Real Estate Matters: Ask the real estate lawyer

by Ilyce_Glink

Q: I currently own a single home, and plan to sell it to my sister before buying another one. I bought it seven years ago for $500,000 and the current estimated market value for the house is about $850,000. But I want to sell it to my sister for only $600,000.Do I have to pay tax on the difference between the actual market value and the price I sell the home to my sister?I still have a mortgage of about $100,000. Can I make an arrangement so that she can continue to pay the mortgage at the same rate that I currently have? That is, she'll assume the $100,000 mortgage, and pay me the other balance?Can I make arrangements so that, after assuming the mortgage of $100,000, she can gradually pay me back the $500,000 within an indefinite amount of time? That is to say, she will pay me in whole or in parts, whenever she can. There would be no specified time frame in which to pay me back.Also, if for some reason, such as financial distress, she's not able to pay all or parts of the $500,000, that's OK with me too. If this would happen, I'd rearrange to sell her the house for only $100,000.A: Thanks for your question. It's clear that you are a generous and loving sister and that you are thinking about how to arrange this purchase so that it meets your sister's financial needs without thinking of yourself.The good news is that you can arrange the transaction any way you want with your sister. That is, you can have documents drawn up to allow your sister to pay you back over time the money she owes you. The documentation can include a provision that allows your sister to skip payments, pay smaller amounts or pay larger amounts. You should work with a real estate attorney to help you draft the documentation.You can even decide to keep the title to the home and sell it to your sister on the "installment basis." You would continue to have the legal ownership to the home and your sister would get title to the home once she makes all the payments owing to you on the house. You could keep the existing loan and pay it as she pays you the monthly payments. You need to know that the lender that gave the $100,000 loan has the right to call the loan at any time that you no longer own the home. Your loan documentation most likely has a "due on sale" clause that gives the lender the right to require to you pay back the loan in full when they get wind of the fact that you sold the home.As far as the income tax consequences of your arrangement, you would be able to structure the transaction for less than the fair market value of the home. The difference would be considered a gift to your sister and you would be required to file a gift tax return for the year in which you sell the home to her.If this home was your primary residence and you lived in it for two out of the last five years and are married, you can exclude $500,000 of profits from the sale of the home. If you fall into this category, you would not have to pay taxes on the sale. If you are single, you are allowed a $250,000 exclusion if it was your primary home and you lived in it for two out of the last five years.If you have made improvements to the home, it would end up being likely that you would not have to pay any tax in this scenario. Your best bet would be to sit down with an accountant and work through what you are planning to do and determine precisely what your tax consequences (gift and otherwise) will be.Since you are so sensitive to your sister's financial situation, you may want to explore helping her in a different way.One option you might want to consider is talking to a financial advisor and estate planner and trying to determine what is the best way to help her. You may find that giving her the house or giving her a large gift of the house may be the way to go, but you may also find other options that are available to you, such as continuing to own the home but allowing her to live in it rent-free.Â© 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by Tribune Media Services.