

Housing and Economic Recovery Act of 2008 Revealed

By Brad Nix
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Benefits for Buyers

The Housing and Economic Recovery Act of 2008 was recently passed and it included many positive things for buyers and sellers of real property. **Highlights of the Housing and Economic Law:**

- * First Time Homebuyer tax credit up to \$7,500
- * FHA Foreclosure Rescue
- * Prohibition of Seller-funded downpayment programs
- * Conforming loan limit increases to \$625,000 in high-cost areas
- * Neighborhood revitalization funds (up to \$4 Billion)

The highlights have been covered by national and local media and almost every real estate blogger has the details on their site. For those looking for the basics of the law, then visit [NAR's summary](#), but here at AgentGenius, you're going to get the details that have yet to be **REvealed**.



Paid for by Sellers

Buried deep on page 690 of the 694 page law is an important change to the Capital Gains Exclusion rule that could cost home sellers across the country. Under the former Capital Gains Exclusion rule, home sellers could claim \$250,000 of home sale profits tax-free (\$500,000 if filing jointly) provided they physically lived in the home for 2 of the previous 5 years.

Under the new Capital Gains Exclusion rule it's no longer an all-or-nothing proposition instead, it's a ratio.

$$\text{Capital Gains Exclusion} = \text{Profit from the sale of the home} * \frac{\text{Number of days the home was "primary"}}{\text{Number of days the home was owned}}$$

Source: US Government

In other words, if a home seller occupied a property as a primary residence in 2 of the last 5 years under the new system, he would be entitled to 40% of his capital gains tax-free versus 100 percent of those gains before the new housing law passed.

The effective date for the new Capital Gains Exclusion rules is January 1, 2009 so homeowners selling in 2008 are exempt.

Sample Equation

You bought a home in January 15 2004 and paid \$500,000. This has been your primary residence until this year, January 15 2008, when you bought another property and moved your primary residence. Say you sell your original property next year, January 15 2009, for \$600,000. Your capital gains are \$100,000. Your capital gains exemption formula:

$$1460 / 1825 = 0.80 \times \$100,000 = \$80,000 \text{ Capital Gains Exclusion}$$

Which means you would pay capital gains tax on \$20,000. Capital Gains Tax is currently at 15%, so you would pay \$3,000 in new taxes that you would have avoided prior to this new law. *Please note this does not account for the state portion of capital gains, In Georgia that would be an additional 6% of the gains or \$1,200 for a total of \$4,200 in taxes on the gain.

It may sound like a small number when you profit \$100,000 to only pay \$4200, but what happens if the new government leaders change the Capital Gains Rate? This rate has been as high as 45.5 percent in the past. This is not good for future sellers of real estate.

Questions/Concerns

- How will the IRS determine a finite 'primary residence' date? We will need an actual date to calculate capital gains. [Current rules](#) are very vague and do not call for exact dates of 'primary residence' declaration.

- Who benefits most? The super-rich because they can now claim exemptions they previously were not qualified for (over \$250,000 gain is much more likely in Million Dollar plus price points) or the long-term property owner who sells his farm for millions of dollars that he only paid hundreds for?

- Who is penalized the most? The average homeowner who buys a new home prior to selling their existing. What if she has to rent it out for a year or tow ride out the market and then sell it? Now she's paying capital gains that she never would have considered under the old rule.

What other concerns do you have about this change? Are you scared to find out what else is not being **REvealed** in this new law?

h/t [Dan Green](#)