

## FUTURE RAMIFICATIONS OF THE HOME BUYER TAX CREDIT

## Future Ramifications of

## the Home Buyer Tax Credit

The Home Buyer Tax Credit has been a benefit to the real estate market, especially REALTORS® and first time home buyers. However, as the program winds down, you need to be aware of the potential future consequences of utilizing the Home Buyer Tax Credit so that you can assist your clients in obtaining the professional guidance they need.

Any transactions in the next few years which involve property purchased with the aid of the tax credit could result in a significant unexpected tax bill to the sellers. As REALTORS® it is important that you understand the situations in which this issue may arise so that your sellers can seek legal or accounting advice as part of their decision to sell their property.

The major catch is that those receiving the credit may be required to repay the entire amount of the tax credit if for some reason they sell the home or cease to use it as their “primary residence” within three years of the initial purchase.

For purposes of the tax credit, a home is no longer considered the purchaser’s “principal residence” if the purchaser sells the home or converts it to business or rental property. It is also not considered a “principal residence” if the home is destroyed, condemned, disposed of under threat of condemnation, or if it is foreclosed on by the lender.

If the home ceases to be the purchasers’ principal residence for any of these reasons, the purchasers are generally required to repay the tax credit. The due date for repayment of the credit depends on the particular circumstances under which the home ceased to be used as the purchaser’s principal residence.

Under most circumstances, the credit must be repaid when the purchaser’s income tax return is due for the year in which the home ceased to be the purchaser’s principal residence. For specific repayment information, sellers should consult Internal Revenue Service Form 5405 and the form’s instructions, which are both available on the I.R.S. website ([www.irs.gov](http://www.irs.gov)).

In general, if the purchaser is required to repay the credit, the full amount is due. There are two major exceptions to this rule:

First, if the purchaser sells the home to an unrelated third party, repayment of the credit is limited to the amount of gain on the sale. This restriction provides a disincentive for those who were looking to receive the tax credit and then sell the home immediately. However, it also affects those who are looking to move any time within the three-year period for legitimate reasons, which are often unexpected and unforeseeable at the time the purchase is made.

Second, if the home is destroyed, condemned, or disposed of under threat of condemnation and the purchaser does not acquire a new home within two years, the purchaser must repay the entire amount of the credit. This provision can have particularly harsh results, especially where a home is destroyed or foreclosed upon and the purchaser is forced to rent afterward.

There are also specific rules which apply in case of the death or divorce of the purchaser. These rules are set out in the instructions to Form 5405.

It is important to be mindful of this issue as purchasers who received the homebuyer tax credit begin looking to sell or convert their property in the next few years. Spotting this issue early and advising your seller clients to

seek professional guidance could potentially save a client thousands of dollars in unexpected taxes and boost your professional reputation.

However, always remember that your job is to assist in spotting the issue. Please do not give tax or legal advice to your clients regarding this issue.

— **Matthew Johnson, Esq., Justin Vartanian, Esq.**  
**Devine Millimet**