper estate plan in the United States to safeguard their assets. With the aid of

knowledgeable attorneys, foreign nationals may be able to establish an estate plan with the necessary types of trusts and trustees that may allow them to take advantage of certain exceptions from estate taxes.

At The Strong Firm, PC, our experienced business and estate planning attorneys have helped many foreign national clients develop plans that allows them to systematically invest in property and businesses in the United States while carefully planning for their future and protecting their interests. If we can assist you in this area, please feel free to give us a call.



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The Strong Firm



From left: **Meghan Leheny**, legal assistant; **Mariana Grijalva**, attorney; **Melanie Edleston**, office manager; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, associate attorney; **Alicia Lightsey**, paralegal; **D. Joe Griffin**, associate attorney.

We provide legal services in the all of the following areas:

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- Real Estate
- Business Disputes
- Wills, Probate, Trusts, and Estates
- Mergers, Sales and Acquisitions of Businesses
- Oil, Gas and Energy
- International Business Investment



Commercial Development Remains Strong in the Woodlands

Continued from page 1

Other Class “A” buildings in the vicinity along The Woodlands Waterway, such as 24 Waterway, 21 Waterway, Waterway One (the office location of The Strong Firm) and Waterway Two, although having seen some turnover and vacancies resulting from a down economy and corporate restructurings, are not seeing significant vacancy increases or rent decreases. And with the ever-persistent rumor of a major oil company locating its corporate campus on several hundred acres just a few miles south of The Woodlands (see Houston Chronicle – January 28, 2010), most believe the general commercial office development and rental environment in The Woodlands area continues to be rock solid.

Retail Soft in Areas but Good for Those with Unique Offerings

While retail development and leasing in retail areas, and related pad site development for restaurant and local shopping, have slowed significantly, the downturn has not halted unique and entrepreneurial and long-time established national retailers from breaking into The Woodlands market in a big way. Hubbell & Hudson® Bistro and Market, a locally-owned and operated high-end grocery, with an elegant bistro-style restaurant next door, has taken The Woodlands by storm, with their upscale approach to delivering a unique market and dining experience. They also recently opened a second location under the name “Hubbell & Hudson® Kitchen” at 4526 Research Forest Drive (at Gosling Road) to better serve the demand for their product west and north of their Waterway location. The bad news associated with the closing Rockfish Seafood Grill just south of The Woodlands Mall, was quickly followed by the announcement that Mi Cocina, a very popular Mexican restaurant in the Dallas area, would quickly open in the same location. It was also announced in 2010 that La Guadalupana Mexican Cuisine & Bar and Luca & Leonardo Ristorante (Italian) both would be opening in early 2011 on The Woodlands Waterway next to Grimaldi’s Pizza (a very popular New York-style Pizzeria that opened over a year ago). All and all, it appears that unique approaches and quality products continue to prosper in The Woodlands market.

Death and Taxes - The Uncertain Certainties of the 2010 Tax Act

Continued from page 2

gifts during their lifetime, whether through a trust structure or simply outright to children, descendants, or other beneficiaries.

More Changes to Come

In future articles we will explore more of the changes to come as a result of legislation coming out of Washington. One thing for certain is that a proper estate plan should be as flexible as possible so that estate tax savings can be maximized no matter what tax laws are in effect when death occurs. As Mr. Franklin aptly stated, despite the uncertainty surrounding the future of death taxes, “nothing is certain but death and taxes,” and a proper estate plan can ease the burdens associated with both of those certainties.