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HOMESTEAD TAX EXEMPTION IN FLORIDA

Vernon W. Clark*

History

In what the Supreme Court of Florida considers the greatest benevolence ever shown by the people of any state toward exemption of homesteads from taxation,1 section 7 of article X was added to the constitution of Florida on November 6, 1934,2 and amended, with more liberality, on November 8, 1938. The section, is as follows:

Every person who 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 home, or the permanent home of another or others legally and naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of Five Thousand Dollars on the said home and contiguous property, as defined in Article 10, Section 1 of the Constitution, for the year 1939 and thereafter. Said title may be held by the entireties, jointly, or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon as their respective interests shall appear, but no such exemption of more than Five Thousand Dollars shall be allowed to any one person or on any one dwelling house, nor shall the amount of the exemption allowed any person exceed the proportionate assessed valuation based on the interest owned.

* A.B.E. 1932, University of Florida; M.A. 1939, New York University; LL.B. 1942, University of Florida; former District Supervisor, Florida Parole Commission; Professor of Law, University of Florida.

1. Overstreet v. Tubin, 52 So. 2d 913 (Fla. 1951). The Court pointed out that Mississippi and Florida are practically alone in their policies of withdrawing homesteads as a source of revenue for the support of their local government, and in states where the exemption from taxes for other purposes is granted the amount that is allowable as a maximum is not nearly as great as that of these two states.

2. Section 7, as adopted originally, appeared as follows: "There shall be exempted from all taxation, other than special assessments for benefits, to every head of a family who is a citizen of and resides in the State of Florida, the homestead as defined in Article X of the Constitution of the State of Florida up to the valuation of $5,000.00; provided, however, that the title to said homestead may be vested in such head of a family or in his lawful wife residing upon such homestead or in both."
by such person. The Legislature may prescribe appropriate and reasonable laws regulating the manner of establishing the right to said exemption.3

Presumably, it was necessary to amend the Constitution in order to make operative this attitude toward taxation of homesteads. By its operation, this type of property would be placed in a preferred class for tax purposes which, in the absence of an appropriate change in the organic law of the state, apparently would result in violation of the provision requiring equality and uniformity of rates of taxation,4 as well as the provision limiting tax exemptions to property used only for specified purposes.5

The dearth of appellate court constructions of this amendment has handicapped proper administration of its provisions. Many questions have arisen concerning its application, and the authorities charged with its administration have found it necessary to ask legal opinions of the Attorney General of Florida upon numerous occasions.

While opinions of the Attorney General are only advisory in nature, they are of unusual importance in this field since, in the absence of a statute or a court decision clarifying the meaning of the amendment, or statutes pertaining thereto, a decision of the Attorney General ordinarily will be followed by the administrative authorities. Consequently, the opinions may affect many people.

The importance of such opinions warrants their inclusion in this discussion, but since they are only persuasive authority and should not be confused with statutory or case law even by arrangement here, they will be presented in separate paragraphs designated, “Op. Att’y. Gen.”

THE DETERMINATIVE DATE

A lien for taxes attaches to all real property in the State of Florida as of January 1 of each year and such property is assessed annually as of this date.7 Since the homestead tax exemption amendments are concerned with real property taxes8 it is apparent that all requirements for tax exemption of homesteads under these amendments must be met annually as of the first day of the year in order to prevent the attachment of the lien.

3. FLA. STAT. § 192.12 (1957). Contains the same terminology.
4. FLA. CONST. art. IX, § 1.
5. Ibid.
6. FLA. STAT. § 192.04 (1957).
8. The description of the homestead as contained in FLA. CONST. art. X, sections 1 and 7 can hardly warrant the tax exemption being applied to anything but real property. Since the tax would, in the absence of the exemption be levied against real property, the imposition could not be classified as an excise; the incidence of an excise is not property, but rather a privilege or activity.
Op. Att’y Gen. The tax year of many municipalities, like that of all Florida counties, coincides with the calendar year. In some cases, however, the tax year of a municipality begins upon a day other than January 1. In such a situation the status of the property for municipal tax exemption purposes is determined as of the day the municipal tax year begins; the governing date for county tax exemption of the same property is not altered, however. This date remains January 1.

**Personal Requirements**

The present amendment is not as restricted as the original in the designation of personal qualifications for eligibility for the exemption. “Every person” meeting title and residence requirements may claim the exemption. The requirements of family headship and citizenship contained in the section adopted in 1934 are not included in the amended version of 1938.

Op. Att’y Gen. “Every person” means that single persons, minors, aliens and others who own their permanent places of residence in the state are qualified to claim the exemption. The applicant need not be a registered voter nor a citizen of the State or of the United States. Consequently the Florida statute providing for the filling of a declaration of domicile and citizenship is of little value in this respect.

A person otherwise qualified for the exemption is entitled to it regardless of marital status. A married woman who is justifiably and permanently living apart from her husband may claim the exemption if she owns the property in question. In such a case the husband, if otherwise qualified, is also eligible to claim exemption for his separate homestead. Mental incompetency of the owner of the homestead does not disqualify him for the exemption if the property on which he is

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10. Smith v. Voight, 158 Fla. 366, 28 So. 2d 426 (1946). The court recognized that a person was not required to be a citizen of the United States in order to qualify for the exemption. Cf. Fla. Stat. § 192.15 (1957) in which the statutory form for the application for the exemption contains a statement that the applicant is a bona fide citizen of Florida. This statute was passed prior to the present amendment, however.
11. Op. Att’y Gen. 057-70 (1957); 1951 Rep. Att’y Gen. 346; 1949 Rep. Att’y Gen. 218. The methods of citation of the opinions of the Attorney General vary due to the fact that all opinions rendered in 1957 and 1958 are only in letter form. Opinions rendered prior to 1957 are in bound volumes and the citations have reference to such volumes. In a few cases in these footnotes, it was necessary to cite an opinion rendered prior to 1957 in the fashion employed for citing opinions rendered in 1957 or 1958 because the citation to the bound volume was not available.
residing permanently was purchased from funds of his estate by order of a court.¹⁷

**PROPERTY INTEREST REQUIREMENTS**

Either legal title or beneficial title in equity to real property constituting a homestead in this state is sufficient to warrant exemption; such title may be held individually, by the entireties, jointly or in common with others. It is clear, therefore, that the property must be located in the state of Florida and that the fee simple title is not the only title which may serve to qualify the holder for the exemption.

The legislature of Florida has made no all-inclusive list of holders of "legal title or beneficial title in equity" but has provided that this terminology includes "vendees in possession of real estate under bona fide contracts to purchase when such instruments, under which they claim title, are recorded in the office of the clerk of the circuit court where such properties lie"¹⁸ and "widows residing on real estate by virtue of dower or other estates therein limited in time by deed, will, jointure, or settlement."¹⁹

An unexercised option to purchase contained in a lease is not sufficient either as a legal or an equitable interest in the real property involved to warrant granting of the exemption.²⁰

In Simpson v. Hirshberg,²¹ the Supreme Court of Florida was faced with the interesting situation of the owners of a homestead giving a signed deed to an ostensible purchaser with the space in the deed for the names of the grantees left blank, and receiving the entire purchase price upon the assumption that they were selling the property to such purchaser. By agreement with this purchaser the owners were to live in the house until the middle of the following January. Later, the ostensible purchaser filled in the deed with the names of grantees with whom she had dealt without the knowledge of the owners and received payment for the property. The court held that the deed from the owners to the ostensible purchaser was void, and only the original owners had sufficient title on January 1 to qualify for homestead tax exemption.


(a) **Beneficial Title** — "Beneficial title in equity" refers to a right or interest in land which, not having the properties of a legal estate but merely a right of which courts of equity will take notice, requires the aid of such court to make it available.²²

¹⁹ Ibid.
²⁰ Gautier v. Lapof, 91 So. 2d 324 (Fla. 1956.)
²¹ 159 Fla. 15, 30 So. 2d 912 (1957).
(b) Heir's Interest — An heir who has inherited a part of undivided real estate has such beneficial title as to entitle him to claim the exemption if he is otherwise qualified. 23

(c) Life Estate — A life tenant in residence can claim the exemption, this being true even though he is making monthly payments on his life estate and there is a right of reversion in the owner of the fee. 24 If a grantor conveys in fee a parcel of land to a grantee, reserving to himself a life estate in an undivided half interest and continues to occupy the dwelling on one half the land while the grantee occupies a dwelling on the other half as his permanent home, the grantee owns title to the entire tract subject only to the life estate; consequently, the grantee may claim the tax exemption upon the one-half he occupies but not upon the half occupied by the grantor; the grantor may claim the exemption on the half he occupies. 25

(d) Remainderman — A remainderman, although in possession of the property in which another has a life estate, does not have a title which will warrant a claim for the exemption since the remainder interest does not entitle the owner to possession as long as the life interest is outstanding. 26 There is a possibility that the remainderman may claim the exemption in some situations by holding possession through a right conferred on him by the holder of the life estate. 27

(e) Tenants in common — If two tenants in common own land and each occupies as a permanent home one-half of their undivided parcel, each tenant is entitled to a homestead exemption only upon the half interest in the part he occupies, since this is the extent of his ownership of the property on which he makes his permanent home. 28

(f) Contract of sale — The equitable title of a purchaser under a contract of sale of real estate is within the purview of the homestead tax exemption amendment; 29 however, a person who is entitled to the homestead tax exemption on the first day of January of a tax year who enters into a contract of sale of his homestead during the tax year does not lose the exemption for that year. 30 The fact that a contract for the sale of land has not been recorded does not affect the purchaser's right to the exemption. 31

(g) **Leasehold** — A leasehold interest is not equitable ownership, since the lessor still holds title to the property; consequently, the lessee is not entitled to the exemption. This statement seems to be true of a lease for a term of years but not of a leasehold for life. A leasehold for a term of years is considered to be personal property, even though it is a long-term lease such as one for 99 years. On the other hand, a leasehold for life is considered as a freehold or real property and the exemption can be granted with reference thereto.

(h) **Corporations** — Opinions of the Attorney General have varied with regard to whether exemption can be granted to shareholders in a non-profit, mutual-ownership corporation, in which the shares of each represent his ownership of his residence. At one time the view was expressed that the exemption could be granted, but later the position was taken that the members held neither legal nor equitable title since the title was in the corporation. Both of these positions eventually were qualified by the recognition of the necessity of carefully examining the nature of the corporation and its relation to the shareholders before the question of whether the exemption could be granted to the shareholders could be answered. If this examination reveals that in spite of the permanent residence of the shareholders they do not have legal or equitable title to the land upon which their residences rest, the exemption cannot be granted; if they have the requisite ownership they are entitled to the exemption.

