

Ask the real estate lawyer

by *Ilyce_Glink*

Q: We just sold my wife's deceased mother's house and we got a 1099-S form that says gross proceeds were \$525,000. What amount do we pay taxes on? The money went directly into my wife's living trust. We got a check from the closing in the amount of \$434,000.

A: I'm sorry for your loss. If you sold the house within a year of your wife's mother's death, it's possible that you will owe no taxes on the sale.

Let's step back. Form 1099-S is merely the form that the closing agent sends to the seller of real estate that sets forth the sales price for the home. In this case, you sold the home for \$525,000. That number only reflects the price the home sold for and does not indicate whether you made a profit or loss on the sale of the home.

If this was your home and you had purchased it for \$500,000 and sold it for \$525,000 and had closing costs of \$25,000, you still would have no profit on the sale of the home and probably would have no tax to pay the IRS.

However, if you inherit a home, you would pay tax on the difference between the value of the home at the time the person died and the sales price of the home when you sold it.

You know the sales price for the home, but you may or may not know the value of the home at the time your wife's mother died. Generally, if the property is sold within a year of the time of death, that sales price is a good indication of the value of the home.

If you sold it a couple of years after she died, you would have to determine a value for the home at the time of her death and then factor in any costs to sell the home and, perhaps, any improvements you made to the home to get it set for sale. A new roof, for instance, could be added to the cost basis of the home.

For more information, talk to an accountant, estate attorney or enrolled agent; for general information you can go to the IRS Web site at www.irs.gov. One publication that is useful in reviewing the factors that affect the value of a home is Publication 523 (<http://www.irs.gov/publications/p523/index.html>).

Q: We're big fans of your column. Here's our question: We have worked extremely hard to preserve and improve our credit our entire adult lives. We currently have a homestead property, and are upside down on

a second property in a hybrid option adjustable rate mortgage.

I am current on the mortgages but we are close to imminent default.

We just hired realtors to do a short sale, as we just cannot afford the second property. My wife and I just lost our jobs. The property was listed at \$450,000, and we received an offer for \$375,000 " which the banks will reject " but there seems to be interest in the property.

If we can build a short sale case for the banks, the second lien holder will get essentially nothing but will save on the costs of foreclosing. Because we are not late on our payments, the banks view us as current on the loans, but we are desperate.

Our goal is to preserve and shield my credit as much as possible. We will not do a deal with a deficiency judgment. Can we push for the bank to agree to our terms without stopping our payments on the mortgages? Will our credit be affected?

A: You are in an unfortunate situation, one that many homeowners share. You're correct that most lenders have their hands full with borrowers who have already defaulted on their loans. These borrowers have had their loans go into foreclosure and seen their credit scores plummet.

It's unlikely that a lender will even talk to you about the prospect of a short sale when you are current on your mortgage. You should try anyway, but the lender is under no obligation to accept a short sale " that is, accepting an amount that was offered to you to buy your second property but which is less than what you owe your primary lender.

Unless you fail to make payments on your mortgages and have a contract in hand with a buyer for your home, you probably won't be able to get the lenders' attention " much less get the first lender accept a short sale and get the second lender to release the lien on the equity or second loan on your home.

But your credit history and credit score will certainly be affected by your failure to make payments on your loans, your failure to pay the first lender in full and your failure to pay the equity lender at all.

Currently you are at the mercy of the slowdown in real estate and credit problems in the marketplace. You probably have no easy way to preserve your good credit history and credit score at this time. If you fail to make your payments to any of your lenders, both your credit history and credit score will suffer. If you fail to

make good on paying in full your loan obligations, your credit history and credit score will also be hurt.

It's tough to see how a lender would agree to let you off the hook for paying your loan obligations in full without hurting your credit. You might get the first lender to accept the short sale and may even get the lender to agree to not report the short sale negatively to the credit reporting bureaus; but if you can't and won't pay anything to the equity lender, that lender will likely report the loan as written off and delinquent.

It doesn't seem likely that you are in a position to agree to repay the balance of the mortgage or equity loan after the sale of the home. You should know however, that either lender has the right to sue you for the amount you owe under the loan unless you pay each loan off in full or have each lender agree that they will not seek additional payment from you after you sell the property.

If you do not get an agreement from each of the lenders, they could sue you after the closing and obtain a judgment for the difference between what they got paid and the amount owed under the loan. That judgment would be called a deficiency judgment.

You should know that your credit score will be affected but the methods of computing how and to what degree your credit score would be hurt is proprietary.

In the range of options, if you were to declare bankruptcy, your credit score would be hurt the most. If you're able to have the first lender agree to take a short sale and have the equity lender agree to forgive all of the debt, your credit will still be hurt, but perhaps not as much.

But it may help to know that if you wipe your slate clean and start over, you will be able to rebuild your credit history and score in just a few years.

Good luck.

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