

1980 S.C. Op. Atty. Gen. 106 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-58, 1980 WL 81941

Office of the Attorney General

State of South Carolina

Opinion No. 80-58

May 21, 1980

***1 SUBJECT: Homestead Exemption—Nonqualification of Leasehold Estate.**

A lease for life and for a nominal consideration would not satisfy the ownership requirements for the homestead exemption.

TO: Honorable Earle E. Morris, Jr.
Comptroller General

QUESTION:

Does a leasehold estate satisfy the ownership requirements for the homestead exemption when the same is for the life of the tenant and for nominal consideration?

APPLICABLE LAW:

[§ 12-37-250, 1976 Code](#) of Laws.

DISCUSSION:

[Section 12-37-250](#) grants a homestead exemption for the dwelling place of certain persons upon conditions. One condition is that such persons:

‘* * * hold complete fee simple title or a life estate to the dwelling place * * *.’

A leasehold interest is not equivalent to a life estate or a fee simple title. A lease is created by contract and there is a landlord-tenant relationship.

‘The relation of landlord and tenant is created by contract, either express or implied, by the terms of which one person designated ‘tenant’ generally enters into possession of the land under another person known as ‘landlord’. A tenant, including a tenant for years, is ordinarily an occupant who has not only an interest in land, but also some estate, be it ever so little, such as the estate of a tenant at will. He is ‘one who occupies the premises of another in subordination to that other's title and with his assent express or implied.’ Thus, as a general rule, the possession of a tenant is that of his landlord, and will be so deemed until the contrary appears. * * *.’ 49 Am. Jur. 2d, Landlord and Tenant, § 1, pp. 41, 42.

A life estate reflects ownership of an estate in the property.

‘Life estates are estates of freehold, not of inheritance. It is well settled that a tenant for his own life, or the life of another, is a freeholder within the various meanings of statutory applications concerning things which may be done only by freeholders. A life estate created by deed or will is an estate to be held by the grantee or devisee for the term of his own life, or for that of another person, or for more lives than one.

The principal distinction between a tenancy for life and a tenancy at will, or from year to year, or at sufferance, is that the former confers a freehold upon the tenant, and the latter a mere chattel interest. * * *. 28 Am. Jur. 2d, Estates, § 56, pp. 144, 145.

A person possessing a residence under a lease neither owns a fee simple title nor a life estate in such residence, hence the ownership requirements for the exemption are not satisfied.

CONCLUSION:

A lease for life and for a nominal consideration would not satisfy the ownership requirements for the homestead exemption.

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