



# Homestead Tax Cheats

Presented by:  
LEGAL EDUCATION DEPARTMENT  
of  
Attorneys' Title Fund Services, Inc.

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# Homestead Tax Cheats

**When Chameleons Go Bad**

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## Homestead Tax Cheats – Program Outline



- Basics, History, Establishment, Construction, Presumptions
- Relation to Exemption from Forced Sale
- Entitlement to Exemption
- Multiple Homesteads
- Rental of Homesteads
- Violations & Challenges

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**The Basics**  
**History**  
**Establishment & Implementation**  
**Construction**  
**Presumptions**  
**Relation to Exemption from**  
**Forced Sale**



Photo: Tax cheating chameleon

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## **Tax Exemption Basic Requirements**

- Equitable or legal title to home
- Reside there permanently
- Resident as of January 1
  - \$50,000 exemption saves approx. \$750 annually
  - Save Our Homes cap limitation for 2024 is 3.0% (CPI)
- Must apply by March 1, 2024
- Late filing with good cause shown to Value Adjustment Board - Sept. 18, 2024 (25<sup>th</sup> day after mailing of TRIM Notice)

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## Homestead Application Basic Requirements

- Ownership Info: deed type, % ownership, recording info
- Exemptions sought
- Date of occupancy (moved-in)
- DOB, SS# of all owners and spouses
- FDL or ID card, vehicle and voter registrations, Declaration of Domicile
- U.S. citizen or Permanent Residence (green) Card
- Last year's address, address on last tax return
- Address of owners not residing on property
- Copy of Trust, if applicable

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## Property Tax Exemption History in Florida

1929 - Great Depression begins. Many property owners can't pay taxes.

1933 - State Rep. Dwight Rogers of Ft. Lauderdale proposes legislation to place a \$5,000 Homestead Exemption Amendment on state ballot.

1934 - Florida's voters overwhelmingly approve Homestead Exemption Amendment. Exempts property taxes on first \$5,000 of a homeowner's residence (today's dollars = \$96,000).

1960s - Exemption increased by Legislature to \$10,000 (not incorporated into Constitution). 1969 court ruling extends exemption to condominium units.

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## Exemption History in Florida (cont.)

1980 - By Constitutional amendment, exemption increased to \$25,000.

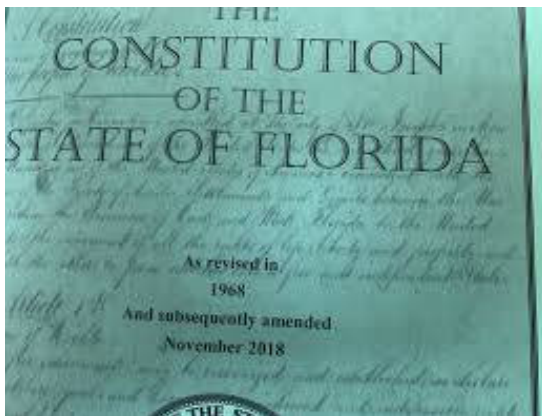
1994 - "Save Our Homes" amendment -- capping annual increase in assessed value on homesteaded properties to no more than 3% -- is adopted.

2008 - Voters adopt constitutional amendment increasing exemption to \$50,000. Also (i) creates "portability," the right to move the Save Our Homes benefit from one homestead to the next, and (ii) 10% non-homestead cap.

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## Establishment, Codification & Implementation



Sec. 6; Article VII, Florida Constitution

Chapter 196, Florida Statutes

Rule 12D-7.007, Florida Administrative Code

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## FL Const., Sec. 6; Art. VII Highlights

- Must hold legal or equitable title to real estate
- First \$25,000 of assessed value exempt from all taxes (except for special assessments), and for all taxes, other than school district taxes, on third \$25,000 (valuations >\$50K and < \$75k)
- Property can be held in all tenancy forms
- **Only 1 exemption per individual or family unit**
- **Permanent residence of owner, or another legally or naturally dependent upon the owner**
- Provides for additional exemptions: vets, first responders, etc.

