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# REAL ESTATE DIGEST

PRACTICAL REPORTS ON TAXES, FINANCING, MARKETS, LAW AND TECHNOLOGY

## Caring for the Elderly While Preserving the Family Homestead

by: Peter Brogan, Director/Legal Department

Estate planning sounds very sophisticated, but regular people do it everyday. Choices are made, deeds are drawn and delivered. People work their entire lives to purchase and maintain the family home. Children grow up there, and when they leave it is their North Star.

Of necessity, parents frequently require long-term care. Few can pay for it without depleting all family assets. A primary goal, then, is to preserve the principal family asset, their home.

As in all matters there is a right and wrong way to accomplish this goal.

Waltzing into an attorney's office the evening before a parent enters a nursing home and requesting assistance is probably the wrong way. The right way, which will be revealed by the experienced attorney, is the delivery of a deed from parent to child which reserves a "special" or "non-

general" power of appointment.

A deed that simply transfers title does start the clock running for the Medicaid 36-month "look back" period. Such a deed does nothing to mitigate capital gains tax consequences for the child/grantee.

There is a solution. A deed transfer that reserves a power of appointment accomplishes two important goals. It establishes the commencement of the 36-month Medicaid "look back" period, and it gives the child the stepped-up basis for capital gains tax purposes.

What does this mean? A deed without such a power of appointment is a gift to the child, and the child has the same basis as the parent. So, if the parent purchased the home for \$60,000.00 in 1975, and the child sells it for \$540,000.00 in 2005, the gain is \$480,000.00. At present, the rate of capital gains tax is 15%, resulting in a tax of \$72,000.00 to the child.

Inserting the following language in the deed will start the clock running for Medicaid purposes, and give the child the "stepped-up" basis (market value at time of conveyance) for computation of capital gains tax:

"AND Grantor reserves the power to appoint, in whole or in part, the property conveyed hereunder to or for the benefit of any one or more of the Grantor's issue in such proportions, outright or upon such trusts, terms and conditions as the Grantor may specify by a writing executed and acknowledged during her lifetime and recorded in the Bronx County Registry of Deeds within sixty (60) days of the date of such exercise, or by her last Will or Codicil making specific reference hereto. In the latter case, failure to record notice or any such exercise of this power in the Bronx County Registry of Deeds within sixty (60) days of the Grantor's death shall be conclusively treated as a default in the exercise of the power. A release of the power reserved hereunder, in whole or in part, shall be effective when recorded with the Bronx County Registry of Deeds. Any exercise or release of the foregoing powers may be made by the Grantor's attorney-in-fact acting under a

durable power of attorney."

Why does this happen? A power of appointment gives the parent the right to re-convey the property to someone else, making it an uncompleted gift. (See Treasury Regulations Section 25.2511-2(c)). The effect is that the property still belongs to the parent.

*Corliss vs. Bowers* 50 S. Ct. 336 (1930) The property will be included in the parent's estate, thus the stepped-up basis. IRC Section 2038 and 1014(b)(9). But, for Medicaid purposes it is a completed transfer.

If this sounds like the best of both worlds, it's because it is.

Lastly, reserving a power of appointment preserves a strong element of control over the parent's home should circumstances and feelings toward the children change.

## TRENDS

### Tucson Builder Takes "Trade Ins"



A relatively new home building company in the Tucson market is using a marketing strategy that might look familiar to anyone who recently purchased a car, according to an article in the Arizona Daily Star. ITC Homes Inc. is accepting home "trade-ins" at its 700-home Santa Rita Acres Estates.

The custom homes, which start at \$289,000, sit on one-acre lots. The development caters to buyers who are looking for a move-up house, said Ron Amiran, the project director.

Last year, Amiran made the offer to two prospective buyers. Both loved the trade-in concept and bought homes. So the company began advertising the program in earnest.

If someone wants to purchase an ITC home, the deal is sealed on a contingency: that ITC and the buyer can agree within a reasonable amount of time on a selling price for the "old" home. If the company and the buyer can't work out a price by themselves, an independent appraiser will help settle the price.

