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Introduction

One of the most important distinctions in the various classifications of property is the distinction between homesteads and non-homestead property. Homestead status is a fundamental concept that has been closely guarded by the Legislature and is viewed as very important by homeowners. Although the current monetary benefit is not particularly significant for residential property, a maximum of \$304, the benefit is much greater for agricultural property. Even though current residential classification rates have eliminated the difference between homesteads and non-homesteads (which once had much different class rates), homestead status is important for many features of the tax system because it determines eligibility for programs such as property tax refunds, the disabled veteran's market value exclusion, the blind/disabled classification, and senior citizen property tax deferral program. It can also affect tax delinquency and forfeiture procedures.

The idea of having a "homestead" is important to the taxpayer and therefore it must be important to the assessor. Improper classification of homesteads causes taxpayers to pay incorrect tax amounts and may cause taxpayers to harbor resentment for the property tax system as a whole and those who administer it. Therefore, assessors should be knowledgeable of the homestead laws so that homesteads are imposed effectively and uniformly across the state.

Types of Homesteads

Types of Homesteads

In general, a **homestead** is a “principal, or primary, place of residence.”

Two classifications of property qualify for homestead status: residential and agricultural property. Residential property can qualify for either an owner-occupied homestead or a residential relative homestead. Agricultural property may be eligible for an owner-occupied homestead, relative homestead or a special agricultural homestead, depending on the circumstances. These situations will be covered in greater detail later in the manual.

1. Residential Homestead*

- a. Owner-occupied homestead
- b. Residential relative homestead

2. Agricultural homestead

- a. Owner-occupied homestead
- b. Agricultural relative homestead
- c. Special agricultural homestead

**Note – Owner-occupied resort and hotels/motels may also qualify for homestead under certain conditions. In these situations, the portions occupied by the owner would be classified as residential homestead (class 1a) property.*

Homestead is a fact situation. It should be noted that it is not the assessor's job to determine how a property owner qualifies for homestead. Rather, the property owner or occupant must prove that he or she meets the requirements for homestead. While there is no single factor that determines whether a property meets the qualifications for homestead, there are strong indicators. First and foremost, owner-occupants must be Minnesota residents for income tax purposes. That means that they must pay Minnesota income tax if they have a taxable income. At the request of an assessor, the Department of Revenue may verify an individual who is requesting or receiving a homestead has or has not filed a tax return as a Minnesota resident for the most recent year the information is available. Homestead requirements are prescribed in state law. Local jurisdictions have no authority in law to impose additional or fewer requirements.

Other indicators that may be helpful to assessors include:

- Where is the taxpayer registered to vote?
- Where is the taxpayer's mail delivered?
- Does the taxpayer have another residence in Minnesota for which they can or do claim homestead?
- Has the taxpayer applied for or received any rent credits?
- What is the taxpayer's address on the taxpayer's motor vehicle registration?
- What is the taxpayer's address on their driver's license? (Per Minnesota Statutes, section 171.11, all licensed drivers must change their driver's license within 30 days of an address or name change.)

Types of Homesteads

- What is the address on the taxpayer's hunting or fishing license and is the license a resident or non-resident license?

It is important to stress that property owners do not have to meet all of the above factors. They are merely listed here to assist assessors in making a final determination. Finally, the department always recommends that the assessor follow a reasonableness test and consider whether the request for homestead is reasonable.

Situations:

- Cook County property owners who live in the Twin Cities deed their cabin to their daughter. She applies for homestead even though she is a full-time student at Carleton College in Northfield. Does it seem reasonable that she actually occupies the Cook County property as her homestead?
- A married couple decides to change their homestead to their lake property. They want their 12-year-old to receive a residential relative homestead on their current home in the metro areas. Does this seem reasonable?

Again, the taxpayer does not have to meet all of the preceding factors. The information provided is meant to provide assessors with indications of as to the probability that the property owner qualifies for homestead. Where the answer is close and the assessor is in doubt, the assessor should classify the property as non-homestead and allow the property owner to pursue the various avenues of appeal.

Current law only requires a one-time filing to initiate the homestead classification. After the homestead is successfully established, the assessor may require the homesteader to file a new application at any time if there is cause to question the correctness of the existing homestead. This is an area where good judgment is crucial. If an assessor feels the homestead is not appropriate (e.g. the homeowners are homesteading their summer cabin), he or she should require a new homestead application to be completed.

General Rules and Guidelines

General Rules and Guidelines

There are general rules that must always be used when trying to determine whether a property qualifies for homestead. An assessor should always approach a property with these general rules in mind, but should also know that there are exceptions to the general rules in certain circumstances. Some types of homesteads, such as *Special Agricultural Homesteads*, have their own set of special rules or provisions that must be followed in addition to the general rules. *Special Agricultural Homesteads* will be covered later in this module.

General Rules

- A person may claim only one homestead.
- Residential property that is occupied and used for the purposes of a homestead by its owner, who must be a Minnesota resident, is a **residential owner-occupied homestead**.
- Agricultural property that is occupied and used as a homestead by its owner, who must be a Minnesota resident, is an **agricultural owner-occupied homestead**.
- Property held by a trustee under a trust may be eligible for homestead if all other requirements are met. In such cases, the **grantor** of the trust is considered to be the “**owner**” of the property for homestead purposes. Thus, if the grantor occupies the trust-held property, it would be considered to be an **owner-occupied homestead** (either agricultural or residential).
- Homestead property includes property this is used for purposes of the homestead but is separated from the homestead by a road, street, lot, waterway or other similar intervening property. The term “used for purposes of the homestead” includes, but is not limited to, uses for gardens, garages, or other outbuildings which are commonly associated with a homestead, but does not include vacant land that is held primarily for future development. In order to receive homestead on the non-contiguous property, the owner must make timely application to the assessor.
- If a single-family home, duplex, or triplex classified as either residential homestead (class 1a) or agricultural homestead is also used to provide licensed child care, the portion of the property used for licensed child care must be classified as a part of the homestead property.
- The assessor shall require proof of ownership and occupancy in order to grant a property a homestead. An annual application is not required, but the assessor may require a homestead application be filed at any time to verify that a property continues to meet the requirements for homestead.

General Rules and Guidelines

- Whenever there is a name change or a transfer of a homestead property, the assessor should remove the homestead from the property as of the next assessment unless a new homestead application is filed to verify that the property continues to qualify for homestead.
- Failure to notify the assessor within 30 days that a property has been sold, transferred, or that the owner, spouse of the owner, or the qualifying relative is no longer occupying the property as a homestead, shall result in a penalty as provided in law and the property will lose its homestead.
- A **full-year homestead** is granted to a property that is occupied by its owner on January 2 of the assessment year for taxes payable the following year.
- A **“mid-year” homestead** is granted to property that is occupied by its owner after January 2 and on December 1 of the assessment year for taxes payable the following year. Application must be made by December 15). “Mid-year” homesteads currently result in the same tax benefits as full-year homesteads.
- In the case of manufactured homes assessed as personal property (located on leased land), the homestead must be established and application must be made by **May 29** of the assessment year.
- Generally, with the exception of special agricultural homesteads, most homesteads do not require an annual application. However, the assessor may, at any time, require a homestead application be filed in order to verify that a property continues to qualify for homestead status. The Department of Revenue strongly recommends annual applications for relative homesteads since these types of homesteads tend to change more frequently over time.
- If, as the result of an audit, the Commissioner of Revenue determines that a person is a non-Minnesota resident or partial-year resident for income tax purposes, the commissioner may disclose the person’s name, address, and Social Security number to the assessor if it is believed that the person may have claimed or received homestead.
- No political subdivision may impose any requirements not contained in Chapter 272 or Chapter 273 to disqualify property from being classified as a homestead if the property otherwise meets the requirements for homestead treatment under Chapter 272 and Chapter 273.

Primary Statutory Reference: 273.124

General Rules and Guidelines

Both Ownership and Occupancy Required

- To qualify for a homestead, a property must be both owned and occupied by the owner or occupied by a qualified relative of the owner as of January 2 or as of December 1 of the assessment year. Application must be made by December 15 of the assessment year, to qualify for homestead.
- A buyer's interest under a Contract for Deed is sufficient to meet the ownership requirement. However, typically an "Earnest Money Contract" or "Purchase Agreement" does not ordinarily constitute enough of an ownership interest to qualify for homestead. Nevertheless, some rare situations may arise when such instruments may constitute more of an interest in the property than the title of the document indicates. In these cases, the department recommends the assessor solicit the advice of the county attorney as to the legal implications.
- Deeds or contracts for deed are not required to be recorded to receive homestead. However, the assessor should examine the deed or contract for deed to determine whether it is a bona fide purchase and keep a copy of the document attached to the application for homestead.
- In all cases, a Certificate of Real Estate Value must be filed, even if the deed is not recorded, to receive homestead if the price paid for the property is **greater than \$1,000**.
- The use of a property for homestead purposes must be actual and substantial. A token occupancy and use, merely to obtain a tax advantage, falls short of statutory requirements. Nevertheless, an owner may be away from home for a reasonable length of time without losing homestead benefits provided the property is maintained as a homestead awaiting the owner's return.
- In most cases, an owner cannot rent out their property to another person and still retain homestead status. There are exceptions to this which will be explored later in this module.

Primary Statutory Reference: 273.124; 272.115

Homestead Carryover/Extension

Sometimes property owners will own additional parcels of non-contiguous property that may or may not qualify to be linked to their base parcel, which is occupied, for homestead purposes. Some examples may include a vacant lot with a garden that is located down the street from a taxpayer's home, a garage located on a site within close proximity to the taxpayer's home, or a storage shed that is located down the block from a taxpayer's home. If such uses are in close proximity to the taxpayer's home, are used in conjunction with the homestead, and the taxpayer makes proper application to the assessor, homestead may be extended in such cases.

If a property is a duplex or triplex, and one of the units is used for homestead purposes, the entire property is deemed to be used for homestead purposes

A residential property containing two separate houses is treated the same as a duplex for homestead purposes (three houses would be treated the same as a triplex).

Homestead Accretion

When non-homestead property is purchased after the assessment date, but on or before December 1, and the property is used in conjunction with the primary homestead, it is eligible for mid-year homestead, provided the owner makes timely application. The parcel(s) may be contiguous or noncontiguous. This will mainly apply to unimproved land; however, it is conceivable that a property owner may purchase a non-homestead parcel with a garage across the street from the primary homestead parcel which would then be used in conjunction with the homestead.

This policy on accretion of homesteads does not apply to the acquisition of additional non-homestead houses. A second residential structure, located on a separate parcel, cannot be used in conjunction with a homestead. The additional parcel must be owned on December 1 and used in conjunction with the primary homestead. Application for homestead must be made no later than December 15 of the assessment year for taxes payable the following year.

Homestead Linkage for Agricultural Property

Minnesota Statutes, section 273.124, subdivision 14, paragraph (c), allows non-contiguous agricultural property to be linked to the base agricultural homestead. It states that:

“Noncontiguous land shall be included as part of a[n agricultural]homestead under section 273.13, subdivision 23, paragraph (a), only if the homestead is classified as class 2a and the detached land is located in the same township or city, or not farther than four townships or cities or combination thereof from the homestead. Any taxpayer of these noncontiguous lands must notify the county assessor that the noncontiguous land is part of the taxpayer's homestead, and, if the homestead is located in another county, the taxpayer must also notify the assessor of the other county.”

In order to be linked, the properties must first be owned by the exact same ownership entity. It is not appropriate to link properties where the ownership entities differ such as individually-owned parcels to corporate- or partnership-owned parcels.

General Rules and Guidelines

Of course there are exceptions to this rule:

1. The homestead of a base parcel owned and occupied by an individual may be linked to a parcel of property that the owner owns with other individuals;
2. The homestead of a base parcel owned and occupied by an individual may be linked to a parcel of property that is owned by a trust and the individual owners of the base parcel are the grantors of the trust-held property (and vice versa); and
3. In the case of married couples, properties that are held solely in the name of one spouse may be linked to parcels that are held solely by the other spouse and parcels that are titled in both names. This does not apply to any entities of which the husband and/or wife are both members. It only applies to parcels owned by natural people.

As a matter of policy, the Department of Revenue recommends that all homestead parcels be linked in the order of their contiguity (the most contiguous parcel should be linked to the base parcel first, the next most contiguous second, etc.) In cases where two parcels are equally contiguous, the parcel with the greatest value is linked before the lesser valued parcel.

** Additional information on linking agricultural property is found in the Special Agricultural Homestead section of this module.*

Primary Statutory Reference: 273.124, subd 14; 273.13, subd.23

Homestead Application

A person who meets the requirements for homestead must file an application with the county assessor to initially obtain the homestead benefits. The Commissioner of Revenue prescribes the format and content of all homestead applications. The most current applications are available in Module 9 of this manual.

