

APPLES AND ORANGES

Ohio and Florida Homestead Exemptions

By Eugenia Maish & Joe Zaks

Self-help clients

You've seen the estate planning scenario a dozen times. In reviewing a copy of the deed to a new client's house, you discover that the educated, retired, time-wealthy gentleman prepared the last transfer document, using forms he found on the internet or at one of the many forms stores surrounding the courthouse.

By blessing of the real estate gods, the deed meets the standards of Ohio law, but your gut prompts you to follow up with a call to the County Auditor to see if the client also filed the correct conveyance tax forms when he recorded the deed. Fortunately, he did and continued to receive the 2.5 % Property Tax Reduction eligible to property owners who occupied their homesite as their principal place of residence as of January 1 of the application year.

To receive this rollback on property taxes, you either have to complete the "Application for Two and One-Half Percent Tax Reduction of Owner-Occupied Home" or check the box on the "Real Property Conveyance Fee" forms which asks whether the property will be the grantee's principal residence by January 1 of the next year. The exemption only applies to the parcel of land on which your home is located.

If your client's property is located on qualified agricultural or forested land, relevant forms also need to be completed to continue to qualify for those exemptions. Hope she or he did check the box/file the paper/pay the fee. Otherwise, lace up your Air Jordan's and start jumping through the bureaucratic hoops to reinstate these exemptions for the next tax year or to attempt applying for retroactive status.

Ohio Homestead Exemption: More than a pot of gold at the end of the Oregon Trail

Ohio offers additional tax relief in the form of the Homestead Exemption. Qualification is not as simple as "check the box." Specific income and age criteria must be met.

The exemption is granted to qualified, low-income, elderly and disabled homeowners and can also be extended to certain surviving spouses. Homestead allows a reduction in taxes but not a complete elimination of taxes. Tax savings

range from \$45 to \$300 per year, depending upon the total income of the property owner and spouse.

Again, the property must be a homesite occupied by the owner as of January 1 of the application year, as evidenced by the applicant's name on the deed. The applicant must be a least 65 years old or totally and permanently disabled. He doesn't need to be 65 on the date he applies but is eligible to apply the year he turns 65. If filing under physical or mental disability, your client must show proof of 100% permanent and total disability, usually in the form of a doctor's signature on a form or attached letter, or an award letter from Social Security Disability.

For purposes of the application, income of both the applicant and spouse must be included. The combined income of the applicant and spouse must not exceed \$24,700. If the applicant files a federal income tax return, he must use his adjusted gross income for the previous year plus his social security (combined social security if he's married).

If your client doesn't file an income tax return, he needs to itemize and include the following income sources: annuities, alimony, dividends, interest, IRA withdrawals, life insurance contracts, pension, rents, social security and gain from sale of property other than the primary residence. Applicants don't have to include income sources such as inheritance, life insurance proceeds, Medicare benefits, Veterans benefits, welfare, Worker's Compensation, Aid to Dependent Children, Black Lung Benefits or Railroad Retirement Benefits (but special rules apply to the latter).

If the client sells his house, the Homestead Exemption is not transferable. He must reapply for the exemption on the new home. Condominium and manufactured home owners can be eligible for the exemption, too.

If your client dies while holding the exemption, a surviving spouse of a homestead recipient may retain the homestead benefits if certain income criteria are met.

Application timeframes usually run from the first Monday in January to the first Monday in June, but check with individual county auditors to be sure.

Florida Homestead: Do-it-yourselfers beware

In Ohio, if a homeowner doesn't apply for or temporarily loses his Homestead Exemption, he's out upwards of a couple hundred dollars in savings per year. In Florida, land of the many, home of the retired Buckeye, it's a whole different ball of wax. This is where the proliferation of self-taught clients are risking quite a bit of tax savings if they transfer an interest in their property without legal advice as to whether the transfer will affect their homestead status. This problem is arising more now that title companies are offering a full range of closing

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services without input from attorneys or other tax professionals regarding maintaining the homestead exemption.

Florida's homestead exemption is not dependent upon the homeowner's income or age as in Ohio. Rather, it is more in line with Ohio's 2.5% homeowners reduction mentioned first in this article.

The basic tenet of the exemption is that it reduces the assessed value of a residential property up to \$25,000 for qualified residents. Residency by January 1 of the application year is key, and all owners who occupy the property must provide proof of Florida residency in the form of:

- a valid Florida's driver's license or ID card
- a Florida voter registration card or declaration of domicile
- a Florida Auto Tag Registration on all privately owned vehicles
- social security numbers

Oddly, the property owner doesn't have to be a citizen to qualify as long as he is a resident of the State of Florida and presents a permanent resident alien card and a Declaration of Domicile.

