Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

Tax Relief for Widows and Widowers

GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE, OAK CREEK & RACINE

Your Asset Protection Law Firm
840 Lake Avenue, Suite 200
Racine, WI 53403
(262) 634-6659

E-mail: tpc@execpc.com
Website: www.TpcLaw.com

The Mortgage Forgiveness Debt Relief Act of 2007 is best known for its provisions regarding income tax treatment of mortgage debt forgiveness. This Act also changed the rules governing the exclusion of gain realized on the sale or exchange of a principal residence. A taxpayer generally can exclude $250,000 of such gain ($500,000 for certain married couples filing joint income tax returns). The taxpayer has to 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. Under the previous law, a surviving spouse could exclude $500,000 of gain only if the following conditions were met:

1. The sale occurred in the year of the deceased spouse's death;
2. The surviving spouse and the deceased spouse's executor or personal representative filed a joint return for the year of death;
3. Either the surviving spouse or the deceased spouse met the two-year ownership requirements with respect to the property immediately before the spouse died;
4. Both spouses met the two-year use requirements with respect to the property immediately before the spouse died; and
5. Neither spouse was ineligible for the benefits of the exclusion with respect to the property by reason of the one sale every two years rule.

This could present problems when the spouse died late in the year and the survivor wanted to sell the family residence. The surviving spouse would have to quickly sell the house in order to preserve the $500,000 exclusion. If, however, the deceased spouse owned the house outright, the surviving spouse would receive the benefit of a full step-up in basis to the date of death or alternate valuation date value, and there would be no rush to sell the house before the end of the year of death. However, if the home was classified as marital property, then the property would be entitled to a double step up in basis at death and the taxable gain would be eliminated.

The new law, effective for sales or exchanges after December 31, 2007, gives the surviving spouse additional options with respect to selling the residence after the deceased spouse's death. The taxpayer can still qualify for the $500,000 exclusion by meeting the conditions listed in items 1 through 5 above. The taxpayer can also qualify for the exclusions if the sale occurs not more than two years after the date of death of the spouse, and the conditions listed in items 3 through 5 listed above are met. If the sale meets these requirements, then the gain on the sale is treated in the same manner as if the spouses had sold the residence immediately before the deceased spouse's death. The new law should generally provide the greatest tax benefit for a

surviving spouse who owned the residence in his or her own name before the death of the deceased spouse, and both the deceased and surviving spouse used the residence. However, if the home was marital property, then the problem is solved. In this case, the residence would not receive a step-up in basis to the fair market value at the date of death or alternate valuation date, but the taxpayer could exclude up to $500,000 of gain.

If the surviving spouse remarried before the residence is sold or exchanged, this new section will not apply because the sale or exchange has to be made by an unmarried individual in order to qualify for the higher exclusion. If the gain on the sale or exchange would exceed $250,000, and the taxpayer intends to sell the residence, then he or she should consider doing so before remarrying.

"Those Who Plan Ahead Win.
Those Who Don't Plan Ahead Lose."

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

*Attorney Timothy P. Crawford is a Nationally Board **C**ertified **E**lder **L**aw **A**ttorney (**CELA**). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

Timothy P. Crawford was invited to join the **Council of **A**dvanced **P**ractitioners (**CAP**) of the **N**ational **A**cademy of **E**lder **L**aw **A**ttorneys (**NAELA**) in August of 2005. **CAP** is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client's Choice Award.

YOUR ASSET PROTECTION LAW FIRM WITH GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE, OAK CREEK & RACINE

"Helping Families in Wisconsin for Over 40 Years
to Protect Their Assets from Nursing Home Care Costs"

© Copyright by Attorney Timothy P. Crawford. This document can be used without the advance written permission of Attorney Timothy P. Crawford however you must disclose the fact that Attorney Timothy P. Crawford is the author.