

By: Paxton

H.B. No. 3767

A BILL TO BE ENTITLED

AN ACT

relating to homestead property transferred to a trustee of certain trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 41, Property Code, is amended by adding Section 41.0021 to read as follows:

Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) In this section, "qualifying trust" means an express trust:

(1) in which the instrument or court order creating the express trust provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of another person;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption; or

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost to the settlor or beneficiary, other than payment of taxes and other costs and expenses specified in the instrument or court order:

(i) for the life of the settlor or beneficiary;

(ii) for the shorter of the life of the settlor or beneficiary or a term of years specified in the

1 instrument or court order; or

2 (iii) until the date the trust is revoked or  
3 terminated by an instrument or court order recorded in the real  
4 property records of the county in which the property is located and  
5 that describes the property with sufficient certainty to identify  
6 the property; and

7 (2) the trustee of which acquires the property in an  
8 instrument of title or under a court order that:

9 (A) describes the property with sufficient  
10 certainty to identify the property and the interest acquired; and

11 (B) is recorded in the real property records of  
12 the county in which the property is located.

13 (b) Property that a settlor or beneficiary occupies and uses  
14 in a manner described by this subchapter and in which the settlor or  
15 beneficiary owns a beneficial interest through a qualifying trust  
16 is considered the homestead of the settlor or beneficiary under  
17 Section 50, Article XVI, Texas Constitution, and Section 41.001.

18 (c) A married person who transfers property to the trustee  
19 of a qualifying trust must comply with the requirements relating to  
20 the joinder of the person's spouse as provided by Chapter 5, Family  
21 Code.

22 (d) A trustee may sell, convey, or encumber property  
23 transferred as described by Subsection (c) without the joinder of  
24 either spouse unless expressly prohibited by the instrument or  
25 court order creating the trust.

26 (e) This section does not affect the rights of a surviving  
27 spouse or surviving children under Section 52, Article XVI, Texas

1 Constitution, or Part 3, Chapter VIII, Texas Probate Code.

2           SECTION 2. This Act applies only to a transfer that is  
3 effective on or after the effective date of this Act. A transfer  
4 that is effective before the effective date of this Act is governed  
5 by the law as it existed immediately before the effective date of  
6 this Act, and that law is continued in effect for that purpose.

7           SECTION 3. This Act takes effect September 1, 2009.