

1976 WL 30931 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1976

*1 An 'inchoate right of dower' and a remainderman's interest in property would not satisfy the ownership requirements of Section 2(c) of Act 208, Act of 1975. Dower that is admeasured, however, is a life estate and satisfies the requirements.

Honorable Robert S. Floyd
Florence County Tax Assessor

QUESTION

You request the opinion of this office of whether a dower interest or a remainderman's interest in property constitutes sufficient ownership to meet the requirements for a residential classification of property for ad valorem tax purposes.

STATUTE INVOLVED

Section 2(c) of Act 208, Acts of 1975, that provides in part as follows:

'The legal residence and not more than five acres contiguous thereto when owned totally or in part in fee, or by life estate and occupied by the owner of such interest shall be assessed equal to * * *.'

DISCUSSION

The text of your letter indicates reference to an inchoate dower interest rather than a dower interest and, because of such, we treat both. An 'inchoate dower interest' is that interest held by the wife during her lifetime in the property of her living husband. It is contingent upon her survival of her husband and, because of such, the same is not a vested right to the property.

'It is a right (inchoate right of dower) which has been held to be a definitive institution of the State which is highly favored. * * *. Although it cannot be properly denominated as an estate in lands or a vested interest therein, we have consistently held that it is a substantial right of property * * *.' [Shelton v. Shelton](#), 225 S. C. 502, 83 S. E. 2d 176.

An 'inchoate right of dower' would not therefore satisfy ownership requirements of the Act for the residential classification.

A dower is a surviving widow's life estate in one-third the lands of her deceased husband or a one-sixth interest in such lands in fee simple.

'It is the general rule at common law and in most jurisdictions that (1) dower does not vest until it has been properly allotted and (2) it normally is defined as a one-third life estate * * *.'

'In South Carolina the widow may, by way of dower, claim either a one-third life estate in her deceased husband's lands or one-sixth interest in fee simple.' [Kennedy's Estate v. United States](#), 302 F. Supp. 343.

Section 19-161, et seq. of the Code provide the procedure to admeasure the dower and the widow's ownership of any lands so admeasured is a life estate meeting the ownership requirements of the Act.

It is the opinion of this office that the remainderman's interest does not satisfy the ownership requirements of the Act. The life tenant's right to possession is immediate and exclusive.

'A tenant for life is entitled to the full use and enjoyment of the property in which he has a life estate, the only restrictions upon this use being that the estate of those who are to follow him in possession shall not be permanently diminished in value * * *.' 51 Am. Jur. 2d, Life Tenants and Remaindermen, Sec. 7, p. 249.

*2 The occupancy by the remainderman of the property during the lifetime of the tenant would be with permission or leave of the life tenant. Additionally, the remainderman has no tax liability for the property nor can his interest be held for the taxes that accrued during the life tenant's possession. Butt v. Sullivan, 173 S. C. 24, 174 S. E. 491, Stamper v. Avant, 233 S. C. 359, 104 S. E. 2d 565.

CONCLUSION

It is the opinion of this office that an 'inchoate right of dower' and a remainderman's interest in property would not satisfy the ownership requirements of Section 2(c) of Act 208, Acts of 1975. Dower that is admeasured, however, is a life estate and satisfies the requirements.

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