(i) **Partnership** — Homestead tax exemption may be claimed if title to the property is held by the entirety, jointly, or in common with others; thus a partner may claim a homestead in the partnership property, subject to the rights of partnership creditors and his co-partners. A partner is the equitable owner of his share in partnership realty even though title to the property is taken in the name of one of the partners or in the name of a third person. A general partner in a limited partnership may claim tax exemption on partnership realty to the same extent as the partners in an ordinary partnership; a general partner may hold legal or equitable title to partnership realty in trust for the other general partners.

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34. 1951 Rep. Att'y Gen. 278.
38. Ibid.
A limited partner's interest in a limited partnership is considered to be personal property and cannot be the basis for a claim for the exemption.42

(j) Trust — Where the title to realty is held by trustees under a trust giving the beneficiary the use and occupancy for his lifetime his interest is considered a freehold, which is sufficient title to qualify for the exemption.43 The necessary title is not obtained by the occupancy of the realty by beneficiaries of the income of the property.44 Neither does a trustee who also is a beneficiary and who, without authority, occupies the property have a title that will support a claim for the exemption.45 A fortiori, when a trust instrument expressly declares the interest of the beneficiaries of real property in trust to be personalty because their rights are limited to the earnings from the property, they do not have a title on which to base a claim for the exemption even though they are in possession of the property.46

(k) Entryman — When a war veteran has made entry of lands under sections 253.35-253.356 of the Florida Statutes for homestead purposes and is complying with the requirements of such statutes but the time has not yet elapsed whereby he is entitled to a conveyance of the public lands upon which he lives, he has insufficient title in the lands to be taxed; but from the time he completes the statutory requirements until he receives the conveyance he has an equitable interest in the land which will support a claim for the exemption.47 Of course, after the conveyance is made he has the legal title.

The Residence Requirement

The language of the amendment apparently requires the applicant for exemption to reside upon the property and make it his or her permanent home in all cases, unless the property is the permanent home of a legal or natural dependent. Apparently the same requirements as to the nature of the residence will apply, regardless of whether the owner or the dependent lives on the property.

Since the first day of January of the tax year is the day as of which the status of the property for tax exemption purposes is determined,48 this also is the day which is all-important from the standpoint of the residence requirement. This fact was emphasized by the Supreme Court of Florida when it held owners of homestead property who resided on the property

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42. Ibid.
43. 1956 Rep. Att'y Gen. 496.
48. See note 8 supra.
on January 1 and considered it their homestead were entitled to the exemption, even though they moved from the property ten days later.\footnote{Simpson v. Hirshberg, 159 Fla. 15, 30 So. 2d 912 (1947).}

(a) \textit{Prior Residence}

The only legislative effort that has been made to require prior residence as a prerequisite to obtaining the exemption failed. In 1951 the legislature passed a statute requiring a person, otherwise qualified, to prove one year of legal residence in Florida prior to being granted the homestead tax exemption.\footnote{FLA. STAT. § 192.12 (1951); this statute was repealed by Fla. Laws 1955, ch. 29615, sec. 7.} This statute was declared unconstitutional by the Supreme Court of Florida\footnote{Sparkman v. State, 58 So. 2d 431 (Fla. 1952).} for the following reasons: an expressed or implied provision of the constitution cannot be altered, contracted or enlarged by legislative enactment; when this statute is applied the class or group of persons to whom is accorded the right or privilege of exemption becomes materially restricted and altered by adding a requirement not included in the constitutional amendment, viz., that a person otherwise qualified to apply for the exemption under the constitution, in addition to meeting such requirements, also must prove legal residence in the State for a period of one year prior to making application for the exemption.

(b) \textit{Abandonment}

Property may lose its homestead character if it is abandoned as a permanent home by the resident owner or his legal or natural dependent if the property has been a homestead by virtue of the dependent's residence. Abandonment requires an intent on the part of the resident to leave the premises permanently.\footnote{Sarkman v. State, 58 So. 2d 431 (Fla. 1952).} If this happens before the annual day upon which the status of the property as homestead or non-homestead becomes fixed it is obvious the property is not entitled to the exemption.

In one of the first cases\footnote{Simpson v. Hirshberg, 159 Fla. 15, 30 So. 2d 912 (1947).} considered by the Florida Supreme Court concerning the abandonment of the property as homestead property for tax exemption purposes, the owners were held not to have destroyed the character of their property as a homestead in spite of the established facts that they had given a deed to the property to a "purchaser," received full payment in December and continued to live on the property until the following January 11 by special arrangement with the "purchaser" because they
could not get immediate possession of another house, which they had previously purchased. The deed was held to be void because it was delivered to the "purchaser" with the places provided for the names of grantees left blank. The court decided that the property as homestead property had not been abandoned by the owners as of January 1, presumably because the owners had not moved from the home before that date. The fact that the "purchaser" by filling in the names of the grantees and delivering the deed, legally conveyed the property to new owners on January 8 did not alter this position. The new owners, although ineligible to apply, were the beneficiaries of tax exemption for more than eleven months, since the property was homestead property on January 1 and did not lose its character as such by the fact that it was legally conveyed to them after this date.

(c) Temporary Absence vs. Abandonment

A Florida statute concerning homestead tax exemptions, provides that "the words 'resident,' 'residence,' 'permanent residence,' 'permanent home' and those of like import shall not be construed to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, reside."

This statute, although passed in 1935, has been applied by the Florida Supreme Court with reference to the 1938 homestead tax exemption amendment. An owner of a home in Florida who had been granted the exemption for several years moved out of his home temporarily for the purpose of renting it from December 1942 until March 1943 for the winter season. He removed from the house only his necessary personal belongings, left the home fully furnished, and resided temporarily in another location. The supreme court was satisfied that the owner was entitled to the exemption for 1943 since he intended to return to his home after the temporary absence. The court indicated that temporary absence from the homestead, regardless of the reason, will no destroy the character of the property as homestead property as long as there is an intention on the part of the owner to return and make it his home. Accordingly, not only does temporary absence fail to destroy the character of homestead property but this property is determined for homestead tax exemption purposes provided the temporary absence may include the date on which the character of the owner intends to return to the property and not to abandon it as his homestead.

55. Ibid.
Care must be taken to preserve the right to homestead exemption if the temporary absence will include the first day of the tax year, however. The intent to return is of paramount importance and an owner should make it evident that he is not abandoning the property as homestead property by his absence.

The supreme court temporarily threw this phase of the law into a state of confusion in 1950 when it considered the case of McCullough v. Forbes. In a 4-3 decision the court affirmed the denial of homestead tax exemption in a case the facts of which are to be gained only from the written dissent. According to the dissenting opinion, a widow moved out of her home in order to obtain nursing service. She stored her furniture in the attic of the home and rented the house on a month to month basis but did not live in it on January 1, 1949, the year for which she requested tax exemption. She claimed the property as her home and that she intended to return as soon as she was able, but was denied the exemption administratively and judicially.

In comparing the written opinion in this case with that of the previously discussed case in which exemption was allowed in spite of temporary absence, a reconciliation of the two decisions is largely a matter of speculation. The supreme court apparently found this to be true when it considered the decisions in a subsequent case. Success was forthcoming, however, but only after a study of the record of the McCullough case as it was considered by the lower court. The additional facts revealed by the examination of this record, together with the facts contained in the dissenting opinion, were considered sufficient to warrant the finding that there had been a permanent abandonment of the property as homestead property in spite of the owner's claim of intention to return. The obvious necessity for the consideration of the trial record by the supreme court in order to reconcile the two decisions suggests that the majority of the court should have issued a written opinion in 1950, especially in view of the fact that clarification of the situation was not made until 1955.

This clarification was only one phase of L'Engle v. Forbes, the most recent and enlightening case considered by the Supreme Court of Florida concerning the residence requirement for homestead tax exemption. A Naval Reserve officer found it necessary to leave his Florida home when called to active duty. He rented the house for the last half of 1952 and the entire year of 1953. The supreme court held that he was entitled to tax exemption on his home for the year 1953, since it clearly appeared that he intended to return to the property and continue to make it his home when relieved from duty in 1954. In holding that the property had not

56. 47 So. 2d 780 (1950).
57. L'Engle v. Forbes, 81 So. 2d 214 (Fla. 1955).
58. Ibid.
lost its character as homestead property by the temporary absence of the owner, the court cited with approval its previously accepted position that continuous physical presence on the homestead without interruption is not necessary to prevent abandonment of the property as homestead property.

In addition, the supreme court indicated in the L’Engle case that the rule governing abandonment of property as homestead property is the same as that developed by its judicial pronouncements in cases involving the constitutional privileges accorded in section one, article ten of the Florida constitution which exempts homesteads from forced sale, and section four of article ten, which prohibits the devise of a homestead when the owner of the homestead has children. The court admitted that it had no express precedent for assuming this position, but pointed out that in two prior cases it had impliedly accepted this position by citing a case involving the exemption granted (by section 1) as authority for a decision involving the character of property for the purpose of homestead tax exemption, and vice versa.

It seems evident, therefore, that the Florida cases dealing with the question of abandonment of homestead property under sections 1 and 4 of the constitution of Florida may be considered by analogy when the same question arises with regard to section 7, the homestead tax exemption section. In such cases the Supreme Court of Florida apparently has assumed the position that temporary absence with an abiding intent to return does not constitute abandonment of the property as homestead property, whether the absence is for business, pleasure, health or for the benefit of the family.

Unfortunately, there still is no method of assuring uniformity of procedure among tax assessors in granting or rejecting applications for tax exemption in questionable cases. As a practical matter, the county tax assessor’s determination of whether property is a homestead usually is final; the lack of specific rules to guide the assessor enhances the possibility of an unfair result.


(a) Permanent Home — A “permanent home” is the place where a person has his true, fixed and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, or in other language, the place in which he has his fixed habitation without any present intention of moving therefrom, and such claimant must not

60. Ibid; Saint-Gaudens v. Bull, 74 So. 2d 693 (Fla. 1954).
62. O’Lesky v. Nicholas, 82 So. 2d 510 (Fla. 1955); Read v. Lietner, 80 Fla. 574, 86 So. 425 (1920).
63. See 9 U. FLA. L. Rev. 98 (1956).
have immediately prior thereto or subsequently thereafter, claimed a homestead tax exemption by virtue of having a permanent home elsewhere. The character of the house is immaterial if it is in fact a dwelling merely being suited or intended for such purpose is not sufficient. No specified period of residence is necessary in order to acquire a permanent home. A person who moves from another state into Florida, buys his home and moves into it in November with the intent to remain permanently may claim the exemption on the following January. Also entitled to the exemption is a citizen and resident of Florida whose spouse is a national of another country who travels between that country and the United States on a commercial visa, if the property is considered as their home. In rare situations, exemption may be granted even though permanent residence has not been accomplished by January 1 of the tax year. A purchaser of property who was prevented from moving into his newly purchased property and making his permanent home there on or before January 1 by the refusal of a tenant to move from the premises due to his right to stay there under a rent control statute was held to be entitled to the exemption if he moved into the property after January 1 and made proper application.

