

FEATURE	Jan. 1 – Nov. 30, 2009 Rules As Enacted February 2009	Nov. 7 – Apr. 30, 2010 Rules As Enacted November 2009
First-time Buyer – Amount of Credit	\$8000 (\$4000 married filing separate)	\$8000 (\$4000 married filing separate)
First-time Buyer – Definition for Eligibility	May not have had an interest in a principal residence for 3 years prior to purchase	Same
Current Homeowner – Amount of Credit	No Provision	\$6500 (\$3250 married filing separate)
Effective Date – Current Owner	No Provision	November 7, 2009
Current Homeowner – Definition for Eligibility	No Provision	Must have used the home sold or being sold as a principal residence consecutively for 5 of the previous 8 years
Termination of Credit	Purchases after November 30, 2009. (Becomes April 30, 2010 on November 7, 2009)	Purchases after April 30, 2010
Binding Contract Rule	None	So long as a written binding contract to purchase is in effect on April 30, 2010 the purchaser will have until July 1, 2010 to close
Income Limits (Note: Increased income limits are effective as of November 7, 2009)	\$75,000 – single \$150,000 – married Additional \$20,000 phase out	\$125,000 – single \$225,000 – married Additional \$20,000 phase out
Limitation on Cost of Purchased Home	None	\$800,000 November 7, 2009
Purchase by a Dependent	No Provision	Ineligible November 7, 2009
Anti-fraud Rule	None	Purchaser must attach documentation of purchase to tax return

First-Time Homebuyer Credit: Scenarios

S1. If a single person (Taxpayer A) qualifies as a first-time homebuyer at the time he/she purchases a home with someone (Taxpayer B) that is not a first-time homebuyer and then later that year they marry each other, is the credit still allowed?

A. Eligibility for the first-time homebuyer credit is determined on the date of purchase. If Taxpayer A, a first-time homebuyer, buys a house and then later that year marries Taxpayer B, not a first-time homebuyer, the credit is allowable to Taxpayer A. Taxpayer A may take the maximum credit.

S2. Taxpayer A is a single first-time home buyer. Taxpayer B (parent) cosigns for A and does not qualify. Both names are on the mortgage. Can Taxpayer A claim the credit and, if so, how much?

A. Yes. Taxpayer B is not a first-time homebuyer and cannot claim any portion of the credit, but A may claim the entire credit (\$7,500 for purchase in 2008; \$8,000 for purchase in 2009), if the home was purchased as Taxpayer A's primary residence.

S3. A taxpayer owned her principal residence. Several years ago, she decided to relocate to a rented apartment, but did not sell the former residence. Instead, she rented it out to tenants. Now the taxpayer plans to buy another house and make it her new principal residence. Does she qualify for the first-time homebuyer credit?

A. A taxpayer who owned rental property within the past three years is still eligible for the credit. The taxpayer cannot have owned and used a home as his or her principal residence within the last three years.

S4. If husband and wife wanted to sell the home that the wife owned when they got married, and the husband had not owned a home within the past three years, could he qualify as a first-time homebuyer for the credit even though the wife would not qualify?

A. No. The purchase date determines whether a taxpayer is a first-time homebuyer. Since the wife had ownership interest in a principal residence within the prior three years, neither taxpayer may take the first-time homebuyer credit. Section 36(c)(1) of the Internal Revenue Code requires that the taxpayer and the taxpayer's spouse not have an ownership interest in a principal residence within the prior three years from the date of purchase. The husband may not take the credit even if he filed on a separate return.

S5. Taxpayer purchased a home on April 24, 2008, while she was separated from her husband. Later in the year, they reconciled and were living together at the end of 2008. She has not owned a home since 2004 but he owned one which he

sold in 2006. They remained married the entire time. Is the taxpayer eligible for the first-time homebuyer credit?

A. No. The purchase date determines whether a taxpayer is a first-time homebuyer. Since the husband had ownership interest in a principal residence within the prior three years, and the taxpayers were legally married, neither taxpayer may take the first-time homebuyer credit. Section 36(c)(1) requires that the taxpayer and the taxpayer's spouse not have an ownership interest in a principal residence within the prior three years from the date of purchase. While individuals do not have to be married to get the credit, marriage (and legal separation) imputes ownership of a previous home upon the other spouse. The wife may not take the credit even if she filed on a separate return.

