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In this edition of Florida Tax Today, the authors examine Florida's homestead exemption.

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Florida property owners have the benefit of a constitutional limitation on ad valorem real property taxes. That "homestead exemption" benefits "[e]very person who has the legal or

equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent on the owner."¹

The homestead exemption provides a general "blanket" exemption from property taxes for the first \$25,000, with increases for senior citizens and veterans.² The homestead exemption also provides an annual 3 percent cap on property tax increases.³ That limits the amount that a property owner's annual taxes can rise, regardless of how much the real property has appreciated.

The catch is that only one homestead exemption can be claimed by an "individual or family unit."⁴

But what is a "family unit"? And can that family unit claim a Florida homestead while getting a similar benefit in another state? The answer is in the case law.

Family Units and Separated Spouses

In *Wells v. Haldeos*,⁵ the Florida Second District Court of Appeal set forth the requirements for spouses to claim multiple homesteads. In *Wells*, a husband and wife were separated. The husband claimed a homestead exemption for his Pasco County residence, while the wife received a residency-based property tax exemption in New York.⁶

The Pasco County property appraiser appealed a judgment allowing the husband to receive a homestead exemption on his Florida

¹ Fla. Const. Art. VII, section 6(a). The specific operation of the exemption is outside the scope of this article. Generally, the constitution provides a blanket exemption from property taxes on the first \$25,000 in value of real property.

² Fla. Const. Art. VII, section 6(d)(1), (d)(e).

³ Fla. Const. Art. VII, section (4)(d).

⁴ Fla. Const. Art. VII, section 6(b).

⁵ *Wells v. Haldeos*, 28 So. 3d 85 (Fla. 2d Dist. Ct. App. 2010).

⁶ *Id.* at 85.

property, claiming that Article VII, section 6(b) of the Florida Constitution prohibited a married couple from receiving more than one homestead exemption.⁷

Article VII, section 6(b) of the Florida Constitution provides that “[n]ot more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.”⁸ The court noted the absence of a constitutional, statutory, or judicial definition of the term “family unit” and proceeded to interpret the term.⁹

The appeals court agreed with the trial court’s interpretation of family unit, which stated that “two people who have no contact with one another, who don’t have any connections of a financial, emotional or any other way” are not a family unit.¹⁰

The property appraiser argued that this interpretation conflicted with Florida Statutes section 196.031(5), which prohibits a person (or family unit) from claiming a Florida homestead exemption when they receive a residency-based ad valorem tax exemption or credit in another state. The court rejected that argument and instead found support for its interpretation in the Florida Administrative Code, which states:

If it is determined by the property appraiser that separate permanent residences and separate “family units” have been established by the husband and wife, and they are otherwise qualified, each may be granted homestead exemption from ad valorem taxation under Article VII, Section 6, 1968 State Constitution. The fact that both residences may be owned by both husband and wife as tenants by the entireties will not defeat the grant of homestead ad valorem tax exemption to the permanent residence of each.¹¹

As further support for its interpretation, the court cited to *Law v. Law*,¹² which held that two people who are married but legitimately live apart could claim separate homestead exemptions as a means to protect their properties from creditors. Accordingly, the court in *Wells* held that a husband and wife may receive individual homestead exemptions when they:

- have established separate residences in good faith;
- have no financial connections with each other;
- do not provide benefits, income, or support to each other; and
- would otherwise qualify for an exemption.¹³

As one would expect, *Wells* has been used by taxpayers in their attempts to claim multiple homestead exemptions. Two examples from the Fourth District Court of Appeal illustrate the dynamic: *Brklacic v. Parrish* and *Miles v. Parrish*.¹⁴

In *Brklacic*, a married couple maintained separate Florida residences and claimed a homestead exemption on each property individually.¹⁵ The Broward County property appraiser assessed the husband’s property with an ad valorem tax lien after discovering that both properties had been receiving homestead exemptions since their marriage.¹⁶ In response, the couple claimed that they had established separate family units and were thus entitled to homestead exemptions on their respective residences.

The Fourth District Court of Appeal in *Brklacic* applied *Wells* to conclude that spouses maintaining an “intact marriage” constitute a single family unit and are thus entitled to one homestead exemption.¹⁷ Although the couple lived separately and the husband presented evidence that there was little comingling of finances between them, the court found that the couple was a single family unit because they

⁷ *Id.*

⁸ Fla. Const. Art. VII, section 6(b).

⁹ *Wells*, 28 So. 3d at 86.

