Australian Government
Australian Taxation Office

Marriage or relationship breakdown and real estate transfers

Capital gains tax (CGT) generally applies to any change in ownership of an asset, such as real estate. However, if you transfer real estate to your spouse due to the breakdown of your marriage or relationship, you may be eligible for a CGT marriage or relationship breakdown rollover.

Marriage or relationship breakdown rollover

A marriage or relationship breakdown rollover may apply when the transfer of property (by you, a company or the trustee of a trust) is a result of a court order, a binding financial or formal agreement or an award.

This rollover means that you disregard any capital gain or loss made when you transfer the property to your spouse. See also, **agreements if the rollover applies**

If a rollover applies

For the **transferor** (the person, company or trustee of a trust who transfers an asset to their spouse):

- Your interest in the property is transferred to your spouse.
- You disregard any capital gain or loss.

For the **transferee** (the spouse who receives the asset transfer):

- The property and cost base are transferred to you.
- You will make a capital gain or loss when you dispose of the property.
- If you already had a legal interest in the property, you must calculate your capital gain or loss separately to the interest transferred from your spouse.
- If the transferred property was acquired by your spouse (or a company or trustee) before 20 September 1985, CGT doesn't apply. However, if they made a major capital improvement to the dwelling on or after 20 September 1985 those improvements are a separate asset and you may be subject to CGT.

If a rollover doesn't apply

The rollover doesn't apply to property that is divided under a private or informal arrangement, that is anything outside of a court order or binding financial or formal agreement.

For the **transferor** (the person, company or trustee of a trust who transfers an asset to their spouse):

- Your interest in the property is transferred to your spouse. You must consider any capital gain or loss you make in working out your net capital gain (or net capital losses carried forward to future years) on your tax return for that year.
- Where the dealings are not arm's length, you are taken to have received the market value of the property for CGT purposes.

For the **transferee** (the spouse who receives the asset transfer):

- The property is transferred to you and you're taken to have acquired it at the time of transfer. You will make a capital gain or loss when you dispose of the property.
- Where the dealings are not arm's length, you are taken to have acquired the property at market value for CGT purposes.
- If you already had a legal interest in the property, you must calculate your capital gain or loss separately to the interest transferred from your spouse.

Note: An arm's length dealing is where each party acts independently and without influence or control over the other. It is dependant on the nature of your relationship and the bargaining between you.

To determine the property's market value at the time of transfer, you should obtain a professional **valuation**.

See also: **Rollovers**

Record keeping

You must keep records relating to your ownership and all costs of acquiring, holding, and disposing of property including:

- contract of purchase and sale
- stamp duty
- major renovations.

Make sure you have records from your spouse if you don't already have a copy, including records that show:

- how and when they acquired the dwelling (or the interest in a dwelling)
- its cost base when they transferred it to you
- the extent (if any) to which it was used to produce income during their ownership period (for example, the periods when it was rented out or available for rent) and the proportion of the dwelling that was used for that purpose
- the number of days (if any) it was their main residence during their ownership period.

You must hold records for at least five years after the sale of the property, or the year in which you declare a capital gain.

If you make a capital loss, once you've offset the loss against a capital gain, you should keep records for another two years.

Example – Pre-CGT assets and main residence exemption

After marrying, Sergio and Nina bought a home on 1 February 1985 for $175,000. Ten years later, they bought a larger home on 1 January 1996 for $325,000.

They converted the original home into a residential rental property.

This means they each owned 50% of the interest in the following assets:

Asset	Purchase price	Purchase date
Rental property	$175,000	1 February 1985
Family home	$325,000	1 January 1996

Sergio and Nina's marriage broke down and, on 1 April 2017, a court order was made that:

- Nina transferred her interest in the rental property to Sergio
- Sergio transferred his interest in the family home to Nina.

After the court order, Nina continued living in the family home, and Sergio moved into the rental property.

The CGT implications are:

Rental property – as the couple acquired the property before the introduction of CGT on 20 September 1985, Sergio is taken to have acquired Nina's interest in the property before that date. As the property is a pre-CGT asset, there are no capital gain or loss obligations for either party, unless major capital improvements were made to the property after 19 September 1985.

Family home – Sergio and Nina lived here from the time of purchase until the court order. It remained Nina's main residence after Sergio transferred his interest to her.

As the property was transferred to Nina under a court order, Sergio is entitled to the marriage or relationship breakdown rollover and he does not have to record a capital gain or loss.

Nina is taken to have acquired Sergio's interest in the family home. Nina's cost base now includes Sergio's cost base at the time of transfer, as well as the cost base of her own original interest. Therefore, the full purchase price of the property ($325,000) forms part of the cost base for Nina.

Nina must take into account how she and Sergio used the property during their respective ownership periods to determine whether any main residence exemption apply. As the property has been their main residence since purchase, and they didn't use it to produce income at any time, Nina is entitled to the main residence exemption. The property will not be subject to any CGT upon sale.

However, CGT obligations may arise if, in the future, Nina:

- no longer treats the property as her main residence
- uses the property to earn rental income
- uses the property to run a business.

Example – Transferor is entitled to rollover

Sam and Alex jointly bought a holiday home on 1 March 2007 for $400,000. The home was never used to produce assessable income, or as their main residence.

Sam and Alex's relationship broke down and, on 1 March 2017, Sam's ownership interest in the property was transferred to Alex under the terms of a binding agreement.

Alex moved into the property on 1 March 2017. He lived there until he sold it on 28 February 2019 for $600,000.

During the ownership period, the property was used as:

Property classification	Dates	Ownership interest
Holiday home	1-Mar-07 to 28-Feb-17	50% Sam + 50% Alex
Alex's main residence	1-Mar-17 to 28-Feb-19	100% Alex

Sam is entitled to the relationship breakdown rollover and does not have to report a capital gain or loss.

Alex must take into account how he and Sam used the property during their respective ownership periods to determine whether a partial main residence exemption applies. Therefore, Alex must calculate the capital gain on his original interest in the property separately to the interest Sam transferred to him.

See also:

- Relationship breakdown refer to **ato.gov.au/relationshipbreakdown**
- Treatment of assets other than real estate refer to **ato.gov.au/cgtotherassets**
- Calculating the CGT asset cost base refer to **ato.gov.au/cgtpartialexemption**
- Calculating the CGT asset cost base refer to **ato.gov.au/cgtcostbase**
- Tax smart tips refer to **ato.gov.au/taxsmarttips**

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