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## Sec. 196.031, F.S. Highlights

- *Exemption may be apportioned* among the owners as reside thereon, as their respective interests appear
- The exemption applies only to those parcels classified and *assessed as owner-occupied residential property* or only to the portion of property so classified and assessed
- **A person *receiving benefit* of an ad valorem tax exemption or a tax credit *in another state* where permanent residency is required as a basis for tax exemption or tax credit is *not entitled to the FL homestead exemption***

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## Construction of Exemption

Tax exemption ➡ strictly construed

Forced sale exemption ➡ liberally construed

*Taylor v. Maness*, 941 So.2d 559 (Fla. 3d DCA 2006); *Law v. Law*, 738 So.2d 522 (Fla. 4th DCA 1999)

In the context of tax laws, Florida Supreme Court has held “[a]lthough taxing statutes are strictly construed against a taxing authority, exemptions are strictly construed against the taxpayer.” *Dep’t of Revenue v. Anderson*, 403 So.2d 397, 399 (Fla.1981); *Parrish v. Pier Club Apts., LLC*, 900 So.2d 683, 685 (Fla. 4th DCA 2005) (“[S]tatutes providing for an exemption from ad valorem tax are to be strictly construed, and any ambiguity is to be resolved against the taxpayer and against exemption.”)

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## Presumptions - Failing to Claim Tax Exemption

Failure to claim tax exemption is irrelevant to whether homestead protections attach to the property in dispute. The exemption from forced sale is different than exemption for tax purposes.

*S. Walls, Inc. v. Stilwell Corp.*, 810 So.2d 566 (Fla. 5th DCA 2002)

Failure to claim homestead tax exemption is not evidence that property is not in fact homestead.

*Pierrepoint v. Humphreys*, 413 So.2d 140 (Fla. 5th DCA 1982)

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## Case Study: Relation to Exemption from Forced Sale

- Decedent, Venezuelan in U.S. as registered alien under temporary visa
- Decedent died indebted to Creditor
- At death, Decedent owned Miami condominium
- Decedent survived by Son, a U.S. citizen
- Creditor made claim on condominium in probate court
- Son claimed condominium as exempt homestead

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## Relation to Exemption from Forced Sale

Creditor argued:

- Decedent never claimed tax exemption on condo
- Because person in U.S. under temporary visa can't meet requirement of permanent residence, no basis to claim exemption
  - relied on R. 12D-7.007, F.A.C
- **Probate Ct.:** for Creditor

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## Relation to Exemption from Forced Sale

- **3d DCA** reversed:
- F.A.C. section applies to tax exemptions, not exemption from forced sale
- Failure to claim tax exemption not evidence property is not homestead
- **Held:** exemption applied to defeat Creditor's claim. Decedent was registered alien allowed to reside under temporary visa **and** Son was U.S. citizen, born in Miami and resided in FL with family.
- *Grisolia v. Pfeffer*, 77 So.3d 732 (Fla. 3d DCA 2011)

Who is Entitled to  
Exemption?

What is a Permanent  
Residence?



Tree homes not exempt

## Citizenship Not Required

- Citizenship is not a prerequisite for claiming homestead tax exemption
- But can't claim when here under authority of *temporary* visa; no assurance owner can continue to reside in good faith for any fixed period of time in this country

*Juarrero v. McNayr*, 157 So.2d 79 (Fla. 1963)

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## Case Study: Owner's Dependents

- The Adonies were citizens of Honduras with temporary E-2 visa
- Three minor children, all U.S. citizens, lived in subject property
- Adonies filed application for tax reduction based on their dependent children being permanent residents
- Application denied, appealed to the Value Adjustment Board. Application granted
- Property Appraiser's Office (PAO) appealed to Circuit Court: (i) taxpayers couldn't prove they were using property as their permanent residence, (ii) taxpayers were in U.S. under temporary visa and not entitled to exemption

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## Owner's Dependents

- Adonies attested to their intent for children to remain in and be residents of the FL property
- **Cir. Ct.** upheld the exemption. PAO appealed
- **3d DCA** affirmed. PAO appealed again
- **FL Supreme Ct.** affirmed: PAO hadn't challenged assertions about the children in lower court; PAO failed to meet burden and wrongly sought to shift burden on taxpayer; failed to show why children didn't have basis for permanent residency or a legal impediment

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## Owner's Dependents

**Question of law** whether the individual for whom the permanent residence is being maintained has a legal impediment to, or restriction from, living permanently on the Florida property.

**Question of fact** whether the property is being used as actual permanent home of owner or owner's dependents. Governed by definition of permanent residence in Sec. 196.012(17), F.S. and factors in Sec.196.015, F.S.

*Garcia v. Adonie*, 101 So.3d 339 (Fla. 2012)

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## Definition of “Permanent Residence”

(17) “Permanent residence” means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. **A person may have only one permanent residence at a time**; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

Sec. 196.012(17), F.S.

