

## **BILL ANALYSIS**

Senate Research Center

H.B. 3767  
By: Paxton (Wentworth)  
Jurisprudence  
5/15/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, creditors are prohibited from suing individuals for a large percentage of their residence homestead. However, when a person through a warranty deed transfers the residence homestead into a living trust, the individual loses that homestead protection since the individual no longer legally owns the residence homestead after the transfer.

This legislation would allow a trustee to transfer, by warranty deed, real property designated as a homestead into a living trust without affecting the homestead designation of the property if the trust settlor is a beneficiary of the trust. In addition, the bill would provide residence homestead protection to settlors, their spouses, and their heirs in a qualified trust for as long as they use the home as a residence homestead.

H.B. 3767 relates to homestead property transferred to a trustee of certain trusts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 41, Property Code, by adding Section 41.0021, as follows:

Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) Defines "qualifying trust" in this section.

(b) Provides that property that a settlor or beneficiary occupies and uses in a manner described by this subchapter and in which the settlor or beneficiary owns a beneficial interest through a qualifying trust is considered the homestead of the settlor or beneficiary under Section 50 (Homestead; Protection from Forced Sale; Mortgages, Trust Deeds, and Liens), Article XVI (General Provisions), Texas Constitution, and Section 41.001 (Interests in Land).

(c) Requires a married person who transfers property to the trustee of a qualifying trust to comply with the requirements relating to the joinder of the person's spouse as provided by Chapter 5 (Homestead Rights), Family Code.

(d) Authorizes a trustee to sell, convey, or encumber property transferred as described by Subsection (c) without the joinder of either spouse unless expressly prohibited by the instrument or court order creating the trust.

(e) Provides that this section does not affect the rights of a surviving spouse or surviving children under Section 52 (Descent and Distribution of Homestead; Restrictions on Partition), Article XVI, Texas Constitution, or Part 3 (Setting Apart Homestead and Other Exempt Property, and Fixing the Family Allowance), Chapter VIII (Proceedings During Administration), Texas Probate Code.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.