

ESTATE PLANNING LEGAL ALERT

New Property Tax “Uncapping” Exemptions Unveiled

By: Kevin M. Huss, Attorney

Earlier this month, Governor Snyder signed Public Act 310 of 2014, which expanded the available exemptions from property tax “uncapping” in the State of Michigan. The effect of this new law provides additional planning opportunities not originally contemplated in prior law. Beginning December 31, 2014, certain transfers to and from trusts, from probate estates, and within families will not be considered transfers of ownership, and therefore will not trigger an uncapping of the property’s taxable value.

Generally speaking, whenever a “transfer of ownership” of real property occurs, the taxable value of that property “uncaps” in the year following the transfer to 50% of the property’s true cash value. Michigan law, however, provides several exemptions to the definition of the term “transfer of ownership.” Until now, some transfers into trusts were subject to uncapping and all transfers from trusts and probate estates were subject to uncapping.

The new law provides critical new definitions and clarity to the exemptions to protect transfers to a defined group of family members. The group of family members now consists of:

- Spouses
- Parents (including parents of a spouse)
- Siblings (including siblings of a spouse)
- Children (including adopted children and children of a spouse)
- Grandchildren (including grandchildren of a spouse)

In this Alert, we will refer to individuals who fall within the five classes of people above as a “Related Person.”

Beginning December 31, 2014, the new law provides that the following transfers will no longer be subject to uncapping:

1. A transfer of residential property into a trust by the settlor of the trust or the settlor’s spouse, provided that the sole present beneficiary or beneficiaries of the trust are all Related Persons.
2. A distribution of residential real property from a trust, provided that the recipients of the property are all Related Persons.
3. A change in the sole present beneficiary of a trust that owns residential real property, so long as all of the new beneficiaries are Related Persons.
4. A distribution of residential real property under a will or by intestate succession to a Related Person.

In addition, Public Act 310 of 2014 clarifies the provisions concerning direct transfers of residential real property during lifetime. Beginning December 31, 2014, a transfer of residential real property to a Related Person is not subject to uncapping. A transferor no longer needs to evaluate whether the transferee was related to the transferor "by blood or affinity to the first degree," as was required under prior law. The transferor now only needs to confirm that the transferee falls into one of the classes of Related Persons as outlined above.

Whenever transfers are planned, however, family members must be aware that the residential property cannot be used for any commercial purpose following the conveyance in order to take advantage of the new uncapping exemptions. Also, a new administrative burden may arise in which the local assessor or the Michigan Department of Treasury can request verification of compliance with the requirements outlined above. Failure to comply with such a request within 30 days results in a fine of \$200, so it is important to assure that follow up on this type of request is completed.

If you would like to learn more about Public Act 310 of 2014 and how it can be used to transfer your residential real property, please contact the attorneys of Smith Haughey Rice & Roegge.



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