An alien in this country under a temporary visa cannot meet the requirement of permanent residence. Neither can an equitable owner under contract of sale if the contract does not give him permissive possession as an incident thereto. If such equitable owner merely rents the property from the landlord he is not entitled to the exemption.

(b) Abandonment—A homestead is abandoned by taking up permanent abode at a different place. Renting the homestead to another or even absence for a long period of time does not necessarily mean the property has been abandoned as homestead property. Whether abandonment of the homestead has actually occurred is a question of fact in each case, and while an extended absence does not of itself establish abandonment it may raise a presumption of abandonment sufficient to cast on the owner the burden of producing satisfactory evidence, beyond his mere expression of intent to return, that no abandonment has taken place.

71. Ibid.
73. Ibid.
The rental of the property during such absence is evidence tending to establish abandonment but such evidence is not conclusive in itself.\textsuperscript{73b}

Abandonment of an insane person's homestead may be accomplished by his legal guardian if the facts clearly show an intent to abandon; evidence of mere rental of the property by the guardian is not sufficient, however.\textsuperscript{74}

A woman accomplishes the abandonment of her homestead by leaving her home to reside permanently with her newly-acquired husband in another state.\textsuperscript{75} An owner of an urban homestead may abandon it in part by devoting that part to uses other than for a home or business house.\textsuperscript{76} Temporary absence or removal from the homestead does not destroy its character as homestead property, since occupancy of the homestead is deemed to continue. Such absence due to business, pleasure, education of children, or to look for another home which has resulted in failure will not be considered an abandonment of the homestead property.\textsuperscript{77}

Specific instances of temporary absence with the consequent retention of the homestead status are the following: a homestead owner who found it necessary to move to Washington, D. C. as the result of appointment to federal government service;\textsuperscript{78} one who became mentally incompetent and was confined in an institution and whose property was rented for his benefit;\textsuperscript{79} a draftee or reservist recalled to military duty;\textsuperscript{80} a fireman who moved his family out of his home to reside in furnished living quarters in the fire station but who maintained his home and spent his vacations and off-duty time there.\textsuperscript{81}

An owner's voluntarily remaining in the armed services after a tour of duty has been served has given rise to conflicting opinions of the Attorney General. In 1949, the position was taken that reenlistment did not constitute a valid basis for ineligibility for the exemption,\textsuperscript{82} but a reservation was contained therein by the observation that the opinion was based partially on the necessity of the federal government maintaining armed forces in foreign countries and that the granting of the exemption in this case was not to be taken as a general precedent. In 1955, an opinion was issued to the effect that a person drafted into the armed services who elected voluntarily to remain in the service upon the expiration of his tour of duty was voluntarily absent from his home and was not eligible for the exemption.\textsuperscript{83} Prior to the consideration by the Florida Supreme Court of

\textsuperscript{74} 1950 Rep. Att'y Gen. 288.
\textsuperscript{75} 1948 Rep. Att'y Gen. 279.
\textsuperscript{76} Op. Att'y Gen. 057-144 (1957).
\textsuperscript{77} 1948 Rep. Att'y Gen. 279.
\textsuperscript{78} 1950 Rep. Att'y Gen. 278.
\textsuperscript{79} 1948 Rep. Att'y Gen. 194.
\textsuperscript{82} 1949 Rep. Att'y Gen. 213.
\textsuperscript{83} 1955 Rep. Att'y Gen. 91.
cases involving the rental of property during the absence of the owner, the Attorney General was of the opinion that the rental of a home was for a commercial purpose which has resulted in eligibility for the exemption;\(^4\) on the other hand, a serviceman was allowed to rent his home during his absence in the service and still remained eligible for the exemption.\(^5\)

**Legal or Natural Dependent**

The only exception to the requirement that the owner of the legal or beneficial title must reside on the property and in good faith make the same his or her permanent home is in the case of a legal or natural dependent of such owner, if such dependent makes the property his or her permanent home.

No appellate court in Florida, nor even the Attorney General, has been concerned with the dependent's role in the determination of the status of the property as homestead property. Presumably, the previous discussion concerning the establishment and the abandonment of homestead property, wherein the intent of the homesteader was of paramount importance, would apply also to a dependent in many situations. Whether it would apply to a dependent minor is problematical. It seems that even though the dependent minor is of the opinion that the place in which he resides is not his permanent home, the exemption should not be disallowed as long as he resides there in a state of dependency upon the owner who applies for the exemption and is not receiving an exemption elsewhere.

The term "legal or natural dependent" has never been construed on the appellate level with reference to this amendment. Obviously, a wife is the legal dependent of her husband, and minor children are the legal dependents of their father, but such relationships are not the ones most likely to raise questions under the homestead tax exemption amendment.

Proper analogies probably may be drawn, to a limited extend, with situations considered by the Supreme Court of Florida having to do with other provisions of the constitution of Florida and with Florida statutes which are concerned with dependents.

In resolving questions of whether family headship exists under the provision of the Constitution exempting a homestead owned by a head of a family from forced sale, a widow with dependent minor children\(^6\) and a wife supporting an incapacitated husband were held to qualify.\(^7\) While

\(^4\) 1941 REP. ATT'Y GEN. 164.
\(^5\) 1941 REP. ATT'Y GEN. 165.
\(^7\) Bigelow v. Dunphc, 143 Fla. 603, 197 So. 328; Rehearing denied, 144 Fla. 330, 198 So. 13 (1940).
family headship is not a requirement for homestead tax exemption; there
seems to be no doubt that the minor children are the legal dependents
of their widowed mother. There may be less force in the contention
that the incapacitated husband is the legal dependent of his wife but he certainly
should be considered a natural dependent, at least.

Additional constructions of the constitutional provision concerning
forced sale of a homestead hold that family headships exist in the following
cases: a widow who lives with and supports adult children; a widower
who rears his granddaughter in his home at his own expense after the
death of her mother and departure of her father, even though no formal
adoption takes place; a grandmother who supports her grandchildren in
her home; a single man supporting his mother and the children of a
deceased sister in his home. While none of the relationships may be
sufficient to warrant considering the person being supported a legal de-
pendent, the conclusion seems to be logical that each might be properly
classified in the "natural dependent" category.

In construing a statute allowing a civil action to a person "who was
dependent for support upon the person killed" the Supreme Court of
Florida required the plaintiff to show "regardless of any ties of relationship
or strict legal right to support, that he or she was, either from disability
of age, or non-age, physical or mental incapacity, coupled with lack of
property means, dependent in fact upon deceased for support. There must
be, when adults claim such dependence, an actual inability to support
themselves, and an actual dependence upon someone else for support, or
with some reasonable claim to support from the deceased." Whether a
Florida appellate court would approve of such a strict concept of depen-
dency with relation to homestead tax exemption remains to be seen, but
the necessity of requiring convincing evidence of substantial dependency in
addition to the owner's word that such dependency exists seems obvious.

The constitution does not expressly require the landowner who claims
exemption on the basis of a legal or natural dependent's residence to
live in Florida. Clarification of this point is desirable. Limitation of the
exemption to Florida residents seems preferable on the basis of public
policy being better served by not encouraging the transplanting and/or
abandonment of financial dependents in Florida as well as not allowing
the possibility that a non-resident may be able to obtain two exemptions
i.e. one in Florida and another in the state in which he resides.

88. Hillsborough v. Wilcox, 152 Fla. 889, 13 So. 2d 448 (1943); Davis v. Miami
Beach Bank & Trust Co., 99 Fla. 1282, 128 So. 817 (1930); Caro v. Caro, 45 Fla. 203,
34 So. 309 (1903).
91. Ibid.
Op. Att’y Gen. — The phrase “legally or naturally dependent on such owner” refers to persons to whom the owner is under a legal duty to support, and to persons related by blood to the owner who are, by reason of disability of age or non-age, physical or mental incapacity, coupled with lack of property means, dependent in fact for support and who have a reasonable expectation or reasonable claim for support.

Legal obligation for a parent to support an adult child or vice versa, or for a person to support in-laws did not exist at common law. A moral obligation coupled with actual support is strongly indicative of natural dependency, but the mere fact that a person is a parent-in-law or an adult daughter of the landowner does not, as a matter of law, make such person a natural dependent of the landowner. It is only when a parent, adult child or other relative is entirely or largely dependent upon the owner for support that he may be considered as naturally dependent upon the owner.

If a landowner is granted an exemption for himself anywhere in the state he may not obtain another exemption on the basis of his support of a legal or natural dependent. Only one exemption may be granted per owner. The Attorney General applied this principle in a situation in which a wife owned a parcel of land on which she and her husband made their permanent home and the husband owned another parcel upon which he maintained a permanent home for his dependent daughter; the Attorney General ruled that only one exemption could be claimed. This opinion seems to be based upon the assumption that the husband had an equitable interest in the property owned by the wife, and left unanswered the question of whether, if the husband had no such interest, both were entitled to exemptions on their individual properties. The refusal of the exemption to the wife while, at the same time, the husband is granted the exemption in such a situation would call for a strained interpretation of the language of the amendment if the property to which the wife held title was truly her sole property and had not been conveyed to her merely to circumvent the requirements of the amendment.

If the landowner is a permanent resident of another state he cannot claim the exemption on the basis of a natural or legal dependent making his or her permanent home on land he owns in this State, since the policy upon which the homestead tax exemption is based favors this State’s resident owners.

An owner of two dwelling houses on land embraced in his homestead is entitled to the exemption on all the property if the occupant of the house

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95. Ibid.
96. Ibid.
98. Ibid.
not occupied by the owner is legally or naturally dependent upon the owner. Of course, the maximum exemption allowable here would be five thousand dollars.

"ALL TAXATION Except . . ."

(a) Extent of Exemption — With the express exception of assessments for special benefits and the implied exception of taxation for the retirement of contractual, unretired indebtedness for which land of the jurisdiction was liable upon the effective date of the pertinent amendment, the exemption may be claimed against all taxation up to the assessed valuation of five thousand dollars.

Such a provision, no doubt, is broad enough to cover exemption from property taxes by the state, county, municipalities and even taxes of special tax districts where land is not specially benefitted by the improvement involved. Since ad valorem taxes for state purposes are now prohibited by the Constitution of Florida, the problems that have arisen involved taxation by the other subdivisions of the State.

