

1972 WL 26143 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1972

*1 Section 19-408 of the Code of Laws of South Carolina precludes the admission of the decedent's will to show ownership unless and until the same has been probated as provided for by law.

Honorable W. A. Jeter
Richland County Auditor
Richland County Court House
Columbia, South Carolina 29201

Dear Bob:

Reference is made to your request for the opinion of this office whether or not a widow may claim the homestead exemption upon the dwelling wherein she resides if the dwelling was owned in fee simple by her deceased husband and left to her by Will. The Will of the deceased husband has not been offered for probate by the widow but is presented to you to show evidence of her ownership of the dwelling.

Notwithstanding that legal title of real estate passes to the heirs of the decedent at the time of death, Section 19-408 of the Code of Laws of South Carolina precludes admission of the decedent's Will as evidence to show ownership until the same has been probated as provided for by law.

‘* * *. And no devise of real estate shall be admitted as evidence in any case until after probate, either in common form or due form of law.’

We therefore conclude and advise that the application for the homestead exemption be denied to the widow under such circumstances.

Yours very truly,

G. Lewis Argoe, Jr.
Assistant Attorney General
South Carolina Tax Commission

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