

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 88-56 PK

July 25, 1988

SUBJECT: Taxation & Revenue - Homestead Exemption - Trusts.

SYLLABUS: When the legal title to a person's residence is held by a trustee, that person must under the terms of the trust possess the right to use the residence for life before the same can qualify for the homestead exemption.

TO: Honorable Norma S. Andrews
Clarendon County Auditor

FROM: Joe L. Allen, Jr. JLA
Chief Deputy Attorney General

QUESTION: Does a person's legal residence qualify for the homestead exemption when legal title thereto is held by trustee with no right in such person to the use of the residence for life?

APPLICABLE LAW: Section 12-37-266, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

The Section provides in part that:

"When a trustee holds legal title to a dwelling that is the legal residence of a person sixty-five years of age or older, or totally and permanently disabled or blind, and such person possesses the use of the dwelling for life, the dwelling shall be exempt from property taxation in the amount and manner as dwellings are exempt under Section 12-37-250 . . . "

In the instant case, the husband died and by Will devised one-half of his estate to his wife. The selection of that part of the estate passing to the wife was conferred upon the Executrix. As understood, the homestead or residence of the wife was not included in the selection.

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Instead, the homestead or residence passed under a separate item in the Will into a trust. A reading of the provisions of the Will reflects that the trust is to be expended "primarily for the medical care, comfortable maintenance, welfare, education of my said wife and children." Certain other provisions are set forth with a final distribution to the descendent heirs. This, however, takes place after the death of the wife and upon the youngest child being of a designated age. Nowhere in the Will do we find any provision that vests the wife with the use of the residence for her life. Under settled rules of construction, the exemption cannot be extended.

"Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming exemption, but he must clearly bring himself within constitutional or statutory language upon which he relies." York County Fair Assn. v. South Carolina Tax Commission, 249 S.C. 337, 154 S.E.2d 361. For other cases, see 17 S.C.D., Taxation, Key 204, et seq.

In the absence of the right to the use of the dwelling for life, conditions for the exemption are not satisfied.

CONCLUSION:

When the legal title to a person's residence is held by a trustee, that person must under the terms of the trust possess the right to use the residence for life before the same can qualify for the homestead exemption.

JLAJR/jws