

## CONVEYANCES

### CONTRACT FOR DEED (cite as: 1987 OK AG 103)

Whether a family in possession of property on a contract for deed should be granted a homestead exemption from ad valorem taxes...

¶8 ..we conclude that 16 O.S. 11A (1987) changes traditional common law concepts relating to contracts for deed, and makes the homestead exemption available to taxpayers holding property under certain contracts for deed. Because of this statutory change A.G. Opin. No. 71-271 should no longer be relied upon.

¶10 “..providing that contracts for real property shall be treated as mortgages..”

¶12 ..the statute is intended to eliminate the unfair burdens imposed under common law, on purchasers who used contracts for deed to finance their acquisitions of real property, and to place those purchasers on the same footing as those financing their acquisitions through purchase money mortgages.

¶13 Oklahoma Supreme Court in *Smith v. Frontier Federal Savings and Loan Ass'n.*, ..the contract for deed would be treated as purchase money mortgage, and the rights of the parties would be determined by mortgage law concepts.

## CONVEYANCES

1987 OK AG 103

¶0 The Attorney General has received your request for an official opinion asking, in effect:

- 1. Whether a family in possession of property on a contract for deed should be granted a homestead exemption from ad valorem taxes; and**
- 2. Whether, once the County Assessor has granted a homestead exemption on a contract for deed, the Assessor can revoke the exemption, if the Assessor finds the grant of a homestead exemption was erroneous.**

¶1 Your request requires us to consider whether a prior opinion, Attorney General Opinion No. 71-271, holding that a buyer under a contract to purchase real estate did not have a sufficient ownership interest to qualify for a homestead exemption under the then relevant statutes, would still be valid, in view of the passage, in 1976, of a statute which extends certain rights to holders of contracts for deed that were not afforded by prior law. Laws 1976, c. 70, 1, effective April 26, 1976, *codified as* [16 O.S. 11A](#) (1987).

### I.

¶2 Your first question asks whether a family in possession of property under a contract for deed qualifies for homestead exemption from ad valorem taxes.

¶3 To determine the interest which a taxpayer must have to qualify for the homestead exemption, we look to [68 O.S. 2406](#) (1981) (definition of homestead), and [68 O.S. 2409.1\(A\)\(3\)](#) (1981) (continuation of homestead exemption). The first sentence of [68 O.S. 2406](#) requires that a homestead be the actual residence of a natural person who is a citizen of the state, provided the "*record actual ownership* of such residence be vested in such natural person residing and domiciled thereon." The statutory definition of homestead in [68 O.S. 2406](#) contains additional language which refers back to the requirement of "record actual ownership." The statute provides, for example, that the surviving spouse and children of a deceased "*shall be considered record owners of the homestead where the title of record* in the office of the county clerk on January 1 is in the name of the deceased." In all other cases, the "*deed or other evidence of ownership*" must be of record in the office of the county clerk on January 1 to enable the resident to qualify for the homestead exemption. (Emphasis added).

¶4 The relevant language of [68 O.S. 2406](#), defining homestead, recurs in [68 O.S. 2409.1\(A\)\(3\)](#), which provides that once granted, a homestead exemption shall stay in effect only so long as (1) *the record of actual property ownership is vested in the taxpayer*, (2) *the instrument of ownership is on record at the county clerk's office*; and (3) the owner-taxpayer qualifies in all other respects for the homestead exemption.

¶5 The earlier opinion ( A.G. Opin. No. 71-271 ) reviewed Oklahoma case authorities and found that those cases which have considered the definition of "ownership" have generally equated that term with "title." Based on those authorities, the opinion concluded:

*Record actual ownership referred to in the statute means title or record title. In other words, the applicant must have record title to the property, and this record title must be on file no later than January 1.*

A.G. Opin. No. 71-271, issued June 4, 1971. (Emphasis added). That Opinion proceeded to hold that under traditional common law concepts as applied in Oklahoma, a purchaser under a contract for deed did not have record title to the property in question, and therefore could not qualify for the homestead exemption from ad valorem taxes.

¶6 The validity of the holding in A.G. Opinion No. 71-271 may have been negated by the subsequent enactment, in 1976, of a statute requiring that contracts for deed, under certain circumstances, be treated as mortgages. [16 O.S. 11A](#) (1987) (hereafter, the Constructive Mortgage Statute). The impact of the Constructive Mortgage Statute must be considered because, in Oklahoma, statutes specifically provide that mortgages are liens, and that liens transfer no title to the property subject to the liens. [42 O.S. 1](#), [42 O.S. 5](#), [42 O.S. 10](#) (1981). Thus, if a person has record title to property on which he resides, he is not rendered ineligible for the statutory homestead exemption simply because a mortgage lien is placed on the property. If the Constructive Mortgage Statute operates to create a mortgage interest in the seller when parties enter into a contract for deed to finance the acquisition of real property, then, assuming the contract for deed is filed of record in the county courthouse, the purchaser's interest would constitute "record actual ownership" and he could qualify for the homestead exemption under [68 O.S. 2406](#) (1981).

