

1978 S.C. Op. Atty. Gen. 226 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-200, 1978 WL 22668

Office of the Attorney General

State of South Carolina

Opinion No. 78-200

November 30, 1978

**\*1 SUBJECT: Property Tax—Homestead Exemption.**

Where a person by deed purports to grant an interest in property not owned by such person, the deed is to be disregarded for tax purposes, and as the basis for determining the ownership requirements for the homestead exemption.

To: Honorable Robert R. Able  
Auditor for Saluda County  
Saluda, South Carolina

**STATEMENT:**

By will property was devised to a surviving spouse by the following language:

‘\* \* \*, for and during her natural life, all of my property of every kind and description, wherever situate, but hereby will that in case she desires to sell or mortgage any or all of same, she may do so and give good title, during her lifetime.’

Upon the death of surviving spouse, the property is devised equally in fee to two children or their issue. The spouse however has now, by deed, granted (by gift) a portion of the property to one of the two children, but, retaining a life estate therein.

**QUESTION:**

Under such circumstances, does the ownership in the surviving spouse qualify for the homestead exemption?

**STATUTE:**

Section 12–37–250.

**DISCUSSION:**

Section 12–37–250 provides a homestead exemption for certain persons that own a complete life estate in the homestead. Since 1971, however, the only qualifying life estate is one created by Will. Is the life estate here involved one created by Will or deed?

The Will confers upon the surviving spouse power to sell or mortgage the property, however, there is no power given to dispose of the same by gift. [Burnett v. United States](#), 314 F. Supp. 492, affirmed 436 F. 2d 975. See also 28 Am. Jur. 2d, [Estate](#), Section 88, p. 192 and [Shevlin v. Colony Lutheran Church](#), 227 S. C. 598, 88 S.E. 2d 674.

The only interest owned by the spouse that could be granted by gift was the life estate. The life estate has not been granted by the deed and hence the life estate created by the Will determines the owner of the property for the homestead exemption.

CONCLUSION:

The life estate possessed by the surviving spouse is that granted by Will and thus qualifies for the homestead exemption.

Joe L. Allen, Jr.  
Deputy Attorney General

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