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## Permanent Residency Factors: Sec. 196.015, F.S.

- |  |  |
|--|--|
| (1) Recorded declaration of domicile                   | (6) Valid Florida driver license or ID card and relinquishment of old licenses |
| (2) Where dependent children are registered for school | (7) Florida motor vehicle tag  |
| (3) Applicant’s place of employment                    | (8) Address on Federal income tax returns                                      |
| (4) Applicant’s previous permanent residency           | (9) The location of where applicant banks                                      |
| (5) Proof of voter registration in Florida             | (10) Proof of payment for utilities at the property                            |

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## Intention of Permanent Residency

Intention to establish a permanent residence is a factual determination to be made, in the first instance, by the property appraiser.

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## Summary: Permanent Residence

Florida Constitution, as amended in 1968, requires that the property owner maintain on the property either:

- (1) the permanent residence of the owner; **or**
- (2) the permanent residence of another legally or naturally dependent upon the owner.

*NOTE: Where owner claims homestead tax exemption based on owner's act of maintaining the permanent residence of his dependents on the property, owner need not also prove that he is residing on the property, permanently or otherwise.*

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## Summary: Basis for Entitlement to Exemption

- Own and occupy home as permanent residence prior to January 1st of the year for which application is made
- Not receiving any type of ad valorem tax exemption on any other U.S. property
- Timely exemption application filed
- Owner or owner's dependents must be U.S. citizen or permanent U.S. resident
  - But see PRUCOL

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## PRUCOL and FL Homestead Exemption

Under Florida law, only U.S. citizens, permanent resident aliens, **or someone holding PRUCOL status** is eligible for a homestead exemption.

PRUCOL ("Permanent Residence Under Color of Law") refers to alien residing in the U.S. with knowledge/permission, express/implied, of the USCIS - and no contemplated enforcement of departure.

A person in the U.S. with asylum or parole refugee status is considered PRUCOL.

A person in the U.S. under an E-, F-, H-, J-, L-, M-, N-, O-, P-, TC- or R-class visa NOT eligible pursuant to Rule 12D-7.007(3), F.A.C. - all deemed "temporary" visas. A person in the U.S. under "Temporary Protected Status" (TPS) also not eligible.

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## P.S. Role of Value Adjustment Board

- The purpose of the Value Adjustment Board (VAB) is to hear appeals regarding property value assessments, **denied exemptions or classifications**, ad valorem tax deferrals, portability decisions, and change of ownership or control
- Composed of 2 County Commissioners; 1 School Board member; 1 homesteaded resident appointed by County Commission, and 1 citizen business owner appointed by School Board
- Rules controlled by FL DOR – Uniform Rules of Procedure, Rule 12D-9, Rule 12D-10 and Rule 12D-16.002
- Petition deadline: 25<sup>th</sup> day following mailing of TRIM notice

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## Two Homesteads: Two Exemptions?



Photo: Not Estranged Family Unit

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## Two Exemptions – History

*Wells v. Vallier*, 773 So.2d. 1197 (Fla. 2d DCA 2000), upheld married couple's FL exemption even though were getting property tax credit in NH, because they were permanent residents of FL.

- In response, current Sec. 196.031(5), F.S., was added:

*(5) 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. This subsection does not apply to a person who has the legal or equitable title to real estate in Florida and maintains thereon the permanent residence of another legally or naturally dependent upon the owner.*

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## Case Study: No Second Exemption

- W deeded off IN property to H. H deeded off FL property to W
- Each claimed exemption. W received FL exemption 20 years
- After passage of Sec. 196.031(5), F.S., County revoked exemption and Save Our Homestead benefit
- W argued Constitutional limitation meant no two FL tax exemptions – and that inclusion of the 'no two states' in the statute was improper limitation not imposed by the Constitution

**4<sup>th</sup> DCA:** disagreed and upheld trial court. No 2nd exemption.

*Endsley v. Broward County*, 189 So.3d 938 (Fla. 4th DCA 2016)

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## If Facing *Endsley* Type Challenge

If faced with Property Appraiser challenge like *Endsley*:

- Determine if out-of-state exemption was something other than an ad valorem tax exemption or a tax credit contemplated by the FL statute
- Or that “permanent residency” was not required by the other state as a basis for granting the ad valorem tax exemption or tax credit

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## Case Study: Second Exemption Allowed