If there's still no agreement,

there's no deal, Amiran said.

The offer is open to anyone living in the Tucson metropolitan area, including Green Valley and Oracle, or anyplace within "striking distance," Amiran said. ITC workers must be able to evaluate and repair the home if necessary, he said. ITC will then turn around and try to sell the home.

Although uncommon in Tucson, the builder's tactic is not entirely new.

The Web site for Veridian Homes in Madison, Wis., offers a sale program in which the builder will purchase a home buyer's home if it can't be sold on the open market within a predetermined time. The Web site for Davis Homes in Indianapolis offers a similar deal.

### Consumers Voice Worries Over Finances in 2005



A financial survey released by a Fortune 500 financial services company indicates Americans are worried

about their economic well-being in the coming year. Taking into account their income, savings and investments against financial obligations, some 44 percent say their families will not be financially better off in 2005 than in 2004, an increase over the 38 percent of a year ago; while those expecting a better family economic situation dropped from 57 percent to 47 percent.

Also, the number of people expecting their incomes to decrease in the coming year doubled from a year earlier. Twenty percent expect their total family income to decrease, up from 10 percent a year ago, while only 38 percent expect it to increase, down from the 51 percent recorded last year. About 38 percent said they expected their incomes to stay the same.

A spokesman said there were many reasons for the pessimism. "Consumer debt is high, health care costs have jumped, interest rates are expected to rise, the dollar has lost value, and many Americans have already tapped available dollars through mortgage refinancing or

home equity loans. Many are feeling financially squeezed and uncertain about the future."

### Demand For "Smart Homes" On The Rise



More buyers are asking about "smart home" technology, but many consumers are still concerned

about costs, according to survey of builders conducted by the International Builders Show.

About 51 percent of builders said buyers are beginning to ask about home technology now; 31 percent said they felt the concept would not catch on for another few years and 14 percent said demand for "smart homes" was five or more years away.

When builders were asked what they thought was the most significant barrier to advancing the concept of "smart homes," 26.5 percent said it was the buyer's perception that "it's not worth the cost" and 22.7 percent said it was lack of home owner awareness.

Almost 34 percent of builders said home owners need to see more model homes featuring technology before it would catch on.

## MORTGAGES

### Under Fire: Industry to Oppose Any Change To Mortgage Interest Tax Deduction



It is difficult to determine if executives from the National Association of Realtors are more concerned about the prospect of rising interest rates or the winds of tax reform.

Both David Lereah, the huge trade group's chief economist, and Walter McDonald, its immediate past president, said that the association "would aggressively oppose" any move to eliminate the mortgage interest deduction in the Bush administration's second term.

"We have heard that tax reform

will probably be on the table," Lereah said. "We will do everything we can to see that it remains in place for consumers."

The mortgage interest rate deduction has been viewed as an enormous incentive of home ownership. Taxpayers who choose to itemize their federal income taxes can reduce taxable income by subtracting the amount they paid in mortgage interest. While the benefit is not a dollar-for-dollar tax deduction, it can be a significant amount, especially in the early years of a fixed-rate loan.

What could come under scrutiny in the next four years is the ability to deduct the mortgage interest on a second home. Under current guidelines, consumers can deduct the interest on two residences – sometimes known as "The Congressman's Rule," because many lawmakers keep a residence in their home state and another in the nation's capital.

Accountants said that if the second-home mortgage interest deduction is threatened, taxpayers could choose to rent out their homes for a period greater than their personal use and change the second home's status to an investment property.

Lereah said he believes the United States is "more toward the middle" of a housing boom rather than at the end, and any change in mortgage deduction law could threaten the industry.

"The demographics of our country favor this trend going forward because echo-boomers, the children of the baby-boom generation and a group almost as large, will be in the prime years for buying a first home for the next decade. These findings demonstrate a fundamental underlying demand that will be driving the housing market to a higher plateau for the foreseeable future."

