

UPDATE

News of Developments in the Financial Sector and Related Areas

*** *IN THIS ISSUE* ***

The Bailout Legislation

Sale of a House Tax Planning

Durable Power of Attorney

The Bailout Legislation

On October 3, 2008, the President signed into law the Emergency Economic Stabilization Act of 2008, which is sometimes referred to as *The Bailout Legislation* (the "Act"). There are probably more questions relating to the ultimate application of the Act than there are answers at this time. Among other things, the Act increases deposit insurance coverage to \$250,000.00 until December 31, 2009, from the current coverage of \$100,000.00. Subsequent to passage of the Act, the Federal Deposit Insurance Corporation has adopted a restoration plan which will increase the rates paid by banks for deposit insurance. The Act also allows the Federal Reserve Board to pay interest on reserves, authorizes the Securities and Exchange Commission to suspend the application of the mark-to-market accounting under Financial Accounting Standards Board Statement Number 157 and extends the current law providing tax forgiveness on the cancellation of mortgage debt.

The Act creates the Troubled Asset Relief Program ("TARP") giving the Treasury Department the authority to spend up to

\$700 billion to purchase troubled mortgage related debt from financial institutions. The Treasury Department has up to 45 days to publish guidelines, which would address, among other things, the procedure for purchasing troubled assets, the methods for pricing and valuing troubled assets and the criteria for identifying troubled assets eligible for purchase.

The Act also requires the Treasury Department to create an insurance program for troubled assets that would include mortgage-backed securities, which would be funded by premiums from the various participating financial institutions. Until December 31, 2009, the Treasury Department has the authority to guarantee the payment of principal and interest on troubled assets in return for a payment to the Treasury of a premium.

The Act defines troubled assets to include, among other things, residential or commercial mortgages, securities, obligations and instruments related to such mortgages which were originated or issued on or before March 14, 2008.

In determining the purchase price of troubled assets, the Act requires the Treasury to take into consideration a number of factors including, but not limited to, protecting the interest of taxpayers, stabilizing financial markets, preserving ownership of homes by families and stabilizing communities, ensuring that financial institutions are eligible to participate, the needs of local communities and the long term viability of the financial institution owning the troubled asset.

All TARP purchases will require the selling financial institutions of the troubled assets to give the Treasury nonvoting profit-sharing warrants or debt instruments. The Act also will limit executive compensation for those financial institutions selling a troubled asset.

Our firm is monitoring this legislation closely and is available to answer questions relating to the sale of troubled assets and compliance with other aspects of the Act.

Sale of a House Tax Planning

Besides the refundable tax credit to a first time home buyer and the increased standard deduction for state and local property taxes by a taxpayer, The Housing Assistance Tax Act of 2008 (the "Act") has a significant impact on a taxpayer upon the selling of his principal residence. Prior to the passage of the Act, taxpayers could exclude up to \$250,000.00 (\$500,000.00 if married and filing a joint return) of gain realized on the sale or exchange of a principal residence. To qualify for this exempt treatment, the taxpayer must have owned and used the property, as a principal residence for at least two years of the five years ending on the sale or exchange of the property.

Beginning on January 1, 2009, the Act requires that the exempt amounts will be prorated in those cases where a taxpayer's principal residence was previously held by the taxpayer as rental property, a vacation home, or otherwise not as a principal residence. This proration is based on the number of years the person occupied the property as a principal residence as compared to the number of years the taxpayer owned the property. For example, if an unmarried taxpayer acquires property in January 2009, operates it as rental property for five years, then moves into the property and occupies it as the taxpayer's principal residence before selling it in January 2019, the \$250,000.00 exemption

amount is prorated to 50%, i.e., the exemption amount becomes \$125,000.00, because the taxpayer occupied the property as a principal residence for five years but owned the property for ten years.

The Act disregards any rental, vacation or summer use of property prior to 2009, and the Act prorates the \$250,000.00 and \$500,000.00 exemption amounts in cases where a rental, vacation or similar property is converted to the taxpayer's principal residence but excluding those situations where a taxpayer's principal residence is converted to a rental, vacation or similar property, i.e., a taxpayer may move out of his home and lease it to others, but the taxpayer may not move into a property which was previously rented to others.

Our firm is available to assist and answer questions regarding the sale of a principal residence and the conversion of rental or vacation property into a principal residence.

Durable Power of Attorney

Since most people do not plan on being disabled as a result of an injury, accident, illness and in some cases old age, a person may be left without the ability or capacity to carry on his routine activities. A *general power of attorney* allows a person to name another person or entity as his agent in handling his affairs or may allow the agent to do only a specific thing such as the sale of property. It is important to note that a general power of attorney will be revoked and terminate in the event of a person's incapacity or incompetency. However, a *durable power of attorney* will not terminate in the event of a person's disability and may be drafted to be effective only upon disability. In selecting an agent, a person should designate someone in whom he has confidence and trust. Although most people are aware of the importance of having a will or an estate plan, they fail to plan for their disability. Proper planning includes having a durable power of attorney.