(b) Assessments for Special Benefits — Whether there is real significance to be attached to the terminology "assessments for special benefits" which appears in the 1938 amendment and the "special assessments for benefits" of the 1934 amendment, cannot be answered with certainty. The Supreme Court of Florida has expressly refrained from determining this point but in so far as the 1938 terminology has been construed no difference has been made to appear. The theory of the special assessment has been applied several times with reference to the current amendment.

A special assessment differs from a general tax. A tax is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. A special assessment is like a tax in that it is an enforced contribution from the property owner; it may possess other points of similarity to a tax, but it is inherently

100. 1939 REp. ATT'y GEN. 447.
101. See notes 136-139 infra and text pertaining thereto.
102. Fla. CONSt. art. IX, sec. 2 provides, inter alia, that after December 31st, A.D. 1940 no levy of ad valorem taxes on real property shall be made for any state purpose. State ex. rel. Ginsberg v. Drcka, 135 Fla. 463, 185 So. 616 (1938) contains language which seems to imply that benefit to the district as a whole is sufficient rather than to the land. Contra, Fisher v. Board of County Com'mrs, 84 So. 2d 572 (Fla. 1956); Crowder v. Phillips, 146 Fla. 428 (1941).
103. Fisher v. Board of County Com'mrs, 84 So. 2d 572 (Fla. 1956); City of Fort Lauderdale v. Carter, 71 So. 2d 260 (Fla. 1954); Crowder v. Phillips, 146 Fla. 428 (1941); State v. Henderson, 137 Fla. 666, 188 So. 351 (1939).
105. Ibid; Whisnant v. Stringfellow, 50 So. 2d 885 (1951); Crowder v. Phillips, 146 Fla. 428 (1941).
106. Ibid.
107. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).
different and governed by entirely different principles. A special assessment is imposed upon the theory that the portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment.

This theory of the special assessment as explained and accepted by the supreme court with reference to homestead tax exemption includes taxes to retire expenses of paving where there are benefits accruing to the property, expenses of special drainage districts, special inland navigation districts and maintenance costs of special road and bridge districts where special benefits peculiar to district property can be shown.

Some efforts to have certain taxes classified as assessments for special benefits have been rebuffed by the Florida Supreme Court. A tax levied by a city upon all property, real and personal, in the city, the revenues produced thereby to be used to defray the expenses of garbage, waste and trash collection was held not to qualify as a special assessment. The court indicated how the theory of a special assessment had been ignored by stating that no distinction had been made in the levy between occupied or vacant properties or, if occupied, whether the property was being used for commercial or residential purposes; the tax was not imposed on a basis of proportionate relationship to the cost of the service to be rendered to any particular property, and no special or peculiar benefit resulted to any specified portion of the community or the property situated therein.

A tax by a special improvement district is not a special assessment in the absence of proof that all property in the district will actually benefit from the improvements, for which the tax is levied, in proportion to its valuation. The mere fact that some property will benefit by the improvement is not sufficient; there must be clear evidence that all property to be taxed will benefit commensurate with the burden of the tax. Taxes by special districts set up for the construction of a school, a county hospital, or a county health unit are not special assessments. While each of these items may be said to generally improve the district in which it

108. Ibid.
110. Rafkin v. Miami Beach, 38 So. 2d 836 (Fla. 1949).
113. State ex rel Ginsberg v. Dreka 135 Fla. 463, 185 So. 616 (1938).
114. City of Fort Lauderdale v. Carter, 71 So. 2d 260 (Fla. 1954).
115. Fisher v. Board of County Commrs of Dade County, 84 So. 2d 572 (Fla. 1956).
116. Ibid.
117. State ex rel Clark v. Henderson, 137 Fla. 666, 188 So. 351 (1939).
118. Crowder v. Phillips, 146 Fla. 428, 1 So. 2d 885 (Fla. 1951).
119. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).
is present, the test of the special assessment is not satisfied, viz., the improvement of the land commensurate with the burden of the tax.\textsuperscript{120}

\textit{Op. Att'y Gen.} — The Attorney General, although previously expressing himself to the contrary,\textsuperscript{121} is presently of the opinion that the Supreme Court of Florida may draw a distinction between the "special assessments for benefits" of the 1934 amendment and the "assessments for special benefits" of the 1938 amendment.\textsuperscript{122} This position is based on the following reasons: In \textit{State v. Dreka},\textsuperscript{123} a case arising under the 1934 amendment, the court seemed to indicate that the tax was a special assessment for benefits if there were benefits accruing to the district by virtue of the improvement, even though there was no showing of special benefits to lands; whereas, in cases decided under the 1938 amendment the court has left little doubt that "assessments for special benefits" is concerned with an assessment bearing a logical relation to direct special benefits to the land. Consequently, under the 1938 amendment homesteads are exempt from taxes for the following purposes: to retire special tax school district bonds issued in 1946;\textsuperscript{124} to pay the expenses of a mosquito control district;\textsuperscript{125} to pay maintenance costs of a road district;\textsuperscript{126} and to pay for the support of a hospital district and the hospital located therein.\textsuperscript{127} All of such taxes are considered as general taxes, not special assessments.

\textbf{Prior Obligations}

(a) \textit{Impairment of Contract} — The Constitution of the United States prohibits a state from passing any law which impairs the obligation of a contract;\textsuperscript{128} consequently, the homestead tax exemption provision of the constitution of Florida, if valid, can not be construed to impair such an obligation.\textsuperscript{129} The result has been the judicial recognition of an additional exception to the exemption of homesteads from taxation under Section 7.

If, prior to the effective date of the amendment, a debt has been incurred by a tax jurisdiction and such jurisdiction is bound contractually\textsuperscript{130} to retire such debt by imposing a tax upon all of the land in the jurisdiction, the operation of section seven does not affect this obligation and the lands

\begin{itemize}
\item[\textsuperscript{120}] See notes 117-119 supra.
\item[\textsuperscript{123}] 135 \textit{ Fla.} 463, 185 \textit{So.} 616 (1938).
\item[\textsuperscript{124}] 1947 \textit{Rep. Att'y Gen.} 616.
\item[\textsuperscript{126}] 1947 \textit{Rep. Att'y Gen.} 620.
\item[\textsuperscript{128}] U. S. \textit{Const.} art. I, § 10.
\item[\textsuperscript{129}] Groves \textit{v. Board of Public Instruction of Manatee County}, 109 F. 2d 522 (5th Cir. 1940). See \textit{American Can Co. v. City of Tampa}, 152 \textit{ Fla.} 798, 14 \textit{ So.} 2d 203 (1943).
\item[\textsuperscript{130}] Such a debt is to be distinguished from a mere unsecured obligation or an obligation which may be secured in some fashion not involving a pledge to tax.
\end{itemize}
remain taxable for its retirement. Neither homestead tax exemption amendment, therefore, can relieve the homestead of taxes for the retirement of the following: bonds which require the taxation of the lands within the jurisdiction for their retirement, provided such bonds were actually issued prior to the effective date of the pertinent amendment; refunding bonds, even though issued after the effective date of the amendment, provided such bonds refunded obligations issued prior to the effective date of the amendment; tax participation certificates exchanged for old evidences of indebtedness binding the lands to taxation for their retirement, such indebtedness being incurred prior to the effective date of the amendment; and even judgments obtained against the tax jurisdiction prior to the operation of the amendment.

(b) Effective Dates—The effective dates of both the 1934 and the 1938 amendments thus become important. If the contractual obligation was incurred prior to November 6, 1934, the amendment approved on that date did not disturb this obligation and all lands previously liable to be taxed for its retirement continued to bear this burden.

If the obligation arose November 6, 1934, or thereafter but before January 1, 1939, the effective date of the 1938 amendment, persons who qualified for the exemption under the 1934 amendment were relieved from taxation of their homesteads for the retirement of such obligation, as provided by the amendment, since the obligee of such contractual obligation had constructive notice of the existence of the amendment and consequently the law did not impair the obligation of his contract.

Contractual obligations of the tax jurisdiction arising on or after January 1, 1939, are not to be retired by taxation of lands exempt under the provisions of the amendment effective on that date. Again the obligee's notice, either actual or constructive, of the existence of the amendment and the possibility that his security for the retirement of the obligation may be jeopardized by property being exempt from taxation gives him no cause for valid complaint if the possibility becomes an actuality.

131. See note 129 supra and text pertaining thereto.
133. Richard v. City of Fort Lauderdale, 146 Fla. 349, 1 So. 2d 202 (1941); State v. City of Pensacola, 123 Fla. 331, 166 So. 851 (1936).
135. Groves v. Board of Public Instruction of Manatee County, 109 F. 2d 522 (1940).
136. It is possible, but not probable, that January 1, 1935 may be considered as the effective date of this amendment, since the tax year of 1934 was practically over when the people approved the change in the constitution. Th 1938 amendment contained the specific date that it was to first become effective, viz., the 1st day of January, 1939 which was the beginning of the next tax year after the adoption of the amendment. There is no date specified in the 1934 amendment.
138. Ibid.
139. Ibid.
HOMESTEAD EXEMPTION

(c) Date of Qualification — It seems apparent that if at any time on or after the effective date of the pertinent amendment a person meets the requirements of the amendment he is qualified to receive the exemption, e.g., a Chinese national residing with his family of which he is the head, in his permanent homestead in Florida on and after November 6, 1934, became a citizen in 1937; he thus was qualified to receive the exemption with reference to contractual obligations of the jurisdiction’s contractual indebtedness incurred after November 6, 1934. A person who becomes an equitable owner of his homestead on or after January 1, 1939, is entitled to the tax exemption with reference to the jurisdiction’s contractual indebtedness incurred on, or at any time after, that date, regardless of the fact that the owner’s qualification post-dated the creation of the obligation. Similarly, non-homestead property apparently may become homestead property on or at any time after the effective date of the pertinent amendment and thus become qualified for exemption.


(a) Prior Obligations — The homestead tax exemption amendment protects a homestead from taxation to retire a general fund indebtedness incurred prior to the effective date of the amendment, since such an indebtedness is not a contractual obligation binding the land.140 Protection is also afforded against taxes for debt service and interest for bonds of a city, issued prior to the effective date of the amendment, and levied against homesteads which were not in the city at the time of such indebtedness was incurred.141 The bond contract between the city and the bond holders is in no way affected by such exemption and is not within the protection of the contract clause of the federal constitution.142 The amendment also warrants exemption from taxation of a building which was erected on land subject to municipal bonded indebtedness but which was excluded from the municipal corporate limits by legislative act prior to the erection of the building.143 This opinion was not concerned with the taxation of the land, merely the building.

