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Divorce and Personal Residence Considerations

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Divorce and Personal Residence Considerations

What personal residence considerations are there in connection with a divorce?

When considering the issue of who gets the house when a divorce arises, there are four options that are frequently used: sell the house, have one spouse buy out the other's half, have both spouses continue to own the property jointly, or simply agree that one spouse (typically, a homemaker) should get the house outright along with (or instead of) other assets. These options involve different tax effects. It is important to understand how tax basis and holding periods are calculated in these cases. It is also important to understand how the sale of a marital residence relates to the exclusion of capital gain income.

In general, property transfers between spouses during a marriage or incident to a divorce are not taxable. However, the timing of transfers between spouses can have tax ramifications. Additionally, transferring the home to third parties can create tax consequences.

What is a transfer incident to a divorce?

Neither spouse recognizes gain or loss if one transfers title of the marital home to the other incident to a divorce. A transfer of property is viewed as incident to a divorce if the transfer occurs within one year after the date on which the marriage ends or if the transfer is related to the ending of the marriage. Any transfer of property between spouses, made pursuant to a divorce decree or separation instrument and that occurs within six years after the date the marriage ceases, is presumed to be related to the ending of the marriage.

For detailed treatment of tax issues related to divorce and personal residences, see Marital Residence. See also Property Settlements and Third-Party Transfers.

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