- After the initial application, owners are not required to file an annual application. The homestead applications shall notify the property owners that the application will not be mailed annually and that if the property is granted homestead for any assessment year, the property will remain homesteaded until the property is sold or transferred to another person, or the owners, spouse of the owner, or the qualifying relative of the owner no longer uses the property as their homestead. However, the assessor, may, at any time, require a new application to verify the homestead status.
- The Department of Revenue strongly recommends that relative homestead applications be filed on an annual basis since occupancy often changes in these situations.
- By law, owners are required to inform the assessor's office within 30 days that they have sold and/or vacated the property and no longer use the property as a homestead. The assessor should then reclassify the property as non-homestead as of the next assessment date. If a homesteaded property is sold, the new owners technically have until December 15 of the following year to file for homestead under their name, provided they occupy the property by December 1.

For example, Taxpayer A & B own and occupy a property in Edina on January 2, 2009. In October 2009, A & B sell their property to Taxpayer C & D and move to Florida. Taxpayers A & B notify the Edina assessor's office that they are vacating their home in Edina. As of January 2, 2010, Taxpayers C & D still have not filed a homestead application for their new property. Therefore, the Edina city assessor classifies the property as residential non-homestead for the 2010 assessment. The taxpayer is notified of the non-homestead classification on the 2010 Notice of Valuation and Classification. Taxpayers C & D realize they forgot to file their application for homestead. They contact the county assessor, complete the application and are granted a full owner-occupied residential homestead for the 2010 assessment for taxes payable in 2011. (The homestead property taxes they pay in 2010 are actually based on Taxpayer A & B's homestead from the 2009 assessment.)

- By law, the application must clearly inform the taxpayer that the application must be signed by all owners who occupy the property; or by the qualifying relative who occupies the property, and the application must be returned to the county assessor for the property to receive homestead treatment.

Homestead Application

- Upon sale or transfer of homesteaded property, a Certificate of Real Estate Value must be timely filed with the County Auditor as indicated under Minnesota Statutes, section 272.115.
- The homestead application must inform the applicant of the requirement that they must inform the assessor within 30 days if the property sells or transfers, or if the owner, spouse of the owner, or qualifying relative no longer occupies the property as their homestead. A penalty will result for failing to notify the assessor and the property will lose its current homestead status.

Rescinding a Homestead Application

A homestead application is a legal document. By completing one, and thereby securing the corresponding tax benefit, taxpayers are certifying that they are residents of Minnesota, the property they are claiming as their homestead is their primary place of residents, and they have a sufficient ownership interest to qualify for homestead benefits. Minnesota Statutes, section 609.41, also states that anyone giving false information in order to avoid or reduce tax obligations is subject to a fine of up to \$3,000 and/or up to one year in prison. Therefore, the Department of Revenue is of the opinion that it is inappropriate for taxpayers to attempt to retroactively change their homestead status and a homestead application cannot be rescinded or undone by an applicant once that application has been made.

Primary Statutory Reference: 273.124; 609.41

Social Security Numbers

- Social Security numbers, state or federal tax returns or tax return information, including the federal income tax Schedule F, or affidavits or other proof of property owners submitted to support a claim of homestead are private data on individuals under Minnesota Statutes, section 13.02, subdivision 12. However, notwithstanding that section, the private data may be disclosed to the Commissioner of Revenue, or to the county treasurer for the purposes of proceeding under the Revenue Recapture Act to recover personal property taxes.
- Every property owner applying for homestead must furnish to the county assessor the Social Security number of each occupant who is listed as an owner of the property on the deed of record, the name and address of each owner that does not occupy the property, and the name and Social Security number of each owner's spouse who occupies the property. The application must be signed by each owner who occupies the property and by each owner's spouse who occupies the property or, in the case of property that qualifies as a relative homestead, by the qualifying relative.
- If the property owner occupies the homestead, the property owner's spouse may not claim another property as a homestead unless the property owner and the property owner's spouse file an affidavit or other proof required by the assessor stating that the property qualifies for a special spousal homestead as provided by law. These will be covered later in this module.

- Owners or individuals occupying residences owned by their spouse and previously occupied with that spouse, either of whom fail to include the other spouse's name and Social Security number on the homestead application or to provide any information or proof requested will be deemed to have elected to receive only partial homestead treatment of their property. The remainder of the property will be classified as non-homestead.
- Each owner/occupant must sign the application. If an owner or spouse's name and Social Security number appear on the homestead applications for two separate residences and only one application is signed, the owner or spouse will be deemed to have elected to have homesteaded the residence for which the application was signed.
- In the case of a residential relative homestead application, both the qualifying relative and the spouse of the qualifying relative must provide their Social Security numbers.

Identity Theft

We have had a few reports from counties who followed up on a duplicate Social Security number situation and found that both individuals had Social Security cards with the same number on them. Unfortunately, this involved a larger issue than homestead administration. It involved identity theft. After researching the issue with the Department of Homeland Security, we discovered it is next to impossible for the untrained individual to distinguish between real and fraudulent Social Security cards. Furthermore, the Department of Revenue cannot confirm whether or not a specific Social Security number is being used by a specific individual. Rather, the department can only confirm that a taxpayer using a specific Social Security number has filed income tax as a Minnesota resident.

Should you encounter this situation, our recommendation is to deny both homestead applications. Notify both taxpayers in writing of the denial and encourage them to contact their local police departments to report the situation. Tell them that they can apply for abatements once the police investigation is completed and it can be satisfactorily determined who qualifies for homestead. The local police should be able to guide them from there. Once the situation has been satisfactorily resolved, the appropriate taxpayer can reapply for homestead and apply for any applicable abatements.

Individual Taxpayer Identification Numbers

In 1996, the Social Security Administration (SSA), working in conjunction with the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services, or CIS), made significant changes in the way Social Security numbers are issued. These changes affect people who are not American citizens and are referred to by the CIS as "aliens." It is now much more difficult to for aliens living legally in the United States to receive a Social Security number.

Homestead Application

Only aliens who have received CIS permission to work in this country are granted a Social Security number. This affects aliens in Minnesota who are seeking homestead benefits. The problem is encountered when the spouse of the person who is authorized to work cannot obtain a Social Security number that is necessary to receive a full homestead.

Fortunately, there is a solution. Any individual who is not eligible to obtain a Social Security number may apply for an individual taxpayer identification number (ITIN). An ITIN is a nine-digit number issued by the Internal Revenue Service (IRS) to individuals who are required to have a United States taxpayer identification number but who do not have and are not eligible to obtain a Social Security number. An ITIN may be used by aliens in place of Social Security numbers when applying for a homestead in certain cases. *

Aliens who do not have permission to work but need an ITIN for homestead purposes must visit, call or write an IRS office and request Form W-7. The form is also available online at www.irs.gov. If applying in person or by mail, the applicant should bring/sent the originals or certified copies of the documents that substantiate the information on Form W-7. Examples of acceptable documents include an original passport, driver's license, birth certificate, identity card, or US immigration documents. Completed forms and supporting documentation should be mailed to:

Internal Revenue Service
ITIN Operations
PO Box 149342
Austin, TX 78714-9342

* **NOTE:** An ITIN can only be used in situations where one spouse has been granted permission to work in the United States and has received a Social Security number and his/her spouse has not. ITINs are not an acceptable alternative to Social Security numbers in any other case. In the case where the spouse does not have or does not choose to obtain an ITIN, the property should receive a partial homestead. In cases where all owners have ITINs and no one has a Social Security number, the property should be classified as non-homestead.

Audits Performed by Commissioner of Revenue

Duplicate Homestead List

Each year, counties must provide the Commissioner of Revenue with a list that includes the name and Social Security number of each property owner and his/her spouse that occupies a property or the qualifying relative and his/her spouse that occupies the property. The commissioner generates a list that indicates if the same Social Security number has been used to homestead more than one property in the State of Minnesota and also to detect improper claims of property tax refunds or renter's credits by owners or relatives of owners.

Counties are required to investigate these situations to determine if the homesteads were properly claimed. Failure on the part of property owners to notify the assessor within 30 days that the property has been sold or transferred, or that the owner, spouse of the owner, or the qualifying relative is no longer occupying the property as a homestead, shall result in a penalty, and the property will lose its homestead. If the homestead has been improperly claimed, the county auditor must determine the amount of homestead benefits the owner received. The owner must reimburse the county for the difference between the homestead and non-homestead tax and pay a penalty equal to 100 percent of the homestead benefits.

The department has also been asked how to handle the ITINs for the annual Social Security match list since these numbers show up as "invalid Social Security numbers." In these instances, and only in these instances, it is appropriate not to enter ITINs into the computer. They will show up as "invalid Social Security numbers" every single time. We strongly suggest keeping a copy of the letter from the IRS that shows the ITIN attached to the homestead application. Remember, in cases where all owners have ITINs and no one has a Social Security number, the property should be classified as non-homestead.

If the Commissioner of Revenue believes a property owner may be claiming a **fraudulent homestead**, the commissioner shall notify the appropriate county or counties. Within 90 days of the notification, the county assessor must investigate to determine if the homestead classification was properly claimed. If the property owner does not qualify, the county assessor must notify the county auditor who will determine the amount of homestead benefits, including appropriate credits, which were improperly allowed.

The county auditor will then notify the person who owned/occupied the improperly-homesteaded property at the time the improper application was filed, demanding reimbursement of the homestead benefits plus a penalty equal to 100 percent of the homestead benefits. The person notified may appeal the county's determination in Tax Court within 60 days of the date of notice from the county. If no appeal is filed within 60 days and the repayment of homestead benefits and penalty are not paid, the county auditor shall certify the amount of taxes and penalty to the county treasurer and the treasurer will add interest to the unpaid homestead benefits and penalty amounts.

If the person notified is the current owner of the property, the treasurer may add the total amount of the homestead benefits, penalty and interest, and costs to the ad valorem taxes otherwise payable on

Audits Performed by Commissioner of Revenue

the property by including the amounts on the property tax statement for the following year. The amount added under this paragraph shall include interest accrued through December 31 of the year preceding the taxes payable year for which the amounts are first added. These amounts, when added to the property tax statement become a lien on the property.

If the person notified is not the current owner of the property, the treasurer may collect the amounts due under the Revenue Recapture Act in Chapter 270A, or use any of the powers granted in sections 277.20 (lien for personal property tax) and 277.21 (levy and distraint), to enforce payment of the homestead benefits, penalty, interest, and costs. The amount(s) due should be treated as if they were delinquent tax obligations of the person who owned the property at the time the application related to the improperly-allowed homestead was filed. The treasurer may relieve a prior owner of personal liability for the homestead benefits, penalty interest, and costs, and instead extend those amounts on the tax lists against the property to the extent that the current owner agrees in writing. On all demands, billings, property tax statements, and related correspondence, the county must list and state separately the amounts of homestead benefits, penalty, interest and costs being demanded, billed or assessed.

Any amount of homestead benefits recovered by the county are distributed as follows:

- to the county, city or town, and school district where the property is located in the same proportion that each taxing districts levy was to the total of the three taxing districts levy for the current year;
- any amount recovered attributable to taconite homestead credit shall be transmitted to the St. Louis County Auditor to be deposited in the taconite property tax relief account;
- any amount attributable to the supplemental homestead credit is transmitted to the Commissioner of Revenue for deposit into the general fund of the state treasury; and
- the total penalty collected must be deposited into the county's general fund.

If a property owner has applied for more than one homestead and the county assessor cannot determine which property should properly receive the homestead, the county assessor should refer the information to the Commissioner of Revenue and the commissioner will make the determination and notify the counties within 60 days.

In addition to the lists of homestead properties, the Commissioner of Revenue may ask the counties to furnish lists of all properties and owners of record. The Social Security Numbers and Federal Identification Numbers that are maintained by a county or city assessor for property tax administration purposes, and that may appear on the lists continue to retain their classification as private data; may also be viewed, accessed, and used by the county auditor or treasurer of the same county for the limited purpose of assisting the commissioner in the preparation of data samples as provided in Minnesota Statutes, section 270C.12 (tax information sample data).

Property Tax Refund File

On or before April 30 of each year, each county must provide the Commissioner of Revenue with the following data, by electronic means, for each parcel of homestead property:

- the property identification number assigned to the parcel for taxes payable in the current year;
- the name and Social Security number of each occupant of homestead property who is the owner, owner's spouse, qualifying relative of the owner, or spouse of the qualifying relative of the owner;
- the classification of the property under section 273.13 for taxes payable in both the current year and prior years;
- an indication of whether the property was classified as a homestead for taxes payable in the current year because of occupancy by a qualifying relative of the owner or by the spouse of a qualifying relative;
- the property taxes payable (as defined in section 290A.03, subd. 13), for both the current and prior years;
- the market value of new improvements to the property first assessed for taxes payable in the current year;
- the assessor's estimated market value of the property for taxes payable in both the current and prior years;
- the taxable market value of the property for taxes payable in both the current and prior years;
- whether there are delinquent property taxes owed on the property;
- the unique taxing district in which the property is located; and
- other information deemed necessary by the commissioner.

This information will be used as appropriate under the law, including for the detection of improper property tax refund claims by owners or relatives of owners.