¶7 Title [16 O.S. 11A](#) (1987) provides as follows:

All contracts for deed for purchase and sale of real property *made for the purpose or with the intention of receiving the payment of money and made for the purpose of establishing an immediate and continuing right of possession of the described real property*, whether such instruments be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, *shall to that extent be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages*. No foreclosure shall be initiated, nor shall the Court allow such proceedings, unless the documents have been filed of record in the county clerk's office, and mortgage tax paid thereon, in the amount required for regular mortgage transactions.

(Emphasis added).

¶8 For the following reasons, we conclude that [16 O.S. 11A](#) (1987) changes traditional common law concepts relating to contracts for deed, and makes the homestead exemption available to taxpayers holding property under certain contracts for deed. Because of this statutory change A.G. Opin. No. 71-271 should no longer be relied upon.

¶9 First, the long title of the statute supports the conclusion that contracts for deed, when given for the purpose of securing the payment of money and establishing an immediate right of possession, shall be treated like mortgages for all purposes. The Oklahoma Constitution requires that the subject of every act be clearly set forth in the title, Okla. Const. Article V, Section 57, and the Oklahoma Supreme Court has construed this provision to require that "the *purpose* of an act be clearly expressed in its title." *Irwin v. Irwin*, 433 P.2d 931, 934 (Okla. 1965) (Emphasis added). The title of an act must be construed with reference to the language which is used in the title itself, and not with reference to other language contained in the body of the statute. *Oklahoma City v. Prieto*, 482 P.2d 919 (Okla. 1971).

¶10 The long title of the Constructive Mortgage Statute is: "An act relating to conveyances; *providing that contracts for real property shall be treated as mortgages . . .*" (Emphasis added). There is no indication in the title that contracts for real property are to be treated like mortgages only for certain purposes. Rather, the title supports a broad construction under which a purchaser of property who takes possession under a contract for deed has the same interest in that property as a purchaser who gives a purchase money mortgage back to his lender: legal title subject to a mortgage lien.

¶11 Second, our conclusion that the Legislature intended to make the homestead exemption available to purchasers in possession of real property under contracts for deed is supported by the requirement that, as a statute in derogation of common law, the Constructive Mortgage Statute must be "liberally construed with a view to effect its object and to promote justice." [25 O.S. 29](#) (1981). A contract for deed is often viewed as a substitute for a purchase money mortgage as a means of financing the acquisition of real estate. However, prior to the enactment of the Constructive Mortgage Statute in 1976, those purchasing property under contracts for deed experienced many hardships which were not imposed on purchasers who financed their acquisitions through mortgages. These hardships included the rule, under traditional law, that a defaulting purchaser under a contract for deed could be removed from possession through an action for ejectment; the purchaser in such a situation had no right to redeem, and a forfeiture often resulted when the purchaser, prior to his default, had made substantial payments toward the purchase price of the property. Further, a purchaser under a contract for deed was not entitled to the benefits of the homestead exemption from ad valorem taxes. In contrast, a purchaser of real property who gave a purchase money mortgage back to the lender had a right to redeem his property, and could not be removed from possession until the lender had complied with all the statutory procedures governing mortgage foreclosures. See, e.g., *Coursey v. Fairchild*, 436 P.2d 35 (Okl. 1967). And, a purchaser who took possession of real property under a purchase money mortgage could qualify for the homestead exemption from ad valorem taxes.

¶12 Construing the Constructive Mortgage Statute broadly to "promote justice," [25 O.S. 29](#) (1981), we conclude that the statute is intended to eliminate the unfair burdens imposed under common law, on purchasers who used contracts for deed to finance their acquisitions of real property, and to place those purchasers on the same footing as those financing their acquisitions through purchase money mortgages.

¶13 Third, the Oklahoma Supreme Court has construed [16 O.S. 11A](#) (1987) broadly, to equate contracts for deed with purchase money mortgages. In *Smith v. Frontier Federal Savings and Loan Ass'n.*, 649 P.2d 536 (Okl. 1982), the Supreme Court addressed a fact situation where the borrowers (the Smiths) had executed a mortgage with a savings and loan which contained a "due on sale" clause. The "due on sale" clause provided that if the Smiths transferred any interest in the property, the lender would have the option of declaring the entire unpaid balance due and payable. The issue arose as to whether the "due on sale" clause was triggered when the Smiths sold the property to a third party, Valentine, under a contract for deed. The Court held:

*[Under [16 O.S. 11A](#) (1981)], the contract for deed . . . must be regarded as a mortgage.... Since the transaction was by statute a purchase money mortgage, equitable title passed to the Valentines even though the Smiths purported to retain title pending payment in full. The effect of the appellants' contract is that the Smiths have sold the property in question to the Valentines, retaining only a security interest; and that is the type of situation in which the due on sale clause may be invoked.*

*Id.* at 538 (Emphasis added). It is clear that the Court held that, under 11A, the contract for deed would be treated as a purchase money mortgage, and the rights of the parties would be determined by mortgage law concepts.

