



ELDER LAW AND ESTATE PLANNING

Joseph Karp

Home in living trust can still get homestead exemption

Question: Our joint living trust was drawn up by a New Jersey attorney when we lived there. Our main goal was avoiding probate. For reasons we don't fully understand, the lawyer told us not to put our home in the trust, so we didn't. We sold that home, and now live in Florida. We own a home here for which we get a Florida homestead exemption. Should we put our new Florida home in our trust?

Answer: I do not know why your New Jersey attorney advised you to keep your home out of your living trust, since that would have subjected it to probate. Here in Florida, my clients regularly re-title their homestead property in the name of their living trusts. Some lawyers seem to think that putting the home into a trust jeopardizes the homestead exemption, but that is not true. The Supreme Court of Florida has ruled that putting homestead property into a trust is a valid transfer, and does not affect the property's homestead status. Thousands of my clients over the years have transferred their homes into their trusts. Not one has had a problem. Our state law requires that the trust address the homestead in order to maintain the tax exemption.

I suggest that at this point, you have all your estate planning documents reviewed

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by a Florida elder law/estate planning attorney. Although a trust valid in one state is valid in all states, as a practical matter, trust provisions that are beneficial in one state may not be useful, and may even be disadvantageous in another. For example, New Jersey had a state estate tax and Florida does not. It's possible your trust is structured in a way that does not best serve you now that you live in Florida. Moreover, laws regarding powers of attorney, wills, etc., can vary from state to state. It's prudent to have all of these items reviewed.

Joseph Karp, a member of the Florida and New York Bars, is a Nationally and Florida Bar Certified Elder Law Attorney and founder of The Karp Law Firm, located in Palm Beach and St. Lucie counties. The firm assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration and estate litigation.