(b) Effective Date — Taxes for the retirement of bonds issued after the effective date of the amendment for a county hospital are prohibited under the amendment.144

Bond indebtedness does not exist until the bonds are sold and delivered, and although the issuance of bonds is authorized by an election held prior to the effective date of the amendment, if the bonds are not sold

until after the effective date of the amendment, the homesteads are protected from taxation for the retirement of such bonds.  

**THE HOMESTEAD**

(a) **Homestead Defined:** — The “home and contiguous real property, as defined by Article 10, Section 1 of the Constitution,” is the type of property covered by the tax exemption section. This section sets the limits of a homestead in the following language, “A homestead to the extent of one hundred and sixty acres of land or the half of one acre within the limits of any incorporated city or town . . . . and the improvements on the real estate . . . . The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner . . . .”

This section of the constitution also provides for an exemption of a homestead from forced sale under process of court and is not to be confused with the exemption from taxation under section seven, the tax exemption section. It is necessary to consider the terminology of both sections in defining the type of property which is entitled to the tax exemption, i.e., a “home and contiguous real property,” according to section seven, “to the extent of one hundred sixty acres of land or the half of one acre within the limits of any incorporated city or town . . . . and the improvements on the real estate . . . in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner . . . .” according to section 1.

Section 5, article X of the Florida constitution poses a problem with reference to the area of a homestead under the tax exemption section. Section 5 provides that “No homestead provided for in section 1 shall be reduced in area on account of its being subsequently included within the limits of an incorporated city or town, without the consent of the owner.” Does this apply to homesteads under section 7 also?

If the answer to this question is to be determined by considering article X only as an entity, an affirmative answer may not be illogical. A negative answer seems preferable, however. Reference to section 5 is not

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145. 1939 REP. ATT’Y GEN. 458.
146. Any real estate used and owned as a homestead by an ex-serviceman, honorably discharged with a service connected disability and classed as a paraplegic or is required to use a wheelchair for his transportation and who has a certificate from the government or the United States Veterans’ Administration, certifying that he is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing is exempt from taxation according to statutes passed in 1957, FLA. STAT. §§ 192.111, 192.112. Since there is no maximum limitation concerning the extent of the homestead in these statutes, they could not be upheld under section 7, article X with relation to the property exceeding the maximum limits of a homestead under that section, but probably would be upheld under section 1, article X which, inter alia, authorizes the legislature to exempt property for a charitable purpose without limiting the extent of the real property that may be involved.
expressly included in section 7, which may indicate an intent to limit the
definition of a homestead entitled to tax exemption to section 7 as supple-
mented only by section 1. In addition, the language of section 5 “No
homestead as provided for in section 1” may be of significance. The term
“provided for” seems more inclusive than merely to denote the area of the
homestead. It seemingly connotes the idea of protection, which is the
purpose of section 1 in so far as homesteads are concerned and such pro-
tection is against forced sale, not the imposition of taxes.


The amendment requires that there be a dwelling house upon the
property, in which the owner usually resides. The nature of the structure
constituting the home is immaterial except in so far as it indicates the
intention of the owner to make it his permanent home.\(^{147}\) A house trailer
may be a permanent home if the owner of the trailer also owns the property
upon which it rests and he intends to reside there permanently.\(^{148}\) A house-
boat which is afloat cannot qualify under the amendment, but probably
may do so if attached permanently to land.\(^{149}\)

A homestead includes everything appurtenant to the dwelling which
may be, and is, used for the more perfect enjoyment of the home, but
property cannot be considered appurtenant unless it is used principally
and in good faith for homestead purposes.\(^{150}\) A garage may be claimed as
an appurtenance to the home and may be included in the exempt
property.\(^{151}\)

If a motor court is located on two parcels of land, each parcel being
separately owned, each owner is entitled to the exemption even though
the motor court, excluding the residences of the owners is operated by
the parties as a single unit.\(^{152}\)

Property that was a homestead prior to its being included within the
limits of an incorporated town cannot be reduced in area to meet the
requirement of the maximum of one-half acre generally required of home-
stead property within incorporated towns. Section 5, article X of the
Florida constitution prohibits such procedure.\(^{153}\)

(b) Contiguity — Contiguity of the real property to the home was
first made an express requirement in the 1938 amendment. No question
concerning this element has faced the appellate courts of Florida with
regard to either amendment.

\(^{148}\) Ibid.
\(^{151}\) Ibid.
Gen. 164. Note the contrary position taken by the writer of this article.

A homestead must be composed of a contiguous area of land,\(^\text{154}\) and if three parcels are joined only at the corners this is sufficient.\(^\text{156}\) Contiguous vacant lots to the lot upon which the dwelling is located in a city, all not exceeding in area the one-half of an acre, may be claimed as exempt property.\(^\text{158}\) Opinions rendered during the operation of the 1934 amendment, in which contiguity is assumed to be a necessary element, were to the effect that this element is not lost when the construction of a public road results in dividing a previously-existing homestead,\(^\text{157}\) but urban lots separated by a public street in existence at the time the lots were purchased are not contiguous within the meaning of the amendment.\(^\text{158}\) There is doubt that contiguity is lost if the right of way is a mere easement, but if the government owns the fee in the right of way property the contiguity is probably destroyed.\(^\text{159}\)

(c) Rural Property

(1) Area

Since the maximum area of land within the limits of any incorporated city or town which may be exempt from taxation is expressly stated to be one-half of one acre, the Supreme Court of Florida apparently has assumed that the provision of section 1 setting the maximum of 160 acres of land applies to land located outside the limits of any incorporated city or town, even though such designation is not expressly made in the section. There is no reasonable objection to such an assumption.

(2) Improvements

There is no express limitation contained in either section 7 or section 1 on the nature of the improvements that may be made on the rural homestead. Apparently any structure or other improvement may be made on the homestead property without affecting the right to the tax exemption.


Since there is no limitation on the nature of the improvements that may be made on rural homestead property, a motor court may be located thereon, regardless of the number of buildings that may be involved.\(^\text{160}\) The Attorney General has implied that only one business

\(^{156}\) Rep. Att’y Gen. 335.
I-HOMESTEAD EXEMPTION

should be allowed on the rural homestead; otherwise, the homestead use may be subordinated to the commercial use and the exemption possibly may be lost.161

A person who owns property outside a municipality upon which are located a dance hall and tourist cottages, and who eats in the dance hall and uses one of the cottages in which to sleep and for his personal belongings, is entitled to the exemption of all his property to the extent allowable under the amendment and not merely on the part he reserves as his living quarters.162

(d) Urban Property

(1) Area — The language of section 7 expressly sets the maximum limits of urban property that may be exempt as being one-half acre. The possibility, as previously discussed, of this maximum being increased in the case of a rural homestead being included within the incorporated limits of a town should not be disregarded, particularly since the Attorney General is of the opinion that the Florida constitution requires such a procedure.

(2) Improvements — The appellate courts have had little to say concerning the nature of the improvements on urban land insofar as the homestead tax exemption amendment is concerned. The Supreme Court of Florida has recognized that the amendment applies to improvements on the land as of January 1 of the tax year,163 but conclusions as to the nature of the improvements that are contemplated by the limitation "business house of the owner" continue to be speculative in nature.

The use the property is put to by the owner probably will be determinative of whether it is a "business house." If the owner actually practices his profession or vocation for a livelihood in the structure there is little reason to doubt that such structure may be considered as his business house even though it may be used for other purposes also. The validity of this observation seems to be supported by the lack of litigation concerning such a situation.

Doubts arise, however, when the property is rented to another; the appellate courts of Florida have been presented no questions concerning homestead tax exemption, the answers to which will resolve these doubts. It is significant to note that in 1955, in the previously discussed case of L'Engle v. Forbes,164 the court used language that lends strength to the position that its prior opinions concerning the nature of the improvements on homestead property exempt from forced sale under section 1 and

161. 1952 REP. ATT'Y GEN. 352.
162. 1947 REP. ATT'Y GEN. 619.
164. See note 58 supra and text pertaining thereto.
devise by will under section 4 can be applied in homestead tax exemption situations. In the L'Engle case the court was dealing with the question of whether the property had been abandoned as homestead property and indicated that the legislature intended to adapt to the homestead tax exemption privilege conferred by section 7 the "rules" previously developed by the court with respect to the homestead "character" of property within the meaning of sections 1 and 4 of article X. Apparently, therefore, the case law concerning questions of actual abandonment under sections 1 and 4 properly is applicable to analogous situations concerning homestead tax exemption.

When considering whether the language of the court in the L'Engle case is broad enough to make applicable its "rules" concerning the "character" of homestead property to questions involving improvements on urban property it is necessary to recognize that the L'Engle case was concerned with the question of whether the homeowner had by extended absence actually abandoned property which at the time of his departure was admittedly of homestead character. It was not concerned with the improvements on the homestead, either as being qualified for tax exemption or as losing its character as homestead property by abandonment. In spite of these distinguishing features the strong possibility of the application to section 7 of the case law having to do with the nature of the improvements on homestead property under court constructions of sections 1 and 4 warrants its consideration.

In this area the court has faced two general types of situations concerning the renting of property which necessitated the determination of whether the rental property constituted the "business house of the owner" and thus was entitled to exemption under section 1 or section 4.

(1) Separate Buildings — The first of these situations involved the renting of buildings separate from the actual residence of the owner, yet located within the maximum limits of the homestead property, i.e., the one half acre. In Cowdery v. Herring the Supreme Court of Florida held that two detached buildings, separate from the residence of the owner, consisting of a garage, used in part for storing the owner's car but principally as the repair shop of a tenant, and a frame building used by the owner to store flower pots and by a tenant as a sign painting shop, constituted a portion of the homesteader's "business house" and was exempt from forced sale. The court stressed that even though the term "business house" is not defined in the constitution, it is plain that the intent was to preserve as exempt a reasonable portion of the homestead improvements, in addition to the owner's actual residence, when

165. 106 Fla. 567, 143 So. 433 (1932), aff'd on rehearing, 106 Fla. 574, 144 So. 348 (1932).
It appears that the improvements concerned are being used as a means for making the owner's livelihood.

In McEwen v. Larson the court, when concerned with section 4 of article X, held that an apartment house with a detached garage built for renting purposes is not a "business house of the owner" but at the same time purported to distinguish Cowdery v. Herring by saying "the owner living on her homestead merely rented for a toolhouse a small garage that had been used as a part of the city homestead property."

