

Homestead exemption, joint ownership

Number: INFORMAL

Date: October 13, 1998

The Honorable Nancy Argenziano
Representative, District 43
6216 West Corporate Oaks Drive
Crystal River, Florida 34429

Dear Representative Argenziano:

You inquire about the applicability of the homestead exemption when the property in question is jointly held.

Florida's tax exemption for homesteads is provided by Article VII, section 6, Florida Constitution, and section 196.031, Florida Statutes. Section 196.031, Florida Statutes, which substantially tracks the language of and implements the constitutional provision, provides:

"(1) Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of \$5,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution. Such title may be held by the entireties, jointly, or in common with others, and the exemption may be apportioned among such of the owners as shall reside thereon, as their respective interests shall appear. *If only one of the owners of an estate . . . held jointly with the right of survivorship resides on the property, that owner is allowed an exemption of up to the assessed valuation of \$5,000 on the residence and contiguous real property. . . .* Except for owners of an estate . . . held jointly with the right of survivorship, the amount of the exemption may not exceed the proportionate assessed valuation of all owners who reside on the property. Before such exemption may be granted, the deed or instrument shall be recorded in the official records of the county in which the property is located." [1] (e.s.)

Thus, under the above statute, if only one of the owners of an estate held jointly with a right of survivorship lives on the estate, that owner is entitled to the homestead exemption. In cases where the property is jointly held but with no right of survivorship, the exemption may not exceed the proportionate value of the interest of the owner residing on the property.

Rule 12D-7.012, Florida Administrative Code, adopted by the Department of Revenue to implement the provisions of section 196.031, Florida Statutes, provides examples of the application of the homestead exemption when property is jointly held, stating in subsections (4) and (6):

"(4)(a) This paragraph shall apply where property is held by the entireties or jointly with a right of

survivorship.

1. Provided no other co-owner resides on the property, a resident co-owner of such an estate, if otherwise qualified, may receive the entire exemption.
2. Where another co-owner resides on the property, in the same residential unit, the resident co-owners of such an estate, if otherwise qualified, must share the exemption in proportion to their ownership interests.

(b) Where property is held jointly as a tenancy in common, and each co-owner makes their residence in a separate family unit and residential unit on such property, each resident co-owner of such an estate, if otherwise qualified, may receive the exemption in the amount of the assessed value of his or her interest, up to \$25,000. No tenant in common shall receive the homestead tax exemption in excess of the assessed valuation of the proportionate interest of the person claiming the exemption.

* * *

(6)(a) Where a parcel of real property, upon which is located a residential unit held by 'A' and 'B' jointly as tenants in common or joint tenants without a right of survivorship, and 'A' makes his permanent home upon the said property, but 'B' resides and makes his permanent home elsewhere, 'A' may not claim as exempt more than his interest in the property up to a total of \$25,000 of assessed valuation on which he is residing and making the same his permanent home. The remainder of the interest of 'A' and the interest of 'B' would be taxed, without exemption, because 'B' is not residing on the property or making the same his permanent residence.

(b) If that same parcel were held by 'A' and 'B' as joint tenants with a right of survivorship or tenants by the entirety under the circumstances described above, 'A' would be eligible for the entire \$25,000 exemption."

The determination, however, whether the constituent in question jointly holds the property with a right of survivorship would be dependent upon the instrument of conveyance.

Section 196.151, Florida Statutes, provides that the property appraiser shall as soon as practicable after March 1 and on or before July 1 carefully consider all applications for tax exemptions. If the property appraiser finds that an applicant is not entitled to the exemption,

"he or she shall immediately make out a notice of such disapproval, giving his or her reasons therefor, a copy of which notice must be served upon the applicant by the property appraiser either by personal delivery or by registered mail to the post office address given by the applicant.[2] The applicant may appeal to the value adjustment board the decision of the property appraiser refusing to allow the exemption . . . and the board shall review the application and evidence presented to the property appraiser upon which the applicant based the claim for exemption and shall hear the applicant in person or by agent on behalf of his or her right to such exemption. The value adjustment board shall reverse the decision of the property appraiser in the cause and grant the exemption to the applicant if in its judgment the applicant is entitled thereto or shall affirm the decision of the property appraiser. The action of the board is final in the cause unless the applicant shall, within 15 days from the date of refusal of the application by the board, file in the circuit court of the county in which the homestead is situated a proceeding against the property appraiser for a declaratory judgment as is provided by chapter 86 or other

appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or value adjustment board or to file any paper other than the application above provided does not constitute any bar or defense to the proceedings." [3]

Thus, the statute provides for notice of the property appraiser's decision and a procedure for appealing that decision.

I trust that the above advisory comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tzg

[1] *And* see s. 196.031(3)(e), Fla. Stat., changing the assessed valuation from \$5,000 to \$25,000 for levies of taxing authorities other than school districts.

[2] See s. 1.01(11), Fla. Stat., stating the term "registered mail" as used in the statute, where the context will permit, includes certified mail with return receipt requested.

[3] See 196.194, Fla. Stat., providing for the hearings of the value adjustment board.