

by *Ilyce_Glink*

Q: I own a house with a mortgage. My sister owns vacant land as an investment that she purchased with a home equity loan on her primary residence. We want to sell my home and her land and combine the money to purchase one residence with both of our names on title. I've been told that she can buy the house as a 50 percent owner and I can lease it from her, but she cannot live in the home for one year in order to qualify for 1031. Is this the only way of doing the deal where she can defer taxes?
A: As far as selling your home, you can do as you wish. If it is your primary residence and you have lived in the home for two out of the last five years, you will not have to pay any federal income taxes on the sale of the home. You get an exclusion from tax of the first \$250,000 of profit (or \$500,000 if you are married). Your sister owns investment property. If she has a profit on the sale of the investment property she will have to pay a tax on the profits. However, if she makes use of a provision in the income tax code section 1031, your sister can defer paying any taxes on the sale of the home by buying a replacement property within a certain time period after the sale of her land. For purposes of undertaking a 1031 exchange, the owner of the investment property must want to sell it and buy a replacement investment property. Your intention is clearly not to buy the home as an investment property but, rather, as your personal residence - that is with respect to your share of the new home. While you may "rent" your sister's half for a period of time after the two of you buy the home, the IRS may not view that purchase as appropriate, given the guidelines for a 1031 exchange. Your sister's share of the property may have to remain a "rental" for up to two years. Some 1031 experts make a case that the IRS will see what the intent of the parties was when they purchased the property and how long the property remained an investment property after it was purchased. They claim that the property should remain rented for at least two years after it was purchased. If your sister is working with a 1031 company, she may wish to explore these issues further with them. If she can't get good information from them, she should seek out an accountant or attorney in her area that has extensive knowledge about 1031 tax-free exchanges. By the way, if your sister is purchasing the home as an investment, you and she should have a written agreement outlining who is responsible for what, and who needs to contribute what to the overall maintenance and upkeep of the property. You should also cover what happens if one of you wants to sell your share. A real estate attorney should be able to draft this for you.

Q: We own a single family home in Florida that was rented and had been managed by a property management company. When we went there to check it out shortly before the tenants were due to move out (by their choice), and we hardly recognized the place due to the damage they caused to the property. We had nearly \$10,000 in damages from their rental, which is way more than their security deposit. We have documentation from the property management company of their quarterly inspection noting several causes for concern, which they did nothing about and about which we were never notified. Despite all the wording in our contract that the property management company is not responsible for anything, what about being responsible to do their job? Can we hold them liable for allowing the place to get trashed?
A: First of all, you have to remember that the tenant caused the problem. You should have had a lease agreement with your tenant making the tenant responsible for any damage caused to the home. Your first course of action is to follow the terms of your lease and get compensated for your damages by your tenant. You may never want to use this management company again and you may want to consult with a litigation attorney in Florida as to whether it's possible to recover damages for the management's company's failure to perform under the management agreement. However, any damages you get from the management company may be far less than what you should get if you prevail against the tenants themselves. As a final thought, you might have required the property management company to provide you with a copy of their quarterly reports on the property. It sounds as though you are trying to be completely hands-off, which can only lay the groundwork for unpleasant surprises. © 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by Tribune Media Services.