

# Real Estate

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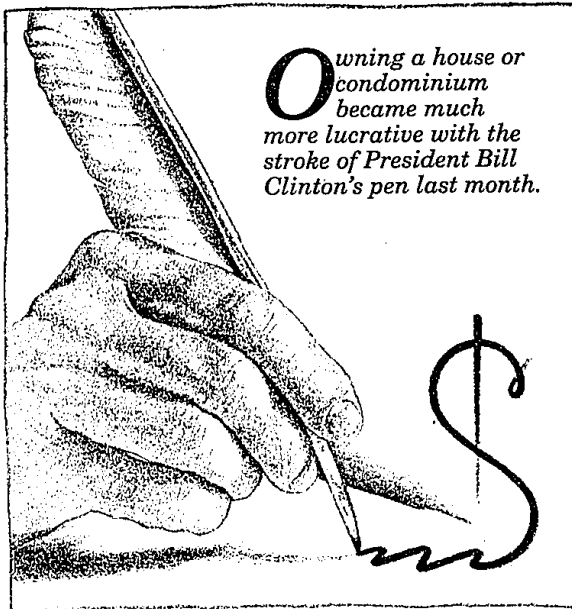
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Owning a house or condominium became much more lucrative with the stroke of President Bill Clinton's pen last month.

TAMARA GRAY/STAFF ARTIST

## Good news for homeowners

BY DOUG FUNKE  
STAFF WRITER

Does the federal government still encourage home ownership as a matter of public policy?

The answer is a resounding yes, judging from real estate news contained in recently-enacted federal tax legislation.

Owning a house or condominium became much more lucrative with the stroke of President Bill Clinton's pen last month.

And first-time buyers strapped for cash received a boost in accumulating money for a down payment and closing costs on a house.

"For residential real estate, it's a home run," said Bill Deacon, an associate broker with Century 21 Town & Country in Birmingham and president of the Michigan Association of Realtors.

Homeowners can exclude substantially more growth in the value of principal residences over time — \$500,000 for joint tax filers, \$250,000 for singles — from capital gains taxes when they sell.

That ultimately means more money in their pockets.

Owners can use the exclusion as often as they want at any age as long as they've lived in the house at least two of the previous five years.

The exclusion had been \$125,000, once a lifetime for homeowners at least 55 years of age.

The maximum capital gains tax rate on sales drops to 20 percent, 10 percent for lower-income earners, from a maximum of 28 percent. Again, more money in their pockets when they sell.

First-time homebuyers can make penalty-free withdrawals of up to \$10,000 from individual retirement accounts to make a down payment and pay closing costs.

These costs often are cited as the biggest roadblocks to ownership. Up to now, penalty-free IRA withdrawals for down payments/closing costs weren't allowed for people less than 59-1/2 years of age.

"Homeowners and would-be homeowners are coming out very well," said Russell K. Booth, president of the National Association of Realtors. "We clearly have something to cheer about."

Here's an illustration of how the new and the old compare.

Don and Norma, both over 60, bought a house for \$75,000 and raised their family there. The adjusted basis at sale is \$250,000.

Under the old law, the couple could exercise their once-in-a-lifetime option, exclude \$125,000 of the \$175,000 appreciation and pay a capital gains tax of \$14,000 (28 percent of \$50,000).

Under the new law, Don and Norma would pay no tax because the \$500,000 exclusion is more than the gain on the sale of the house.

The new law allows Don and Norma to exclude \$500,000 profit from taxation every time they sell their principal residence as long as they lived there two of the preceding five years before the sale.

Again, the new law allows couples and singles to use the exclusion at any age.

Here's another example, perhaps more typical.

Chris and Louise own three houses together during their married life. They buy the first for \$75,000 and sell for \$100,000, then buy for \$110,000 and sell for \$200,000, then buy for \$250,000 and sell for \$400,000 before settling into a luxury apartment.

Under the new law, they would pay no tax because the \$500,000 exclusion for joint filers totally offsets the gain between each buy and sell.

Previously, they would have paid capital gains tax of \$39,200 on accumulated

gains of \$265,000 with a \$125,000 exclusion at a 28 percent tax rate.

