

1972 S.C. Op. Atty. Gen. 36 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3251, 1972 WL 20398

Office of the Attorney General

State of South Carolina

Opinion No. 3251

January 17, 1972

**\*1 Where a person dies intestate survived by a spouse and children, the homestead would not be entitled to the exemption unless the surviving spouse and the children are all sixty-five years of age or older and make the homestead their legal residence.**

Executive Director

South Carolina Association of Counties

You have requested the opinion of this office concerning the homestead exemption to the following facts:

“Blackacre’ and residence are in the name of Mrs. Jones age 75. Mrs. Jones has died and her estate is not settled. Mr. Jones, her husband also age 75, still resides on ‘Blackacre’ and intends to do so. Is Mr. Jones eligible for the tax exemption under the Homestead Act at this time or must he wait until the estate is settled. There is no will and they have four children.’

Under the law of the State of South Carolina, title to real property vests immediately upon the death of the owner in his heirs at law or devisees. In the case herein, no will was left, therefore, title to the property immediately vested in the heirs of Mrs. Jones. *Carter v. Wroten*, 197 S. C. 432, 198 S. E. 13. See also 31 *Am. Jur.* 2d, *Executors and Administrators*, Sections 243 and 246.

The title to the property herein passes under the South Carolina Statute of Descent and Distribution, Section 19–52, and in the case herein the husband and the four children are the owners of the property. The property would not qualify for the exemption unless Mr. Jones and all of the four children are over sixty-five years of age and only then if the property is the legal residence of Mr. Jones and all of the four children.

Joe L. Allen, Jr.

Assistant Attorney General

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