

# NWR Reporter

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## Legal Update

### Principal Residence Rule Update

*NWR Reporter March 2003*

*by Cris Anderson*

#### Treasury Decision 9030 Clarifies Dection 121 Exclusions

Section 121 of the Internal Revenue Code allows an exclusion up to \$250,000 of the capital gain on a principal residence for single taxpayers and \$500,000 for a married couple filing jointly. To qualify, the taxpayer must own and use the home as a principal residence for 2 of the 5 years prior to the sale. The ownership and use periods do not need to be concurrent. The two years may consist of 24 full months or 730 days. Treasury Decision 9030 clarifies a number of issues including exceptions to the two-year rules for use, ownership and claimed exclusion "safe harbors" when the primary reason for the sale is health, change in place of employment, or "unforeseen circumstances."



**Employment:** Exception permitted if the new job site is at least 50 miles farther from the old home than the old workplace was from that home.

**Health:** Exception permitted if the primary reason is related to a disease, illness or injury or if a physician recommends a change in residence for health reasons. In addition, a qualified person for health reasons includes close relatives, so that sales related to caring for sick family members will qualify.

#### Unforeseen Circumstances

- Death
- Divorce or legal separation
- Becoming eligible for unemployment compensation
- Change in employment that leaves the taxpayer unable to pay the mortgage or reasonable basic living expenses
- Multiple births resulting from the same pregnancy
- Damage to the residence resulting from a natural or man-made disaster, or an act of war or terrorism
- Condemnation, seizure or other involuntary conversion.

Any of the first five situations listed above must involve the taxpayer,

spouse, co-owner, or a member of the taxpayer's household to qualify. The Regulations also give the IRS Commissioner the discretion to determine other circumstances as "unforeseen."

The Regulations list several factors relevant in determining which home is the "principal residence" of taxpayers who own more than one home:

- Place of employment
- Amount of time used
- Where other family members live
- Address used for tax returns
- Driver's license
- Car and voter registration
- Bills and correspondence
- Location of taxpayer's bank & clubs

Taxpayers do not need to allocate the gain between the business and residential use if the business use occurred within the same dwelling unit as the residential use (as compared to a separate structure). Capital gain taxes must be paid on the total depreciation taken after May 6, 1997, but may exclude additional gain on the residence, up to the maximum amount.

The principal residence exclusion may include capital gain from the sale of vacant land that has been used as part of the residence, if the land sale occurs within two years before or after the sale of the residence.

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### Legislative Update

## Community Choice in Real Estate Act Introduced

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*NWREporter March 2003*

Legislation that prohibits big banking conglomerates from entering the real estate business was reintroduced in both houses of Congress with the same strong bipartisan support the bill garnered in the last Congress, the National Association of Realtors® announced. Known as the Community Choice in Real Estate Act, the bill is identical to legislation that was introduced in the 107th Congress. Over a dozen U.S. Senators and more than 245 members of the U.S. House of Representatives signed onto that bill last session.

NAR commended lead sponsors Reps. Ken Calvert (R-Calif.) and Paul E. Kanjorski (D-Penn.) in the House and original sponsors Sens. Richard Shelby (R-Ala.), Wayne Allard (R-Colo.) and Hillary Rodham Clinton (D-N.Y.) for their unwavering commitment to keep big banks from entering real estate brokerage or property management. Over 100

Representatives are expected to sign onto the bill as original cosponsors on the day the bill was introduced.

Banking conglomerates are seeking permission to sell and manage real estate via a proposed rule before the Federal Reserve Board and the Treasury Department. However, the proposed rule is contrary to what Congress intended when it passed the 1999 Gramm-Leach-Bliley Act. This bill clarifies congressional intent and amends the Bank Holding Company Act to preclude any such action by the Federal Reserve or Treasury.

"The reintroduction of the Community Choice in Real Estate Act sends a clear signal that Congress never intended to mix banking and commerce," said NAR President Cathy Whatley. "We are proud that Congressmen Calvert and Kanjorski and Senators Allard and Clinton as well as new Senate Banking Committee Chairman Shelby have reaffirmed their commitment to passing this bill. Our goal this year is the same as last year - we will not relent until the bill is passed. We simply ran out of time last year."

NAR has several reasons to be even more optimistic about the bill's chances this Congress. NAR won the only votes on this issue in the last Congress when the House passed language precluding the Treasury Department from using any funds to implement the rule in 2003. Congressional support for keeping big banks out of real estate is expected to grow even stronger this year in light of the recent accounting scandals and recent allegations that firewalls between different but separate bank activities have been violated.

"Allowing large national banks to enter into and dominate the real estate industry is explicitly contrary to congressional intent and is a dangerous proposition. In order to properly protect consumers and home buyers, as well as the national economy, banking and commerce should remain separate as Congress intended upon passage of the Gramm-Leach-Bliley Act," Rep. Calvert said.

"Our local communities are best supported by local businesses like hometown Realtors® who serve as leaders, volunteers, fundraisers and boosters. In addition, local Realtors® who live and work in the same neighborhoods as their customers are best positioned to provide personal customer service," Rep. Kanjorski said.

"The Community Choice in Real Estate Act of 2003 is the continuation of an effort that I began in the 107th Congress," Sen. Allard said. "This bill would clarify congressional intent that real estate brokerage and management are not financial activities and would therefore retain the separation of commerce and banking that we intended during consideration of the Gramm-Leach-Bliley Act in 1999."

A chorus of consumer and community advocates have also voiced their support for the bill because they agree that if big banks were allowed to take over local real estate businesses, there would be a negative impact on communities across America, leaving home buyers and sellers with fewer choices, higher loan fees and reduced customer service.

America's small business owners agree that banking conglomerates should stay out of the real estate business. The National Federation of Independent Business (NFIB) recently expressed support for the bill.

"Housing continues to be the pillar of the economy. Approximately 68 percent of new growth in our gross national product (GNP) last year was housing-related. We simply cannot afford to allow big banks to enter real estate and thus tinker with the leading sector of America's economy," Whatley said.

Organizations that have voiced support for the Community Choice in Real Estate Act include the Building Owners and Managers Association, CCIM Institute, Consumers Union, Institute of Real Estate Management, International Council of Shopping Centers, National Affordable Housing Management Association, National Association of Home Builders, National Association of Industrial and Office Properties, National Auctioneers Association, National Fair Housing Alliance, National Federation of Independent Business, National Leased Housing Association and the National Community Reinvestment Coalition.

*The National Association of Realtors®, "The Voice for Real Estate," is America's largest trade association, representing over 840,000 members involved in all aspects of the residential and commercial real estate industries.*

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