"Mid-Year" Homesteads

"Mid-Year" Homesteads Established After the Assessment Date

Any property that was not used for the purpose of a homestead on the assessment date of January 2, but was used for the purpose of a homestead on December 1 of a given year, may be granted either an agricultural or a residential mid-year homestead. This may happen in a variety of ways. For example:

- a new home is built on a vacant site after January 2 and occupied by the new owner and homesteaded before December 1;
- a non-homestead property is purchased and occupied by a new owner who meets the qualifications for homestead before December 1; or
- a home that receives a fractional homestead on January 2 is purchased by an owner who qualifies for a full homestead before December 1.

The previous examples assume the new owners make application by December 15.

If the homestead has not been requested as of December 15, the assessor will classify the property as non-homestead for the current assessment for taxes payable in the following year.

Question: How should mid-year applications be processed during the assessment year?

Answer: It is the Department of Revenue's opinion that any mid-year homestead applications should be verified and processed after December 1 of the same year. At that time, the determination may be made as to the appropriateness of the application. Minnesota Statutes, section 237.124, subdivision 9, clearly states that "*any property that was not used for the purpose of a homestead on the assessment date, but which was used for the purpose of a homestead on December 1 of a year, constitutes [residential or agricultural homestead].*"

This verification cannot be done at the time of application. The homestead status of a person who makes application on February 1 may change by December 1. The law clearly requires homestead compliance on January 2 or December 1, and it was purposefully written to prevent people from applying on multiple properties at different times throughout the year. Therefore, our recommendation is to verify the appropriateness of all mid-year homestead applications on or about December 1 of each year, if that is practical for your county.

Homestead Notice

Each year, no later than December 1, assessors are required to publish a public notice in a newspaper of general circulation within the county requesting anyone who has purchased a home to file a homestead application. The Department of Revenue will typically send an annual reminder notice with suggested text. However, it is still the responsibility of the assessor to make sure this requirement is met. The suggested text for last year is below.

Important property tax homestead notice

** This will affect the amount of property tax you pay in 2010, and it may affect your eligibility for a property tax refund.*

Please contact your county assessor to file a homestead application on or before December 15, 2009, if one of the following applies:

- You purchased a property in the past year and you, or a qualifying relative, occupy the property for homestead purposes on December 1, 2009; or
- You, or a qualifying relative occupy a property for homestead purposes on December 1, 2009, and the property was previously classified as non-homestead.

A qualifying relative for homestead purposes depends on the type of property. For residential property, a qualifying relative can be a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew, or niece of the owner. This relationship may be by blood or marriage. For agricultural property, a qualifying relative can be a child, grandchild, sibling, or parent of the owner or a child, grandchild, or sibling of the spouse of the owner.

Once you have been granted the homestead classification, no further applications are necessary unless they are specifically requested by the county assessor.

You must also contact the assessor by December 15, 2009, if you are the property owner, or a qualifying relative of the property owner, and the use of the property has changed during the past year.

If you should sell, move, or for any reason no longer qualify for the homestead classification, you are required to notify the county assessor within 30 days of the change in homestead status. Failure to notify the county assessor within this 30-day period is punishable by recalculation of tax as non-homestead, in addition to a penalty equal to 100 percent of the homestead benefits.

<Spruce County Assessor's Office>
(XXX) 555-1234

Relative Homesteads

Relative Homesteads

There are two types of relative homesteads: residential relative homesteads and agricultural relative homesteads. Both are described in this section. It is important to remember the following when administering relative homesteads:

- Spouses are not considered relatives for homestead purposes.
- There are different qualifying relatives for residential and agricultural property.
- Properties owned by an entity (corporation, partnership, limited partnership, LLC, LLP, etc.) cannot qualify for a relative homestead – since they are non-human entities, they cannot have relatives.
- Trust-held property can receive relative homestead if occupied by a qualifying relative of the *grantor* (creator) of the trust.

Separate relative homestead applications for residential and agricultural property have been developed and are available in Module 9.

If at any time, a different relative from the one listed on the application subsequently occupies the property, the owner must notify the assessor within 30 days of the change in occupancy. The department strongly recommends verifying relative homesteads on an annual basis since they are subject to frequent changes.

Residential Relative Homesteads

Residential real estate that is occupied and used for the purposes of a homestead by a relative of the owner is a homestead to the extent of the of the homestead treatment that would be provided if the related owner occupied the property. Qualifying relatives for residential property, which may be by blood or by marriage, include:

- | | |
|---------------|----------|
| Parents | Brothers |
| Step-parents | Sisters |
| Children | Aunts |
| Step-children | Uncles |
| Grandparents | Nieces |
| Grandchildren | Nephews |

To qualify for a residential relative homestead, the owner does not need to be a Minnesota resident but the qualifying relative must be a Minnesota resident.

Neither the owner nor the qualifying relative who occupies the property may claim a property tax refund under Chapter 290A unless the property is jointly owned and one of the joint owners occupies the property as his or her principal place of residence.

Property that has been classified as seasonal residential recreational property at any time while it has been owned by the current owner or spouse of the current owner cannot be reclassified as a homestead unless it is occupied as a homestead by the owner. (It also cannot be reclassified as class 4bb residential non-homestead.) This also applies to property that would have been classified as seasonal residential recreational property at the time the residence was constructed.

* **Note** – Beginning July 1, 2008, in cities with populations of over 25,000 people, the law requires annual registration of some relative homesteads. If a property receives a relative homestead and compensation is received for rental of any part of the property for a period that exceeds 31 consecutive days during a calendar year, the recipient of the compensation must register the property with the city where the property is located no later than 60 days after the initial rental period began. Each city is required to maintain a file of these property registrations that is open to the public, and must retain the registrations for one year after the date of filing.

Agricultural Relative Homesteads

Agricultural property that is occupied and used for the purposes of a homestead by a qualifying relative of the owner may be given an agricultural relative homestead on the house, garage, farm buildings, other structures, agricultural land, and contiguous rural vacant land under the same ownership. Such property that is occupied and used for the purposes of a homestead by a qualifying relative of the owner is a homestead to the same extent as the homestead that would be provided if the related owner occupied the property, providing that all of the following criteria are met:

- the qualifying relative who occupies the property is a son, daughter, brother, sister, grandson, granddaughter, father, or mother of the owner or a son, daughter, brother, sister, grandson, or granddaughter of the spouse of the owner of the agricultural property.
- the owner is a Minnesota resident;
- neither the owner nor his/her spouse receives another agricultural homestead in Minnesota; and
- the owner of the agricultural property is limited to only one agricultural homestead per family.

If all of the requirements for an agricultural relative homestead are not met, the house, garage, and first acre of a residence that is located on agricultural land may be eligible for a residential relative homestead if those requirements are satisfied.

Neither the qualifying relative nor the owner of the property may claim a property tax refund for a homestead occupied by a relative unless the property is owned jointly and one of the joint owners occupies the property as his or her primary residence.

Neither the owner nor the qualifying relative may claim another agricultural homestead in Minnesota. This is limited to one agricultural homestead per family.

Primary Statutory Reference: 273.124

Spousal Homesteads

Spousal Homesteads

Background

Each year we receive inquiries from assessors and the public regarding application of the homestead laws when a married couple owns property but the spouses are living apart and/or are applying for homestead benefits on more than one property. The information contained within this manual reflects our best understanding of the homestead laws in cases where a married couple owns property either together or separately and are claiming homestead for one or more properties. **This information may represent a change from letters we have issued in the past.**

Discussion

Minnesota Statutes, section 273.124, contains the rules for determining when a homestead can be granted. Generally, a property that is owned by a Minnesota resident and is occupied and used by that person as a principal place of residence qualifies for homestead benefits. If a property is owned by a single person who is a Minnesota resident and who occupies and uses the property as a principal residence, the property will qualify for a full regular homestead. If a property is owned by several individuals, all of whom are Minnesota residents, and all occupy and use the property as a principal place of residence, the property will qualify for a full regular homestead. If a property is owned by more than one person and at least one person occupies and uses the property as a principal place of residence but at least one person does not occupy and use the property as a principal place of residence, the property will qualify for only a fractional regular homestead. The relative homestead provisions may come into play here but the relative homestead provisions are not applicable in spousal circumstances because the law does not define a spouse as a relative.

For a married couple, the most common situation finds the couple living together in a home owned by either one or both of them. No matter how a property is titled, whether in one name or both, a married couple is considered one entity for property tax purposes. The property qualifies for a full regular homestead if the couple occupies the home as their principal place of residence.

But what happens when the spouses do not live together in a single residence?
Minnesota Statutes, section 273.124, subdivision 1, clause (e) reads:

“(e) In the case of property owned by a property owner who is married, the assessor must not deny homestead treatment in whole or in part if only one of the spouses occupies the property and the other spouse is absent due to:

- (1) marriage dissolution proceedings,*
- (2) legal separation,*
- (3) employment or self-employment in another location, or*
- (4) other personal circumstances causing the spouses to live separately, not including an intent to obtain two homestead classifications for property tax purposes.*

To qualify under clause (3), the spouse's place of employment or self-employment must be at least 50 miles distant from the other spouse's place of employment, and the homesteads must be at least 50 miles distant from each other. Homestead treatment, in whole or in part, shall

Spousal Homesteads

not be denied to the owner's spouse who previously occupied the residence with the owner if the absence of the owner is due to one of the exceptions provided in this paragraph.”

And section 273.124, subdivision 1, clause (f), reads in part

“(f) The assessor must not deny homestead treatment in whole or in part if: ...

(2) in the case of a property owner who is married, the owner or the owner's spouse or both are absent due to residence in a nursing home, boarding care facility, or an elderly assisted living facility property as defined in section [273.13, subdivision 25a](#), and the property is not occupied or is occupied only by the owner's spouse.”

Examples

Example 1: Spouse 1 and Spouse 2 own Home A with both names on the deed but Spouse 2 lives somewhere else on the assessment date. Often the assessor will not be aware that Spouse 2 is no longer living in the home. Most likely the assessor learns the facts when the Spouse 2 files an application for homestead benefits on a Home B. The assessor denies the homestead application telling Spouse 2 that since a homestead already exists, the applicant cannot qualify for a second homestead. The applicant tells the assessor the spouses are divorcing.

Issues: Is Home A eligible for homestead benefits? Is Home B eligible for homestead benefits?

Discussion: Both Home A and Home B are eligible for full regular homesteads IF a divorce petition has actually been filed in the District Court. As part of the divorce proceedings, the Court will determine the property rights in Home A and appropriate deeds will be drafted and recorded, removing one spouse's name from the title to Home A.

Until the divorce is finalized and title to Home A transferred, the social security number of the Spouse 2 will appear on the homestead records for both properties and will cause a “duplicate record” report when the Department runs the statewide homestead files.

Tip: The petition for dissolution must be filed with the Court before the second property qualifies for homestead benefits. A mere assertion that the couple intends to divorce is not sufficient.

Example 2: Same as Example 1 but the divorce petition has not been filed.

Issues: Is Home A eligible for homestead benefits? Is Home B eligible for homestead benefits?

Discussion: Home A and Home B are each eligible for one-half owner-occupied homestead.

Section 273.124, subdivision 13, clause (c), reads:

Spousal Homesteads

“(c) Every property owner applying for homestead classification must furnish to the county assessor the Social Security number of each occupant who is listed as an owner of the property on the deed of record, the name and address of each owner who does not occupy the property, and the name and Social Security number of each owner's spouse who occupies the property. The application must be signed by each owner who occupies the property and by each owner's spouse who occupies the property, or, in the case of property that qualifies as a homestead under subdivision 1, paragraph (c), by the qualifying relative.

If a property owner occupies a homestead, the property owner's spouse may not claim another property as a homestead unless the property owner and the property owner's spouse file with the assessor an affidavit or other proof required by the assessor stating that the property qualifies as a homestead under subdivision 1, paragraph (e).

Owners or spouses occupying residences owned by their spouses and previously occupied with the other spouse, either of whom fail to include the other spouse's name and Social Security number on the homestead application or provide the affidavits or other proof requested, will be deemed to have elected to receive only partial homestead treatment of their residence. The remainder of the residence will be classified as nonhomestead residential. When an owner or spouse's name and Social Security number appear on homestead applications for two separate residences and only one application is signed, the owner or spouse will be deemed to have elected to homestead the residence for which the application was signed.

The Social Security numbers or affidavits or other proofs of the property owners and spouses are private data on individuals as defined by section [13.02, subdivision 12](#), but, notwithstanding that section, the private data may be disclosed to the commissioner of revenue, or, for purposes of proceeding under the Revenue Recapture Act to recover personal property taxes owing, to the county treasurer. “

The law is clear and says that Spouse 2 may not claim another property as a full homestead unless the conditions in subdivision 1, clause (e), exist and the assessor has sufficient proof that the conditions exist. In this example, since the petition for dissolution has not been filed and attorneys have not even been hired, Homes A and B can only receive one-half homestead benefits each based on occupancy by one spouse. Even if the assessor knows Spouse 1 and Spouse 2 personally and knows that they intend to file the petition soon, neither home is eligible for full homestead.

Tip: Remember that Home B may not qualify on the assessment date but if the petition is filed in Court before December 1 of the assessment year and Spouse 2 files the homestead application by December 15, the assessor may grant Spouse 2 a midyear homestead for that assessment.

