

NEW HOMESTEAD EXEMPTION MAY BE TRAP FOR THE UNWARY

In November 2004, the Louisiana voters approved a new Constitutional Amendment to revise Louisiana's Homestead exemption law for ad valorem tax purposes. While this new law is helpful in clarifying a number of issues, it does create a trap for the unwary. Specifically, the new law has been interpreted to deny the homestead exemption for individuals who transfer their homes into revocable trusts (also known as living trusts).

While not as common as it is in other states, some Louisiana residents have used revocable or living trusts for estate planning purposes. Basically, these trusts hold title to an individual's property during his or her lifetime and can be managed by a successor trustee if the individual becomes incapacitated. Upon the individual's death, the property passes to the beneficiaries (heirs) under the terms of the trust.

The new law allows for the homestead exemption for irrevocable trusts but not for revocable trusts. Before the new law was enacted, there had been a number of Attorney General's Opinions allowing the homestead exemption for homes held in revocable trusts when the prior homeowner

continued to serve as trustee and/or beneficiary of the trust. In a revocable trust, the settlor (homeowner) can revoke the trust at any time and get the home back. Because of this power of revocation, it would make sense to treat the settlor as the owner of the home notwithstanding the trust. However, because the new law specifically allows for irrevocable trusts, but is silent with respect to revocable trusts, it has been interpreted to prohibit the homestead exemption for homes held by revocable trusts. Apparently, the tax assessors throughout the state have agreed upon this interpretation and are proceeding to contact individuals whose homes are in revocable trusts to advise them that they no longer qualify for the homestead exemption. While the validity of the assessors' interpretation is somewhat questionable, there may be alternatives to qualify for the homestead exemption and still utilize a revocable living trust when desired.

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TENANT IMPROVEMENTS – WHO OWNS THEM?

Who owns the improvements constructed by a tenant is often a critical issue when a lease terminates. If a lease does not address the issue, the relevant Louisiana Civil Code Articles will apply. Effective January 1, 2005, Louisiana revised the Civil Code Articles regarding leases. The revised Articles specifically address improvements made by tenants and govern if the lease is silent on the issue.

Civil Code Article 2695 now specifically addresses the removal of improvements made by tenants. The Article grants the tenant the right to remove any improvements the tenant has made even if the tenant made the improvements without the landlord's consent. If the tenant does not elect to remove the improvements and restore the leasehold premises to its prior condition, the landlord may: (1) keep the improvements and reimburse the tenant for the lesser of: (i) the enhanced value of the improvements, or (ii) the cost of the improvements; or (2) the landlord may demand that the tenant remove the improvements

within a reasonable time and restore the leasehold premises to its original condition. If the landlord demands removal and the tenant fails to remove the improvements, the landlord may: (1) have the improvements removed and restore the leasehold premises to its former condition at the tenant's expense; or (2) keep the improvements, in which event the landlord is not obligated to reimburse the tenant for the improvements.

A lease should always address whether or not a tenant has the right to construct improvements and the tenant's right or obligation to remove the improvements once the lease terminates. If the lease is silent regarding the improvements, the outcome may be different from what the parties originally anticipated.

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