



**NEW YORK  
CITY BAR**

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**REPORT ON LEGISLATION BY THE  
LEGAL PROBLEMS OF THE AGING COMMITTEE AND THE  
TRUSTS, ESTATES AND SURROGATE'S COURTS COMMITTEE**

**A.6658  
S.4600**

**M. of A. Wright  
Sen. Golden**

AN ACT to amend the real property tax law, in relation to partial tax abatements for certain property

**THIS BILL IS APPROVED**

This brief memorandum is offered by the Legal Problems of the Aging Committee and the Trusts, Estates and Surrogate's Courts Committee of the New York City Bar Association (the "Committees") in support of a recently introduced bill (A.6658/S.4600) amending Real Property Tax Law ("RPTL") section 467-a.

In January 2013, the New York State Legislature passed and the Governor signed into law A.3354/S.2320 (Ch. 4, Laws of 2013), which amended RPTL Section 467-a so that, among other changes, the cooperative/condominium real property tax abatement is extended for three additional years but would be lost if the cooperative or condominium dwelling unit were held by a trust.

The Sponsor's Memorandum In Support of A.3354/S.2320 explained the purpose of the relevant provision as follows:

"Since 1996, the City of New York has offered, with New York State authorization, a partial property tax abatement program for co-op and condo owners. The program was established to address inequities in the real property tax system in New York City that burden owners of co-op and condominium units with larger tax bills than the owners of comparably valued one-, two and three-family homes. The original intent of the program was to ensure equity to those co-op and condo owners who primarily reside in New York City. However, a significant number of current beneficiaries are not owner-occupants but investors who were not the intended recipients. This bill extends the program for three additional years, provides additional benefit by enriching the abatement

for lower-valued properties, and restores the original intent of the program by phasing out the benefit for non-primary residents.”

The proposed bill (A.6658/S.4600) amending RPTL section 467-a would make two changes to current law. Section one of the bill amends subdivision 2 of section 467-a of the RPTL to provide that a tax abatement may be granted to a cooperative or condominium dwelling unit held in trust for the benefit of a person or persons who would otherwise be eligible for the abatement had he, she or they owned the unit directly, by adding a new paragraph (b-1) to read as follows:

“(b-1) Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to any dwelling unit held in trust solely for the benefit of a person or persons who would otherwise be eligible for an abatement, pursuant to this section, were such person or persons the owner or owners of such dwelling unit.”

There are many reasons, including but not limited to estate planning, why the owner-occupant of a cooperative or condominium dwelling unit would want the unit to be held in trust. Some owners transfer their primary residences to revocable trusts and it seems incongruous to treat a unit held by a trust that can be revoked at the whim of its creator any differently than a unit owned by the creator outright and free of trust. Qualified personal residence trusts are a common estate planning vehicle for residential property wherein the creator of the trust retains use of the residence for a period of time, after which the ownership passes to other beneficiaries. Qualified terminal interest property trusts are a common way of leaving property, including cooperative or condominium dwelling units, to a surviving spouse for his or her life for estate tax marital deduction and other purposes.

There are also many other reasons why cooperative or condominium dwelling units would be held in trust. The mere fact that title to the unit is held by a trustee for the benefit of a beneficiary who would otherwise qualify for the cooperative/condominium real property tax abatement should in no way prevent the unit from qualifying for such abatement, as is clear from the intent of the original bill as demonstrated in the Sponsor’s Memorandum In Support of S.2320, as quoted above. Thus, the Committees support the bill.<sup>1</sup>

## **RECOMMENDATIONS FOR FUTURE CONSIDERATION**

Notwithstanding the City Bar’s support for the bill, the Committees would like to suggest that a further corrective amendment be considered in the future. New paragraph (b-1) of subdivision 2 of section 467-a of the RPTL uses language that is used in other sections of the RPTL, such as sections 458(7), 458-a(5), 458-b(6), 459-c(9) and 467(10), to mean that property held in trust for a beneficiary who would be eligible for a real property tax benefit is still eligible

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<sup>1</sup> Section two of the bill amends subdivision two of RPTL section 467-a to provide that a property receiving benefits under RPTL 425 (the STAR exemption) or RPTL 459-c (exemption for persons with disabilities and limited incomes) shall not be ineligible for a cooperative or condominium real property tax abatement. The Committees support this provision of the bill as well.

for such benefit even though the property is held in trust. However, this language is open to misinterpretation. Trusts are generally multigenerational. A trust for the benefit of the person whose primary residence is a dwelling unit owned by the trust would not generally be solely for the benefit of that person, at least not as that terminology typically is used in trust law. That person's children and grandchildren or other beneficiaries likely have remainder interests in the trust after the death of the original beneficiary, and therefore are also beneficiaries of the trust, albeit not necessarily current beneficiaries.

The Committees therefore suggest that the Legislature consider amending RPTL section 467-a(b-1), and possibly RPTL sections 458(7), 458-a(5), 458-b(6), 459-c(9) and 467(10), so that they apply if a current beneficiary of the trust would be eligible for the tax benefit were he or she the owner of the property (as opposed to requiring that the trust be "solely" for such beneficiary's benefit).

Likewise, the Committees believe these exemptions should be expanded to include two other means of ownership: (1) legal life estates (RPTL section 467(10) currently gives a tax benefit to property subject to a legal life estate, but the other sections do not), and (2) single member limited liability companies, which are also common means of ownership where title to residential property may not be in the name of the occupant of the property, but the occupant can still use the property as a primary residence.

Committee on Trusts, Estates & Surrogate's Courts  
Sharon L. Klein, Chair

Committee on Legal Problems of the Aging  
Judith D. Grimaldi, Chair

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