

LAW

Pre-empted exemption

People who use a certain type of trust for their homes risk running afoul of tax assessors.

BY STEVE CLARK

All Patricia Fair wants is the homestead tax exemption she's entitled to—or thinks she is.

It turns out it isn't so easy.

Fair's brush with bureaucracy should serve as a heads-up to people with revocable trusts who also enjoy homestead tax exemptions. Those homestead exemptions are in jeopardy because of how the Louisiana Tax Commission and some tax assessors are interpreting a new constitutional amendment.

Fair hopes she has found a solution with the help of an attorney, who figured out a way to get Fair her homestead exemption while hanging on to her revocable trust—with the assessor's blessing.

But a subsequent tax commission opinion in response to another assessor's question on the very same issue calls into question whether Fair's solution will stand. The latest turn is prompting her attorney, Kevin Curry, a partner with the Kean Miller law firm, to request an opinion from the state Attorney General's Office.

Fair is an Illinois transplant who moved into her new Prairieville home a year ago. She's also a retired estate-planning paralegal long accustomed to dealing with revocable trusts, also known as living trusts.

A revocable trust allows the person who established it to amend or revoke the trust at any time. When that person dies, the trust becomes irrevocable and goes to beneficiaries. An irrevocable trust, once established, can't be changed or canceled.

When Fair closed on her house, she had the title placed in her trust. No problem.

"I just don't understand the logic of it. The whole country knows about this. Living trusts have been in existence for over a quarter of a century that I know of."

PATRICIA FAIR, retired estate-planning paralegal

"The purpose of the trust is to save time and money," she says. "After I'm gone, I want everything to go to my four children equally, without the interference of any government and any lawyer. My son can take care of everything, all by himself."

Then she applied for her homeowner's exemption, along something called



CULTURE SHOCK: Patricia Fair, a retired estate-planning paralegal who recently moved to Prairieville from Illinois, says Louisiana is at odds with the rest of the country over how it handles homestead exemptions for people with her type of trust.

with a senior freeze, a type of retroactive property tax break available to people of retirement age.

A few months later, Fair got a letter from the assessor's office. Her homeowner's exemption had been denied because her property was in a revocable trust. If she'd had an irrevocable trust, she could have had the exemption.

Fair was flabbergasted.

"I just don't understand the logic of it," she says. "The whole country knows about this. Living trusts have been in

existence for over a quarter of a century that I know of. I've been doing them up in Illinois for people who live out East, down in Florida, California—I mean they're all over the country."

Homestead tax exemptions save the typical homeowner about \$750 a year. Some people would have shrugged it off. Not Fair, who wasn't about to let go

of her revocable trust due to what seems to her a ridiculous law.

So she sought legal help from Curry.

"We basically had to pull the house out of her trust, then put it back in with her keeping a usufruct," he explains.

Usufruct gives a person the right to use the property in question. It's a good way for a parent to leave the house to the kids, still be able to live there the rest of their lives and not have to deal with the succession process.

Curry took Fair's house out of trust and put it back in with the usufruct and the assessor's thumbs up all in one day. Fair had her revocable trust and her homestead exemption at a cost of about \$800 in attorney and sundry fees.

That was before the tax commission issued an opinion last April that suggests Curry's fix won't fly.

The amendment dealing with homestead exemptions doesn't specifically prohibit exemptions for revocable trusts, though it does specifically allow them for irrevocable trusts. Reading between the lines, one could conclude, as the tax commission has done, that the exemption is not allowable for revocable trusts.

Curry says that as far as he can tell, the law was written the way it was to address perceived concerns that revocable trusts could be altered, making it impossible to know who was living in

the house, which determines who should get the homestead exemption.

He thinks the tax commission is reading too much into the statute and is requesting an opinion from the Attorney General's Office. In the meantime, Louisiana residents with revocable trusts and homestead exemptions can expect bad news from their assessors.

Curry calls the statute a "trap for the unwary."

"In my mind, if you put the house into this trust, and you can revoke it tomorrow and get your house back, it ought to be treated as your house," he adds.

The tax commission, meanwhile, is giving no ground. The commission is taking the position that if the law doesn't specifically allow the revocable trust, it's not allowed.

Tax commission attorney Vanessa LaFleur says a tax exemption for an individual must be "clearly, unequivocally and affirmatively established" by the law. That's not the case, LaFleur says, with the interpretation Curry is arguing for.

"The law does not provide in any instance for a revocable trust to receive the homestead exemption," she says.

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