

FEBRUARY 21, 2019 | PUBLICATION

Client Alert: Florida Homestead Exemption

The Florida Homestead Exemption reduces the value of a home for assessment purposes by up to \$50,000 dollars. In addition, Florida's "Save Our Homes" amendment to the constitution caps the rate at which homestead property assessments may be annually increased to the lesser of three percent or the rate of inflation. The application of the Florida Homestead Exemption laws can be complicated and below, are just a few of the issues that can arise:

Claiming Two Homesteads in Florida

Separated:

Generally, a married couple is considered a "single family unit" and is only entitled to one homestead exemption. While Florida law does not recognize legal separation, at least one Florida court has held: (a) if a couple is actually living separate and apart; (b) if neither party is dependent upon the other (no support, maintenance, etc.), and (c) if the separation is "bona fide" (not resulting from some fraudulent intent or designed to take advantage of homestead or other laws), each party may claim homestead. This approach has been upheld by the Florida Attorney General.

Out of State and within the State of Florida:

Under Florida law, a person who is receiving a tax exemption in another state (where permanent residency is required) is not entitled to Homestead Exemptions in Florida. The penalties for fraudulently claiming exemption are severe. Owners who intentionally cheat on homestead will have a tax lien placed against their properties, be back taxed for up to 10 years (as applicable), be required to pay a substantial penalty (50 percent of the unpaid taxes for each year), and pay an interest rate of 15 percent per year.

Rental of Homestead

Thirty Days in Two Years:

INDUSTRY SECTOR

Real Estate, Construction, & Development

SERVICE LINE

Litigation & Disputes

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Florida law states that if homesteaded property is rented in total or in part for more than 30 days per year for two consecutive years, the homestead owner loses the homestead exemption. Violations of this provision can result in penalties in addition to the disapproval of the homestead exemption such as a 50% penalty and 15% interest for any year or years the property was rented in the prior ten years.

Military

There is a military exception to the above rental rules. When property is owned and used as a homestead by a person serving in the military, the service member may rent the homestead property without abandoning their homestead exemption.

Confidential Sale:

A buyer wishing to maintain privacy may purchase property in an anonymous land trust. To claim homestead, the trust beneficiary must be the applicant. Many Florida property appraisers require the recording of a trust certification naming the beneficiary, thereby defeating the purpose of the land trust. The Sarasota County Property Appraiser's office, however, merely requests a copy of the trust to review and keep on file. The Manatee County Property Appraiser's office also only requires a copy of the trust for their files and will not record anything further in the Manatee County Public Records, however, the tax rolls will list the name of the beneficiary.

Continuing Homestead after Residence Is Demolished:

Intentional:

If the homestead is demolished for replacement and the owner is temporarily living elsewhere, many Florida property appraisers deny the homestead exemption. A few property appraisers, including the Sarasota and the Manatee County Property Appraisers, will consider preserving the homestead exemption on a case-by-case basis. The Save Our Homes cap, however, will be affected by the demolition. The main factors considered are the timing and the length of time for rebuilding. The first step is to communicate with the property appraiser's office.

Disaster:

When homestead property is destroyed by a natural disaster, the homestead exemption continues under Florida law, if the property otherwise qualifies and the owner notifies the property appraiser of intent to rebuild and live in the rebuilt home (and does not claim a homestead exemption on any other property). Failure to commence the rebuilding of the homestead property within three years after January 1 following the property's destruction constitutes abandonment of the property as homestead.