## FHA Limits Go Up Seven Percent



The Federal Housing Administration has increased its single-family home mortgage limit by about

seven percent, meaning it will insure single-family home mortgages up to \$172,632 in low-cost areas and up to \$312,895 in high-cost areas.

Loan limits for two-, three- and four-unit dwellings also increased. The FHA is sending letters to thousands of mortgage lenders and brokers to make them aware of the higher limits, which can help families.

Last year, the loan limits were \$160,176 in low-cost areas and \$290,319 in high-cost areas. Five years ago, the limits ranged from \$121,296 to \$219,849. Low-income and first-time home buyers are attracted to FHA-insured loans because the agency requires only a three percent down payment.

## Subprime Borrowers Risk Higher Prepayment Penalties



People with subprime home loans who live in minority neighborhoods face 35 percent greater odds of being

saddled with prepayment penalties than borrowers living in predominantly white neighborhoods, according to new research from the Center for Responsible Lending (CRL).

CRL reports findings – in direct contradiction to subprime mortgage industry claims of homeowner savings – that borrowers burdened with prepayment penalties actually pay higher interest rates on subprime home-purchase loans and receive no meaningful interest-rate reduction when they choose to refinance.

CRL found that 30-year subprime purchase loans with prepayment penalties carried an interest rate 40 basis points higher than would otherwise be expected. Applying CRL's research findings to 2003 subprime purchase loans, researchers estimated that during the life of these loans, Americans will pay up to \$881 million in extra interest on purchase loans with prepayment penalties.

Prepayment penalties occur in 70 percent to 80 percent of all subprime home loans, but are almost

nonexistent in the prime mortgage market. Subprime lending now accounts for one out of five mortgage loans.

## HOME BUYING

### What Buyers Hate About Moving



Feeling anxious about moving into your new home? You're not alone. Owens Corning

recently surveyed new home owners, asking what they hated most about moving into a new dwelling. Here's what they said:

- 1 Unpacking/getting rid of boxes.
- 2 Weather-stripping and caulking doors and windows.
- 3 Fixing dripping faucets.
- 4 Hanging pictures/shelves without damaging walls.
- 5 Cleaning gutters.
- 6 Repairing plaster and drywall.
- 7 Making sure house is properly insulated.
- 8 Touching up paint.
- 9 Checking and making sure roof doesn't leak.
- 10 Assembling and moving furniture.

### HUD Recommendation: Buy A House, Use An Agent



Housing Secretary Alphonso Jackson has recommended that home buyers use real estate professionals to help them.

"A good real estate agent – one who ideally comes recommended by family or friends – is another invaluable resource," he said in his message. "Real estate agents should listen carefully to you, understand your needs, and offer sound judgment. If the agent makes you feel comfortable and can provide you with the knowledge and services you need, then you've chosen the ideal agent."

## AGENT'S CORNER

### Real Estate Advertising Poised for Online Shift



Real estate brokers and agents who are spending small fortunes advertising in newspapers may soon be shifting that money to better-targeted Web advertising, according to HouseValues CEO Ian Morris.

Morris said, "as consumers increasingly turn to the Internet as a core part of the real estate process, real estate advertising is poised for a multi-billion-dollar transformation."

Morris said the overwhelming majority of consumers are starting their searches for real estate online. As a result, he said, "real estate professionals are increasingly shifting their advertising dollars to more efficient marketing solutions that increase their value to consumers."

### Realtors Update "1031" Investment Advice



Realtor.org has launched an updated guide to 1031, or tax-deferred, exchanges. This guide provides access to articles, manuals, forms and ideas to help members start building their 1031 investment property niche.

Section 1031 of the U.S. Internal Revenue Code allows investors to defer capital gains taxes on the exchange of like-kind properties. A 1031 exchange is one of the most powerful tax deferral strategies remaining available for taxpayers. Anyone involved with advising or counseling real estate investors should know about tax-deferred exchanges, including Realtors, lawyers, accountants, financial planners, tax advisors, escrow and closing agents, and lenders.

For more information, visit [www.realtor.org/libweb.nsf/pages/fg408](http://www.realtor.org/libweb.nsf/pages/fg408)



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