

1-1 By: Paxton (Senate Sponsor - Wentworth) H.B. No. 3767
1-2 (In the Senate - Received from the House May 6, 2009;
1-3 May 7, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to homestead property transferred to a trustee of certain
1-9 trusts.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter A, Chapter 41, Property Code, is
1-12 amended by adding Section 41.0021 to read as follows:

1-13 Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) In this
1-14 section, "qualifying trust" means an express trust:

1-15 (1) in which the instrument or court order creating
1-16 the express trust provides that a settlor or beneficiary of the
1-17 trust has the right to:

1-18 (A) revoke the trust without the consent of
1-19 another person;

1-20 (B) exercise an inter vivos general power of
1-21 appointment over the property that qualifies for the homestead
1-22 exemption; or

1-23 (C) use and occupy the residential property as
1-24 the settlor's or beneficiary's principal residence at no cost to the
1-25 settlor or beneficiary, other than payment of taxes and other costs
1-26 and expenses specified in the instrument or court order:

1-27 (i) for the life of the settlor or
1-28 beneficiary;

1-29 (ii) for the shorter of the life of the
1-30 settlor or beneficiary or a term of years specified in the
1-31 instrument or court order; or

1-32 (iii) until the date the trust is revoked or
1-33 terminated by an instrument or court order recorded in the real
1-34 property records of the county in which the property is located and
1-35 that describes the property with sufficient certainty to identify
1-36 the property; and

1-37 (2) the trustee of which acquires the property in an
1-38 instrument of title or under a court order that:

1-39 (A) describes the property with sufficient
1-40 certainty to identify the property and the interest acquired; and

1-41 (B) is recorded in the real property records of
1-42 the county in which the property is located.

1-43 (b) Property that a settlor or beneficiary occupies and uses
1-44 in a manner described by this subchapter and in which the settlor or
1-45 beneficiary owns a beneficial interest through a qualifying trust
1-46 is considered the homestead of the settlor or beneficiary under
1-47 Section 50, Article XVI, Texas Constitution, and Section 41.001.

1-48 (c) A married person who transfers property to the trustee
1-49 of a qualifying trust must comply with the requirements relating to
1-50 the joinder of the person's spouse as provided by Chapter 5, Family
1-51 Code.

1-52 (d) A trustee may sell, convey, or encumber property
1-53 transferred as described by Subsection (c) without the joinder of
1-54 either spouse unless expressly prohibited by the instrument or
1-55 court order creating the trust.

1-56 (e) This section does not affect the rights of a surviving
1-57 spouse or surviving children under Section 52, Article XVI, Texas
1-58 Constitution, or Part 3, Chapter VIII, Texas Probate Code.

1-59 SECTION 2. This Act applies only to a transfer that is
1-60 effective on or after the effective date of this Act. A transfer
1-61 that is effective before the effective date of this Act is governed
1-62 by the law as it existed immediately before the effective date of
1-63 this Act, and that law is continued in effect for that purpose.

1-64 SECTION 3. This Act takes effect September 1, 2009.

1-65

* * * * *