In a subsequent case, O'Neal v. Miller, four small houses and a fish store, all on the homestead property and all rented to others, were held not contemplated by the term "business house of the owner" in spite of testimony that the rentals constituted the sole income of the owner. In the concurring opinion, an attempt was made to throw some light on the court's attitude in distinguishing the Cowdery and McEwen cases, "In the Cowdery case the garage and the paint shop were improvements in the form of commercial establishments, from which the owner derived her principal means of livelihood, and such were held to constitute a 'business house' within the intendment of the constitution. In the McEwen case, while it is true that the apartment house was the source of income, such income was derived from persons who came to reside on the property, and the apartment house and land required for its operation and maintenance were held to have been abandoned as homestead property." O'Neal v. Miller was concerned with the construction of section 1 of article X.

The question again was presented to the supreme court in 1956. In Union Trust Co. v. Glunt involving probate proceedings, a small one-story cottage and a two-story garage apartment, both separate and detached from the residence and used for rental purposes, were considered as within the term "business house." With reference to the opposing contentions that the case should be ruled by Cowdery v. Herring or McEwen v. Larson, the supreme court was of the opinion that the Cowdery case was determinative of the present one. The court quoted with approval from this case to the effect that even though "residence and business house" of the owner is not defined in the constitution, still the intent of this language is to "preserve as exempt a reasonable portion of the homestead improvements, in addition to the owner's actual residence, when it appears that the improvements concerned are being used as a means of making the owner's livelihood." The court stated that one's business, trade, craft or other means by which he makes a living may have much to do with determining what constitutes his "residence and business

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166. 136 Fla. 1, 185 So. 866 (1939). See Jordan v. Jordan, 100 Fla. 1586, 132 So. 466 (1931).
167. 143 Fla. 171, 196 So. 478 (1940).
168. 85 So. 2d 877 (Fla. 1956).
house”; that it is a matter of common knowledge garage apartments are frequently placed adjacent to the home for rental as well as utility purposes; that the one-story cottage was a one-room affair, twelve feet wide and twenty-six feet long and its only purpose or design was to produce a small rental or contribution as a means of making the owner’s livelihood. The court’s conclusion was that the terms “residence and business house of the owner” and “means of making the owner’s livelihood” are flexible clauses and should be construed reasonably in light of the trade, craft or occupation one pursues to make a living.

The reasoning of the court in this case is inconsistent with the explanation appearing in the concurring opinion of O’Neal v. Miller concerning the distinction between Cowdery v. Herring and McEwen v. Larson, since here income was derived from persons who came to reside on the property.

The tests that must be met in ascertaining whether the detached buildings are included in the term “business house” are not clear. The court apparently emphasizes the necessity of limiting this type of property to a “reasonable portion” of the homestead property. The care with which the court in Union Trust Co. v. Glunt, supra, considered the size of the buildings and the amount of the rentals accruing therefrom seemed of great significance. The implication may be that the business use cannot be the predominant use of the homestead property; it must be subordinate to the use of the property as a home. On the other hand, the requirement that the rental property actually be used for purposes of making a livelihood rather than merely a supplement to a livelihood gained by other means seems to imply the rental property cannot be considered as a mere sideline and still be entitled to the exemption as a “business house” of the owner. The court apparently is satisfied that each case must be decided as it arises.

(2) Single Building — The second type of situation involved the rental of a part of the building in which the homesteader resided. The supreme court in Smith v. Guckenheimer169 early approved the equitable division of the building into exempt and non-exempt parts with relation to a forced sale situation. The court expressed the opinion that in cases where the non-exempt improvement or building is combined in a single structure that likewise constitutes the residence or business house of the owner, the soil perpendicularly under and covered by any non-exempt improvement is improperly dedicated to other uses than are consistent with the constitutional right of exemption thereof, and is, therefore, not exempt. The court, by a perpendicular line, divided the building into exempt and non-exempt parts and permitted the sale of the non-exempt part under execution.

169. 42 Fla. 1, 27 So. 900 (1900).
Later, in Brogdon v. McBride, the court seemingly held this procedure not applicable to a situation involving a multiple unit apartment building, the ground floor apartment being the residence of the owner, because the building was not divisible by a perpendicular line without destroying or eliminating a part occupied by the owner; consequently, all the property was considered homestead property in relation to the attempt to devise it contrary to section 4, article X of the Florida constitution.

The requirement of a perpendicular division of the exempt from the non-exempt portions of the property, while logically applicable to situations of forced sale or devise, in which the property often must be divided, is of doubtful value for tax exemption purposes. Since the taxation does not involve the necessity of dividing the building, as do forced sale and devise, there is no reason why the property cannot be divided into exempt and non-exempt parts even though such a division cannot be accomplished by a perpendicular line. Such a division has been approved by the Florida Supreme Court in tax exemption situations not involving homesteads.


An owner who resides and makes his permanent home on a piece of land and also operates his business thereon, either in a separate building or in the building used as a home, is entitled to tax exemption on all the property to the extent allowable under the amendment. Any part of the building not used as the home and its curtilage or the owner's business house is not entitled to the exemption. The tax assessor should separate the uses and grant the tax exemption only as to the designated uses.

Rental property located on urban homestead land is eligible for the exemption if such property is a principal part of the means of livelihood of the owner. The earlier view of the Attorney General was that the tax exemption remained unaffected even though the rentals were carried on as a sideline; later, his position was changed to require the rentals to be the principal business of the owner.

The rental property may be a part of the same building occupied by the owner as his home, e.g., a hotel, or it may be a separate building.

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171. Simpson v. Bohon, 159 Fla. 280, 31 So. 2d 406 (1942); State v. Doss, 150 Fla. 491, 8 So. 2d 17 (1941).
175. 1941 Rep. Att'y Gen. 163.
177. Ibid.
If an owner lives in and operates a motor court consisting of several buildings within a municipality, he is entitled to an exemption of the building in which he lives and one other building as his business house. The remaining buildings are not entitled to tax exemption.\textsuperscript{179}

A garage or a garage apartment which are rental properties may be included as a part of the homestead for exemption purposes unless they are of sufficient size to have the use of them as rental property be deemed a predominant rather than a subordinate use of the homestead property.\textsuperscript{180}

**Maximum Exemption**

(a) *Assessed Valuation* — Since the exemption may be claimed “up to the assessed valuation of five thousand dollars” the following observations apparently have a valid basis: (1) if the assessed valuation of the property is less than five thousand dollars the entire value of the property will be the basis of the exemption; (2) if the assessed valuation of the property is less than five thousand dollars, the difference between the assessed valuation and $5,000.00 cannot be transferred for the purpose of obtaining tax exemption on other property, since the amendment is concerned only with tax exemption of homesteads as defined in the constitution; (3) If the assessed valuation of the property exceeds five thousand dollars a real property tax may be levied with reference to the excess; (4) Since the method of assessing real property is largely subjective in nature, the assessed valuation probably will vary from the full cash value, which is the statutory basis for real property tax assessments in Florida.\textsuperscript{180a} To the extent that this is true the owner of the property may either pay taxes which he should not be required to pay or he may be exempt from payment of taxes which he should be required to pay. The charge is often made that in some counties in Florida the property is not assessed at more than fifty percent of its full cash value. If this is true in a given situation it is significant to note that the owner of a homestead the full cash value of which is $10,000.00 would be required to pay no ad valorem tax on the homestead, in the absence of special assessments or contractual obligations, incurred prior to the effective date of the amendment, for the retirement of which special assessments or obligations the property is bound to be taxed.

(b) *One Dwelling House* — The maximum limit of the exemption for any one dwelling house is stated to be $5,000.00. Accordingly, the scope of the term "dwelling house" assumes importance.

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\textsuperscript{179} Ibid.
\textsuperscript{180} 1952 Rep. Att'y Gen. 352.
\textsuperscript{180a} Fla. Stat. § 193.11 (1957).
In Overstreet v. Tubin, a duplex apartment, each side being owned separately, was held by the Florida Supreme Court to be one dwelling house. Consequently, each resident owner was entitled to a maximum exemption of $2,500.00.

The court was impressed with the benevolence the people of Florida had extended the homesteader but was more impressed with the fact that the exemption in operation substantially reduced a prolific source of tax revenue for local government.

The canon of statutory construction upon which the decision was based requires that tax exemption statutes be strictly construed against the claimant. Doubts, under such a construction, are resolved in favor of the government. A doubt that each apartment of a duplex is a single dwelling house seems, in the main, to be assumed by the court. The only aid directly on this issue was a Mississippi statute which provided that the duplex should be considered as a single dwelling, but the court admitted that it was not bound by such a statute.

The major portion of the opinion consists of a discussion of the ultimate in benevolence shown by the people, the obligation of the homesteader to pay his fair share of taxes, the comparative treatment of homesteads for other purposes in other states, and the potential danger of ingenious planning and building of homes on a small area resulting in additional loss of tax revenues.

The reason why the court considered it necessary to dwell at length on these facts is not clear. Certainly they do not establish the meaning of the term “one dwelling house” as including each side of a duplex apartment house where each apartment is separately owned. The court evidently considered the ominous financial future of local government which would be produced as a result of a contrary decision as justifying its attitude. Apparently this decision can be taken as authority for limiting to $5,000.00 the exemption on all multiple dwellings.

While one may agree that the loss of tax revenue from such a source as homesteads is deplorable, such sentiment is hardly a justification for a decision which probably would shock all laymen and many lawyers.

(c) Joint Ownership—Ownership by the entireties, jointly or in common with others does not defeat the exemption. It may be apportioned among the owners who “reside thereon as their respective interests shall appear, but no such exemption of more than five thousand dollars shall be allowed to any one person, and the amount of the exemption allowed any person cannot exceed the proportionate assessed valuation based on the interest owned by such person.”

181. 53 So.2d 913 (Fla. 1951).
(1) Single Dwelling — It is apparent that, in order to be entitled to the exemption, each joint owner must be otherwise qualified, i.e., he or she must reside on the property and in good faith make it his or her permanent home. It also seems that if a legal or natural dependent of the joint owner makes the property his or her permanent home exemption may be claimed.

It follows, therefore, that if two persons are joint owners of a single dwelling house in equal proportions and both reside in the house, the house being assessed at a value of $5,000.00, the entire property will be exempt from taxation, if proper application is made and no special assessment or contractual obligation binding the land to be taxed is involved. Each joint owner would be entitled to an exemption of $2,500.00, since the section limits the total exemption of any one dwelling house to $5,000.00.

If the permanent home of the two joint owners, each owning an undivided one-half interest, is assessed at $10,000.00, the maximum exemption to which each owner is entitled is more questionable. A maximum of $5,000.00 on each dwelling house is specified in the section, yet there is also a provision to the effect that a joint owner's exemption cannot exceed the proportionate assessed valuation based on the interest he owns. If the term "assessed valuation" in this situation is construed to mean $10,000.00 then each joint owner would be entitled to an exemption of $5,000.00; on the other hand, if the assessed valuation is considered to have a maximum limit of $5,000.00 regardless of the actual assessed valuation, each owner would be entitled to an exemption of only $2,500.00.