S6. I have been estranged from my spouse for over three years and file married filing separate. I don't know if my spouse has owned a main home in the last three years, but I have not. If I buy a house in 2009 that otherwise qualifies for the first-time homebuyer credit, can I claim the credit?

A. Section 36(c)(1) requires that the taxpayer and the taxpayer's spouse not have an ownership interest in a principal residence within the three years prior to the date of purchase. While individuals do not have to be married to get the credit, marriage (and legal separation) imputes ownership of a previous home upon the other spouse. If your spouse has not owned a main home in the last three years, then you may claim the credit.

S7. I am separated from my spouse and considered unmarried, and qualify for the unmarried head of household filing status. My spouse has owned a main home in the last three years, but I have not. If I buy a home on May 1, 2009, that otherwise qualifies, can I claim the first-time homebuyer credit?

A. No. Section 36(c)(1) requires that the taxpayer and the taxpayer's spouse not have an ownership interest in a principal residence within the three years prior to the date of purchase. While individuals do not have to be married to get the credit, marriage (and legal separation) imputes ownership of a previous home upon the other spouse. The taxpayer may not take the credit even if filed on a separate return.

S8. A qualifying taxpayer bought a home in August 2008 that needed a lot of work before occupying. They finished the renovations and moved in the home in January 2009. Can they claim the \$8,000, since they did not occupy the home until 2009?

A. No. Taxpayers who purchase an existing home and renovate the property before moving in are eligible for the first-time homebuyer credit based on the date of purchase, not the date of occupancy.

NAR Frequently Asked Questions

Homebuyer Tax Credit Changes



National Association of REALTORS® Government Affairs Division
500 New Jersey Avenue, NW, Washington DC, 20001

Here are some of the most frequently asked questions on the changes to the Homebuyer Tax Credit

Question: **Existing homeowner credit: Must the new house cost more than the old house?**

Answer: *No. Thus, for example, individuals who move from a high cost area to a lower cost area who meet all eligibility requirements will qualify for the \$6500 credit.*

Question: **I am an existing homeowner. On October 25, 2009, I signed a contract to purchase a new home. I have lived in my current home for more than 5 consecutive years and am within the new income limits. I will go to settlement on November 20. If President Obama has signed the bill by the time I go to settlement, will I qualify for the new \$6500 tax credit?**

Answer: *Yes. The existing homeowner credit goes into effect for purchases after the date of enactment (when the bill is signed). There is no reference to the date of contract for the new credit. The provision looks solely to the date of purchase, which is generally the date of settlement.*

Question: **I am a first-time homebuyer but was not within the prior income limits at the time I entered into my contract to purchase on October 30, 2009. I will be covered, however, by the new income limits. If the new rules have been signed into law by the time I go to settlement, will I be eligible for a credit?**

Answer: *Yes. The new income limitations go into effect as soon as the President has signed the bill. The income limit and other eligibility rules will look to your status as of the date of purchase, which is the settlement date. So if the new rules have been signed when you go to settlement, you should be eligible for the credit (or a portion of the credit if you're within the phase-out range).*

Question: **I am an eligible existing homeowner. I have a fair amount of equity in my home. I have found a home with a non-negotiable price of \$825,000. Will I be able to use any of the \$6500 tax credit?**

Answer: *No. The \$800,000 cap on the cost of the purchased home is firm at \$800,000. Any amount above \$800,000 makes the home ineligible for any portion of the credit. The \$800,000 is an absolute ceiling.*

Question: **I owned my home for 10 years, but sold it two years ago year and have been renting since. If I purchase a home, will I be eligible for the \$6500 tax credit if I meet all the other eligibility tests?**

Answer: *Yes. Because you lived in the home for more than 5 consecutive years of the previous 8, you will qualify for the \$6500 credit. For example, Say John and his wife bought a home in 2000 and lived there until 2008 when he got a divorce. Whether John has been renting or bought in the interim, he WOULD INDEED be eligible for the credit because he owned a home and occupied it as his principal residence for 5 consecutive years out of the last 8 years. The keyword here is "consecutive." As long as he lived in that house for 5 years straight what he did since 3 years doesn't impact eligibility.*

Question: **I am an eligible first-time homebuyer. I entered into a contract to purchase on November 1, 2009. Do I have to go to closing before December 1? How does the extension date affect me?**

Answer: *You do not have to close before December 1. Once the legislation has been signed, it will be as if the Nov 30 date had never existed. Therefore, so long as the contract settles before April 30 (or July 1, worst case), the purchaser will be eligible for the credit.*