One more example. Scott, single, buys a house for \$800,000, sells for \$1.2 million, then downsizes to a condominium for \$350,000.

Under the new law, Scott will pay capital gains tax of \$30,000 (\$1.2 million minus \$800,000 less the \$250,000 exclusion taxed at 20 percent).

Previously, Scott would have paid \$77,000 (\$1.2 million minus \$800,000 less a \$125,000 exclusion taxed at 28 percent). If he weren't entitled to an exclusion under the old law, Scott would have been taxed \$112,000.

The liberalized exclusion and reduced capital gains tax rates apply retroactively to houses sold as of May 7 of this year. IRAs can be tapped for home buys without penalty starting Jan. 1, 1998.

Persons who already used their once-in-a-lifetime exclusion under the old law are eligible for exclusions provided by the new.

IRAs of spouses, parents, children and grandchildren can all be tapped, but not for more than \$10,000 total.

Keep in mind that some financial advisers recommend using IRAs only for retirement income.

"I think the biggest benefit is it simplifies record keeping," Orwin Velz, managing director of research for the National Association of Realtors, said of the legislation.

"For empty nesters, you can buy down without penalty. You don't have to worry about a tax equation," Velz added.

"It should help everyone, especially those sitting in houses they do want to downsize but don't want to pay tax," said Greg McClelland, legal counsel for the Michigan Association of Realtors.

Tax law is complicated. See an expert for advice on how your specific situation affects you.

## Safety is their duty

### REAL ESTATE QUERIES



ROBERT M. MEISNER

**Q.** We live in a neighborhood where there are some gangs, and our condominium association has done nothing to help police the area. As a co-owner, I am concerned about my tenants' health and safety in this condominium as well as the association's liability. Am I right to be concerned?

**A.** In a precedent-setting case, the Arizona Supreme Court held that where a gang member shot a tenant's guest in a condominium parking lot, the condominium association may be liable. In that case, the guest was attending a party given by a tenant. There was evidence that the condominium association was aware of drug dealing in the area, but only hired a security guard to patrol after 9 p.m. The shooting occurred shortly before the guard came on duty. The facts indicate that the security guard had warned the association that it needed a 24-hour patrol. The association had briefly hired a second guard but fired him due to the expense. The court held that the condominium association had a duty to "take reasonable precautions" to protect the safety of people on the land it controls and this includes protection from "physical harm caused by criminal intrusion."

In a California case, an association refused to spend the money necessary to run the business of the condominium and may well be held accountable for it. In that case, a rape victim successfully sued the association because it wouldn't let her put in proper lighting and then refused to do so itself. This case should be a wake-up call to all condominium associations regarding the responsibilities of security for their co-owners and, on a different level, their preparedness to protect the safety of people on the land it controls and this includes protection from "physical harm caused by criminal intrusion."

Robert M. Meisner is an Oakland County area attorney concentrating his practice in the areas of condominiums, real estate, corporate law and litigation. You are invited to submit topics that you would like to see discussed in this column, including questions about condominiums, by writing Robert M. Meisner, 30200 Telegraph Road, Suite 467, Bingham Farms MI 48025. His email address is [bmeisner@mich.com](mailto:bmeisner@mich.com) and his web site is <http://www.meisner-law.com>. This column provides general information and is not a legal opinion.

## Here is when to get an appraisal

### First of two parts

How do you know when your home needs a full appraisal or when an inspection would be sufficient?

Comparable sales and average prices per square foot can give you a vague idea of your home's value. But those measures also can be highly inaccurate if your home has had improvements or doesn't fit the cookie-cutter mold of your neighborhood.

So when should you order a written appraisal of your property? The American Society of Appraisers, one of the largest organizations representing appraisers of all disciplines, suggests you order an appraisal when:

■ **Selling your home.** If you're relocating, knowing the current market value can help you negotiate a sale more quickly, especially if you

have a unique property such as the oldest house or the largest house in the area.

If you've done any renovations, including remodeling, an appraisal will reflect the increased value to your home.

■ **Buying a home.** Knowing the current market value of the home you are considering buying can keep you from agreeing to an inflated price and save you money.

