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Candidates Run Anodyne Race For Sup. Court

Large Field Eschews Harsbly Negative Tone of Years Past

BY LORI LITCHMAN AND MICHAEL A. RICCARDI

Of the Legal Staff

Most of the fireworks in the races for five seats on the state's intermediate appellate courts has come in courtrooms in Lancaster and Pitsburgh, where bar association dissidents have contested negative ratings handed out to candidates by the state bar-sponsored Judicial Evaluation Commission.

The lead lawyer and litigant in that case, Richard A. Sprague, who suffered a rare setback in court, did succeed in driving much

\$12.5 Million Jury Award Upheld

Unanimous 3rd Circuit Panel Issued Ruling Without Comment

BY SHANNON P. DUFFY
U.S. Courthouse Correspondent

A federal appeals court yesterday upheld a jury's \$12.5 million verdict awarded to a now-defunct Bucks County computer software firm in a breach of contract suit over a failed joint venture to develop multi-media software.

Without comment, the unanimous three-judge panel upheld a February 1997 opinion by U.S. District Judge Lowell A. Reed Jr. which rejected defense arguments that the size of the verdict was based on speculation.

Reed instead found that the testimony of an expert witness for the plaintiff "provided a reasonable foundation" for the award, and that it was "not in such excess as to compel a conclusion that the award [was] the result of passion or prejudice."

The 3rd Circuit ruling comes less than a week after the case was argued before Circuit Judges Carol Los Mansmann,

In the suit, attorneys David Smith, Christina M. Rainville and Jeanette M. Brian of Schmader Harrison Segal & Lewis represented ProtoComm Corp., formerly of Treose, which claimed its business was destroyed by Fluent Inc.

Instead of a joint venture, ProtoComm claimed that Boston-based Fluent took the information it learned from ProtoComm and secretly developed a piece of competing software with Novell Inc., a major player in computer networking software.

Fluent was later acquired by Novell for \$21.5 million, but ProtoComm went out of business.

After a 21-day trial before Reed, the jury deliberated four days before returning its verdict.

On most of the questions it answered, the jury sided with ProtoComm, finding that Fluent had breached the contract and rejecting Fluent's counterclaims for abuse of process and breach of contract. But it



SMITH

INSIDE THE LEGAL

3rd Circuit: In Bankruptcy, Unpaid Workers' Comp. Premiums Not Priority

3 An insurance company's claim against a bankruptcy estate for unpaid workers' compensation premiums is not entitled to priority payment because it does not qualify as a contribution to an employee benefit plan, a federal judge has ruled.

Companies Fight Over Use of Internet Domain Names

3 QVC Inc., the West Chester, Pa.-based king of the cable television home shopping channels, is suing a Massachusetts company for trademark infringement over a website on the Internet named "QVC-Mall.com."

IRS Tax Bill Pits Lawyers Against Accountants

4 Lawyers are grudging for a lobbying fight with accountants. It's over an item in the IRS overhaul bill that could strip away an important reason for hir-

REAL ESTATE

New Tax Treatment for Home Sales Under Taxpayer Relief Act of 1997

Simpler Recordkeeping Big Homeowner Benefit

BY SHELDON D. POLLACK

Special to the Legal

The Taxpayer Relief Act of 1997, signed into law in August, significantly changed the rules governing the tax treatment of gain recognized on the sale or exchange of a "principal residence."

The new rules — which apply to transactions closing on or after May 7, 1997 — provide an exclusion from income of \$250,000 of gain (\$500,000 for married taxpayers filing jointly) recognized on the sale of what is, for most individuals, the most significant and expensive capital asset they will ever own — their home.

PRIOR LAW

For decades, Section 1034 of the Internal Revenue Code provided the general framework for the tax treatment of gain recognized on the sale or exchange of a "principal residence." (This provision remains applicable to sales closing before May 7, 1997, and taxpayers may elect to apply prior law to sales closing on or after May 7, 1997, and before Aug. 5, 1997.)

At the heart of this provision is a special tax preference providing a deferral of the recognition of the gain on a home sale. No gain is recognized to the extent that the

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seller purchases a new residence within two years of the sale and the purchase price of the replacement principal residence is equal to or greater than the "adjusted sales price" of the old principal residence.

In common tax parlance, Section 1034 allows for a tax-free "rollover" of the sale proceeds realized on the sale of a principal residence.

Under prior law, taxpayers were also provided with a one-time exclusion of up to \$125,000 of capital gain recognized on the sale of a principal residence.

To qualify for this exclusion — which was repealed along with Section 1034 by the new statute — the taxpayer must have reached the age of 55 years before the date of the sale and must have used the home as a principal residence during at least three of the five years immediately prior to the sale date.

The \$125,000 exclusion could be used in conjunction with a rollover, thereby allowing the taxpayer to purchase a replacement principal residence that costs as much as \$125,000 less than the amount of the sale proceeds realized on the sale of the old principal residence without recognizing any taxable gain on the transaction.

On account of these provisions, few taxpayers ever paid federal income tax on the gain realized on their homes. Indeed, in those rare cases where tax is due, it is usually because of a failure to comply with the many technical requirements imposed under prior law.

NEW \$250,000 EXCLUSION

Under the new tax rules, taxpayers need no longer worry about reinvesting the proceeds from a home sale. Nor need taxpayers worry about delaying the sale until they (or their spouse) reach 55 years.

As re-written, IRC Section 121 allows for an exclusion of up to \$250,000 of gain (\$500,000 for married taxpayers filing jointly) recognized on the sale of a principal residence. This is not a deferral of gain, but rather a permanent exclusion of the gain.

Taxpayers who previously claimed the \$125,000 exclusion are eligible to claim the new \$250,000 exclusion — for instance, upon a sale of their retirement residence prior to moving into a nursing facility.