The attitude of the Supreme Court of Florida in Overstreet v. Tubin182 involving the duplex apartment situation, although not concerned with joint ownership, may be indicative of the feeling on the part of the court that if only one dwelling house is involved this fact shall be determinative of the maximum exemption allowable regardless of joint ownership.

Even so, the joint owner whose interest in the property is represented by an assessed valuation of $5,000.00 or more may contend that he has an interest in his home which should be protected to the extent of the $5,000.00 exemption and by allowing him the exemption there would be no violation of the maximum limitation of $5,000.00 on one dwelling house. The fallacy in such a contention is apparent by assuming a situation involving a valuable homestead in which each joint owner's interest is represented by an assessed valuation of $5,000.00 or more. Obviously, each could not validly make this contention concerning the same dwelling house.

The same result is accomplished by construing the term "assessed valuation" in the clause "nor shall the amount of the exemption allowed

182. See note 181 supra and text pertaining thereto.
any person exceed the proportionate assessed valuation based on the interest owned by such person" as meaning the assessed valuation not in excess of $5,000.00.

(2) **Multiple Dwelling**— The reasoning concerning the amount of exemption allowable to each joint owner of a single dwelling would, no doubt, apply to joint owners of a multiple dwelling, since in *Overstreet v. Tubin* the court considered the multiple dwelling as a single dwelling house for taxation purposes.

It is doubtful that if the ownership of the duplex apartment in the Tubin case had been joint rather than each unit separately owned the result would have been different. As long as the court considers a multiple dwelling as one dwelling house for homestead tax exemption purposes and maintains its present reluctance to decrease potential sources of tax revenue, the fact that such multiple dwelling is jointly owned will not serve to increase the aggregate exemption.

Op. Att'y Gen.— More than one owner can claim the exemption on the same property, but no such exemption of more than $5,000.00 shall be allowed to any one person or any one dwelling house and it is not necessary for the interest of each partial owner to be separately assessed on the tax roll. Only the partial owners in a single dwelling who reside on the property are entitled to the exemption each in an amount not to exceed the proportionate assessed valuation based on his interest; if there is more than one person, the total exemption cannot exceed $5,000.00.

Although a tenancy by the entirety may not be severed even for tax purposes, a joint tenancy can be severed for tax purposes as well as other purposes; consequently, the joint tenant who lives on the property is entitled to an exemption based on his interest in the property.

(3) **Several Dwellings**— If the homestead property is owned jointly or in common with others and each of the owners occupies a separate dwelling house located thereon as his permanent home, the determination of the maximum amount of the exemption becomes more complicated.

Is each joint owner entitled to only his proportionate share of the assessed valuation up to a maximum of $5,000.00 as an exemption, or is he entitled to his proportionate share of the actual assessed valuation even though it is in excess of $5,000.00, provided there is no violation of the provision whereby no person can receive more than $5,000.00 as an exemption?

It seems reasonable to assume that the maximum limitation of $5,000.00 as an exemption on any one dwelling house does not mean that

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183. Ibid.
185. Ibid.
the term "dwelling house" is synonymous with "homestead" in all cases. Why should the amendment be construed to penalize joint ownership of several houses when each house is the permanent home of one of the joint owners or his legal or natural dependent?

While it is true that the joint owner can claim an exemption based only on the interest he owns, still this interest may represent an assessed valuation of $5,000.00 or more. Certainly, such an interest should be exempt from taxation to the same extent that would be true if the joint ownership was severed and each former joint owner held title to his dwelling house individually. The reasoning of the court in Overstreet v. Tubin which stressed the owner's obligation to pay his fair share of the cost of his government is even more difficult to apply here than in the situation of the duplex apartment. Once the people of the state bind the government to exempt homesteads from taxation, this obligation should be fulfilled.

Op. Att'y Gen.—Partial owners must reside on their property to be entitled to any homestead tax exemption therefor; the total exemption to all cannot exceed $5,000.00 on any one dwelling house and the amount of such exemption is to be determined so that the same shall not exceed the proportionate assessed valuation based on the interest owned by such person. Since the amendment limits the exemption to the value of the interest of the homesteader, when the homesteader's interest is a life estate there remains another valuable interest in the real estate, viz., the remainder or reversion. Such an interest can be separately valued. The value of the life estate on any particular day depends upon the value of the property measured by the life expectancy of the life tenant.

When partners hold title to a tract of land in the names of all the partners, in the names of some of the partners, or in the name of a third party and there are located upon the land several dwellings which are occupied separately by the partners, each partner may claim an area for exemption up to the maximum of a homestead as defined in section 1, article X of the Florida constitution, since a partner is equitable owner and a tenant in common with other partners. The amount of the exemption to which each partner is entitled, however, is measured by his interest in the property and since the value of the homestead for tax exemption purposes is limited to $5,000.00 his exemption cannot exceed

187. See note 180 supra and text pertaining thereto.
190. Ibid.
his share of this amount measured by his proportionate interest in the property. 193

Where two tenants in common, each possessed of an undivided interest in the property, own a parcel of real estate, and occupy separate buildings thereon and make the same their permanent homes, each is entitled to a homestead tax exception on his interest, which is one-half interest. 194 Each tenant in common holds only an undivided interest in the land occupied. Only his interest can be exempt. If the other tenant does not occupy the land his interest cannot be exempt. The fact that they occupy separate dwellings does not alter their interest in the land, which is the subject of the exemption. 195

Where the owner of a parcel of real property conveys it to another, retaining a life estate in an undivided one-half interest therein, and each of such parties makes his permanent home in separate dwelling houses located upon the said property each is entitled to an exemption based upon the nature of his interest, i.e., the grantee of the undivided one-half interest is entitled to the exemption on the lands to the extent of his separate occupancy of said undivided one-half interest; the life tenant is entitled to exemption on the undivided one-half interest of which he is possessed but only to the extent of the value of the life estate; the value of the remainder is subject to taxation. 196 There cannot be two occupancies of the same lands by two or more persons where there are separate dwelling houses occupied by each. Two or more persons may jointly occupy one dwelling house and be entitled to an exemption on the same building, to the extent of their interests so long as not more than $5,000.00 total exemption is allowed on one house; but there may not be such a joint occupancy for purposes of homestead tax exemption, in two or more dwelling houses. 197

The 1938 homestead tax exemption amendment does not prohibit the $500.00 exemption allowable to a widow or a disabled person under section 9, article IX of the constitution of Florida from being applied to a homestead. 198

(4) The Widow

The provision in the amendment whereby a joint owner and an owner in common with others cannot be granted an exemption in excess of the proportionate assessed valuation based on the interest owner by such a person poses a troublesome question when the occupant of the homestead is a life tenant, particularly if the life tenant is a widow.

193. Ibid.
195. Ibid.
197. Ibid.
If the term "jointly or in common with others" is construed to include a life tenant together with the remainderman the question of the value of the life tenancy in connection with the land will arise regardless of whether the term "assessed valuation" is considered to have a ceiling of $5,000.00 or not. It is apparent that the value of the tenancy would diminish each year the tenant made the property his or her permanent home.

It may be of significance to note that in the rare situations in which the legislature of Florida took the trouble to designate specific interests which should be included as either legal or equitable in the construction of the tax exemption amendment, "a widow residing on real estate by virtue of dower or other estates therein limited in time by deed, will, jointure, or settlement" was paid particular deference. It should be noted, further, that even a tenancy for a term of years is sufficient to qualify the resident widow. Such a tenancy probably would qualify no one else in the absence of a statute, since a tenancy for a term of years is not considered as an interest in the real property.

Since the value of a life tenancy or a tenancy for a particular term would be comparatively small in relation to the value of the remainder, which probably could not be the basis for a claim for the exemption since it is subject to the tenancy, the exemption that could be claimed by the tenant apparently would amount to very little and would become even smaller as the tenancy was extended. Accordingly, there is a doubt that an appellate court in Florida will construe the tax exemption amendment in such a manner as to jeopardize the granting of the full exemption to the widow if the assessed value of the homestead in which she is making her permanent home by virtue of her tenancy is $5,000.00 or above.

This position seems even stronger in the situation of a widow who receives a life estate by virtue of a constitutional provision, such as the life estate she receives through the operation of section 4, article X of the constitution of Florida when she and children survive her husband whose death terminates his sole ownership of a homestead.

**Procedure**

The amendment provides that the legislature may prescribe appropriate and reasonable laws regulating the manner of establishing the right to the exemption. The legislature has exercised this authority upon several occasions.


The homestead tax exemption amendment is self-executing, requiring no statute to entitle a qualified person to the exemption. A constitutional
provision does not lose its self-executing quality merely because it provides that the legislature shall by appropriate legislation provide for carrying it into effect.199

(a) The Application — Each taxpayer who claims the exemption is required to file a statutory form with the county tax assessor of the county in which the property is located on or before April 1st of each year.200 Failure to do so will constitute a waiver of the exemption for that year.201

The filing of the request for exemption with the county tax assessor is deemed also to be application for the exemption from the municipality in which the homestead is located.202 It is the duty of tax assessors of municipalities in Florida to obtain a copy of each application for the exemption on file in the office of, and approved by, the county assessor of the county in which such municipality is located and it is the duty of the county tax assessors to furnish such copies to the municipal tax assessors in their respective counties upon request.203 City tax assessor are governed by the laws relating to the homestead tax exemption amendment.204

Some doubt has been cast on the written request as being an absolute requirement for the exemption. The Florida Supreme Court upon one occasion stated,208 “Although we do not decide it here, it is doubtful if the taxing authorities can deny homestead exemption to one otherwise qualified for it upon failures to file written requests therefor or to fill out the complicated forms now in use by such authorities.”

A statutory exception to the requirement that each taxpayer who claims the exemption shall file the request is made in the case of persons serving in any branch of the armed forces of the United States. Such persons may file a claim for the exemption, either in person or if by reason of such service he is unable to file the claim in person he may file it through his or her next of kin or through any other person he or she authorizes in writing to file the claim.206

The application for tax exemption need not be made under oath, but whoever makes or subscribes an application knowing or having reason to know that it is false as to any material matter therein, shall be guilty of a misdemeanor.207

199. 1939 REP. ATT’Y GEN. 438, 442.
200. FLA. STAT. § 192.16 (1957).
201. Ibid. This statute provides that in counties of a population exceeding 27,500 the assessor is required to give the applicant a receipt for the application and this receipt constitutes conclusive proof of the timely filing of the application. As a matter of practice many county tax assessors issue receipts acknowledging the application.
203. Ibid.
204. FLA. STAT. § 192.18 (1957).
207. FLA. STAT. § 192.57 (1957); this statute, passed in 1943, seemingly changed the law since an oath apparently was required previously. See FLA. STAT. § 192.15 (1935).

