# Application requirements for homestead exemption

**Number:** INFORMAL

**Date:** September 04, 2007

The Honorable Wayne G. Weeks
Clay County Property Appraiser
Post Office Box 38
Green Cove Springs, Florida 32043-0038

Dear Mr. Weeks:

This is in response to your inquiry as to whether an individual must file an application in order to receive a homestead exemption. You have provided details of a specific instance in which the subject property was titled in the name of one individual who died in 2000. On August 15, 2001, by "Order Determining Homestead Status of Real Property," the property was placed in the name of two other individuals, lineal descendants of the deceased. A copy of the order was received by your office and ownership of the property was changed on the 2002 assessment roll to the two individuals. According to your letter, your office failed to remove the homestead exemption and the Save-Our-Homes assessment limitation associated with the previous owner and the subsequent owners enjoyed these benefits until being notified by your office of the error for the tax years 2001-2006.

Section 196.011(1)(a), Florida Statutes, states:

"Every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. The Department of Revenue shall prescribe the forms upon which the application is made. Failure to make application, when required, on or before March 1 of any year shall constitute a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8)."[1]

Subsection (5) of the statute requires the owner of property that has received an exemption in the prior year to reapply on a short form, affirming that the use of the property and his or her status as a permanent resident have not changed since the initial application. Section 196.011(9), Florida Statutes, however, provides:

"A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for exemption of property within the county after an initial application is made and the exemption granted. The waiver under this subsection of the annual application or statement requirement applies to all exemptions under this chapter except the exemption under s. 196.1995. Notwithstanding such waiver, *refiling of an application or statement shall be required when any property granted an exemption is sold or otherwise disposed of, when the ownership changes in any manner*, when

the applicant for homestead exemption ceases to use the property as his or her homestead, or when the status of the owner changes so as to change the exempt status of the property. In its deliberations on whether to waive the annual application or statement requirement, the governing body shall consider the possibility of fraudulent exemption claims which may occur due to the waiver of the annual application requirement. *It is the duty of the owner of any property granted an exemption who is not required to file an annual application or statement to notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes so as to change the exempt status of the property*. . . ." (e.s.)

This office has been informed that Clay County has waived the requirement of an annual application or statement for continuing the exempt status of property pursuant to section 196.011(9), Florida Statutes. It is assumed that the individuals who inherited the property received an annual notice from your office of their need to notify your office if they were no longer entitled to the homestead exemption.[2]

Section 196.161(1)(b), Florida Statutes, directs the property appraiser upon determination that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, to serve the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be subject to the taxes exempted, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest. Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest.

Section 196.031(1), Florida Statutes, speaks to entitlement of the homestead exemption:

"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."[3]

A number of Attorney General Opinions have addressed the issue of Florida homestead exemptions from taxation. 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."[4]

As that opinion notes, the burden of demonstrating that the applicant has met the statutory requirements rests upon the applicant. This office and the Florida courts have recognized that in order to establish entitlement to a homestead tax exemption, the applicant must prove ownership of the home, residence therein, and that such residence is the permanent home in good faith.[5] The Supreme Court of Florida, in *Horne v. Markham,*[6] stated that the procedures to establish homestead exemption include a timely application under chapter 196, Florida Statutes.[7]

While Attorney General's Opinion 2005-60 noted that the constitutional and statutory homestead provisions should be interpreted in the liberal and beneficent spirit in which they were conceived,[8] it is clear that where the benefits of a 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.[9]

In 1992, Florida citizens amended the Florida Constitution by adopting a provision that limited ad valorem taxation on homesteads. The amendment levied a base year "just value" assessment for each homestead as of January 1, 1994, and restricted subsequent increases in assessments to the lower of either (a) three percent of the prior year's assessment or (b) a percent change in the Consumer Price Index.[10] The purpose of the amendment was to encourage the preservation of homestead property in the face of ever-increasing opportunities for real estate development and rising property values and assessments.[11]

Subsection 4(c)(3) of Article VII, Florida Constitution, however, provides:

"After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein."

The Legislature subsequently adopted section 193.155, Florida Statutes, to implement the homestead amendment. Subsection (3) of the statute provides:

"Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change in ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection. There is no change of ownership if:
(a) Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:
1. The transfer of title is to correct an error;
2. The transfer is between legal and equitable title; or
3. The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if any individual who is additionally named as a grantee applies for a homestead exemption on the property, the application shall be considered a change of ownership . . . .
(b) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;
(c) The transfer occurs by operation of law under s. 732.4015; or
(d) Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner."

Section 193.155(3), Florida Statutes, thus reflects the intent of Article VII, section 4(c), Florida Constitution, that a change in ownership requires that the property be reassessed at just value as of January 1 of the year following the change in ownership.[12] Certain exceptions exist

including exceptions for transfers between a husband and wife and for transfers upon the death of an owner between the owner and one who is a permanent resident on the property and is legally or naturally dependent upon the owner. While section 193.155(3) contains certain exceptions, you have not advised this office whether any of the exceptions set forth in section 193.155(3)(a)-(d) are applicable. Such a determination involves questions of fact and mixed questions of law and fact that this office cannot resolve. For example, this office has no information as to whether the transfer is between the deceased owner and one who is a permanent resident who was legally and naturally dependent upon the owner. It is, however, a general principle of statutory construction that where a statute sets forth exceptions, no others may be inferred.[13]

Property appraisers have always been able to correct mistakes of fact in property assessments.[14] Section 197.122(1), Florida Statutes, recognizes:

"No act of omission or commission on the part of any property appraiser . . . shall . . . defeat the payment of taxes; but any acts of omission or commission may be corrected at any time by the officer or party responsible for them in like manner as provided by law for performing acts in the first place, and when so corrected they shall be construed as valid ab initio and shall in no way affect any process by law for the enforcement of the collection of any tax."