- H & W estranged with separate permanent residences
- H in Pasco County, W in NY
- W received residency-based property tax exemption
- PAO denied H tax exemption in FL on grounds married couples (“family unit”) can only receive 1 tax exemption
- **Trial Court:** Ruled for H. PAO appealed

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## Second Exemption Allowed

**2d DCA:** affirmed ruling for H.

- “Def[ies] logic for two people who have no contact with one another, who don’t have any connections of a financial, emotional or any other way to call them a family unit.”
- Cites to rule 12D-7.007(7), F.A.C.
- Must be **bona fide separation** – burden of proof on taxpayer

*Wells v. Haldeos*, 48 So.3d 85 (Fla. 2d DCA 2010)

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## 12D-7.007, Florida Administrative Code Separate Family Units

(7) A married woman and her husband may establish separate permanent residences without showing “impelling reasons” or “just ground” for doing so. 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.

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## Case Study: No Second Exemption

- H owned residence in Broward County since 1979
- Married W in 2001
- W owned own home in Palm Beach County
- Maintained separate residences for personal & prof. reasons
- Separate bank accounts
- Stayed together on weekends
- H challenged penalties on grounds he and W maintained separate family units
- **Trial Ct:** ruled that they weren't a separate family unit

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## No Second Exemption

**4th DCA:** Affirmed.

Until *Wells v Haldeos*, no Court had defined “family unit”

- The key to *Wells* is that the couple was truly separated
- Here, H&W live separately and may be financially independent but aren't not “intact” (emotionally, physically)

*Brklacic v. Parrish*, 149 So.3d 85 (4th DCA 2014)

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## Takeaways

- Discuss with clients buying new primary residence
- Confirm no other residency-based tax credits/exemptions on any other property **anywhere**
- If client claims to be “separated” from spouse and buying new FL homestead, explain what separated means in terms of homestead tax exemption
- Tell clients seeking two exemptions to make application to PAO with detailed explanation of why/how bona fide separate family unit

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## Ways to Lose Exemption

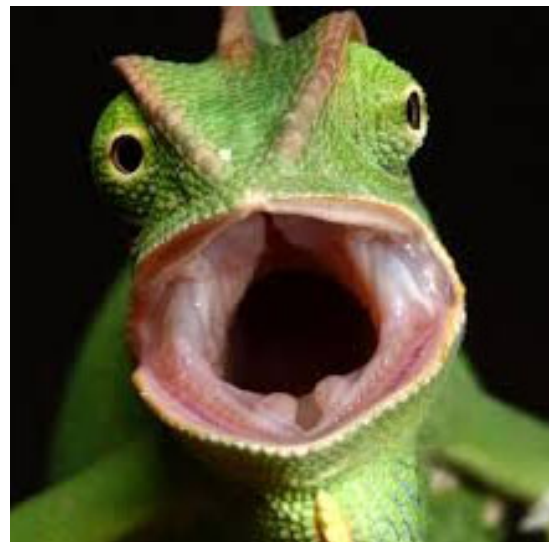


Photo: Chameleon busted

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## Penalties for Violations

Per sections **193.155 (10)** and **196.161**, F.S., owners who cheat on tax homestead exemption will:

- have a tax lien placed against their properties
- be back-taxed for up to 10 years (as applicable)
- be required to pay a substantial penalty (50% of the unpaid taxes for each year) and
- be required to pay 15% interest per annum

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## 2024 Amendment to Taxpayer Bill of Rights

- Sec. 192.0105 (Florida Taxpayer's Bill of Rights)

- Amended in 2024 to add:

*“ ... information regarding why the taxpayer was not entitled to the [homestead] exemption and how tax, penalties, and interest are calculated, ...”*

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## Penalties for Violations

- Process starts with recording Notice of Tax Lien
- Collected like ad valorem taxes
- Super-priority (on par with taxes, as it is taxes)
  - *Miami-Dade v. Landsdowne Mortgage*, 235 So.3d 960 (Fla. 3 DCA 2017)
- Bleeding lien

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## 2024 Amendments to “Back Taxes”

- Previously, no penalties or interest due where taxpayer received benefits due to clerical error or omission by property appraiser
  - But back taxes due for upwards of 10 years
- Now, if taxpayer alerts of error – no back tax
- Otherwise, back taxes owed for up to 5 years from when property appraiser notifies owner of mistake

See Sec. 193.155(10), F.S.