Spousal Homesteads

If either Home A or Home B is owned solely by one spouse or jointly by both, if only one spouse occupies Home A as a principal residence, and the absence of Spouse 2 is not due to conditions listed in subdivision 1, clause (e), Home A and Home B qualify for only half the regular homestead.

Tip: Remember, spouses are not “relatives” for homestead purposes and, therefore, neither spouse can qualify for a relative homestead.

Example 3: Home A is owned by Spouse 1 and Spouse 2 and is receiving full homestead benefits. Spouse 2 files an application for homestead benefits on Home B. Spouse 2 advises the assessor that Spouse 1 and Spouse 2 are “separated.”

Issues: Is Home A eligible for homestead benefits? Is Home B eligible for homestead benefits?

Discussion: Minnesota Statutes, section 518.06, provides that “a decree of legal separation shall be granted when the court finds that one or both parties need a legal separation.” A decree of separation does not dissolve the marriage but does determine the rights and responsibilities of husband and wife arising out of a marital relationship. While many spouses are separated, meaning that the spouses do not live together, a court-ordered legal separation is not common. One spouse may institute a proceeding in District Court seeking a legal separation.

The analysis for homestead purposes follows the analysis in Examples 1 and 2. Until a decree of separation is issued by the court, Spouse 2 has not met the conditions in section 273.124, subdivision 1, clause (e) and, therefore, cannot have a separate full homestead. As Spouse 2 is not residing in Home A, Home A can receive only half of the homestead benefit and Home B is eligible to receive one-half homestead based upon the occupancy by Spouse 2.

If a decree of separation has been issued by the court, Spouse 1 and Spouse 2 can establish separate homesteads and Home A and Home B qualify for full regular homestead benefits. The social security number of Spouse 2 will appear on the records for both properties and will cause a “duplicate record” report when the Department runs the statewide homestead files.

Tip: The assessor should review the decree as issued by the court to establish that a legal separation has actually occurred. If the decree has not been issued as of the assessment date but is issued before December 1 of the assessment year and Spouse 2 files the homestead application prior to December 15, the assessor may grant the homestead for the current assessment.

Spousal Homesteads

Example 4: Home A is owned by Spouse 1 and Spouse 2 and is receiving full homestead benefits. Spouse 2 files an application for homestead benefits on Home B. Spouse 2 advises the assessor that Spouse 2 is now employed in another location and is establishing a separate homestead at the new location. Spouse 1 will continue to reside in Home A. Spouse 1 and Spouse 2 are not divorcing and they are not legally separated.

Issues: Is Home A eligible for homestead benefits? Is Home B eligible for homestead benefits?

Discussion: Subdivision 1, clause (e), does provide for the possibility of separate full homesteads if spouses live apart because of employment. The place of employment or self-employment of Spouse 2 must be at least 50 miles distant from the place of employment or self-employment of Spouse 1 AND Home A must be at least 50 miles distant from Home B. Both Spouse 1 and Spouse 2 must be gainfully employed or gainfully self-employed. If the assessor is satisfied that the facts support this exception, both Home A and Home B qualify for full regular homesteads.

If Spouse 1 remains in Home A but is not gainfully employed, Home B does qualify for only half homestead benefits and Home A also qualifies for only a half regular homestead.

Tip: Both spouses must be gainfully employed or self-employed and the places of employment must be at least 50 miles apart and the homes must be at least 50 miles apart. The applicant is responsible for supplying whatever evidence the assessor needs to establish the qualification for homestead benefits. Remember that the social security numbers of Spouse 1 and Spouse 2 will appear on the records for both properties and will cause a “duplicate record” report when the Department runs the statewide homestead reports.

Example 5: Spouse 1 and Spouse 2 were recently married. Spouse 1 owns, operates and resides on the 160 acre Farm A. Farm A is classified as an agricultural homestead. Spouse 2 owns, operates and resides on the 160 acre Farm B. After the marriage, Spouse 1 intends to live on Farm A and manage the operations there. Spouse 2 will continue to live on Farm B and manage the operations there.

Issues: Is Farm A eligible for homestead benefits? Is Farm B eligible for homestead benefits?

Discussion: If the farms are over 50 miles distant from each other, both farms qualify for full agricultural homesteads. Farm A is the place of employment for Spouse 1 and Farm B is the place of employment for Spouse 2. If the assessor is satisfied that the facts support the exception, the assessor should extend homestead benefits to both properties.

If the farms are not 50 miles distant from each other, each property qualifies for only one-half homestead based on its occupying spouse.

Spousal Homesteads

Tip: The social security numbers for both Spouse 1 and Spouse 2 will appear on the records of both properties and will cause a “duplicate record” report when the statewide homestead report is run.

Example 6: Spouse 1 and Spouse 2 own and occupy Home A as their principal residence but Spouse 1 must now move to a nursing home, a boarding care facility or an elderly assisted living facility, either on a short term or longer term duration.

Issue: Is Home A eligible for a full regular homestead?

Discussion: Home A is eligible for regular homestead treatment based on section 273.124, subdivision 1, paragraph (f), clause (2). In fact, if both Spouse 1 and Spouse 2 moved to a nursing home, a boarding care facility or an elderly assisted living facility AND Home A is not occupied by anyone, Home A continues to qualify for a full homestead. The statute considers this a temporary absence from Home A, even if the absence extends for quite some time, as long as no one else moves into Home A. If Home A is rented to someone, it no longer qualifies for homestead treatment because Home A is no longer available for the return of Spouse 1 and/ or Spouse 2. If a son or daughter or other relative of Spouse 1 or Spouse 2 stays in Home A on a short-term basis while visiting Spouse 1 or Spouse 2, we would not consider this short use as an abandonment of the homestead by Spouse 1 or Spouse 2.

Tip: If one or both spouses are absent because they are residing in a nursing home, boarding care facility, or an elderly assisted living facility, the law presumes that the homestead is not abandoned as long as the home remains available for their return. If the home is offered for sale but not yet sold, the homestead remains. Generally, if the home is leased to others, the home no longer qualifies for a regular homestead. However, in some cases, if the nursing home, boarding care facility, or elderly assisted living facility fees are being paid by a governmental assistance program, the program will require that the home be offered for lease and any payments received used to defray the governmental assistance. Our position is that the homestead benefits continue if the leasing arrangement is a requirement of the governmental program.

Example 7: Spouse 1 and Spouse 2 own and occupy Home A and receive a full regular homestead. Spouse 2 purchases Home B and applies for homestead benefits. Spouse 1 and Spouse 2 are not divorcing, are not separated, and are not working at least 50 miles apart. Spouse 2 advises the assessor that Spouse 2 can no longer live with Spouse 1 because Spouse 1 battered Spouse 2.

Issue: Is Home B eligible for a full regular homestead?

Discussion: The Department has advised the assessor to grant a full regular homestead on Home B. Section 273.124, subdivision 1, clause (e) allows one additional exception for “other personal circumstances causing the spouses to live separately, not including an intent to obtain two homestead classifications....” The circumstances here were so unique that the

Spousal Homesteads

Department agreed with the assessor that a second homestead was warranted. The Department has narrowly construed the “other personal circumstances” clause to be abuse or other extreme circumstances.

In another situation, Spouse 1 and Spouse 2 owned Home A and received a full regular homestead. Spouse 1 worked outside the home but became ill with a debilitating disease and could no longer work. Spouse 2 then became employed in order to support the family and obtain insurance benefits. Spouse 2 purchased Home B and applied for homestead benefits. Even if the place of employment is over 50 miles away, Spouse 1 was not employed so the exception for working apart did not fit. Spouse 1 could not move to Home B because the medical treatments for Spouse 1 were close to Home A. The Department again agreed with the assessor that these circumstances were sufficiently unique to allow a second homestead.

Tip: Under unique circumstances, the assessor may consider an additional exception but should contact the Department. Rarely will the circumstances merit this exception, but it can happen.

Conclusion

Unless the specific exceptions are met, spouses living apart cannot receive homestead benefits on two homes. In fact, Home A and Home B can receive only a half regular homestead each based upon the occupying spouse.

Special Provisions

As discussed previously in this module, a property must be occupied by the owner or a qualifying relative in order to receive homestead benefits. However there are several special provisions in law that allow for exceptions to those rules. These exceptions are outlined on the following pages.

Life Estates

In a life estate situation, it is the holder of the life estate, not the fee owner of the property or the person with the remainder interest in the property, who has the right to occupy the property until their death. A qualifying relative of the life estate holder may also qualify for a relative homestead in such a situation.

For agricultural property, a life estate may be for the house, garage, and first acre or it may be for the entire farm. The type of homestead that will be granted, either residential on the HGA or agricultural on the entire farm, will depend on the terms of the life estate and what the life estate holder is allowed to occupy.

If the terms of the life estate do not specify that the person is allowed to occupy the property until their death, or if it specifies that the person may occupy for a specific period of years, it is not a true life estate. This is likely an “estate in years.” It is the department’s opinion that an estate in years is not enough of an ownership interest to grant a property a homestead.

Homestead of Owner in Nursing Home, Boarding Care, or Elderly Assisted Living Care Facility

An assessor cannot deny homestead, in whole or in part, if:

1. In the case of a property owner who is not married, the owner is absent due to residence in a nursing home, boarding care facility, or an elderly assisted living facility, as defined in section 273.13, subdivision 25a, and the property is not otherwise occupied; or
2. In the case of a property owner who is married, the owner or owner’s spouse or both are absent due to residence in a nursing home, boarding care facility, or an elderly assisted living facility, as defined in section 273.13, subdivision 25a, and the property is not otherwise occupied or is occupied only by the owner’s spouse.

If the owner of the property is required by the Department of Human Services to rent out the property in order to pay for the cost of care received in a nursing home, the homestead should remain on the property.

Minnesota Statutes, section 273.13, subdivision 25a, defines elderly assisted living facility property to mean “*residential real estate containing more than one unit held for use by the tenants or lessees as a residence for periods of 30 days or more, along with community rooms, lounges, activity rooms, and related facilities, designed to meet the housing, health, and financial security needs of the elderly. The real estate may be owned by an individual, partnership, limited partnership, for-profit*

Special Provisions

corporation or nonprofit corporation exempt from federal income taxation under United States Code, title 26, section 501(c)(3) or related sections.

An admission or initiation fee may be required of tenants. Monthly charges may include charges for the residential unit, meals, housekeeping, utilities, social programs, a health care alert system, or any combination of them. On-site health care may be provided by in-house staff or an outside health care provider...”

Primary Statutory Reference: 273.124, paragraph (f); 273.13, subdivision 25a

Homesteads for Property Requiring a Relative Co-Owner for Financing Purposes

An individual who is purchasing a property and is required by the terms of the financing agreement to have a relative shown on the deed as a co-owner is entitled to receive a full homestead benefit.

This provision only applies in the following situations:

1. A single person or married couple is purchasing a property for the first time; or
2. A person who was previously married is purchasing a property.

Both the owner/occupant and the related co-owner required for financing must complete the addendum to the homestead application prescribed by the Commissioner of Revenue and must provide the documentation necessary for the assessor to determine if full homestead benefits are warranted.

It should be noted that this type of homestead differs from a relative homestead and should not be treated as such. The owner/occupant may be eligible for property tax refund if all other qualifications are met.

The related, non-occupying co-owner is not required to be a Minnesota resident for this type of homestead.

Primary Statutory Reference: 273.124, paragraph (g)

Homestead of Property Subject to Jurisdiction of Probate Court

Minnesota Statutes, section 273.124, subdivision 1, paragraph (h), provides for homestead treatment if residential or agricultural real estate is occupied and used for purposes of a homestead by a child of a deceased owner, and the property is subject to the jurisdiction of probate court. It specifies that the child shall receive a relative homestead classification to the same extent to would be entitled to if the owner (parent) were still living, until the probate is completed. For the purposes of this provision, “child” includes a relationship by blood or by marriage.

Primary Statutory Reference: 273.124, paragraph (h)

Homestead of a Member of the United States Armed Forces, Peace Corps, or VISTA

Real estate that is actually occupied and used for the purpose of a homestead by a person or by a member of that person's immediate family should remain classified as a homestead even though the person or family is absent due to the person being on active duty with the United States Armed Forces or serving as a volunteer under either the VISTA or Peace Corps programs. The homestead must first be established before being called to active duty or prior to serving as a volunteer under these programs in order to continue receiving homestead during the person or family's absence. The owner must intend to return to the property and claim it as his/her homestead as soon as he/she is discharged or relieved from service. The property may be rented out and still retain the homestead so long as the person or family intends to return.

It should be noted that the military serviceperson or volunteer must maintain their Minnesota residency for income tax purposes in order to continue to homestead their property.

Any person who knowingly makes or submits to an assessor an affidavit or other statement that is false in any material matter to obtain or aid another in obtaining a benefit under this subdivision is guilty of a felony.

