

PENN ATTORNEYS

TITLE ALERT

ALTA UPDATE TAX REPORTING REQUIREMENTS CHANGE

The "Taxpayers Relief Act of 1997" signed by the President on August 5, 1997, modifies both capital gains treatment for sales of principal residences and Form 1099-S reporting requirements.

Capital Gains for Home Sales: Under prior law, taxpayers can generally rollover the gain on the sale of a personal residence into the cost of a replacement residence without paying any capital gains tax. Taxpayers over age 55 are also provided with a one-time opportunity to exclude up to \$125,000 of gain on the sale of a personal residence. Under prior law, taxpayers track their gain and file Form 2119 to report the transaction with their annual tax returns.

Under the new law (Sec. 312 of the "Taxpayer Relief Act of 1997"), taxpayers are generally able to exclude up to \$250,000 of gain (\$500,000 if married filing jointly) from the sale or exchange of a principal residence. The provision is generally effective for sales after May 6, 1997, although a taxpayer may elect to take prior capital gains treatment if there is a valid contract in effect on August 5. The exclusion can be used only once every two years, and there are many limitations in qualifying for the capital gains exclusion, such as a requirement that the property should have been used as a principal residence for two of the last five years, denial of the exclusion to expatriates, and a requirement for depreciation recapture for home offices and rentals.

Real Estate Reporting on Form 1099-S: Under prior law (Sec. 6045(e) of the I.R.C.), real estate reporting persons filed for most real property transactions, information on gross proceeds, and state real property tax proration amounts associated with a sale on Form 1099-S.

The New law provides that real estate reporting persons generally need not file information reports (Form 1099-S) for sales or exchanges of principal residences with a sale price at or below \$250,000 for a single individual (or at below \$500,000 if the seller is married), as long as the reporting person obtains a certification from the seller in a form acceptable to the Secretary [of the Treasury] that the property (1) is the principal residence and (2) the full amount of the gain on such sale or exchange can be excluded. Consequently, closers should continue to collect information necessary to file Form 1099-S until Treasury issues an "acceptable" certification form. We expect the 1099-S filing requirement will still be applicable in the District of Columbia to track the first-time homebuyers credit of \$5,000.

Illustration: A single individual bought property for \$100,000 in 1992, has used it as a principal residence for at least two years, and sells it for \$300,000 in December, 1997. The individual would not have to pay capital gains taxes, as they only have \$200,000 worth of gain, and there is an exclusion of \$250,000 from capital gains taxes on sales of principal residences. Nevertheless, a Form 1099-S should be filed as the property sale price is over \$250,000.