¶14 In holding that a purchaser who takes possession under a contract for deed may qualify for the homestead exemption from ad valorem taxes, we emphasize that the requirements of [68 O.S. 2406](#) (1981) must nevertheless be satisfied. Under that statute, the contract for deed must be filed of record in the county courthouse. Further, the individual claiming the homestead exemption must be actually residing on the real property for which the homestead exemption is sought.

## II.

¶15 Your second question is as follows: Once the assessor has granted a homestead exemption on a contract for deed, can the assessor revoke the exemption, once the assessor finds that the grant of a homestead exemption was erroneous?

¶16 In your opinion request, you indicate that this question may be moot by our holding above that a purchaser who takes possession under a contract for deed may qualify for the statutory exemption from ad valorem taxes. However, there may be instances where a county assessor, who has granted a homestead exemption to a purchaser under a contract for deed, wishes to revoke that exemption because the purchaser is no longer residing on the property, or for some other valid reason. Accordingly, we briefly describe below the procedures which should be followed to revoke a homestead exemption.

¶17 In A.G. Opinion No. 72-102, the Attorney General addressed the issue of whether a county assessor could correct an error relating to an improper allowance of a homestead exemption. That Opinion addressed only the situation which arises when the assessor wishes to correct the error after the assessor has delivered the tax rolls to the county treasurer. The Attorney General held that, in that situation, the county assessor can seek a certificate from the Board of Tax Rolls Corrections, pursuant to the provisions of [68 O.S. 2479](#) (1971), now codified as [68 O.S. 2479](#) (1981). The assessor can seek such a certificate only in those cases where the ad valorem taxes for the year in question have not yet been paid or where there has been no attempt to make the ad valorem tax payments. In the event that the Board of Tax Roll Corrections determines that a homestead exemption has been improperly granted, the board issues a "certificate of error" to the county treasurer, who alone is authorized to make appropriate changes to the tax rolls to correct the error. [68 O.S. 2479](#) (1981).

¶18 The issue arises as to whether a county assessor may revoke a homestead exemption *prior* to the time that the tax rolls have been delivered to the county treasurer. We find that, in such a case, the assessor has the power to revoke a homestead exemption, which he determines to have been erroneously granted, by virtue of [68 O.S. 2409.1\(A\)\(3\)](#) (1981). As discussed previously, that statute provides that a homestead exemption can continue in effect only if (1) the record of actual property ownership remains vested in the taxpayer; (2) the instrument of ownership is on record in the county clerk's office; and (3) the owner-taxpayer is in all other respects entitled by law to the homestead exemption. It follows from this statute that the county assessor has the implicit power to revoke an exemption if he determines that any one of these statutory conditions is not present.

¶19 It is, therefore, the official opinion of the Attorney General that:

1. Based on the provisions of [16 O.S. 11A](#) (1987), a purchaser of real property under a contract for deed qualifies for the statutory homestead exemption from ad valorem taxes, authorized under [68 O.S. 2406](#) (1981), providing (1) the contract for deed was made for the purpose of receiving the payment of money and for the purpose of creating an immediate and continuing right to possession of the real property; (2) the contract for deed is filed of record in the county courthouse; and (3) the purchaser under the contract for deed actually resides on the property.
2. When a county assessor has granted a homestead exemption and subsequently discovers that the grant of the exemption was erroneous, he may revoke the exemption, provided he complies with the applicable statutes, [68 O.S. 2479](#) (1981) and [68 O.S. 2409.1\(A\)\(3\)](#) (1981).
3. Attorney General Opin. No. 71-271 is no longer valid, in light of the statutory change enacted in [16 O.S. 11A](#) (1987), and should no longer be relied upon in the determination of whether purchasers under contracts for deed qualify for the homestead exemption from ad valorem taxes.

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Cite Name Level

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**Citationizer: Table of Authority**

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Cite Name	Name	Level
<b>Title 16. Conveyances</b>		
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<a href="#">16 O.S. 11A,</a>	<a href="#">Constructive Mortgage</a>	Discussed at Length
<b>Title 25. Definitions and General Provisions</b>		
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<a href="#">42 O.S. 1,</a>	<a href="#">Definition of Lien</a>	Cited
<a href="#">42 O.S. 5,</a>	<a href="#">Contracts Subject to Provisions of Chapter 1</a>	Cited
<a href="#">42 O.S. 10,</a>	<a href="#">Lien or Contract for Lien Transfers No Title to Property Subject to Lien</a>	Cited
<b>Title 68. Revenue and Taxation</b>		
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<a href="#">68 O.S. 2406,</a>	<a href="#">Repealed by Laws 1988, HB 1750, c. 162, § 165, eff. January 1, 1992</a>	Discussed at Length
<a href="#">68 O.S. 2409.1,</a>	<a href="#">Repealed by Laws 1988, HB 1750, c. 162, § 165, eff. January 1, 1992</a>	Discussed at Length
<a href="#">68 O.S. 2479,</a>	<a href="#">Repealed by Laws 1988, HB 1750, c. 162, § 165, eff. January 1, 1992</a>	Discussed at Length