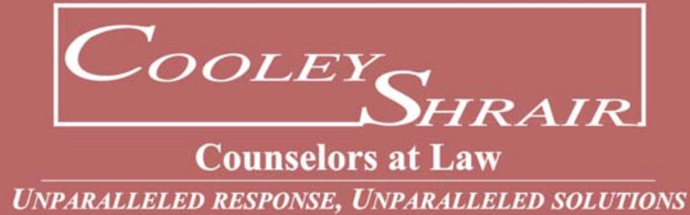
Legal Briefs



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Tax Matters

Congratulations – we've all survived the 2007 tax season. Now we're on to 2008. This is the first of what will be occasional updates about items of interest regarding various tax and estate planning matters.

The Mortgage Forgiveness Debt Relief Act of 2007 is best known relative to the issues regarding mortgage debt forgiveness as it relates to tax purposes. Overlooked by most of the media coverage of the new law is a major change in the rules governing the sale of a principal residence by a widow or widower. Under the new law, a surviving spouse will be able to exclude from capital gains taxation up to $500,000 of the profit from the sale of the principal residence as long as the sale occurs within two years of the death of the spouse and the surviving spouse has not remarried. This provision is effective for sales and exchanges after Dec. 31, 2007.

A single taxpayer generally can exclude $250,000 of the gain realized from the sale of a principal residence. For certain married couples filing joint income tax returns, the exclusion amount increases to $500,000. Under the old law, the full $500,000 tax break for such married couples was available only if the house was sold in the very same year in which the spouse died. In practical terms, this meant the survivor had to sell the house by Dec. 31 of the year of his or her spouse's death, even if that death occurred late in the year.

The taxpayer must have owned the residence and used it as a principal residence for at least two years of the five-year period ending on the date of the sale or exchange. For an unmarried taxpayer whose spouse is deceased on the date of sale of the property, the period that the unmarried individual owned and used the property includes the period the deceased spouse owned and used the property before death.