

by Ilyce_Glink

Q: My mother-in-law, who is disabled due to a stroke, used a quit claim deed to sign over her house to my wife for \$1 a couple of months ago before my mother-in-law went into the nursing home. My mother-in-law owes the bank \$95,000 on the mortgage to the home. Because my wife had been her mother's primary caregiver for more than two year, she is entitled to keep the house and does not have to give proceeds to the state for her care. My question is this: If we sell the house, will we owe capital gains tax on the difference between the amount we owe on the mortgage and the sales price, or the difference between the "purchase" price of \$1 and the sales price? My wife has been making the mortgage payments since she took ownership of the property. We expect the property to sell for about \$200,000. A: If your wife truly bought the home for \$1 plus the assumption of the debt on the home, you will have to pay taxes on the entire sales price of the home. Those taxes will not be capital gains but ordinary income if you sell the home before you have owned it for at least one year. If you have owned the house for more than one year, then the profits would be considered capital gains. If you are taxed on the profits as ordinary income, you can expect to pay up to 35 percent of the profits in federal income tax, depending on your other income and other deductions on your tax return. You would also pay state income tax. If the profits are taxed as capital gains, you'll pay up to 15 percent of the profits in taxes, plus state tax. Unfortunately, in either case, that much gain may have other unintended consequences with your tax return to the federal and state governments. Some of these consequences may cause you to pay more taxes, due to your inability to get certain tax credits and deductions, or may cause your state income taxes to be higher. Your tax professional may be able to help you. You may want to talk to a tax planner to determine how to handle your mother-in-law's estate. You say that your mother-in-law "sold" the home to your wife for \$1. Was that a true sale or was she gifting the house to your wife? Those two different scenarios will have different impacts on your income taxes when you sell the house. If you and your wife plan to move into the house and live there for at least two years, the two of you could keep up to \$500,000 in profits tax-free. You may find that this is the best way to go. Q: I opened escrow and had my home deeded to me as a single man. Then I got married (after the deed was signed and notarized). After the wedding, we closed escrow. Now I am going through a divorce. My ex-wife is claiming that our home is community property. I am claiming that my house is mine and only mine. The escrow officer never asked me if I was married when it closed. Escrow followed escrow instructions as set when escrow opened. Was it my duty legally to inform escrow I was married at closing or is escrow legally to ask? Is it illegal to hold title as a single man while married? A: You purchased a home and while you were buying and closing on the purchase you got married. So you actually closed on the purchase of the home once you were married. Even if you are married, you can own title in your own name. You can also own title in the name of a corporation, partnership, limited liability company or even in a trust. How you hold title to property isn't the driving issue. The real issue is whether your opening escrow while you were not married and then closing on escrow once you were married gives your spouse rights to the property. In some parts of the country, buyers and sellers conduct a closing of the purchase of real estate through an escrow agent. The escrow agent prepares the documents for the closing and assists both the buyer and the seller to close the transaction. The escrow agent, however, does not represent either party in a fiduciary capacity. That is to say, the escrow agent is only obligated to follow the instructions in the agreement to close the transaction and does not have a duty to advise the buyer or the seller as to the merits or pitfalls of the transaction. As a general rule, property that is purchased during a marriage might give the spouse rights in that property. That's what your spouse is probably claiming. If money from the marriage was used to maintain the home, your spouse will probably prevail in the claim that the home is marital property. That would give your spouse the right to at least some of the gain from the sale of the home. The attorney assisting you in your divorce should be able to guide you through this issue. © 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by TMS.