The homeowner should file his application for the exemption on or before April 1 of the year for which the exemption is requested. Late filing may possibly be justified under exceptional circumstances, to be determined as they arise. The April 1 deadline cannot be extended, even by the board of county commissioners, except in those rare instances in which waiver by the party entitled to the exemption is impossible, such as an insane person.

The use of the present tense in the statutory form for making application, contained in Florida Statutes, section 192.15, does not shift the date as of which the right to the exemption is fixed from January 1 to any date on or before April 1 that the claimant happens to select for filing.

An application which is refiled after being voluntarily withdrawn by the owner is valid and the exemption may be granted if the applicant is otherwise qualified. No Florida statute expressly requires title papers of the applicant to be of record in the county, although as a matter of practice some county tax assessors make this a requirement.

If the owner of property on which a homestead exemption could have been claimed dies without having filed the claim, and lineal descendants survive, the personal representative of the owner has no jurisdiction over the property and thus is not entitled to claim the exemption, but if the situation is such that, under the law, the homestead is considered as a part of the estate the personal representative may make the application.

The application cannot be filed by a person who purchases the property after January 1st. There apparently is an exception to this requirement, however, with relation to exemptions from municipal taxes in some situations. If the tax year of a city begins July 1st, a person who becomes a homeowner after January 1st but before July 1st may make proper application for the exemption to the city tax assessor. Although the municipal tax assessor is required to obtain copies of the homestead exemption claims filed with the county tax assessor, he is not precluded from examining them and ascertaining whether the exemption status of

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January 1st still continues on the following July 1st.\textsuperscript{218} A person, therefore, who is not qualified for the exemption from county taxes on January 1st may be qualified for exemption from city taxes by the determinative date in a particular city.\textsuperscript{218} This date was July 1st in the particular city with regard to which the opinion was rendered, but any date varying from January 1st which is recognized by the city presumably would be subject to this opinion.

When some of the partners in a partnership wish to claim the exemption on partnership property the consent of the remaining partners to the application probably should be required.\textsuperscript{220}

A person who makes a false affidavit for the purpose of claiming the exemption is guilty of a misdemeanor under section 192.16(3) of the Florida Statutes rather than a felony under section 837.01 dealing with perjury, and whoever knowingly aids, abets, counsels or otherwise procures another to make such an affidavit is guilty of a misdemeanor under section 776.011, whereby he is a principal in the first degree, and section 192.16(3) which denounces the crime and provides the penalty.\textsuperscript{221}

If a husband resides with his wife in a home in one county and properly files application for exemption in such county, and his wife, who owns realty in another county but does not permanently reside thereon, makes application for exemption in that county, the application of the husband may not be denied on ground of fraud since there is no fraud in his application.\textsuperscript{222}

A person may claim the exemption in a county other than that in which he is registered as a qualified elector at all elections under the state constitution, provided there is a legal reason for distinguishing between the separate voting residence and the residence for homestead tax exemption purposes.\textsuperscript{222a}

(b) \textit{Original Jurisdiction to Grant Exemption}

The tax assessor of the county and the tax assessor of the municipality are empowered to make the first decisions relative to granting or refusing the requests for tax exemption in the jurisdictions they serve.\textsuperscript{223} They are required to allow the exemption if the request is found to be in accordance with the law and to make such entries upon the tax roll as are necessary to allow the exemption to the applicant.\textsuperscript{224}

\textsuperscript{218} Ibid.
\textsuperscript{219} Ibid.
\textsuperscript{222} 1955 Rep. Att'y Gen. 194.
\textsuperscript{223} Fla. Stat. § 192.19 (1957).
\textsuperscript{224} Ibid.
The examination of the applications by the tax assessor is required to be made as soon as practical after the first day of April of the current year and prior to the first Monday in May.\textsuperscript{225} Apparently, neither the county nor the city tax assessor is bound by the decision of the other, in spite of the reference in the statute requiring the city assessors to obtain the applications filed with "and approved by" the county tax assessors.

If, after due consideration, the tax assessor should find the applicant not to be entitled under the law to the exemption, the assessor is required to deliver to the applicant in person or by registered mail a form of notice of disapproval containing the reasons for the disapproval.\textsuperscript{228}

\textit{Op. Att'y Gen.}—The tax assessor is, in the first instance, the judge of the sufficiency of the evidence concerning whether the applicant has established a permanent home on the property.\textsuperscript{227}

The city tax assessor is not bound by the decision of the county tax assessor concerning the application for the exemption. He may exercise his independent judgment.\textsuperscript{228}

An assessor can correct clerical errors of extension on a tax roll after allowing the exemption, and may grant the exemption after first denying it and failing to notify the claimant; but notice of denial constitutes an automatic appeal and prevents further changes by him.\textsuperscript{229} An assessor who discovers his mistake of granting an exemption may give notice to the applicant and reject the application. He subsequently, after a hearing is afforded the applicant, may cause the tax roll to be corrected as authorized by Florida Statutes section 192.21.\textsuperscript{230}

(c) \textit{Administrative Appeal}

If the tax assessor of the county refuses the application for tax exemption he is required to file in the office of the clerk of the board of county commissioners the original of the notice of disapproval with entry of service upon the applicant. The filing of this notice constitutes an appeal of the applicant from the decision of the tax assessor to the board of county commissioners, when sitting as a board of tax equalization.\textsuperscript{231} This board is required to review the case and shall review the application and evidence presented to the tax assessor upon which the applicant based his claim for exemption and shall hear the applicant in person or by agent. The board may affirm or reverse the decision of the tax

\begin{itemize}
\item \textsuperscript{225} \textit{Ibid.}
\item \textsuperscript{226} \textit{Fla. Stat.} § 192.19 (1957).
\item \textsuperscript{227} 1951 Rep. Att'y Gen. 350.
\item \textsuperscript{229} 1938 Rep. Att'y Gen. 524.
\item \textsuperscript{230} 1952 Rep. Att'y Gen. 286.
\item \textsuperscript{231} \textit{Fla. Stat.} § 192.19 (1957).
\end{itemize}
The applicant is not required to personally make application for the hearing or appear in person or by agent before the assessor or board in order to have his case reviewed. Appeals from the decision of a city tax assessor are not expressly covered in the statutes. Presumably the governing body of the city would be the proper appellate body and, in practice, this is done, although from a technical standpoint the county commission may be considered as the only administrative appellate body.

Op. Att'y Gen.—The applicant whose application for exemption has been refused by the tax assessor need not appear in person or by agent before the board of county commissioners in order to have such board review the assessor's action, since the review is made mandatory on the part of the board.

After the county tax roll has been completed, equalized, extended, approved and delivered to the tax collector no additional homestead benefits may be granted except such as may be corrections of omissions and commissions of the taxing officials. The county commission's power as a board of equalization has ceased upon its adjournment. However, in case the assessor makes a mistake in granting an exemption, gives notice of the mistake to the applicant and also notice of rejection, the applicant is entitled to a hearing even though the tax rolls are in the hands of the tax collector.

(d) Judicial Appeal—The action of the board of county commissioners sitting as a board of tax equalization is final unless the applicant shall within 15 days from the date of refusal of the application file in the circuit court of the county in which the homestead is situated a proceeding against the assessor for a declaratory decree or initiate other proceedings seeking to establish his right to the exemption.

Op. Att'y Gen.—The county tax assessor may contest in the circuit court an alteration of his assessment by the county commissioners that he deems incorrect. The Florida statute section 192.19 providing that the decision of the board of county commissioners sitting as a board of tax equalization is final does not apply to the tax assessor in such a situation.

CONCLUSION

The practical position to be taken with regard to the homestead tax exemption provision of the constitution is to regard it as a fixture for this
generation at least. Constructive thinking and action concerning it should be directed toward improving its administration and keeping it within its present limits. To argue that a homestead should bear its fair share of taxes, that the present exemption will always be unfair in its administration, and that it causes an unjust shifting of the burden of local taxation may be logical, but at this time is purely academic. A tax exemption of this type has an inherent appeal for the public and once it becomes a part of the organic law of a state nothing short of an economic upheaval will uproot it. Consequently, the following discussion is offered with the thought of improving the administration of what we have rather than advocating a basic change in the constitution.

Some of the language of section 7 is vague. It should be clarified. The most expeditious and practical way for this to be done lies with the legislature. Under the constitution, appropriate and reasonable legislation is authorized for regulating the manner of establishing the right to the exemption. This authorization apparently is not limited to the passage of statutes dealing with the mere mechanics of application, decision, and appeal. The Florida Supreme Court has approved of the statute by which the Legislature provided that continuous physical residence was not necessary in order for a person to be considered a permanent resident. This type of statute is helpful in the construction of the amendment.

Of course, the legislature must stay within its constitutional limits when dealing with this subject, as it discovered when the statute requiring one year's residence as a pre-requisite for the exemption was declared unconstitutional. The fact remains, however, that there is a fertile area for carefully considered legislation which can be exceedingly beneficial in the proper construction of the amendment.

A clearly worded legislative conception of the meaning of the terms "natural dependent," "abandonment," "dwelling house," and "assessed valuation" would be advantageous in the administration of the amendment. The rights of joint owners, particularly life tenants, should be clarified. Definite requirements for proving an intent to return to the homestead in case of temporary absence should be established. Legislative attention should also be directed to determining whether the permanent home of a legal or natural dependent in Florida can qualify, for the exemption, an owner who resides permanently in another state.

Uniformity is sadly lacking in the administration of the amendment. As long as the present system of assessment of taxes is followed in Florida there can be no uniformity in its administration. Criteria for assessments vary so widely in the cities and counties throughout Florida that some home owners are bound to benefit more than others even though their homesteads actually are of the same value. A tax commission with the authority to correct inequities in tax assessments and supervise the granting
of tax exemptions probably is not the complete answer, but the creation of such a body would be a step in the right direction.

Until these legislative steps are forthcoming, and even subsequent thereto, the appellate courts of Florida should assume the responsibility of clarifying the amendment at every opportunity. To forego the opportunity to do this as was done in *McCullough v. Forbes* engenders confusion and adds nothing to the prestige of the court. Once the court determines to exercise its prerogative of construction, however, care should be taken to consider the tax exemption amendment in the light of what it is reasonable to assume the legislature and the people had in mind in the process of adding it to the constitution. In *Overstreet v. Tubin* concerning the duplex apartment the Court seemed to exhibit an attitude characteristic of paternalism toward an irresponsible people, rather than a desire to determine the true intent underlying the adoption of the amendment. The wisdom of legislation should continue to be determined only by the people and their authorized representatives.