¹⁰ *Id.*

¹¹ *Wells*, 48 So. 3d at 87 (quoting Fla. Admin. Code r. 12-D 7.007(7)).

¹² *Law v. Law*, 738 So. 2d 522, 525 (Fla. 4th Dist. Ct. App. 1999).

¹³ *Wells*, 48 So. 3d at 88.

¹⁴ *Brklacic v. Parrish*, 149 So. 2d 85 (Fla. 4th Dist. Ct. App.); and *Miles v. Parrish*, 199 So. 3d 1046 (Fla. 4th Dist. Ct. App. 2016).

¹⁵ *Brklacic*, 149 So. 2d at 85.

¹⁶ *Id.*

¹⁷ *Id.* at 89.

regularly spent time together in the same residence.¹⁸

Therefore, it stands to reason that there is a significant burden on spouses claiming individual homestead exemptions to show that they are no longer maintaining an intact marriage, meaning they no longer provide *any* financial or emotional benefits to each other. After all, it is a property owner's burden to show that she is entitled to a homestead exemption, and exemptions are strictly construed against the taxpayer.¹⁹

Similarly, in *Miles v. Parrish*,²⁰ the property owner and her late husband had both claimed homestead exemptions on properties in Broward County and Highlands County. As a result, the Broward County property appraiser removed the homestead exemption and retroactively imposed taxes and penalties on the property owner for claiming multiple homestead exemptions while married.²¹

The property owner challenged the revocation of the homestead exemption, but the complaint was dismissed because it was filed after the 60-day non-claim period under Florida Statutes section 194.171.²² On appeal, the Fourth District Court of Appeal remanded the case, holding that the 60-day non-claim period did not apply to tax liens.²³

Thus, a property owner wishing to challenge a tax lien resulting from the removal of a homestead exemption can file a complaint more than 60 days after receiving notice of the lien from the property appraiser.²⁴

The key point from those cases is that spouses will have a hard time convincing a court that they are not a family unit for homestead purposes.

Out-of-State Property?

At least one party has attempted to argue that the Florida Constitution's family unit limitation does not apply when one of the claimed exemptions is for an out-of-state property.²⁵

The couple in *Endsley* jointly owned one property in Florida and another in Indiana.²⁶ The wife transferred her interest in the Indiana property to her husband, while her husband transferred his interest in the Florida property to her.²⁷ Throughout their marriage, the wife claimed a homestead exemption on the Florida property and the husband claimed a residency-based property tax exemption on the Indiana property.²⁸ After discovering that both the husband and wife were receiving residency-based property tax exemptions, the Broward County property appraiser removed the homestead exemption from their Florida property and demanded payment of additional tax for the years in which both exemptions were claimed.²⁹

The Fourth District Court of Appeal held that the plain language of Article VII, section 6(b) of the Florida Constitution prohibited spouses from claiming more than one homestead, regardless of location.³⁰ Also, the court noted that Florida Statutes section 196.031(5) was enacted to address situations in which homestead exemptions were simultaneously claimed in Florida and another state.³¹ Section 196.031 provides:

A person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit is not entitled to the homestead exemption provided by this section.³²

¹⁸ *Id.*

¹⁹ *Matthews v. Jeacle*, 55 So. 865 (Fla. 1911); and *Department of Revenue v. Anderson*, 403 So. 2d 397, 399 (Fla. 1981).

²⁰ *Miles v. Parrish*, 199 So. 3d 1046 (Fla. 4th Dist. Ct. App. 2016).

²¹ *Id.* at 1047.

²² *Id.*

²³ *Id.* at 1049.

²⁴ *Id.*

²⁵ *Endsley v. Broward County*, 189 So. 3d 938 (Fla. 4th Dist. Ct. App. 2016).

²⁶ *Id.* at 939.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 941.

³¹ *Id.* at 940.

³² Fla. Stat. section 196.031.

The couple in *Endsley* argued that provision unconstitutionally limits the class of persons entitled to a homestead exemption.³³ The court disagreed, reasoning that the wife still received the financial benefit of the Indiana tax exemption because of the comingling of funds with her husband.³⁴ Therefore, the constitutional limitation preventing a family unit from claiming more than one homestead exemption applies to property tax exemptions claimed outside Florida.

Conclusion

Property appraisers in Florida are understandably reluctant to grant homestead property exemptions to persons who appear to be a family unit, or who are enjoying similar benefits on out-of-state real property. Taxpayers in those situations should tread carefully before claiming multiple exemptions that involve Florida real property. ■

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³³ *Id.* at 941-942.

³⁴ *Id.*