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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

July 18, 1990

SUBJECT: Taxation & Revenue - Homestead Exemption.

SYLLABUS: A person who leases a lot and constructs his legal residence thereon and later assigns the lease to another does not meet the ownership requirements for the homestead exemption when the lease limits the rights in the lease to the lessee.

TO: Mr. Michael L. Horton
Assistant Comptroller General

FROM: Joe L. Allen, Jr. *[Signature]*
Chief Deputy Attorney General

QUESTION: A person leased a lot on which was erected the lessee's legal residence. The lessee meets the qualifications for the homestead exemption. The lessee assigned the lease to another, however, alleges that the residence was not transferred. Does the homestead exemption continue?

APPLICABLE LAW: Section 12-37-250, Code of Laws of South Carolina, 1976, as amended.

DISCUSSION:

Section 12-37-250 provides a homestead exemption from property taxation of the legal residence of certain qualifying persons. It first required that the homestead be owned in complete fee simple or for life. Amendments were adopted, one of which provides:

" . . . When a dwelling house and legal residence is located on leased or rented property and such dwelling house is owned and occupied by the owner even though at the end of the lease period the lessor becomes owner of the residence, the owner lessee shall qualify for and be entitled to a

Mr. Michael L. Horton
Page Two

July 18, 1990

homestead exemption in the same manner as though he owned a fee simple or life estate interest in the leased property on which his dwelling house is located.
.. "1

The question here is whether the residence continues to be owned by the first lessee so as to qualify for the exemption.

The lease here considered provides in Section 14 in part that:

"This lease or any interest therein may not be assigned or transferred by the Lessee, and the leased property may not be sublet in whole or in part unless the Lessee has secured written permission from the Lessor prior to such assignment, transfer, or sublease. Any assignment, transfer, or sublease granted by the Lessee without the prior written consent of the Lessor shall be void and of no effect."

The lease thus prohibits any sublease without prior approval by the Authority. We do not find any prior approval by the Authority and must conclude that the residence was therefore included in the assignment.²

CONCLUSION:

A person who leases a lot and constructs his legal residence thereon and later assigns the lease to another does not meet the ownership requirements for the homestead exemption when the lease limits the rights in the lease to the lessee.

JLAJR/jws

¹The statute refers to the "owner-lessee." Here the person claiming ownership of the residence is not the lessee.

²The conclusion above stated is fortified because under paragraph 6 only the lessee may "construct and maintain the residence." The original lessee is no longer authorized under the lease to maintain the dwelling.