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## Getting Tax Break on Other Property



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### Case Study: Exemption on Other Property

- M/M Fitts, FL residents, bought 2nd home in OH
  - Loan docs correctly noted OH 2nd home
  - Never considered OH home
- Sarasota County: Fitts getting tax exemption on OH property
  - Tax lien recorded on FL home revoking exemption
- OH closing agent, without Fitts knowledge, checked off “Yes” (will be primary residence)
- Tax benefit in OH was negligible: \$110 for 5 years. Fitts unaware of small benefit

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## Exemption on Other Property

- \$8,882.81 penalty, loss of SOH cap
- PAO acknowledged “harsh result” where Fitts didn’t ask for OH tax credit and refunded \$\$\$

**Trial Ct:** For PAO. Fitts appealed.

**2d DCA:** Affirmed.

- Fact that Fitts undoubtedly FL residents not material to issue
- Statute strictly construed against taxpayer

*Fitts v. Furst*, 283 So.3d 833 (Fla. 2d DCA 2019)

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## Change of Ownership



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## Recording Deed – “Change of Ownership”

- Most “changes of ownership” (arms-length sale, foreclosure, devise to adult children) result in reassessment
    - Notable exceptions: transfers between spouses, including divorce; by operation of law to surviving spouse or minor child; if after “change of ownership” same person is entitled to the exemption
- Warning: adding a person (e.g., adult child) to title may result in reassessment IF newly-added owner applies for homestead exemption

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## Recording Deed – “Change of Ownership”

Example from Orange County, FL Property Appraiser’s website:

*“Florida law requires that you re-apply for the Homestead exemption anytime there has been a change of ownership. You MUST re-apply for the homestead exemption by March 1<sup>st</sup>. Even if you have always lived there, you must re-apply!”*

- Recording deed adding a name
- Removing a name
- Deed to trust
- Life Estate deed

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## Transfers from Individual Owners to LLC

- Will cause loss of Save Our Homes “cap” and reassessment
- See *S and A Investment Services, LLC, v. Pedro J. Garcia*, 60 So.3d 432 (Fla. 3d DCA 2023):
  - Owners (H&W) transferred investment property to wholly-owned LLC
  - Lost 10% non-homestead cap, property re-assessed
    - Unsuccessfully compared situation to *Crescent City Miami*
    - Unsuccessfully argued because they still control the LLC, no change of ownership control occurred; transfer “was merely between legal & equitable title”

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## Other Triggers to Investigation, Re-Assessment

- Recording deed to land trust (or “123 Elm Ave. Trust”)
- Changing homestead mailing address
- Changing address on driver’s license
- Changing voter’s registration address
- Registering kids in school outside your district
- Changing mailing address to P.O. Box
- Having mail forwarded (TRIM notices returned “undeliverable”)

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# Renting of Homestead



Pictured: Chameleon VRBO

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## Rental of Homestead

- Rental of “all or substantially all of a dwelling” constitutes abandonment
- But abandonment after Jan. 1 doesn’t affect exemption for that year unless property is rented for more than 30 days per calendar year for 2 consecutive years
- Doesn’t apply to active members of Armed Forces
- Sec. 196.061, F.S.

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## Rental of Homestead Property

- Important change
- Fla. Supreme Court case 4/23:

Allowing for loss of homestead exemption on portion of residence that's rented out.

Facts: front door two doorbells; upstairs bedrooms more like apartment(s).

*Furst v. Rebholtz as Trustee, et al.*, 361 So.3d 293 (Fla. 2023) (quashing and remanding 302 So.3d 423).

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## Rental Takeaways



Two consecutive annual “seasonal” rentals (Jan-Mar) will cause disqualification



Do not rent homestead Dec – Jan!



Think twice about advertising rental of your homestead on the internet



A “snowbird” can receive the homestead exemption every other year **if he doesn’t remain in his home on a year-round basis**, although he’ll need to be living in the property on Jan. 1 of the year he wishes to claim the exemption

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# Recap

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## **Summary: Endangering Homestead Tax Exemption**

- Improperly renting-out the property
- Improperly claiming permanent residency
- “Inheritance” of decedent’s exemption
- Obtaining tax benefit on other property
- Improperly assuming estranged spouse can separately claim
- Abandoning residence
- Using all or substantially all of property for commercial purposes
- Recording deed and changing ownership

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**Thanks for  
Attending**



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Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0	HOMESTEAD TAX CHEATS / Michael Rothman	<i>Michael Rothman</i>

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Signature of CP			Name of Seminar/Program Sponsor		
			HOMESTEAD TAX CHEATS / ATFS, LLC		
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			<i>Michael Rothman</i>		
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