Homestead Exemption, determining eligibility

Number: INFORMAL

Date: June 08, 2007

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

Dear Mr. Desguin:

Thank you for contacting the Florida Attorney General's Office regarding application of the homestead exemption provided in Article VII, section 6, Florida Constitution. Attorney General McCollum has asked me to respond to your letter.

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."[1] As that opinion notes, the burden of demonstrating that the applicants have met the statutory requirements rests upon the applicants. 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.[2]

As is noted 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 relevant 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:

"1) Formal declarations of the applicant.
2) Informal statements of the applicant.
3) The place of employment of the applicant.
4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.

5) The place where the applicant is registered to vote.
6) The place of issuance of a driver's license to the applicant.
7) The place of issuance of a license tag on any motor vehicle owned by the applicant.
8) The address as listed on federal income tax returns filed by the applicant."

As the statute notes, no one factor is conclusive of the establishment of permanent residence. Rather, a consideration of all the proofs offered is required.

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. 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

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[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, 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."

[3] *See, e.g., Schooley v. Judd,* 149 So. 2d 587 (Fla. 2nd DCA 1963), *cert. den.* 155 So. 2d 615 (Fla. 1963), *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).