

Trusts Affect Texas' Homestead Exemption

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For individuals who own a home, one of their main concerns is the preservation of the homestead exemption on the property. A homestead exemption helps save property taxes on an individual's home by removing a portion of the value of the property from taxation.

In Texas, a residence that qualifies as a homestead is entitled to several tax exemptions for property tax purposes, including exemptions from school and county taxes. Under Texas law, a homestead is a structure designed for human residence used by its owner or owners as a main residence. These exemptions from assessment in valuation include a homestead exemption as well as an additional exemption for an owner who is 65 or older or disabled.

In addition to removing a portion of the value of the property from taxation, residences subject to a homestead exemption are protected from dramatic increases in valuation for property tax purposes under the homestead cap. The cap for homestead purposes is the lesser of the market value of the property or the previous year's appraised value, plus 10 percent. If homes in the area are appreciating by more than 10 percent, the homestead cap can produce substantial property tax savings.

In order to receive an exemption, the residential homestead may be owned by an individual or by a qualifying trust. For estate planning purposes, many people use trusts to hold and manage their assets. Some people prefer to place their assets into a revocable living trust for ease in handling those assets during their lifetime and to avoid probate upon their death. Others utilize bypass trusts upon death as a way to allow their surviving spouse to benefit from their estate without it becoming part of the surviving spouse's estate. Both types of trusts often hold residential homesteads as part of the trust assets. Clients worry that in placing their homestead into their revocable living trust or into a bypass trust at death that the residential homestead will lose its exemption for property tax purposes.

The law is clear that if you own your home, live in it and continue to use it as your primary residence, you will not lose your homestead exemption. But a residence for property tax purposes is defined as one that is owned not only by an individual but also by a qualifying trust.

How can we make sure that if we place our primary residence into a revocable living trust or a bypass trust at death that it does not lose its homestead exemption?

We must determine that the trust holding the homestead is a qualifying trust. To be a qualifying trust the trust, or other written instrument, must give the beneficiary the right to use and occupy the residence rent free and without charge except for taxes and other costs and expenses specified in the instrument. The language allowing the trust to maintain its qualifying trust status can be in a separate deed, trust amendment (if the trust document allows amendment) or by court order. The right to use and occupy the property may be for life or for a set term of years or until the date the trust is revoked or terminated.

Another consideration regarding whether or not to place your home in a revocable living trust concerns potential future eligibility for Medicaid long-term care benefits. Generally, for Medicaid eligibility purposes, the home is an exempt asset and not considered when determining an individual's countable assets. However, homes placed in a revocable living trust lose this exempt status and the value of the homestead is included as a countable resources often resulting in a loss of Medicaid eligibility.

In order to regain the home's exempt status, action must be taken to re-establish the home's exempt status for Medicaid purposes by the individual seeking to obtain Medicaid eligibility.

Among the many benefits of living in Texas is that Texas has one of the most protective homestead rights of any state. However, careless estate planning techniques may result in the loss of this unique benefit. In order to ensure that the homestead exemption is not lost, it is advisable to contact a qualified estate planning or elder law attorney for the preparation of your estate planning documents.