

1978 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-62, 1978 WL 22543

Office of the Attorney General

State of South Carolina

Opinion No. 78-62

March 29, 1978

***1 SUBJECT: Residential classification for property tax purposes.**

Under a passive trust that provided the beneficiary a use for life in the beneficiary's legal residence the legal title and the equitable title for such are merged by the statute of uses and the resultant life estate satisfies the ownership requirement for the residential classification. There is however no merger when the trust is active and because of such the ownership requirements for the classification are not satisfied.

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QUESTION:

When a trust is created and the cestui que trust is entitled to the use of the real property therein consisting of such person's legal residence, can that legal residence qualify for the residential classification provided by Section 12-43-220?

STATUTE:

Section 12-43-220.

DISCUSSION:

The response is dependent upon whether the trust is active or passive. If active, the ownership would not satisfy the classification statute, however, if passive, the ownership would meet the requirements. The classification statute, Section 12-43-220, requires the ownership to be:

‘* * * totally or in part in fee or by life estate * * *.’

The beneficiary's ownership must therefore equal the above.

In a passive trust, the legal and equitable interests are joined by operation of the statute of uses. Section 21-27-70.

‘The statute of uses conveys the possession to the use and transfers the use to possession, thereby making the cestui que use the complete owner of the lands and tenements at law as well as in equity under South Carolina law.’ [Henderson v. Griffin](#), 30 U. S. 151, 5 Pet 151, 8 L. Ed. 79. See also [Des Champs v. Southern Coating & Chemical Co.](#), 236 S. C. 420, 114 S. E. 2d 765.

The life estate under a passive trust would therefore be complete and would qualify for the classification. The same does not however apply to an active trust.

‘Active duties in management of property imposed by trust deed on trustee during duration of trust periods prevented statute of uses from executing trust during such periods.’ [Linder v. Nicholson Bank & Trust Co.](#), 170 S. C. 373, 170 S. E. 429.

There being no merger of the legal and equitable interests under such a trust, there is no life estate held by the beneficiary sufficient to satisfy the ownership requirements for the classification.

CONCLUSION:

Under a passive trust that provided the beneficiary a use for life in the beneficiary's legal residence the legal title and the equitable title for such are merged by the statute of uses and the resultant life estate satisfies the ownership requirement for the residential classification. There is however no merger when the trust is active and the ownership requirements for the classification are not satisfied.

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