

Homestead exemption, separate family units

Number: INFORMAL

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Mr. V. Frank Desguin
Charlotte County Property Appraiser
18500 Murdock Circle
Port Charlotte, Florida 33948-1076

Dear Mr. Desguin:

As Property Appraiser for Charlotte County, you have asked for this office's assistance regarding homestead exemptions and separate family units. Attorney General Crist has asked me to respond to your letter.

In Attorney General's Opinion 2005-60, this office considered whether the county property appraiser should grant homestead exemptions to both applicants when a married woman and her husband owned two separate residences and had applied for separate homestead exemptions under Article VII, section 6, Florida Constitution. The property appraiser advised this office that the husband and wife lived within easy driving distance of two separately owned properties and claimed to be two separate family units.

In concluding that the property appraiser was authorized to grant a homestead exemption to both applicants, Attorney General's Opinion 2005-60 notes that Article VII, section 6, Florida Constitution, creating the homestead exemption from taxation does not establish an absolute right to the exemption. Rather, taxpayers who would otherwise qualify for such an exemption are granted the exemption "upon establishment of right thereto." [1] As the opinion notes, the burden of demonstrating that they have established separate family units falls on the applicants. This office and the Florida courts have recognized that in order for there to be entitlement to a homestead tax exemption, there must be ownership of the home, residence therein, and the making of such residence as the permanent home in good faith. [2]

As is pointed out in Attorney General's Opinion 2005-60, the constitutional and statutory homestead provisions should be interpreted in the liberal and beneficent spirit in which they were conceived. [3] Where the benefits of the tax exemption are claimed, the constitution or statutes involved must be construed strictly against the one attempting to bring himself or herself within the terms of the exemption. [4] It is the bona fide intent of the parties to make the residence a homestead or permanent residence and occupy it as such exclusively of any other dwelling place that determines the existence of a homestead and mere occupancy without such intention will not suffice. The question of intent is to be determined by all the surrounding facts and circumstances and not necessarily by the representation of the parties. [5] In fact, section 196.015, Florida Statutes, provides a number of factors for the property appraiser to consider in determining whether an applicant for a homestead exemption intends to establish a permanent residence in this state.

Ultimately, it is the property appraiser who must determine an applicant's entitlement to a homestead exemption from an objective evaluation of the surrounding facts and circumstances; this office has no authority to interject itself into the process.

I trust that these informal comments will assist you in resolving this matter and I enclose a copy of Attorney General's Opinion 2005-60 for your convenience. Thank you for contacting this office to express your concerns and please do not hesitate to call upon us if we can assist you in the future.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tfl

[1] See *Horne v. Markham*, 288 So. 2d 196, 199 (Fla. 1973); Ops. Att'y Gen. Fla. 03-11 (2003) and 05-60 (2005).

[2] *Id.*, Ops. Att'y Gen. Fla. 52-158, p. 347 (1952) and 02-19 (2002). See also 12D-7.007(1), Fla. Admin. Code, which provides that "[f]or one to make a certain parcel of land his permanent home, he must reside thereon with a present intention of living there indefinitely and with no present intention of moving therefrom."

[3] See, e.g., *Schooley v. Judd*, 149 So. 2d 587 (Fla. 2nd DCA 1963), *cert. den.* 155 So. 2d 615, *rev'd on other grounds*, 158 So. 2d 514 (Fla. 1963); Op. Att'y Gen. Fla. 02-19 (2002).

[4] *Id.*

[5] See, e.g., Op. Att'y Gen. Fla. 57-327, p. 393 (1957).