

## TRUSTS AND HOMESTEAD ELIGIBILITY

In March, 2010 we published an article in these pages describing how different types of ownership or beneficial interest influence eligibility for the Homestead Exemption. However, because we've recently received a flurry of questions asking if and how a beneficiary of a trust would qualify for the homestead exemption, we decided to revisit the topic as it relates to revocable and irrevocable trusts, qualified personal residence trusts, unrecorded business trust organizations, land trusts, and trusts for the benefit of an IRA account.

Legal title to property owned by a trust is vested in the trust. In order for an otherwise qualified person who is a beneficiary of a trust to claim the Homestead they must be granted a beneficial interest and possessory right to the real property under the terms of the trust and present recorded proof of that interest and right to the Property Appraiser.

**Revocable and Irrevocable Trusts:** In the case of an existing Homestead, if the property is transferred to a trust, and the grantor/homesteader is named in the deed as trustee of the trust/grantee, the homestead will continue without any further action by the person claiming the exemption. In the case of a new homestead, if the deed shows the qualified applicant as the trustee, no additional paperwork beyond the application is required. If the existing homesteader or new applicant is not named as trustee/grantee a separate Grant of Beneficial Interest and Possessory Right must be recorded with the Clerk of the Court in order for the property to support a homestead exemption, (a sample form is available on our website, [www.SC-PA.com](http://www.SC-PA.com) under the Download Forms link). Typically, the beneficial interest and possessory right is for the life of the beneficiary.

**Qualified Personal Residence Trusts:** Also called QPRTs, these trusts grant a beneficial interest and possessory right to a beneficiary for a number of years. Up until 1995, Florida did not permit beneficiaries of QPRTs to claim a homestead. In that year the Third District Court of Appeal ruled that beneficial title for a number of years supported the Homestead exemption. As mentioned above, if the interest and possessory right of the beneficiary is not recited in the deed a separate document must be recorded with the Clerk of the Court. At the end of the term of the trust the homestead exemption will end.

**Unrecorded Business Trust Organizations:** Also called a UBTO, such an entity holds legal title to the property but may grant a beneficial interest and possessory right to a beneficiary by recording, with the Clerk of the Court, the minutes of a meeting of the Board of Directors of the organization in which the grant is adopted. If the beneficiary is otherwise qualified he or she may be granted the homestead exemption.

**Land Trusts:** Under the laws of the State of Florida, legal and beneficial interest in a land trust is vested with the trust. Any beneficial interests and possessory rights granted to a beneficiary by a Land Trust are considered personal property and are not eligible for a Homestead exemption. It is not unusual for such a trust to be established to preserve the anonymity of the person residing on the property. If that person wishes to apply for the Homestead a Grant of Beneficial Interest and Possessory right would have to be recorded with the Clerk of the Court. However, if a trustee of a land trust is also the beneficiary, because the trustee has both legal and beneficial interest, the qualified beneficiary could be entitled to the Homestead Exemption.

**Trusts for the Benefit of an IRA Account:** This is a relatively new wrinkle in the Homestead/Trust relationship. IRA's can only be funded by money, but the IRA may invest in certain property, including real estate. However, the interest in that real property is vested in the custodian or trustee of the IRA account, not in the beneficiary/account owner. The IRS explicitly states that use of such property by the beneficiary/account owner is a "prohibited transaction". If the beneficiary, or a member of their family, (spouse, ancestor, lineal descendant or spouse of lineal descendant), uses the property at any time during the year, the account stops being an IRA as of the first day of that year. The result is that all assets are considered distributed at their fair market values on the first day of the year. The tax implications can be dire, including possible capital gains taxes. Beneficiaries of such trusts do not qualify for homestead exemption.

As we've said previously, many factors play a role in choosing how to take title to real property. You and your clients and customers should definitely consult with an attorney.

### Rules and Statutes Governing Trusts and Exemptions

**§196.031(1)(a) F.S.:** Every person who, on January 1, has legal title or **beneficial title in equity** to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence is entitled to a homestead exemption...The property appraiser may request the applicant to provide additional ownership documents to establish title.

**§196.041(2) F.S.:** A person who otherwise qualifies for the homestead exemption shall be entitled to such exemption where the person's possessory right in such real property is based upon an instrument granting to him or her a **beneficial interest for life**, such interest being hereby declared to be **"equitable title to real estate."**

**Chapter 12D-7.008(1), FAC:** The Constitution requires that the homestead claimant have the legal title or **beneficial title in equity** to real property claimed as his tax exempt homestead. §196.031 F.S. requires that the deed or other instrument to homestead property be recorded in order to qualify for homestead exemption.

**Chapter 12D-7.011 FAC:** The beneficiary of a passive or active trust has **equitable title** to real property if he is entitled to the use and occupancy of such property under the terms of the trust; therefore, he has sufficient title to claim homestead exemption. Homestead tax exemption may not be based upon residence of a beneficiary under a trust instrument which vests no present possessory right in such beneficiary.

### Other references and resources:

**Chapter 689.07 F.S. Conveyances of Land and Declarations of Trust:** Interests under deeds or other instruments; under the Florida Land Trust Act; and real estate interests under an IRA or qualified plan.

**Attorney General Advisory Legal Opinions:** AGO 74-313 (Inter Vivo Trusts and Homestead), AGO 90-70 (Beneficial Interest and Homestead), AGO 2008-44 (Land Trusts, Qualified Personal Residence Trusts and Homestead).

**IRS Publication 590, Individual Retirement Agreements, Prohibited Transactions, p 44.**

**NEED A SPEAKER FOR YOUR MEETING? BILL FURST WILL COME AND TALK WITH YOUR GROUP AND ANSWER YOUR QUESTIONS.**

**WANT MORE INFORMATION ON NAVIGATING OUR WEBSITE? OUR GIS/IT DEPARTMENT IS AVAILABLE FOR DEMONSTRATIONS AND DISCUSSION.**

To make an appointment call our office at 941.861.8200 or email us at [PA@SC-PA.com](mailto:PA@SC-PA.com).