The most meaningful part of the Homestead Exemption is that it places a ceiling of 3% on the Appraiser's annual assessment increase on the homestead property (or qualifying portion thereof). When the exemption is first granted, that year's assessed value will be the base value for the property. Thereafter, the homestead property's tax assessment value cannot inflate beyond the 3% annual increase limitation or the percentage change in the Consumer Price Index, whichever is the lesser amount. As Florida law requires annual re-appraisals of property, versus Ohio's once every three or six-year rule, this cap on the tax assessor's valuation of qualified property becomes a vital tool for clients' financial planning.

For example, if in 1990 you bought your waterfront home for \$100,000 in Bonita Springs and qualified for homestead exemption, the appraiser's assessed value of the property cannot increase more than the stated amount per year, regardless of whether nearby home prices skyrocket into the million dollar range, as recent history has evidenced.

By 2003, using the 3% increase per year formula, the maximum assessed value on the \$100,000 property would be \$130,477. The owner above may only pay \$2,900 in annual property taxes on his beachfront home, while his new neighbor, Esmeralda, who purchased her property in 2000 for \$1 million forks over \$22,000 in taxes yearly. It's easy to see how that difference of \$19,100 can make or break some of your retired clients.

For this reason, it is vital that Florida residents whose primary Florida residence is their homestead NOT lose their exemption status via an uncounseled transfer of ownership. Whenever the original owner's interest in the property changes, under legal or equitable title, the exemption status will be reassessed by the appraiser.

When does this occur? When, for example, a widowed retiree/sole owner, quitclaims one-half of his house to his new wife. Now, only the widower's interest in the house remains at the \$130,477 value while the wife's one-half of the property could be reassessed at current market value.

If you rent your home, it can be considered an abandonment of homestead exemption.

Transfers from an individual to an individual's revocable grantor trust can also trigger a loss in homestead exemptions as can life estate transfers, unless implemented correctly.

Lifetime gifting is causing problems for Florida homeowners, too. If, every Easter, Granddad gives \$11,000 interest in his home to Gilda Grandchild, who lives in New York State, then that presumably "gift tax free" transfer starts costing the donor hidden costs in the form of increased property taxes on the percentage of the house now owned by the non-Florida resident, homeowner, Gilda.

Worse yet, if over the years Granddad didn't fill out the paperwork necessary to evidence Gilda's ownership and non-entitlement to homestead exemption, the auditor's property appraiser can place a tax lien against the property for the unpaid, past taxes plus levy a penalty of 50 percent of the unpaid taxes each year and 12 percent interest per annum. This occurs more than you think, with grantors quitclaiming ownership interest to other family members using unrecorded deeds. When the grantor dies and the chain of title is unraveled, suddenly the county appraiser is knocking on the executor and donee's door, demanding restitution.

A less common situation is residency flipping. Mom and Dad, who own a second home in Florida, are advised by their accountant to make the Sunshine State their home for 2004. Years later, when Ohio tax law changes, one or both spouses sees a tax incentive for reverting back to Ohio residency. They do so without advice from their Florida attorney then are shocked to see that they have lost their homestead exemption which has kept their Marco Island house's tax valuation from rising astronomically. Their tax bill jumps into the tens of thousands dollars instead of the low \$5,000 a year to which they've become comfortably accustomed.

Another little quirk of the Florida homestead law is that additions and improvements to the parcel are assessed at market value on January 1 after the changes are substantially completed. If a homeowner whose canal home is tax valued at \$150,000, for instance, then adds a \$300,000 boathouse/guesthouse, his property's new base value becomes \$450,000, which triples the annual taxes. Builder beware. However, replacement of portions of the real property damaged by calamity or misfortune qualify for different assessment values.

So, yes, while the homestead reduction of \$25,000 would save the homeowner a couple hundred dollars in property taxes per the year, the more valuable benefit is in its effect in keeping the property's overall tax assessment value increases at a much lower rate than the market value of comparable homes. In Florida, this status is worth more than all the Cadillacs parked in a Sarasota church lot the first Sunday in December.

By the way, homestead law also applies to bankruptcy and what real estate can be kept from the hands of creditors, but let's leave that discussion for lazy day in May (or anytime after April 15).

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