

**IMMIGRATION STATUS AND THE IMPLICATIONS TO HOMESTEAD
EXEMPTION ELIGIBILITY**

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INTRODUCTION

I. Homestead Exemption – Provided for in Art. VII, Sec. 6, Florida Constitution and implemented in s.196.031, Florida Statutes.

- Statutory language – s.196.031(1)(a) – “Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence or the permanent residence of another or others legally or naturally dependant upon such person is entitled to an exemption....”
- Definition – Fla. Stat. s.196.012(18) – 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 a change has occurred.”

II. Eligibility for Homestead

- Beneficial or legal title
- Permanent residence or residence on property of one legally or naturally dependant upon owner for support

III. Permanent Residence and Immigration Status

- Immigration status factors into the Property Appraiser's Office's determination of whether an application for homestead exemption can in good faith claim permanent residency;
- Early Florida case law determined that without permanent resident status having been granted, an applicant is unable to formulate the requisite intent to make property their permanent residence. This was so because the applicant lacked the legal ability to determine their future in this Country, See Juarrero v. McNayr, 157 So.2d 79 (Fla. 1963). This case involved a refugee from

¹ *This presentation is designed to provide general information only and is not provided as legal advice. Such presentation should not be utilized as a substitute for obtaining independent legal advice or professional services on public record matters. Further the matters discussed herein are subject to changes in the law and interpretation by the Courts.*

Cuba. Under current case law Juarrero would be able to get the exemption today.

- The Department of Revenue codified the Juarrero ruling in Rule 12D-7.007(3), FAC which still provides today that “A person in this Country under a temporary visa cannot meet the requirement of permanent residence or home and, therefore, cannot claim homestead exemption.”
- This premise has been upheld in the ad valorem tax context with only one limited exception – where the applicant is seeking political asylum.
 - The current exception is based on the fact that an applicant seeking asylum is present in the Country with no defined end or defined purpose, as are provided by Congress for temporary aliens; and the applicant has no intention of returning to the Country of origin.
 - The current exception was first recognized for homestead exemption purposes in the case of Lisboa v. Dade County Property Appraiser, 705 So.2d 704 (Fla. 3d DCA 1998). Lisboa relied on a Florida Supreme Court case (Dept. of Health and Rehabilitive Services v. Solio, 580 So.2d 146 (Fla. 1991) which determined that an applicant for political asylum residing in the United States was eligible for AFDC (Aid to Families with Dependant Children) Benefits as she was permanently residing under color of law within the meaning of that particular statute. The Solis case, and Lisboa, looked at how federal statutes defined “permanent” and the context of use of the term temporary in the immigration status context.
 - Following Lisboa, the Second District Court of Appeals in Dequervain v. Desquin, 927 So.2d 232 (Fla. 2d DCA 2006) reiterated that the requirement of a permanent residence visa still applies, the fact that an application to adjust to such status is pending is not sufficient, and that Lisboa created only a limited category of aliens who could qualify for the tax exemption without having obtained permanent residence status (i.e. those with pending asylum applications on the relevant taxing date).
- Florida Courts and the Attorney General have considered immigration status and residency in contexts other than the homestead exemption from ad valorem taxation. These include: the Article X homestead exemption from forced sale in the bankruptcy context (for example, See In re Fodor, 339 B.R. 519 (M.D. Fla. 2006); Establishment of residency for purposes of filing action for dissolution of marriage (See Weber v. Weber, 929 So.2d 1165 (Fla. 2d DCA 2006); Immigration status and aid to families with dependant children (AFDC Benefits) under S.409.026, Fla. Stat. (Dept. of Health and Rehabilitive Services v. Solio, 580 So.2d 146 (Fla. 1991); and Immigration status and health care reimbursement for indigent residents (See AGO 2007-11).

CONCLUSION

For purposes of Florida law and the homestead exemption from ad valorem taxation, for an alien to establish permanent residency they must have been granted a permanent resident visa, or be in the Country under a pending application for political asylum as of the relevant taxing date.

RESOURCES

- Florida Statute §196.031, Florida Statutes
- Fla. Admin Code R. 12D-7.007 (3)
- Juarrero v. McNayr, 157 So.2d 79 (Fla. 1963)
- Alcime v. Bystrom, 451 So.2d 1037 (Fla. 3d 1984).
- Dep't of Health and Rehabilitative Services, 580 So.2d 146 (Fla. 1991)
- Lisboa v. Dade County Property Appraiser, 705 So.2d 704 (Fla 3d DCA 1998)
- Dequervain v. Desquin, 927 So.2d 232 (Fla. 2d DCA 2006).
- DOR OPN 91-0071
- DOR OPN 91-0072