

Dual Homestead Exemptions for Married Couples

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Prior Versions of the Homestead Exemption

Original 1933 Version

- There shall be exempted from all taxation . . . to every head of family who is a citizen of and resides in the State of Florida, the homestead as defined in Art. X . . .; provided, however, that the title to said homestead may be vested in such head of family or in his lawful wife residing upon such homestead or in both.
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1937 Amendment

- Every person who 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 home, or the permanent home of another or others legally or naturally dependent upon said person . . . [shall be entitled to the exemption].
 - No such exemption of more than \$5,000 . . . shall be allowed to any one person or any one dwelling house.
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The “Family Unit” Limitation

Article VII, Section 6(b) of the 1968 Florida Constitution provides:

Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.

Question #1

What is a "family unit"?

Commentary by 1968 Constitutional Revision Commission

- “The limitation on the number of exemptions allowed to a unit is basically the same provided for in the amended 1885 Constitution except that the words “family unit” have been added. The Revision Commission recommended the words “married couple” and would have omitted reference to “any residential unit.””
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Language Proposed by Constitutional Revision Commission

- ❑ Not more than one exemption shall be allowed any individual or married couple.
 - ❑ It is not known why the final proposal changed this language to “any individual or family unit, or with respect to any residential unit.”
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Non-Binding (but potentially persuasive) Interpretations

Attorney General Opinions 076-146 and 2005-60

A husband and wife may establish separate family units.

However, if one spouse maintains the home of the other, that would tend to suggest that they are not separate family units.

Skipper v. Wells (Trial Court)

- ❑ A married couple is not automatically a family unit.
 - ❑ The court found that the Plaintiffs were not a single family unit because one did not maintain the home of the other.
 - ❑ (Basically, the court followed the Attorney General opinions).
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Coolidge v. Todorova (Trial Court)

- ❑ To be entitled to separate homestead exemptions, the married couple would need to have filed for a dissolution of marriage, and clearly show an ending of their family relationship.
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Palmer v. Turner (Trial Court)

- The existence of a single family unit depends on the extent to which a married couple is financially *and* personally interconnected.
 - In this case, the couple was a family unit because their finances were substantially commingled, they were married, and they behaved like a family.
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The “Family Unit” Limitation

Article VII, Section 6(b) of the 1968 Florida Constitution provides:

Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.

Question #2

What exemptions are limited to “one per family unit”?

Does the limitation apply to the Florida homestead exemption, or to exemptions or tax credits received in other states?

Interplay with Section 196.031(6), Fla. Stat.

- 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.
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Sample Fact Scenarios

Scenario 1

The Husband resides at his home in Everglades County, Florida, and has applied for a homestead exemption.

What if his wife resides at a house in Michigan that they own in a tenancy by the entirety, and she receives a homestead exemption on that property?

- ❑ Does the Property Appraiser need to determine if they are a family unit, or is there a simpler answer?
 - ❑ Would Fla. Stat. 196.031(6) apply?
 - ❑ Would it matter if the wife only received a \$100 tax credit in Michigan?
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What if the Michigan house was owned by the wife individually, rather than in a tenancy by the entirety?

- Would Fla. Stat. 196.031(6) still apply?
 - Does the “one homestead exemption per family unit” limit apply to out-of-state homestead exemptions?
 - What if the wife received a \$100 residency-based tax credit on the house in Michigan?
 - Would that trigger the one homestead exemption per family unit, so as to prevent the husband from receiving a Florida homestead exemption?
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Scenario #2

Wife owns a home in Everglades County on which she has a homestead exemption.

She files for divorce, and her husband purchases and moves into the house next door.

They are financially independent.

However, they continue to eat and socialize together as a couple, and have been reconsidering whether to finalize the divorce.

Questions for Scenario #2

- Should the Husband be granted a homestead exemption on “the house next door?”

 - How significant is it that they are financially independent?
 - Is that determinative of the issue?

 - How does the act of filing for a divorce affect your answer?
 - Does it matter that the divorce is not final, and may never become final?
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Scenario #3

Couple reside at home in Grove County near the wife's family.

Husband moves to Everglades County for a job, but wife stays behind.

They visit each other once a month or so.

Questions for Scenario #3

- Is the Husband entitled to a homestead exemption on his Everglades County residence?
 - Would it matter if he and his wife were financially independent?
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Scenario #4

- Jack and Jill have separate homesteads.
- Jack and Jill get married.
- They continue to live separately, but otherwise act as a family unit.

Whose homestead exemption should be removed? The Husband or the Wife's?

Questions & Answers
