

From the desk of

***John A. Crane***

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## ***The Texas Homestead***

I have made the remark before to clients that Texas and Florida are probably the two best places to be if you owe money. Both states have laws that exempt a significant amount of property from seizure by creditors. For instance, when our Texas forefathers were drafting our state constitution, they felt homestead protection was important to the preservation of the family.

There are two types of homesteads: urban and rural. An urban homestead can consist of up to 10 acres and can include multiple lots so long as they are contiguous. A homestead is urban if it is located within a municipality and is served by police and fire protection as well as three of the following services: electric, gas, sewer, storm sewer, and water. A homestead that does not meet the urban criteria is a rural homestead and is limited to two hundred acres for a married couple or 100 acres for a single person.

Note that there is no monetary limit on the size of the homestead. Your 10-acre urban homestead can be worth \$100,000 or \$100,000,000 and it is all protected. There has been talk in Washington lately of reforming the federal bankruptcy laws to place a cap on the homestead value that can be protected in a bankruptcy proceeding. Much of this effort is driven by angry Congressmen from other states who fume at the thought of folks like Kenneth Lay keeping their mansions.

Essentially, homestead protection means that your house cannot be seized and sold to satisfy your debts. Of course, your mortgage or home equity lender can certainly foreclose if you don't pay. Similarly, if you have repairs or improvements done to your home, the contractor may have the right to foreclose a mechanic's lien on the property if you fail to pay. Also keep in mind that our state law has no effect on the IRS and its ability to seize

your home, or anything else, if you owe federal taxes.

Whether or not a house is your homestead is purely a matter of intent. There is no need to formally designate your property as homestead in order to qualify for the exemption. (You may want to make sure the taxing authority knows it is your homestead for property tax purposes.) If you purchased a new lot and intend to build your homestead on it, it can qualify as your homestead. If you have moved out and are temporarily renting the property until you can afford to move back in, then it remains your homestead during the rental. You can only have one homestead, though. If you own two homes, only one can be protected.

When you die, your surviving spouse and/or minor children and/or unmarried adult children who still live in the home can continue claiming the homestead exemption, even if you left the property to your brother in your will. In such a case, none of your creditors could force the sale of the homestead to pay your bills and your brother would have to wait until your surviving family members abandoned the property before he could take possession of it. If you die leaving no spouse, minor child or adult child living in the home, then your homestead is no longer protected and can be sold to pay creditors of your estate.

Recently, our legislature passed a law authorizing the State of Texas to pursue probate claims against the estates Medicaid recipients. Although the rules governing such claims procedures are only now being implemented, essentially they give the State no greater rights than any other probate claimant. No law gives the State an automatic lien against property for Medicaid benefits paid.