In the case of a person who is absent solely because he/she is on active duty with the United States Armed Forces, homestead benefits may be granted even if the property has not been occupied as a homestead by the person or member of the person's family (i.e. the homestead does not need to be established prior to being called away from home to active duty). To qualify, the person who acquires the property must notify the assessor of the acquisition and of his/her absence due to military service. When the person returns from military service and occupies the property as a homestead, he/she shall notify the assessor, who will provide for an abatement of the difference between the homestead and non-homestead taxes for the current and two preceding years – not to exceed the time the person owned the property.

Primary Statutory Reference: 273.124; subdivision 12

Property Undergoing Renovation by a Church or Non-Profit Organization

Another exception to the general "occupancy" rule is given to property that is owned by a church or a non-profit organization. Property that is not occupied as a homestead on the assessment date of January 2 will be classified as a homestead if it meets each of the following requirements:

1. the structure is a single family or duplex residence;
2. the property is owned by a church or an organization that is exempt from taxation under section 501(c)(3) of the IRS Code; and
3. the organization is in the process of renovating the property for use as a homestead by an individual or family whose income is no greater than 60 percent of the county or area median income, adjusted for family size, and that renovation process and conveyance for use as a homestead can reasonably be expected to be completed within 12 months after construction begins.

Special Provisions

The church or organization must apply to the assessor for classification under this provision within 30 days of its acquisition of the property, and must provide the assessor with the information necessary for the assessor to determine whether the property qualifies.

Primary Statutory Reference: 273.124, subdivision 18

Lease-Purchase Program

Qualifying buildings and appurtenances, together with the land on which they are located, may receive homestead benefits if the following conditions are met:

1. the property is leased for up to a 5-year period by the occupant under a lease-purchase program administered by the Minnesota Housing Finance Agency (MHFA) or a Housing and Redevelopment Authority (HRA) as defined under sections 469.001-469.047;
2. the occupant's income is no greater than 80 percent of the county or area median income, adjusted for family size;
3. the building consists of one or two dwelling units;
4. the lease agreement provides that part of the least payment is escrowed as a non-refundable down payment on the housing;
5. the administering agency verifies the occupant's income eligibility and certifies to the county assessor that the occupant meets the income standards; and
6. the property owner applies to the county by May 30 of each year.

For the purposes of the provision, "qualifying buildings and appurtenances" means a one or two unit residential building which was unoccupied, abandoned, and boarded up for at least 6 months.

Primary Statutory Reference: 273.124, subdivision 19

Trust Property Homestead

Real property held by a trustee under a trust is eligible for classification as homestead property if:

1. the grantor or surviving spouse of the grantor of the trust occupies and uses the property as a homestead (*this is the same as an owner-occupied homestead*);
2. a relative or surviving relative of the grantor who is considered a qualifying relative in the case of residential real estate; or who is considered a qualifying relative in the case of agricultural property, occupies and uses the property as a homestead (*this is the same as a relative homestead*);
3. a family farm corporation, joint farm venture, limited liability company or partnership operating a family farm rents the property held by a trustee under a trust, and a shareholder, member or partner of the corporation, joint farm venture, limited liability company or partnership occupies and uses the property as a homestead, and is actively farming the property on behalf of the corporation, joint farm venture, limited liability company or partnership (*these are special agriculture homestead situations*); or

4. a person who has received homestead classification for property taxes payable in 2000 on the basis of an unqualified legal right under the terms of the trust agreement to occupy the property as that person's homestead, and who continues to use the property as a homestead, or a person who received the homestead classification for taxes payable in 2005 under clause (3) above, but who does not qualify under clause (3) above for taxes payable in 2006 or thereafter, but who continues to qualify under clause (3) above as it existed for taxes payable in 2005. *(This has very limited applicability and can no longer be established – it had to have received homestead under this provision for the 2004 assessment for taxes payable in 2005.)*

“Grantor” is defined as the person creating or establishing a testamentary, inter vivos, or revocable or irrevocable trust by written instrument or through the exercise of a power of appointment. The grantor of the trust is considered the owner for homestead purposes.

Primary Statutory Reference: 273.124, subdivision 21

Leased Buildings or Land

Occasionally, assessors will come across situations where homes are owned by one or more individuals but are located on land owned by someone else. Are these properties eligible for homestead? Answer: Yes.

Minnesota law provides the following:

“For the purposes of class 1 [residential] determinations, homesteads include:

(a) buildings and appurtenances owned and used by the occupant as a permanent residence which are located upon land the title to which is vested in a person or entity other than the occupant;

(b) all buildings and appurtenances located upon land owned by the occupant and used for the purposes of a homestead together with the land upon which they are located, if all of the following criteria are met:

(1) the occupant is using the property as a permanent residence;

(2) the occupant is paying the property taxes and any special assessments levied against the property;

(3) the occupant has signed a lease which has an option to purchase the buildings and appurtenances;

(4) the term of the lease is at least five years; and

(5) the occupant has made a down payment of at least \$5,000 in cash if the property was purchased by means of a contract for deed or subject to a mortgage;

(c) all buildings and appurtenances and the land upon which they are located that are used for purposes of a homestead, if all of the following criteria are met:

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- (1) the land is owned by a utility, which maintains ownership of the land in order to facilitate compliance with the terms of its hydroelectric project license from the federal Energy Regulatory Commission;*
- (2) the land is leased for a term of 20 years or more;*
- (3) the occupant is using the property as a permanent residence; and*
- (4) the occupant is paying the property taxes and any special assessments levied against the property.*

Any taxpayer meeting all the requirements of this paragraph must notify the county assessor, or the assessor who has the powers of the county assessor pursuant to section 273.063, in writing, as soon as possible after signing the lease agreement and occupying the buildings as a homestead.”

Primary Statutory Reference: 273.124, subd. 7

Townhomes, Condominiums, Cooperatives and Common Areas

Upon meeting all other requirements and qualifications, a townhome or condominium unit, including a proportionate share of land and its interest in any common areas, shall be awarded the homestead benefits. The value of the unit's interest in the common area should be included in the total value of the unit along with the proportionate share of land. Remember, the common areas of the complex should not be valued or taxed separately as this leads to several issues including but not limited to:

1. the value of the common areas to a potential buyer separate from the condominium or townhome complex;
2. what happens in the event of non-payment of tax and the potential for tax forfeiture; and
3. the potential for property tax refund.

If the condominium, cooperative, or townhome property is owned by the occupant and used for the purposes of a homestead but is located upon land which is leased, that leased land must be valued and assessed as if it were homestead property within class 1 (residential) if all of the following criteria are met:

1. the occupant is using the property as his permanent residence;
2. the occupant or the Cooperative Association is paying the ad valorem property taxes and any special assessments levied against the land and structure;
3. the occupant or the Cooperative Association has signed a land lease; and
4. the term of the land lease is at least 50 years, notwithstanding the fact that the amount of the rental payment may be renegotiated at shorter intervals.

Primary Statutory Reference: 273.124, subd. 2

Owner-Occupied Hotel/Motel and Cooperative Property

Homestead benefits may be granted to owner-occupied motel property if the person who is residing at the motel is using that property as a homestead, is part-owner of the motel and is actively engaged in the operation of the motel business. The homestead is limited to the portion of the motel actually occupied by the person (no common area). Homestead treatment applies even if legal title to the property is in the name of a corporation or partnership and not in the name of the individual person residing at the motel.

A person meeting these requirements must notify the county assessor in writing to qualify for the homestead under this provision. The motel must meet the definition under Chapter 157 to qualify. Minnesota Statutes, section 157.15, subdivision 7, defines a hotel or motel to be “*a building, structure, enclosure, or any part thereof used as, maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished to the public and furnishing accommodations for periods of less than one week.*”

Primary Statutory Reference: 273.124, subd. 17; 157.15, subd. 7

Buildings Owned by Non-Profit Corporations

When a building containing several dwelling units is owned by an entity organized under Chapter 317A (Non-Profit Corporations) and operating as a non-profit corporation, and the entity enters into membership agreements with persons under which those persons are entitled to life occupancy in a unit in the building, homestead classification must be given to each unit so occupied and the entire building must be assessed the same as cooperatives and charitable organizations.

Primary Statutory Reference: 273.124, subd. 4

Continuing Care Facilities

When a building containing several dwelling units is owned by an entity which is regulated under the provisions of Chapter 80D (Continuing Care Facilities) and operating as a continuing care facility, and the entity enters into residency agreements with persons who occupy a unit in the building under which those residents are entitled to occupancy in the building after personal assets are exhausted and regardless of ability to pay the monthly maintenance fee, homestead classification shall be given to each unit so occupied and the entire building shall be assessed the same as cooperatives and charitable organizations.

Primary Statutory Reference: 273.124, subd. 5

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Cooperatives and Charitable Corporations

- A. When a property is owned by a corporation or association that is organized under Chapter 308A (Cooperatives), and each person who owns a share or shares in the corporation or association is entitled to occupy a building on the property or a unit within a building on the property, the corporation or association may claim homestead treatment for each dwelling for each dwelling or on each unit occupied by a shareholder. Each building or unit must have its own legal description or number.

The net tax capacity of each building or unit that qualifies for a homestead cannot include more than ½ acre of land (if platted) or 80 acres of land (if unplatted).

The net tax capacity of the property is the sum of the net tax capacities of each of the units comprising the property, including the net tax capacity of each unit's proportionate share of the land and any common areas.

To qualify for homestead treatment, the corporation or association must be wholly owned by persons having a right to occupy a building or unit owned by the corporation or association. A charitable corporation that is organized under the laws of Minnesota and not otherwise exempt, with no outstanding stock, qualifies for homestead treatment with respect to member residents of the buildings or dwelling units who have purchased and hold residential participation warrants entitling them to occupy the units.

- B. To the extent provided in paragraph A above, a cooperative or corporation organized under Chapter 308A or Chapter 308B (Cooperative Association) may obtain individual valuation and tax statements for each residential homestead, residential non-homestead, or each seasonal residential recreational unit that is not used for commercial purposes. The appropriate class rates shall be applicable as if each unit were a separate tax parcel. However, this is provided the tax parcel which exists at the time the cooperative or corporation makes application under this subdivision shall be a single parcel for purposes of property taxes or the enforcement and collection thereof, other than as provided in paragraph A or B.
- C. A member of a corporation or association may initially obtain the separate assessment, valuation and tax statements as provided in paragraph B by applying to the assessor by June 30 of the assessment year.
- D. When units within a building no longer qualify under paragraph A or B, the current owner must notify the assessor within 30 days. Failure to do so will result in the loss of benefits under paragraph A or B for taxes payable in the year the failure is discovered.

Primary Statutory Reference: 273.124, subd. 3

Leasehold Cooperatives

Ordinarily, someone must have an ownership interest in a property to receive a homestead. However, special legislation allows homesteads for those meeting certain conditions below. To qualify for homestead status as a leasehold cooperative, such properties must be owned by a non-profit corporation subject to the provisions of Chapter 317A (Non-Profit Corporations) and qualifying under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, or by a limited partnership which corporation or partnership operates a property in conjunction with a cooperative association and receives public financing. In these cases, the cooperative association, on behalf of the members, may claim homestead for each dwelling unit occupied by a member of the cooperative. The cooperative association must provide the assessor with the Social Security numbers of those members. In addition, the following conditions must be met:

1. The cooperative association must be organized under Chapter 308A, and all voting members of the board of directors must be resident tenants of the cooperative and must be elected by the resident tenants of the cooperative.
2. The cooperative association must have a lease for occupancy of the property for a term of at least 20 years, which permits the cooperative association, while not in default of the lease, to participate materially in the management of the property, including material participation in establishing budgets, setting rent levels, and hiring and supervising a management agent.
3. To the extent permitted under state and federal law, the cooperative association must have a right under a written agreement with the owner to purchase the property if the owner proposes to sell it. If the cooperative association does not purchase the property when it is offered for sale, the owner may not subsequently sell the property to another purchaser at a price lower than the price at which it was offered for sale to the cooperative association unless the cooperative association approves the sale.
4. A minimum of 40% of the cooperative association's members must have incomes at or less than 60% of the area median gross income as determined by the United States Secretary of Housing and Urban Development under section 142(d)(2)(B) of the Internal Revenue Code. For purposes of this clause, "member income" means the income of a member existing at the time the member acquires his or her cooperative membership.
5. If a limited partnership owns the property, it must include, as the managing general partner, a non-profit organization operating under the provisions of Chapter 317A and qualifying under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The limited partnership agreement must provide that the managing general partner has sufficient powers so that it materially participates in the management and control of the limited partnership.