■ **Buying insurance for real estate.** By establishing the current market value of the property, you can ensure that you have the facts to buy enough insurance.

■ **Filing an insurance claim.** If you have to file for a casualty loss, it's important to determine market value of the property to determine replacement costs.

■ **Applying for a home equity loan.** An appraisal will help establish the amount of equity you have.

■ **Taxation increase.** If you plan to challenge a tax assessment on your home, an appraisal can provide support to obtain the correct valuation for tax assessment.

■ **Refinancing.** If you decide to refinance, an appraisal can provide support to establish the market value of your property and the amount of the new mortgage.

■ **Removing private mortgage insurance.** Most lenders are willing to drop their requirement for private mortgage insurance when your home equity reaches a certain level, often 20 percent of the amount borrowed.

A current market value appraisal can provide the evidence necessary to support the equity in your home.

## BUILDING LEADERS

1st half of 1997 residential permits.

City	Total Permits	Change from 1996
1. Atlanta	23945	-3%
2. Dallas/Ft. Worth	20405	+13%
3. Phoenix-Mesa	19792	-10%
4. Chicago	17104	-7%
5. Houston	16636	+25%
6. Las Vegas	15119	-7%
7. Washington, D.C.	13896	-16%
8. Miami-Ft. Lauderdale	13317	+31%
9. Denver	12483	4%
10. Detroit	12148	-5%
11. Puget Sound, WA	11976	-1%
12. San Francisco Bay	11832	-27%
13. Portland, OR	9966	+6%
14. Charlotte, NC	9477	+9%
15. North & Cent. NJ	9477	+31%

Source: U.S. Housing Markets

## Servicing a mortgage

### MORTGAGE SEARCH



DAVID C. MULLY

The following formation is provided from the Federal Trade Commission.

When you apply for a home mortgage, you may think that the lender (originator) will handle the loan. This is not always true: Mortgage servicing rights often are bought and sold.

If you are notified that your mortgage

has been sold, you may wonder how it will affect you. Some consumers have complained that they were not given enough notice of loan servicing transfers and were unfairly charged late fees and penalties. Here's a summary of the key responsibilities of a mortgage servicer.

The mortgage servicer collects your monthly payments and handles your escrow account. An escrow account is a fund that your lender establishes in order to pay property taxes and hazard insurance as they become due on your home during the year. In this way the lender uses the escrow account to guard its investment in your home.

When your escrow account is established, your mortgage servicer must give you a statement telling you the estimated taxes, insurance premiums and other charges that are anticipated over the next 2 months and the expected totals of those payments. The mortgage servicer also must give you an annual statement that details the activity of your escrow account. This statement shows your account balance and reflects payments for property taxes and homeowners insurance.

The National Affordable Housing Act requires that lenders or servicers: Provide a disclosure statement that says whether the lender intends to sell the mortgage servicing immediately, whether the mortgage servicing can be sold at any time during the life of the loan; and the percentage of loans the lender has previously sold. The lender also must provide information about servicing procedures, transfer practices and complaint resolution.

If you have a face-to-face interview with a lender, you must receive the disclosure statement at the time of the loan application. If you apply for a loan by mail, the lender has three business days to send you the disclosure statement after receiving your application. If you do not return a signed disclosure statement, the lender can not fund a mortgage for you.

If you believe you have problems with the servicing of your loan, contact your servicer in writing. Include your account number and explain why you believe your account is incorrect. Within 20 business days of receiving your inquiry, the servicer must send you a written response acknowledging your inquiry. Within 9 business days, the servicer must correct your account or determine that it is accurate.

The servicer must send you a written notice of what action it took and why. Do not subtract any disputed amount from your mortgage payment. Many servicers will refuse to accept "partial payments." They could declare the mortgage in default and start foreclosure.

To contact David Mully, call Continuity Programs Inc. at 1-800-521-0026 ext. 227, fax him at (248) 669-6875 or mail to him at P.O. Box 485, Novi MI 48376. You can access Mully's previous Mortgage Search articles and current mortgage rates on-line at <http://www.observer-eccentric.com/realstate/mully>