

# Elder Law Update: Selling the Family Home

By Remo A. Hammid, Esq.

As Elder Law attorneys we often find ourselves in the real estate business – representing our clients in real estate transactions. That's because most of our clients own a home and sometimes even a vacation property. As our clients get older, many will downsize their homes as their children leave or their ability to maintain a large property diminishes. Once our clients have decided to sell, their first concern, and rightly so, is how much they will have to pay in taxes.

The family home is usually the most valuable asset in a senior's portfolio – both financially and emotionally. And it is typically the asset that has appreciated the most over time. Consider that many of today's seniors bought their home more than ten years ago. Over that time the value of their houses have risen dramatically, sometimes in multiples exceeding twenty times what they originally paid. This appreciation or profit is deemed a capital gain by our federal and state taxing authorities, and therefore taxable.

**Example:** Mary and John bought their house for \$50,000 twenty-five years ago. They are now selling for \$650,000 and moving to a retirement community. We'll assume that Mary and John spent about \$100,000 making capital improvements to their property (new shrubs, roof, new dormer, etc.) over the past twenty-five years. Their

profit is calculated as the selling price, less what they paid, less capital improvements. In this case the profit would be \$500,000. This, as we said before, is a capital gain and is taxable at approximately twenty-five percent for total tax bill of \$125,000. That's a significant tax bill. However, John and Mary might qualify for an exclusion under the Tax Code which looks to encourage home ownership.

**The Rule.** The relevant section of the Code states that each individual can exclude up to \$250,000 of the gain on the sale of a home if the individual has owned the property and used it as his or her primary residence for a period of two years over the last five years. Married couples may exclude up to \$500,000. For many sellers, this will mean that there is no taxable gain.

**How does it work?** To be eligible, the individual must have used the property as a primary residence for two years within a five year period (the years of residency may be non-consecutive). Also, to take advantage of the \$500,000 married couple deduction, it is not necessary that both spouses own the property, only that both have used the property as their principal place of residence for two of the past five years. In cases where one spouse has died, the surviving spouse's period of ownership includes the period in which the deceased spouse owned

the property.

## **Hardship Exception.**

There are some lesser known exceptions to the rules on excluding gain from the sale of a primary residence. For instance, someone who fails to meet the ownership and use requirements for a two-year period may still be entitled to a "hardship" exclusion. According to the IRS, a hardship exception may be granted when the sale of the home is due to relocation due to employment, health or unforeseen circumstances. Under the hardship provisions, relief is granted in the form of a prorated exclusion amount based upon the actual time of occupancy and use.

## **Long - Term Care Exceptions.**

Of particular importance to seniors are the provisions relating to physical and/or mental incapacity. If an individual is unable to care for himself and must be placed in a licensed care facility such as a nursing home, the individual will be deemed to continue to own and occupy the principal residence. Therefore, a resident of a nursing home will still be eligible to take advantage of the exclusion even if she no longer occupies the home.

It's important to point out that while the tax law may allow nursing home residents to take advantage of the exclusion, doing so may not be in the best interests of the nursing home resident or the resident's family. By keeping the property in her name, the

resident makes the home an available asset, possibly precluding Medicaid eligibility.

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## **UPCOMING SEMINARS:**

**Elmont Public Library,**  
Friday,  
September 28, 2007  
at 12:30 PM  
("Legal Update: Medicaid  
and Long Term Care  
Planning")

**Floral Park Public Library,**  
Saturday,  
November 3, 2007  
at 11:00 AM  
("Basic Estate Planning  
for Everyone")