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6. Prior to becoming a member of a leasehold cooperative described in this subdivision, a person must receive notice that describes the leasehold cooperative property in plain language, including the effects of classification under this subdivision on rents, property taxes, and tax credits or refunds, and operating expenses. It must also state that copies of the articles of incorporation and bylaws of the cooperative association, the lease between the owner and the cooperative association, a sample sublease between the cooperative association and a tenant, and, if the owner is a partnership, a copy of the limited partnership agreement, can be obtained upon written request at no charge from the owner. The owner must provide the requested information within 7 days of receiving the request.
7. If a dwelling unit of a building was occupied on the 60th day prior to the date on which the unit became leasehold cooperative property, then the notice described in paragraph 6 must have been sent by first class mail to the occupant of the unit at least 60 days prior to the date on which the unit became leasehold cooperative property. For purposes of the notice under this paragraph, the copies of the documents referred to in paragraph 6 may be in proposed version, provided that any subsequent material alteration of those documents made after the occupant has requested them shall be disclosed. Copies of the articles of incorporation and certificate of limited partnership shall be filed with the secretary of state after the expiration of the 60-day period unless the change to leasehold cooperative does not proceed.
8. The county attorney of the county in which the property is located must certify to the assessor that the property meets the requirements of this subdivision.
9. The public financing received must be from at least one of the following sources:
 - a. Tax increment financing proceeds used for the acquisition or rehabilitation of the building or interest rate write-downs relating to the acquisition of the building.
 - b. Government-issued bonds exempt from taxes under section 103 of the Internal Revenue Code, the proceeds of which are used for the acquisition or rehabilitation of the building.
 - c. Programs under section 221(d)(3), 202, or 236, of Title II of the National Housing Act.
 - d. Rental housing program funds under Section 8 of the United States Housing Act of 1937 or the market rate family graduated payment mortgage program funds administered by MHFA that are used for the acquisition or rehabilitation of the building.
 - e. Low-income housing credit under section 42 of the Internal Revenue Code.

- f. Public financing provided by a local government used for the acquisition or rehabilitation of the building, including grants or loans from federal community development block grants, HOME block grants, or residential rental bonds issued under Chapter 474A.
 - g. Other rental housing program funds provided by the MHFA for the acquisition or rehabilitation of the building.
10. At the time of the initial request for homestead classification or of any transfer of ownership of the property, the governing body of the municipality where the property is located must hold a public hearing and make the following findings:
- a. That the granting of the homestead treatment of the apartment's units will facilitate safe, clean, affordable housing for the cooperative members that would otherwise not be available absent the homestead classification.
 - b. That the owner has presented information satisfactory to the governing body showing that the savings garnered from the homestead classification on the units will be used to reduce tenant's rents or provide a level of furnishing or maintenance not possible without the homestead classification.
 - c. That all requirements of paragraphs 2, 4, and 9 have been met.

Homestead treatment must be afforded to units occupied by members of the cooperative association, and the units must be assessed as provided in subdivision 3 provided that any unit not so occupied shall be classified and assessed pursuant to the appropriate class. No more than three acres of land may, for assessment purposes, be included with each dwelling unit that qualifies for homestead treatment under this subdivision.

When dwelling units no longer qualify under this subdivision, the current owner must notify the assessor within 60 days. Failure to notify the assessor will result in the loss of benefits under this subdivision for taxes payable in the year that the failure is discovered. For these purposes, "benefits under this subdivision" means the difference in the net tax capacity of the units which no longer qualify as computed under this subdivision and as computed under the otherwise applicable law, multiplied by the local tax rate applicable to the building for taxes payable that year. It will also result in a penalty equal to 100% of that amount.

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Preliminary Approval of Leasehold Cooperatives

Preliminary approval for classification as a leasehold cooperative may be granted to property when a developer proposes to construct one or more residential dwellings or buildings using funds provided by the Minnesota Housing Finance Agency if all of the following conditions are met.

1. The developer must present an affidavit to the county attorney and to the governing body of the municipality that includes a statement of the developer's intention to comply with all requirements in subdivision 6 and a detailed description of the plan for doing so.
2. The commissioner of the MHFA must provide the county attorney and governing body with a description of the financing and related terms the commissioner proposes to provide with respect to the project; and an objective assessment of the likelihood that the project will comply with the requirements of subdivision 6.
3. The county attorney must review the materials provided above and may require the developer or the MHFA to provide additional information. If the county attorney determines that it is likely that the project will meet the requirements of this subdivision, the county attorney may provide preliminary approval to treat the property as a leasehold cooperative.
4. The governing body shall conduct a public hearing as provided in subdivision 6, paragraph 10, and make its preliminary findings based on the information provided by the developer and MHFA.

Upon completion of the project and creation of the leasehold cooperative, actual compliance with the requirements of this subdivision must be demonstrated and certified by the county attorney. A second hearing by the governing body is not required.

If the county attorney finds that the homestead treatment granted pursuant to a preliminary approval under this subdivision must be revoked because the completed project failed to meet the requirements of the subdivision, the benefits of the treatment shall be recaptured. The county assessor shall determine the amount by which the tax imposed on the property was reduced because it was treated as a leasehold cooperative. The developer will be charged an amount equal to the tax reduction received, or if the county attorney determines that the failure to meet the requirements was due to the developer's intentional disregard of the requirements, 150% of the tax reduction received.

Primary Statutory Reference: 273.124, subd. 6a

Manufactured Home Park Cooperatives

Manufactured home park cooperatives allow lessees to create an association that buys the park itself, manages the park and guarantees every member of the association a site upon which to locate a manufactured home. There is at least one, maybe more, nonprofit group that is assisting the lessees

to organize themselves into cooperative associations and financing the purchase of the park. Currently, we are aware of several manufactured home park cooperatives in Minnesota.

Formation of a manufactured home park cooperative can have property tax implications. Ordinarily, manufactured home parks are classified as class 4c(5) property and taxed at 1.25%. However, all or a portion of a manufactured home park cooperative's estimated market value may qualify for the homestead class with a rate of 1% on the first \$500,000 of value and 1.25% on the remainder.

When a manufactured home park is owned by a corporation or association organized under Chapter 308A (Cooperatives), and each person who owns a share or shares in the corporation or association is entitled to occupy a lot within the park, the corporation or association may claim homestead treatment for each lot occupied by a shareholder. Each lot must be designated by legal description or number, and each lot is limited to not more than ½ acre of land for each homestead. The park shall be valued and assessed as if it were homestead property within Class 1 if all of the following criteria are met:

1. The occupant is using the property as a permanent residence;
2. The occupant or the cooperative association is paying property taxes and any special assessments levied against the land and structure either directly or indirectly through dues to the corporation; and
3. The corporation or association organized under Chapter 308A is wholly owned by persons having a right to occupy a lot owned by the corporation or association.

The charitable corporation, organized under the laws of Minnesota with no outstanding stock and granted a ruling by the IRS for 501(c)(3) tax-exempt status, qualifies for homestead treatment with respect to member residents of the manufactured home park who hold residential participation warrants entitling them to occupy a lot in the manufactured home park.

A manufactured home park cooperative is valued the same as any other manufactured home park but the classification may be different. In order to determine if any sites or the entire park cooperative is eligible for the homestead treatment, the assessor must work with the representatives of the cooperative association. The assessor needs to see how many lots are on the plan and how the cooperative association has laid out the lots.

The assessor must first determine a value for the home park as a whole. However, only the value of the lots occupied and used for purposes of a homestead by a member of the cooperative can be given homestead. If there are 50 lots and only 25 are being used for homesteads by members of the cooperative, only the total value of those 25 lots can be classified as homestead, with the remainder being classed as 4c(5) manufactured home park.

Primary Statutory Reference: 273.124, subd. 3a

Special Agricultural Homesteads

Special Agricultural Homesteads

Introduction

This information was originally issued in a Department of Revenue bulletin to all assessors in August 2006. It was been updated for law changes in following the 2009 legislative session. This information is presented in conjunction with the department's flow chart for determining a property's eligibility for agricultural homestead and is intended to replace **all** previous correspondence that has been issued by the department on special agricultural homesteads.

In order to optimize the use of the flow chart, it is essential that we all use the same terminology. Therefore, we have included a glossary of terms applicable for use with special agricultural homesteads. Some of the most-used terms are also defined on the bottom of the flow chart. These definitions are all statutorily defined, commonly-accepted legal definitions, or developed by the Department of Revenue. It is important that you review the terms in the glossary in order to fully understand the bulletin and the flow chart.¹

We have tried to simplify the process by developing a flow chart that is based on three basic questions:

1. Who owns the property?
2. Who lives on the property?
3. Who farms the property?

Using the flow chart, included in the Supplemental Information Module (Module 9) and the answers to these questions, you should be able to determine who qualifies for Special Ag Homesteads. We also included a section to indicate who receives the homestead. This is the person whose Social Security number should be entered into the computer. This section is highlighted in purple and is located near the bottom of the flow chart. There is a row to highlight which homestead application form should be used in each situation. Obviously, you may use the appropriate re-application form in subsequent years when nothing has changed from the time the original special ag homestead application was completed.

Special ag homestead forms are updated and e-mailed to all the counties annually. These forms are to be used for the current assessment year for taxes payable in the following year. It is important to remember that special ag Homesteads must be applied for on an annual basis based on current crop year. These forms are not posted on our website because we do not want to confuse taxpayers and we do not want them to return completed applications to the department.

¹ The full text of the statutes that are referenced below can be viewed by section on the Minnesota Legislature's website, www.leg.state.mn.us

History of Special Ag Homesteads

To understand the vast complexities of special ag homesteads, it is necessary to review the history of how we got them into existence in the first place. Special ag homesteads were a direct result of the 1997 flooding in the Red River Valley. Special session legislation allowed property owners to retain the agricultural homestead classification on farms that the owner abandoned due to the flood. This special provision was limited to six counties and required the owner to live within 30 miles of the farm.

In 1998, southwestern Minnesota was hit with an outbreak of tornadoes. The special ag homestead provision was then expanded to include seven counties in southwestern Minnesota. It allowed people to retain the agricultural homestead classification on farms that the owner abandoned due to the tornadoes as long as the owner lived within 50 miles of the farm.

In 1999, the provision was expanded to include the entire state of Minnesota. The expansion allowed farmers to retain the agricultural homestead classification even if the owner did not live on their farm or on any farm as long as they met **all** of the following requirements:

1. The owner must live within four cities, townships or a combination thereof from the farm;
2. The owner must actively farm the land;
3. The owner must be a Minnesota resident;
4. Neither the owner nor their spouse claim another agricultural homestead in Minnesota; and
5. The farm consists of at least 40 contiguous acres.

The special ag homestead provision was expanded again in 2000. This expansion allowed the owner's son or daughter to actively farm the property. It also allowed an authorized entity to own the property and receive homestead if a member of that authorized entity actively farmed the property.

Further expansion occurred in 2001. This new provision allowed the owner, owner's spouse, or child of the owner or owner's spouse to actively farm property either on their own behalf OR on behalf of an authorized entity of which they are a member. In addition, an exception was added for owners who live farther than four townships/cities from their farm in employer-provided housing; the law was expanded to include property held under a trust; and it allowed an authorized entity to lease land from a member of the entity and still qualify for a special agricultural homestead.

In 2005, the Legislature expanded the provision to include property farmed by a grandchild of the owner or spouse of the owner, or, for property held under a trust, farmed by a grandchild of the grantor of the trust. It was also specified that for homesteads of property held under a trust and rented to an authorized entity, the property must be the homestead of or actively farmed by the grantor, spouse of the grantor, or child of the grantor who must also be a shareholder, member, or partner of the entity that is leasing the property. Previously, the shareholder, member, or partner did

Special Agricultural Homesteads

not need to be a qualifying relative of the grantor to receive homestead under this provision. It also includes a “grandfather” provision for those who previously qualified but no longer will qualify due to the law change.

In 2007, special legislation was passed to allow property owners who abandoned their agricultural homestead property due to flooding in Dodge, Fillmore, Houston, Olmsted, Steele, Wabasha, or Winona counties to retain the homestead for the 2007 assessment and beyond so long as the property remains under the same ownership and the owner continues to live within 50 miles of one of the parcels of land.

In 2008, brothers and sisters were added to the list of relatives who can qualify for agricultural relative homesteads as well as special ag homesteads. In addition, clarification was added that provides that the requirement to have at least 40 acres to qualify for a special agricultural homestead allows adjustments to be made for undivided government lots and correctional 40s.

Farms Owned by Entities

Ownership of farms has changed significantly over the past two decades. Gone are the stereotypical sole proprietorships where a single individual owns and operates his/her own farm. Those sole proprietorships have been replaced by different entities including partnerships, limited partnerships, limited liability companies, corporations, and trusts. Typically, farmers will transfer ownership of their property into one of the entities to save on income or Social Security taxes. Property taxes are often the least of their concerns - until they lose their homestead. It is important for assessors to have a basic understanding of the different types of entities. Please review the glossary for additional information on the types of entities.

It is also important to remember that all of the entities must be authorized to own and farm land under Minnesota Statutes, section 500.24, in order to qualify for homestead. Entities including corporations, limited partnerships, limited liability companies, and trusts must register with the Minnesota Department of Agriculture by filing the Minnesota Corporate Farm Application prior to purchasing or engaging in farming of agricultural land. A copy of the application may be viewed at:

<http://www.mda.state.mn.us/news/publications/licensing/ag01313.pdf>

In addition to the initial filing, entities are required by law to fill out and return a report each year by April 15, indicating if anything has changed. Therefore, it is perfectly appropriate for assessors to ask for a copy of the letter that the entity receives from the Department of Agriculture granting them authorization to own and farm land under section 500.24. If the owner(s) did not keep a copy for their records, they may request a copy from the Department of Agriculture. In the absence of a copy of the letter, it is up to the assessor to contact the Department of Agriculture and verify that the entity is authorized under section to own and farm land in Minnesota.