Rule 12D-8.021, Florida Rules of Administrative Procedure, provides the procedure for correction of errors by property appraisers. Among the errors that may be corrected is the granting of an exemption in error.[15]

All of the above mentioned statutes, opinions, and rules contemplate that the property appraiser, as well as the property owner, will timely and appropriately perform the required steps. While there are provisions for corrections of errors in assessments, in this instance, where there appears to have been a lapse by the property appraiser in carrying out statutorily prescribed duties, there may be a question of whether the property appraiser may be estopped from asserting that the property owner was not entitled to the homestead exemption.[16] Clearly, there is no question that the property owner failed to file an initial application for a homestead exemption on the property after an apparent change in ownership. However, the property appraiser's placement of the property on the tax rolls with the homestead exemption after receiving the judicial order determining homestead status of the property and the mailing of the notice of homestead exemption to the property owner in subsequent years may implicate questions of equitable estoppel.[17] Regrettably, it is beyond the authority of this office to fashion a remedy. It may be appropriate to seek judicial clarification in this matter.

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] It is not asserted that the individuals qualify under the provisions of subsections (7) and (8).

[2] Affidavit of Dale S. Wilson, legal representative of Cheryl L. Gustafson in the Estate of Jackie Driggers, stating that Ms. Gustafson received an annual homestead exemption renewal card in her name from the year 2001.

[3] Section (6)(a), Art. VII, Fla. Const., provides:

"Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years."

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

[5] *Id.*; Ops. Att'y Gen. Fla. 52-158, p. 347 (1952) and 02-19 (2002). See also 12D - 7.007(1), Fla. Admin. Code, stating 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."

[6] 288 So. 2d 196, 199 (Fla. 1973).

[7] *See also, Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004).

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

[9] *Id.*

[10] *See* Art. VII, s. 4(c), Fla. Const., which provides in part:

"All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:
a. Three percent (3%) of the assessment for the prior year.
b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average,

all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
(2) No assessment shall exceed just value.
(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.
(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.
(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.
(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law."

[11] *See Smith v. Welton,* 710 So. 2d 135 (Fla. 1st DCA 1998), *affirmed on other grounds*, 729 So. 2d 371 (Fla. 1999). *But see, Robbins v. Kornfield*, 834 So. 2d 955, 957 (Fla. 3rd DCA 2003), recognizing that *Smith v. Welton* was superceded by the amendment of s. 193.155(8)(a), Fla. Stat. (2001). *And see*, Constitutional Amendments on the Florida Ballot, Understanding Florida's Issues, (Fla. Inst. of Gov., Univ. of Fla., Gainesville, Fla.), Oct. 1992, at 9. The "primary advantage" of the amendment, therefore, is the "stabilizing [of] annual increases in property taxes, [and] providing protection to the elderly and poor against losing their property due to high taxes . . . ." *Id.*

[12] *And see*, Rule 12D-8.0061(2), Fla. Admin. Code, providing in part:

"Real property shall be assessed at just value as of January 1 of the year following any change of ownership. . . . For purposes of this section, a change of ownership includes any transfer of homestead property receiving the exemption . . . ."

[13] *See, e.g., Dobbs v. Sea Isle Hotel*, 56 So. 2d 341 (Fla. 1952).

[14] Section 197.122(3), Fla. Stat.

[15] Rule 12D-8.021(2)(a)2., Fla. Admin. Code

[16] *See City of Naples v. Conboy*, 182 So. 2d 412 (Fla. 1965) (although back assessments are specifically authorized by Florida Statutes [now s. 193.092, Fla. Stat.], equitable estoppel prevents a city where good faith is not disputed from back assessment of taxes for past years).

[17] *See Alachua County v. Cheshire*, 603 So. 2d 1334, 1337 (Fla. 1st DCA 1992) (party seeking to invoke estoppel against the government must establish affirmative conduct by the government going beyond mere negligence, that the government's act will cause serious injustice and the imposition of estoppel will not unduly harm the public interest; it is not necessary to prove intentional deceit on the part of the government); *Salz v. Department of Administration, Division of Retirement*, 432 So. 2d 1376, 1378 (Fla. 3rd DCA 1983) (estoppel is established by proving: 1) a representation as to a material fact that is contrary to a later-

asserted position; 2) reliance on that representation; and 3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon, *citing Department of Revenue v. Anderson*, 403 So. 2d 397, 400 (Fla. 1981)); and *Tri-State Systems, Inc. v. Department of Transportation*, 500 So. 2d 212, 215-216 (Fla. 1st DCA 1986) (decision on whether estoppel should be applied will depend upon properly made findings of fact as to each element in accordance with applicable legal principles).