

# OFFICE OF THE ATTORNEY GENERAL

83-00175



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130

(205) 832-5640  
HERBERT I. BURSON, JR.  
B. FRANK LOEB  
RON BOWDEN  
JOHN J. BRECKENRIDGE  
WILLIAM L. THOMPSON  
ASSISTANT ATTORNEYS GENERAL  
REVENUE DEPARTMENT

JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

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Honorable Ken Malone  
Mobile County Tax Assessor  
P. O. Box 2925  
Mobile, AL 36652

## Ad Valorem - Homestead Exemption

The owner of a duplex who lives in one half of the duplex and rents one half of the duplex is entitled to the entire homestead exemption, since the dominant use of the duplex is as his home.

Dear Mr. Malone:

Reference is made to your letter of December 9, 1982, in which you request the opinion of this office as to how to apply a homestead exemption to a duplex where the owner of the duplex lives in one half of the structure and rents the other half to a third party.

The Supreme Court of Alabama has held that "the owner of a homestead may, if he chooses, rent out a portion of the tract without subjecting the portion so rented to the payment of his debts." Bailey v. D. R. Dunlap Mercantile Company, 138 Ala. 415, 35 So. 451, 453 (1903). The taxpayer is either entitled to the homestead exemption or he is not. The test is the dominant use of the structure. The Alabama Supreme Court has stated the rule as follows:

[W]here the trade adaptation and use of a building is incidental or secondary only to its habitation as a dwelling, where the chief use of the structure is that of a home for the owner, and some part only, not essential to this end, is fitted up and used as a shop, an office, or salesroom, it is a homestead. But when this state of facts is reversed, and the residence feature is only auxiliary to the business use, where only a relatively small part of the building is devoted to the uses of a habitat, and the chief adaptation and use are those of business, the building is not a homestead, even though the

occupant have no other home, and uses this for all the purposes of living. Garrett v. Jones, 95 Ala. 96, 10 So. 702, 703 (1892).

Although the facts presented here do not fall neatly within either situation described in Garrett v. Jones, it is the opinion of this office that the facts here described would support the conclusion that the duplex is entitled to the homestead exemption. As stated in Garrett, "[a] man's homestead must be his place of residence; the place where he lives; the place where he usually sleeps and eats; where he surrounds himself with the ordinary insignia of home, and where he may enjoy its immunities and privacy." 10 So. at 703. The owner of a duplex who lives in one half of the duplex and rents one half of the duplex is different from the owner of a business who sleeps in a back room of his place of business. The duplex is a home in the sense that it is a self contained unit, not part of a place of business. For this reason the homestead exemption should be allowed to the owner-resident of a duplex.

I trust the above is sufficient to answer your question.

Respectfully,

CHARLES A. GRADDICK  
Attorney General  
By-

MELISSA C. BOWEN  
Assistant Attorney General

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