Special Agricultural Homesteads

It is important to remember that properties held by different entities **cannot** be linked together, nor can the homestead be carried over from one entity to another. Examples include, but are not limited to:

- individually-owned property to entity-owned property;
- partnership-owned property to corporation-owned property; and
- one partnership to another partnership.

Linking parcels will be examined in greater detail later in this module.

Special Agricultural Homesteads

Possible Homestead Scenarios for Agricultural Property

1. Property that is owned, occupied, and farmed by a natural person. Typically, the property is owned in fee simple ownership. A Property Tax Refund (PTR) is available on the house, garage and first acre (HGA). The homestead is granted in the name of the owner/occupant/farmer. The farmer is irrelevant in this case.

Primary Statutory Reference: 273.124, subd. 1, para. (a)

2. Property that is owned and occupied by a natural person but farmed by another person. In this situation, the land is often rented to and farmed by a neighbor or family member. This type of farm is typically owned in fee simple ownership. A PTR is available on the house, garage, and first acre. As a general rule, if the owner is a Minnesota resident and occupies the property, it doesn't matter who actually farms the property, the property is eligible for homestead. The homestead is granted in the name of the owner/occupant. The farmer is irrelevant in this case.

Primary Statutory Reference: 273.124, subd. 1, para. (a)

3. Life estates. A person deeds the property to someone else (usually a child/children) but retains the right to occupy the property for the remainder of his/her life. In this case, the property may be homesteaded in the name of the person retaining the right to occupy the property or in the name of a qualifying relative of the life estate holder who occupies the property. The life estate may be for the house, garage, and first acre or on the entire farm, depending on the wording of the life estate documents. It is up to the assessor to verify this information before granting the homestead. PTR is available only on the HGA. The homestead is in the name of the life estate holder who occupies the property. The farmer is irrelevant in this case.

Primary Statutory Reference: 273.124, subd. 1, para. (a)

4. Vested remainder interests. This occurs when there is a life estate on a property, and the remainder interest follows the life estate. For example, if parents sell their property to their son, but retain a life estate (the right to occupy until their death) on the entire farm, the child's interest is called a vested remainder interest in that they do not have the right to occupy the property until their parents pass away. The child could be granted a vested remainder homestead in this case. This type of homestead happens fairly infrequently since the relative homestead provisions came into effect. The homestead is in the name of the holder of the vested remainder interest.

Primary Statutory Reference: 273.124, subd. 14, para. (d)

Special Agricultural Homesteads

5. Agricultural relative homestead. Property that is owned by one person, occupied by a qualifying relative, and farmed. The qualifying relatives for agricultural property are the child, grandchild, sibling, or parent of the owner or the child, grandchild, sibling, or parent of the spouse of the owner. It should be noted that these are different than the qualifying relatives for residential property. If the property is occupied by a qualifying relative for agricultural property, the entire property can receive an agricultural relative homestead, regardless of who farms the property.

You may grant agricultural relative homesteads in cases of fractional ownership. It is incumbent upon the assessor to verify that the applicant meets all of the qualifications. These include:

- both the owner(s) and qualifying relative(s) must be Minnesota residents;
- neither the owner (or owners in cases of fractional ownership) nor the qualifying relative(s) may claim another ag homestead in Minnesota; and
- there may only be **ONE** ag relative homestead per family.

For example, if ownership of the farm was split between six children and the farm was occupied by the parents, the property could qualify for an agricultural relative homestead.

Neither the owner, nor the qualifying relative is eligible for a PTR. The homestead is granted in the name of the qualifying relative who occupies the property.

It should also be noted that with the exception of trusts, it is impossible to receive an agricultural relative homestead on entity-owned property. Corporations, partnerships, limited liability companies, etc. are legal entities in and of themselves. They are not people, so they cannot have relatives. If a property is occupied by a qualifying relative of the grantor of trust-held property, the relative can receive an agricultural relative homestead if they meet all of the other requirements.

Primary Statutory Reference: 273.124, subd. 1, para. (d)

6. Residential relative homestead on HGA. If a farm is occupied by a relative that does not qualify for an agricultural relative homestead but does qualify for a residential relative homestead (i.e. a niece or nephew), OR if the farm is not owned by a Minnesota resident, it may be appropriate to grant a residential relative homestead on the house, garage on immediately surrounding one acre (HGA). The remaining agricultural land would be either non-homestead or it may qualify for a different type of homestead. Neither the owner nor the qualifying relative is eligible for a PTR. The homestead is granted in the name of the qualifying relative who occupies the property.

Primary Statutory Reference: 273.124, subd. 1, para. (c)

Special Agricultural Homesteads

7. Trust-held property. Agricultural property that is held under a trust may be homesteaded if it is occupied by the grantor (who must be a Minnesota resident) or the surviving spouse of the grantor (who also must be a Minnesota resident). This would be a regular agricultural homestead. It may also qualify if the property is occupied by a qualifying relative or surviving qualifying relative of the grantor. Again, if the property is occupied by a qualifying relative for an agricultural homestead, it should be given an agricultural relative homestead. If the property is occupied by a qualifying relative that is a qualifying relative for residential property but not for agricultural property, the relative should be given a residential relative homestead on the HGA. The property may only receive PTR if it is occupied by the grantor or the grantor's spouse (not qualifying relatives) and it is only available on the HGA. The homestead is granted in the name of the occupant – the grantor, grantor's surviving spouse, or qualifying relative that occupies the property.

Primary Statutory Reference: 273.124, subd. 21, clauses (1) and (2)

8. Less than 10 acres.* Property of less than 10 acres that was homesteaded by its owner **for the 1998 assessment** is grandfathered in as an agricultural homestead if:
- a. The parcel on which the house is located is contiguous on at least two sides to either agricultural land, land owned or administered by the U.S. Fish and Wildlife Service, or land administered by the DNR on which payments in lieu of tax are made under sections 477A.11 to 477A.14; AND
 - b. The owner also owns a noncontiguous parcel of agricultural land that is at least 20 acres in size; AND
 - c. The noncontiguous land is located not farther than four townships, cities or a combination thereof from the homestead; AND
 - d. The agricultural use value of the noncontiguous land and farm buildings is equal to at least 50% of the market value of the house, garage and one acre of land.

This homestead is granted in the name of the owner/occupant.

****Homesteads can no longer be established under this provision and they are not shown on the flow chart; but homesteads granted under this provision for the 1998 assessment may continue regardless of the subsequent use of the adjoining parcels.***

Primary Statutory Reference: 273.124, subd. 14, para. (a)

Special Agricultural Homesteads

9. Flooded agricultural homesteads. ** Agricultural land and buildings that were agricultural homestead property for the 1997 assessment shall remain classified as agricultural homestead for subsequent assessments if:
- a. The property owner abandoned the homestead dwelling located on the agricultural homestead as a result of the April 1997 floods; AND
 - b. The property is located in either Polk, Clay, Kittson, Marshall, Norman, or Wilkin counties; AND
 - c. The agricultural land and buildings remain under the same ownership for the current assessment year as existed for the 1997 assessment and continue to be used for agricultural purposes; AND
 - d. The dwelling occupied by the owner is located in Minnesota and is within 30 miles of one of the parcels of agricultural land that is owned by the taxpayer; AND
 - e. The owner notified the county assessor that the relocation was due to the 1997 floods, and the owner furnished the assessor any information deemed necessary by the assessor in verifying the change in dwelling.

This homestead should be granted in the name of the owner.

*****Homesteads can no longer be established under this provision but homesteads granted under this provision for the 1997 assessment may continue as long as the ownership remains the same and any dwellings remain uninhabited. This option is not reflected on the flow chart.***

Primary Statutory Reference: 273.124, subd. 14, para. (e)

10. Tornado-affected agricultural homesteads. *** Agricultural land and buildings that were agricultural homestead property for the 1998 assessment shall remain classified as agricultural homesteads for subsequent assessments if:
- a. The property owner abandoned the homestead dwelling located on the agricultural homestead as a result of damage caused by a March 29, 1998 tornado; AND
 - b. The property is located in either Blue Earth, Brown, Cottonwood, LeSueur, Nicollet, Nobles, or Rice counties; AND
 - c. The agricultural land and buildings remain under the same ownership for the current assessment year as existed for the 1998 assessment year; AND
 - d. The dwelling occupied by the owner is located in Minnesota and is within 50 miles of one of the parcels of agricultural land that is owned by the taxpayer; AND
 - e. The owner notifies the county assessor that the relocation was due to a March 29, 1998 tornado and the owner furnishes the assessor any information deemed necessary by the assessor in verifying the change in homestead dwelling.

Special Agricultural Homesteads

This homestead should be granted in the name of the owner.

******Homesteads can no longer be established under this provision but homesteads granted under this provision for the 1998 assessment may continue as long as the ownership remains the same and any dwellings remain uninhabited. This option is not reflected on the flow chart.***

Primary Statutory Reference: 273.124, subd. 14, para. (f)

11. Flooded agricultural homesteads.**** Agricultural land and buildings that were agricultural homestead property for the 2007 assessment shall remain classified as agricultural homestead for subsequent assessments if:
- a. The property owner abandoned the homestead dwelling located on the agricultural homestead as a result of the August 2007 floods; AND
 - b. The property is located in either Dodge, Fillmore, Houston, Olmsted, Steele, Wabasha, or Winona counties; AND
 - c. The agricultural land and buildings remain under the same ownership for the current assessment year as existed for the 2007 assessment and continue to be used for agricultural purposes; AND
 - d. The dwelling occupied by the owner is located in Minnesota and is within 50 miles of one of the parcels of agricultural land that is owned by the taxpayer; AND
 - e. The owner notified the county assessor that the relocation was due to the August 2007 flood, and the owner furnished the assessor any information deemed necessary by the assessor in verifying the change in dwelling.

For taxes payable in 2009, the owner must have notified the assessor by December 1, 2008, of his/her eligibility for this special agricultural homestead.

*******Homesteads can no longer be established under this provision but homesteads granted under this provision for the 2008 assessment may continue as long as the ownership remains the same and any dwellings remain uninhabited. This option is not reflected on the flow chart.***

Primary Statutory Reference: 273.124, subd. 14, para. (i)

12. Actively engaged in farming. There is one possible homestead scenario for those who are “actively engaged in farming.” See page 57.
13. Actively farming. There are five possible homestead scenarios for those who are “actively farming.” See page 59.

Special Agricultural Homesteads

Rules for Special Agricultural Homesteads

The following rules have been developed and must be followed to ensure consistent application of the special ag homestead provisions across the state.

Four Cities/Townships or Combination Thereof Rule

This rule is consistent for all types of non-contiguous farm homestead property. Non-contiguous farmland must be located within four cities, townships or a combination of four cities and townships in order to be linked to the base parcel and therefore qualify for homestead. For example, if the base parcel is located in township A, then farm land could also be in township A, B, C, D or E to qualify for homestead. Land located in township F does not qualify.

<u>Base Parcel</u> Township A	YES Township B	YES Township C	YES Township D	YES Township E	NO Township F
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It should also be noted that corner-to-corner townships can be counted as contiguous as are correctional townships. The example illustrated on the next page should help clarify this explanation.

