

1975 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3950, 1975 WL 22248

Office of the Attorney General

State of South Carolina

Opinion No. 3950

January 28, 1975

***1 1. A life estate for homestead exemption purposes must have been in existence on December 31, 1971, if created other than by will.**

2. A joint life estate of husband and wife would qualify if timely or properly created, however on death of a life tenant the exemption would depend on right of survivorship.

3. The joint ownership of property by husband and wife satisfies the exemption if either are permanently disabled.

Horry County Auditor

Reference is made to your letter of January 24, 1975, wherein request is made for the opinion of this office concerning the homestead exemption to the following:

‘1. If a taxpayer owns her property fee simple and deeds her children same, reserving a life estate to herself, would she still be entitled to homestead if this deed was after December 31, 1971?’

The language of the exemption, Section 65–1522.1, provides in part that:

‘The provisions of this section shall apply to life estates created by will and also to life estates otherwise created which were in effect on or before December 31, 1971.’

The life estate is created by deed and was not in effect on December 31, 1971, therefore, the conditions for the exemption are not met and the same cannot be granted.

‘2. Another situation we had this week was the land is in the father's name, he had deeded the land to his children, reserving a life estate to he and his wife in 1961. He is now deceased and the widow has her life estate left in the farm. Would she qualify for homestead since this was done by deed prior to December 31, 1971?’

The precise language of the deed reserving the life estate must be reviewed before an opinion on this question can be made. If the deed reserved the life estate to the husband and wife and to the survivor for life, the widow would hold title to the property under the life estate and such title would be sufficient to satisfy the exemption. Should, however, the deed have reserved the life estate to the husband and wife, then the interest in the property held by reason of the life estate of the deceased husband is now vested in the remaindermen. The ownership of the widow by the life estate would not be complete because the widow and the remaindermen jointly own the title, therefore, the same would not qualify for the exemption unless, of course, it is the legal residence of all owners who likewise separately satisfy the conditions for the exemption.

‘3. Does disability joint ownership qualify for homestead regardless of age, or does the property have to be in the name of the disabled person only?’

The statute provides that when the homestead is jointly owned by the husband and wife and either is disabled, the exemption is to be granted. The language of the statute provides in part:

'The exemption shall include the dwelling place when jointly owned in complete fee simple or life estate by husband and wife and *either* has reached sixty-five years of age, or is totally and permanently disabled. * * *.' (Emphasis added)

*2 You inquire concerning life estates and any life estate created by will would satisfy the terms of the exemption, however, all others must have been in existence on December 31, 1971 to qualify. If created after that date and not by will, the exemption cannot be granted.

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