Furthermore, taxpayers may exclude gain that is attributable to prior tax-free rollovers.

With the new exclusion, elderly homeowners need no longer hold on to their home until death to avoid income tax. Most important, the new exclusion is not a one-time option — as was the \$125,000 exclusion.

Taxpayers may exclude gain from successive sales of principal residences — regardless of their age and regardless of whether the sale proceeds are reinvested in a new residence.

REQUIREMENTS

There are several requirements imposed upon taxpayers who would make use of the new \$250,000 exclusion.

First, the new exclusion generally may be invoked only once every two years. In addition, to qualify for the exclusion, selling taxpayers must have owned and used the residence as their principal residence for periods aggregating at least two years during the five-year period ending on the date of the sale.

Under certain circumstances a partial exclusion is allowed. Exceptions include cases wherein the taxpayer fails to meet the use and ownership requirements, as well as sales within the two-year period occasioned

Home Sales

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by health reasons, a job relocation or (to the extent provided in future regulations) other "unforeseen circumstances."

In such cases, a partial exclusion of gain is allowed.

The amount of the partial exclusion of gain is determined by reference to the amount of time the taxpayer has used the residence as a principal residence, as compared to the two-year period otherwise applicable.

MARRIED TAXPAYERS

Married taxpayers are eligible to claim a \$500,000 exclusion on the sale of their jointly-owned principal residence. Where married taxpayers wish to make use of the \$500,000 exclusion (or the partial exclusion), a number of special rules apply.

- First, the couple must file a joint return for the year of the sale.
- Second, both spouses must meet the use requirement with respect to the property.
- Third, at least one of the spouses must meet the ownership requirement with respect to the property.
- Finally, neither spouse can be ineligible to claim the exclusion by virtue of failing to meet the rule allowing only one

exclusion every two years. In the event that the latter requirement is not met by one spouse, the other spouse may claim the \$250,000 exclusion, if otherwise eligible.

Several technical rules apply to the transfer of a principal residence pursuant to a divorce or legal separation. For instance, the new provision provides that a taxpayer who owns a residence is treated as having used that property as his or her principal residence during such period as the taxpayer's spouse or former spouse was granted use of the property under a divorce decree or separation agreement.

This rule solves the problem faced by separated or divorced spouses who previously moved out of the former marital residence, and accordingly, could not claim the property as a "principal residence" at the time of a subsequent sale for purposes of making a tax-free rollover or claiming the old \$125,000 exclusion for their share of the gain.

EXAMPLE

The following example illustrates how the new exclusion might work.

In 1970, John and Mary purchased their marital residence for \$100,000. They spent \$15,000 for a new roof and driveway in 1975. In 1984, they sold the home for \$240,000. (Neither John nor Mary was 55 years of age at the time of the sale.)

Home Sales continues on 10

AREA MORTGAGE RATES

Lender	Fixed Rates			Adjustable Rates		Jumbo Rates*		Commercial Yes/No**
	30 yr.	15 yr.	1 yr.	1 yr.	30 yr. fixed	30 yr. fixed	30 yr. fixed	
Security Nat'l Mtge. 610-630-4820	6.50/3	6.00/3	5.75/0	6.88/3	6.88/3	6.88/3		No
Hamilton Nat'l Mtge 610-640-4100	6.63/3	6.25/3	N/Q	6.75/3	6.75/3	7.00/3		Yes
Century Mortgage Corp. 800-224-7006	6.75/3	6.25/3	4.25/3	4.25/3	7.00/3	7.00/3		No
Lighthouse Mortgage 800-784-1331	6.75/3	6.25/3	4.50/3	4.50/3	6.88/3	6.88/3		No
National Future Mtg. 800-291-7900	6.75/3	6.25/3	5.50/0	5.50/0	7.50/0	7.50/0		No
Presidential Home Fin. 800-528-9246	6.75/3	6.38/3	4.50/3	4.50/3	7.00/3	7.00/3		No
Absolute Financial 800-542-3363	6.88/3	6.38/3	4.50/2.25	4.50/2.25	7.13/3	7.13/3		No
AccuBanc Mortgage 888-503-2064	6.88/3	6.50/3	N/A	N/A	7.25/2.5	7.25/2.5		No
First Union 800-276-3560	7.00/2.5	6.50/3.13	N/Q	N/Q	N/Q	N/Q		No
Main Line Bank 800-578-4959	7.00/3	6.50/3	4.25/3	4.25/3	7.13/3	7.13/3		No
Countrywide Home Loans 610-296-5550	7.25/0	7.13/0	5.88/0	5.88/0	7.63/0	7.63/0		No
American Family Mtge. 610-499-9331	7.50/0	7.38/0	4.38/3	4.38/3	7.50/0	7.50/0		No

* A "Jumbo" or non-conforming mortgage is a loan amount in excess of \$214,600.

** Indicates if a lender offers mortgage loans for commercial properties. Call to discuss rates and terms.

Rates compiled by the National Mortgage Reporter, a mortgage information and financial clearing house in West Chester, Pa. Rates may be for new applicants only; information on terms and other available programs may be obtained by calling the lender directly. Consumers wishing additional rate information call (610) 344-9953. Rates valid October 29, 1997. Check rates daily on the Internet: <http://www.nfrus.com>

DISTINCTIVE PROPERTIES

At 2601 Parkway, Autumn means...
Sparkling mornings...winding trails,
falling leaves of red and gold.

- Studio, one, two, & three bedroom apartments
- Individually controlled A/C

SPECIFICATIONS

Each ad will measure 3" W x 2.5" D

1428 HAMPTON ROAD, RYDAL
ABINGTON TOWNSHIP

Gracious and spacious stone house on 1.4
enormous acres with pool in convenient area