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Homeowners who fall behind on their property taxes risk the swift loss of their homes through tax foreclosures if they cannot pay off the back taxes owed, plus any interest, fees, costs and penalties that have accrued. The accumulated amounts needed to resolve the tax debt can be overwhelming and result ultimately in the loss of their home.

The impact of property tax foreclosures is especially harsh for heirs who inherit property without a will or who have not yet filed probate. The remaining family members of the deceased owner may now own the home, but if their names are not on the deed, they are not the record owners of the property and may be unable to access property tax assistance programs. Obtaining property tax relief is further compounded by the costly and time-consuming process of establishing formal ownership.

In Florida, heirs are particularly disadvantaged through the wrongful imposition of a homestead exemption penalty for failing to immediately notify a county property appraiser of the death of the prior owner and apply for a new homestead exemption.

THE FLORIDA HOMESTEAD PROPERTY EXEMPTION

In Florida, an owner-occupant of property that is their primary residence must submit an application for a homestead exemption with the county property appraiser. Once the application is approved, the owner is exempt from a certain amount of property taxes and the annual assessment value on the property is limited. The owner of the property must notify the property appraiser of any change of ownership or condition of the property. Failure to do so can result in severe penalties on the owner, including having to pay the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted.

The Consequences on Heirs

The death of the owner constitutes a change in ownership of the property, which terminates the homestead property tax exemption and requires an assessment of the current property value. The statute does not anticipate, however, who should provide the notice of change of ownership if the owner dies. It simply states that the owner shall notify the appraiser whenever there is a change in the ownership or condition of the property.

While the statute clearly states that this failure to notify the appraiser results in a penalty on the owner of the property, some Florida counties are imposing this penalty on the owner's heirs. In those counties, if the heir does not provide prompt notification of change of ownership and a new exemption application, the appraiser will impose the penalty on the heir, even if the heir would otherwise be entitled to a homestead tax exemption. This can result in an heir being burdened not only with the increased tax amount going back to the death of the owner plus 15% interest but also an additional 50 percent of the exempt taxes. This can add up to thousands of dollars, as in the case of one Florida resident who remained in his mother's home after her death and is now facing a homestead penalty of over \$10,000.

The Homestead Exemption Penalty Language Is Not Drafted to Impose a Penalty On an Heir

1. In Fla. Stat. Ann. §196.011(9)(a), “owner” refers to “the owner of any property granted an exemption.”
2. The provision places an affirmative obligation on “the owner” to notify the appraiser promptly if the “use of the property or the status or condition of the owner changes so as to change the exempt status of the property.”
3. If the same owner fails to provide this notification to the appraiser and the appraiser determines the owner was not entitled to the exemption for a period of time yet continues to claim it, that owner is “subject to the taxes exempted as a result of such failure” plus interest and a penalty.
4. The interest and penalty are directly tied to the failure of the owner who originally received the exemption to provide the required notification to the property appraiser. As such, the interest and penalty are imposed on the owner who received the exemption in the first place, and only based on wrongful conduct up until that owner’s death.

The purpose of the statute is to penalize living homeowners who were granted a homestead property tax exemption and abuse the exemption scheme by failing to notify the tax assessor if they move out of the home, for example, to use it as an investment property or vacation home. Imposing the penalty on an heir goes beyond the strict language of the statute and places a burden on an unintended person.

Other states such as Mississippi, Michigan, and Pennsylvania with similar homestead property tax exemption statutes impose penalties on the living owner of the property only, not on surviving heirs, and only for willful or intentional failure to notify the tax assessor of a change in status of the homestead. States such as Texas and Pennsylvania allow a conditional period to allow an heir time to establish title and the homestead exemption.

To alleviate the risk of excessive property tax burden on heirs, Florida should:

- Abandon the imposition and collection of homestead penalties against heirs who intend to make the property their primary residence;
- Recognize that heirs are the owners of an inherited property immediately upon death of the decedent, and are eligible for the property tax homestead exemption and other homeowner relief options even before they are record title owners;
- Provide the homestead exemption retroactively for certain heirs;
- Require that, upon the death of any homeowner, the tax authority shall provide notification to the heirs of the necessity to notify the tax assessor and the process by which they can and should apply for the homestead tax exemption

For more information about the consequences of property tax penalties and foreclosures on heirs in Florida and nationwide, please read the full report, [Property Tax Foreclosures on Heirs Property: The Devastating Consequences and Recommendations for Prevention](#) and contact Andrea Bopp Stark at astark@nclc.org or John Rao at jrao@nclc.org.