

Certified Divorce Lending Professional

Divorcing Your Mortgage Educational Series

Understanding the Importance of Basis When Selling the Marital Home



Divorce Lending Association

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Divorcing Clients who are selling the marital home should understand the importance of Basis. The Basis of the property is usually the acquisition cost and may be an important number when calculating any capital gains on the sale. The cost is the amount paid in cash, debt obligations, other property, or services. In addition to the cost of the property, certain other fees and expenses become part of your cost basis.

Real Estate Taxes. When the marital home was purchased, if the buyer paid real estate taxes the seller owed on real property acquired and was never reimbursed by the seller, taxes paid may be treated as part of the Basis. This amount should not be deducted as taxes paid. If the seller paid real estate taxes on behalf of the buyer and was reimbursed, the amount is usually deducted as an expense in the year of the purchase and should not be included in the basis of the property. If the seller was not reimbursed, the amount paid by the seller must be reduced from the Basis.

Settlement Costs. The calculation of Basis includes the settlement fees and closing costs for buying the property. The fees and costs for getting a loan on the property may not be included in the Basis. A fee for buying property is a cost that must be paid even if the property was purchased with cash. The following items are some of the settlement fees or closing costs included as Basis:

- Abstract fees (abstract of title fees)
- Charges for installing utility services
- Legal fees (including title search and preparation of the sales contract and deed)
- Recording fees
- Surveys
- Transfer taxes
- Owner's title insurance
- Any amounts the seller owes that you agree to pay, such as back taxes or interest, HOA assessment fees, recording or mortgage fees, charges for improvements or repairs, and sales commissions.



Settlement costs do not include amounts placed in escrow for the future payment of items such as taxes and insurance. The following items are some of the common settlement fees that CANNOT be included in the Basis of the property:

- Casualty insurance premiums
- Rent for occupancy of the property prior to closing
- Charges for utilities or other services related to occupancy of the property prior to closing
- Charges connected with obtain a mortgage
- Fees for refinancing a mortgage

Special Rules For Other Types of Disposition of the Marital Home

Foreclosure or Repossession. If the marital home was foreclosed on or repossessed, this is a disposition and may result in ordinary income, gain or loss.

Abandonment. If the marital home is abandoned, there may be ordinary income, gain, or loss.

Trading Homes. If the marital home is traded for another home, the trade is treated as a sale and purchase.

Transfer to Spouse . If the marital home is transferred to a spouse or former spouse incident to divorce, in most cases there is no gain or loss. This is true even if cash or other considerations are received in exchange for the home. If the marital home is owned jointly and one spouse's interest in the home is transferred to the other spouse, the same rule applies. There is no gain or loss..

Exception: These transfer rules may not apply if the receiving spouse or former spouse is a nonresident alien. In that case, there may be a gain or loss to address.

Involuntary Conversion. When the marital home is destroyed or condemned and the owner receives other property or money in payment, such as insurance or a condemnation award there is a disposition. This is treated as a sale and all or part of any gain from the destruction or condemnation may be able to excluded from the basis.

Always work with a Certified Divorce Lending Professional (CDLP) when real estate or mortgage financing is present in divorce.



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