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What Every Texas Estate Planner Needs to Know About Advising New to Texas Clients

BRIAN D. CORORVE

Author Contact Information:

Brian D. Cororve
Gray, Reed & McGraw
Houston, Texas

bcororve@grayreed.com

713.986.7122

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Brian D. Cororve
Gray, Reed & McGraw
Houston, Texas
bcororve@grayreed.com
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I. INTRODUCTION

If you have practiced law in Texas as an estate planner for any period of time, it is highly likely that you have been engaged by a client or clients that have relocated from another state (or possibly even another country, although that is outside the scope of this paper). That should come as no surprise, as Texas is a great place to live for a number of reasons and can be a very attractive landing spot for clients looking to relocate from a higher tax environment.

In particular, many of these clients are coming from California. In fact, according to Bill Fulton of the Kinder Institute for Urban Research at Rice University, “something like 20 percent of the new residents of Texas come from California.”¹ The number one reason seems to be affordable housing. In Texas, the median home price is \$362,000, topping out at \$640,000 in Austin. But in California, the median cost of \$800,000 and getting as high as \$1.3 million in San Francisco.² Another significant reason is taxes and less regulation. California has a state income tax, while Texas does not. California is also a state with stronger regulations. As a result, many businesses formerly based in California have moved to Texas, most notably Tesla, Oracle, Hewlett Packard Enterprise, CBRE and Charles Schwab. The migration of these major companies means an accompanying transfer of employees, supporting businesses, and others to the state.

Many of the reasons above apply to clients moving from other states as well. Illinois and New York, for example, also have state level individual tax regimes, whereas Texas does not. Cost of housing is extremely high on the East Coast, and our weather tends to be much milder than the winters faced by residents of those states (I went to college in St. Louis and couldn’t move back fast enough to Texas after several winters there). Therefore, Texas estate planners need to be prepared to advise their formerly out-of-state clients on how best to make that transition to Texas as smooth as possible, while avoiding pitfalls that are inherent in the state law regimes of their former states. Given the prevalence of clients moving from California, many of the examples in this paper will be to California law, but the lessons should be the same regardless of the state from which the client is moving. And in all cases, please be advised that this is no substitute for collaborating with local counsel as specific issues arise.

¹ William Fulton, *It Seems Like All of California is Moving to Texas. Is that True?*, RICE UNIV., KINDER INST. FOR URB. RSCH. (Mar. 2, 2021), <https://kinder.rice.edu/urbanedge/it-seems-all-california-moving-texas-true>.

² David Schechter, *We’re No. 1! More people move to Texas from California than any other state. But...why?*, WFAA News 8 (May 9, 2022), <https://www.wfaa.com/article/news/state/texas-news/main-reason-so-many-californians-move-to-texas/287-241575db-746c-4528-bd86-55576e8a526b>.

II. UPDATING ESTATE PLANNING DOCUMENTS FOR TEXAS

One of the first tasks for a Texas estate planner to undertake for their new-to-Texas clients will be to update their estate planning documents to conform with Texas law. Assuming that these clients engaged in meaningful estate planning in their prior state, they will most certainly have a revocable trust as the centerpiece of the estate plan. Why? Many states have overly burdensome probate procedures, and helping clients avoid probate is a common practice in other states, whereas in Texas, the probate process is much easier (assuming that the will calls for an independent administration). Later in the paper, we will give some examples of the specific probate issues in California, but other states such as Florida and New York are equally as challenging, so it is not uncommon to find clients coming from those states with revocable trust plans already in place.

Just because clients have a revocable trust, should we advise them to get rid of the trust in favor of wills, given the ease of probate in Texas? Not necessarily. For one thing, if the clients have taken the time, effort and expense to retitle their assets in the name of the revocable trust, they may not want to go through that process again to “unwind” the trust. In addition, the clients may still own property in their former state or other states, where having a revocable trust can still be beneficial to avoid an ancillary probate (which is just as problematic as a full probate in many states). Finally, from a practical standpoint, the clients may not be thrilled about completely redoing their estate planning documents if they had them done recently and there are no “structural” issues with the documents. That being said, what are the best ways to update these documents in the most cost effective way?

A. Amend the Revocable Trust

If the plan is to keep the revocable trust in place, even if temporarily, then amending the revocable trust will be a good starting point. A complete amendment and restatement of the trust agreement may ultimately be a good idea, but takes time to draft and could result in inadvertent changes to the original trust agreement. Drafting a more targeted amendment to make specific changes to comply with Texas law is a good initial step. Aside from any other changes the clients wish to make, the purpose of the amendment is twofold: (i) to make sure that the trust agreement is governed under Texas law, not the prior state’s law, and (ii) to add provisions that will take advantage of certain aspects of Texas law. A couple examples are discussed below, and a sample Amendment is included as **Exhibit A**.

1. Homestead Rights

A great example of an amendment that should be included would be language intended to ensure that the primary residence, if owned by the trust, qualifies for the residential homestead exemption for Texas property tax purposes. By qualifying for the homestead exemption, the owner can save on school and county taxes based on a certain percentage of the value of the home, and the amount by which the taxing authority can increase property taxes annually on the residence is capped. Given that this is a significant source of tax revenue in Texas, the homestead exemption can be very valuable for a Texas homeowner.

Under section 11.13 of the Texas Tax Code, a residence homestead includes “property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who

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