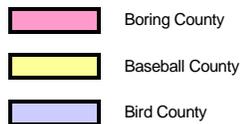
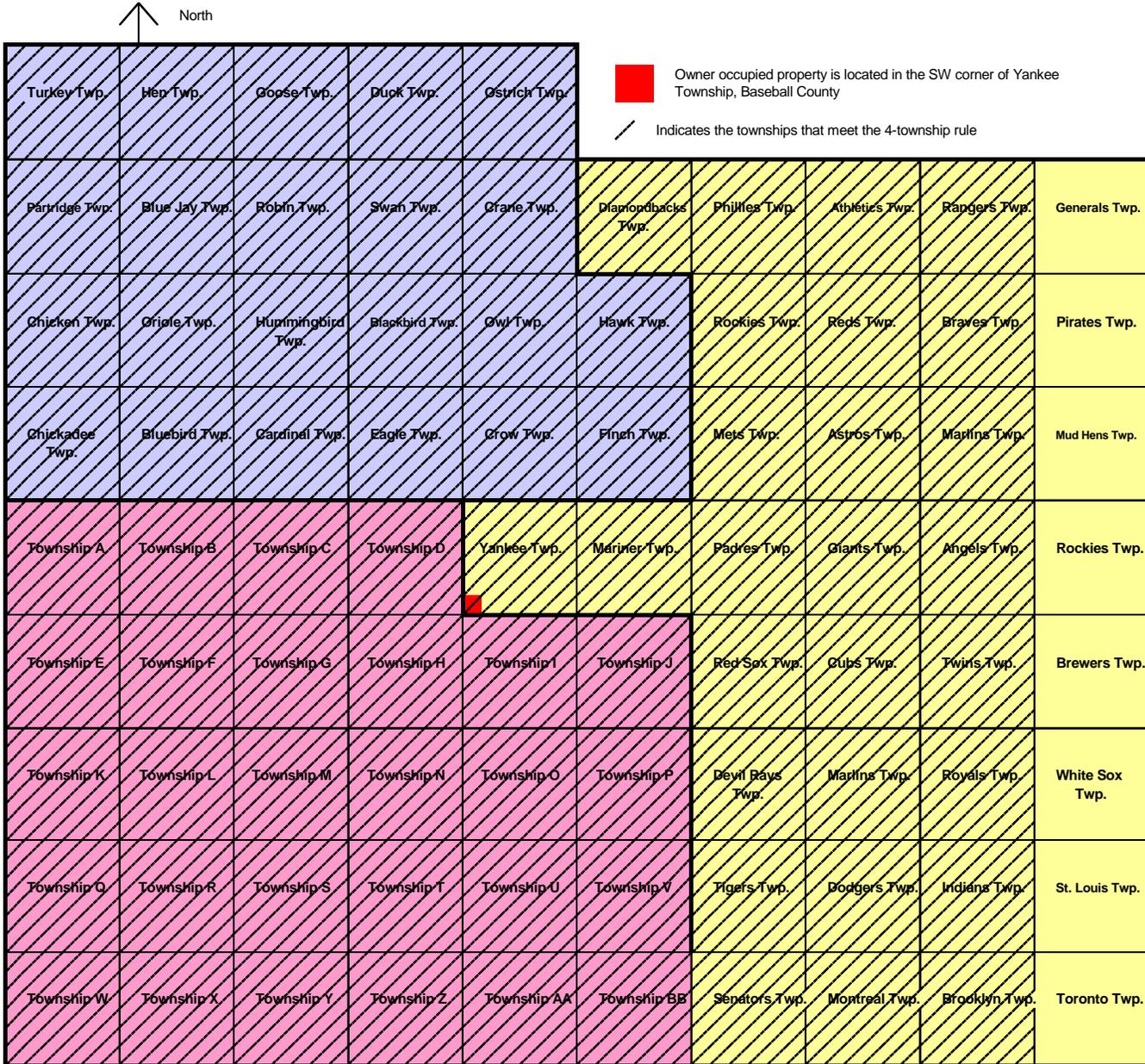
This rule has been tested and upheld in Minnesota Tax Court (see *Allan W. and Janet T. Lamkin v. County of Sibley*, C2-02-70, 2002).

It must be stressed that all non-contiguous land must qualify for the agricultural classification on its own merits under Minnesota Statutes, section 273.13, meaning that there must be at least 10 acres in agricultural production, or there must be an exclusive or intensive agricultural use. Just because the base parcel qualifies for the ag class, it does not mean that everything a farmer owns within 4 cities/townships then automatically qualifies for ag homestead.

Properties that do not meet the statutory requirements for the agricultural classification under section 273.13 are not to be considered part of the homestead, and are to be classified according to use.

Special Agricultural Homesteads

Four Township Rule



Over 50% Rule

This administrative rule was developed in 2001 in conjunction with legislative staff and applies **only to special agricultural homesteads where no one lives on the farm (actively farming).**

In order for land to qualify for an actively farming homestead, over 50% of the class 2a land (excluding CRP, RIM, CREP, etc.) must be actively farmed by the person who is receiving the homestead. There are three basic items to consider when applying this rule:

1. The parcel (or contiguous land mass) must be at least 40 acres in size, AND
2. There must be enough of an agricultural use (10 acres in agricultural production) to sustain the agricultural class pursuant to Minnesota Statutes, section 273.13, AND
3. You must consider how much of the land is farmed by the person receiving homestead.

Notes:

- **Farmed land** is defined as land that is used for agricultural purposes and qualifies as class 2a.
- Land enrolled in CRP/CREP/RIM, by definition, is **not farmed land**, even if they qualifies for the 2a classification. The CRP/CREP/RIM acres are excluded from determining whether the property owner actively farms 50% of the class 2a land.
- Wetlands, wastelands, wooded land, etc. and other acreage classed by the assessor as 2b rural vacant land or other are **not farmed land**, even if they are a part of the agricultural homestead land mass.
- Land that is rented out to another farmer who is farming it **is** considered to be agricultural (farmed) class 2a land.
- Each non-contiguous land mass must qualify on its own merits. Just because a farmer meets the requirements for one of the land masses he or she owns, that **does not** carryover to all property the farmer owns within four townships/cities.
- The rule **does** allow a farmer to enroll only one parcel rather than an entire contiguous land mass in actively farming if he/she is farming only one parcel in a contiguous land mass.

The following examples should help provide clear direction as to whether or not a property qualifies for a special agricultural homestead.

Special Agricultural Homesteads

Examples

Example #1

A farmer lives on a residential parcel in City X and receives a residential homestead. The farmer also has a 200-acre farm, but he only actively farms 100 acres himself. He rents 60 acres to his neighbor. The other 40 acres are wetlands and are class 2b.

Step #1: Take the total acreage of the parcel/land tract and subtract the acreage that is not farmed.

$$(200 \text{ total acres} - 40 \text{ acres wetland}) = 160 \text{ farmed acres}$$

Step #2: Divide the number of acres actively farmed by the owner by the number of total farmed acres.

$$100/160 = .625 \text{ or } 62.5\%$$

Step #3: The answer must be greater than .50 or 50% in order to be eligible for a special ag homestead.

$$.625 (62.5\%) > .50 (50\%) \quad \textit{The property may be granted an actively farming homestead if all other requirements are met.}$$

Example #2

A farmer lives on a residential parcel in City X and receives a residential homestead. The farmer also owns three contiguous 100-acre parcels which are entirely class 2a agricultural land and are farmed. He rents out two of the parcels and actively farms the third parcel himself. In this case, he only farms 1/3, or 33 1/3%, of the farmed land mass. He could receive a special ag homestead on only the 100-acre parcel that he actively farms. The other two 100-acre parcels would not be eligible for an actively farming homestead.

Step #1: Take the total acreage of the parcel/land tract and subtract the acreage that is not farmed.

$$(300 \text{ total acres} - 0 \text{ acres that are not farmed}) = 300 \text{ farmed acres}$$

Step #2: Divide the number of acres actively farmed by the owner by the number of total farmed acres.

$$100/300 = .333 \text{ or } 33.3\%$$

Step #3: The answer must be greater than .50 or 50% in order to be eligible for an actively farming homestead.

$$.333 (33.3\%) < .50 (50\%)* \quad \textit{The entire contiguous land mass that he owns cannot be granted an actively farming homestead. *HOWEVER, the farmer may receive a special ag homestead on the 100-acre parcel that he is actively farming. The two parcels that are rented to the neighbor should remain class 2a agricultural non-homestead.}$$

Example #3

A farmer lives on a residential parcel in City X. He owns and actively farms all of a 60-acre parcel in Township A and all of a 30-acre parcel in Township B. Townships A and B are contiguous to City X, but the parcels are not contiguous to each other. What qualifies for a special ag homestead? The 60-acre parcel located in Township A qualifies since it meets the 40-acre minimum size. However the 30-acre parcel in Township B does not qualify because it does not meet the 40-acre minimum size requirement.

Linking Parcels

Can an individually-owned parcel of property be “linked” to other property that is owned by an authorized entity of which the individual person is a qualified person? **Answer:** ABSOLUTELY NOT – even if the individual owner of the base parcel is the sole member of the authorized entity that owns/farms the other property.

It is NOT appropriate to link properties where the ownership entities differ such as in the case of individually owned parcels linked to corporate or partnership-owned parcels.

For example, Ole and Lena own and occupy their own farm where they receive an owner-occupied special agricultural homestead. Ole and Lena are also the only shareholders in Norsk Family Farms, Inc. Norsk Family Farms, Inc. owns four other agricultural properties which Ole farms on behalf of the corporation. In this case, the homestead CANNOT be extended from the base parcel, which is individually-owned, to the four other corporately-owned parcels (even though Ole and Lena are the only two shareholders) because they are owned by different entities.

Of course, there are three exceptions to this rule:

1. The homestead of a base parcel which is owned and occupied by an individual may be linked to a parcel of property that the owner owns with other individuals. For example, Ole and Lena own and occupy their own farm. Ole and Lena also own three parcels jointly with Ole's brother Sven and Sven's wife Uma. In this case, Ole and Lena may extend their homestead to the 50% ownership of the parcels they own with Sven and Uma.
2. An individually-owned parcel may be linked to a trust-held parcel if the owners of the individually-owned parcel are the grantors of the trust that holds another parcel. For example, Ole and Lena own and occupy their own farm. They, Ole and Lena as grantors, have placed four other parcels of agricultural property into a revocable trust for their children. In this case, they may extend their homestead on the base parcel to the other four, trust-held parcels since they are the grantors of the trust that holds the other parcels.

Special Agricultural Homesteads

3. In the case of married couples, properties that are solely held in the name of one spouse may be linked to parcels that are solely held by the other spouse, and/or parcels that are titled in both names. This does not apply to parcels held by an entity of which the husband and/or wife are members. It only applies to parcels owned by natural people.

Linking non-contiguous properties for agricultural homestead purposes may only be done if those properties qualify for the agricultural classification under section 273.13. Just because a base parcel qualifies for an agricultural homestead does not mean that the homestead may be linked to all property within 4 townships owned by that same person or entity. First, the property must qualify for the agricultural classification, meaning at least 10 contiguous acres must be used to produce an agricultural product for sale, then the assessor can determine whether the property meets the qualifications for homestead.

For example Fred and Wilma own and occupy a 160-acre farm where they raise dairy cattle. In addition, they own a 40 acre parcel of wooded property approximately 6 miles from their home, which the assessor has classified as 2b rural vacant land. Can the wooded parcel be linked to the base parcel's homestead? **Answer:** Absolutely not. In order to be linked for homestead purposes, the property must first be classified as 2a agricultural property. Since the property is wooded and classified as 2b rural vacant land and there is no agricultural production taking place on the property, the property cannot be linked to the base parcel for homestead purposes.

Special Ag Homesteads after the Assessment Date (Mid-Year Homesteads)

Minnesota Statutes, section 273.124, subdivision 9, provides that when *non-homesteaded* property is purchased after the assessment date but on or before December 1, and the property is used in conjunction with the primary homestead, it is eligible for a mid-year homestead provided the owner makes application by the statutory deadline of December 15.

However, special circumstances may arise in the case of special ag homesteads because the homestead is granted or denied based on the *current crop year*. If a buyer purchases property from a seller who occupied the property as their homestead on January 2 of the assessment year, obviously the homestead would continue for that assessment year until January 2 of the following assessment year, when the homestead would be subject to change.

What happens if a buyer purchases property during the year that was part of a special ag homestead or will be part of a special ag homestead? As is the case with all good questions, the answer is... *it depends!* Assessors will have to use their judgment in these cases, keeping in mind the requirements of farming during the "current crop year." The following examples are meant to provide guidelines.

Examples

Example #1

A buyer purchases non-homesteaded agricultural land on April 1 – can the buyer file for a special ag homestead on the property? **Answer:** Yes.

Example #2

A buyer purchases non-homesteaded agricultural land on July 1 (the crop has been planted by the previous owner but has not been harvested) – can the buyer file for special ag homestead on the property? **Answer:** It depends. If the buyer plans to farm it, harvest it, etc., for the remainder of the current crop year and meets all of the other requirements, a special ag homestead may be granted.

Example #3

A buyer purchases non-homesteaded ag land on November 30 (the seller planted and harvested the crop) – can the buyer apply for a special ag homestead since he owns the property on December 1 but did not perform any of the work for the current crop year? **Answer:** No. Since the current crop year is over, the farmer should not be granted a special ag homestead for the current year.

Example #4

A buyer purchases non-homesteaded ag land (pasture land) – can the buyer apply for a special ag homestead since he owns the property on December 1? **Answer:** Possibly if the buyer can prove that he/she is using it agriculturally by having livestock in the pasture. This is where the decision is best left to the discretion of the assessor.

Example #5

A husband and wife have a residential homestead. Every other year, they lease their agricultural land to a corporation which farms potatoes. They farm it themselves on the alternating years. Since special ag homestead must be applied for on an annual basis, can they receive a special ag homestead during the years that they actually farm? **Answer:** Yes. However, the assessor should require that they fill out the full application in the years they farm. In this case, it would not be appropriate for them to fill out the re-application for the years they farm.

Poultry

There has been some confusion in that in Minnesota Statutes, section 500.24, the definition of farming states that farming does not include poultry production. However, poultry is considered to be an agricultural product in Minnesota Statutes, section 273.13, for purposes of classifying property. Therefore, poultry production should not preclude anyone from receiving a homestead under Minnesota Statutes, section 273.124.

Special Agricultural Homesteads

Actively Engaged in Farming vs. Actively Farming

Prior to examining the specific scenarios of special agricultural homesteads, we must have a basic knowledge differences between those who are “actively farming” and those who are “actively engaged in farming.” There are several differences between these two concepts.

Actively Engaged in Farming applies when someone lives on the farm. It also involves participation on the farm on a regular and substantial basis but it is not as much direct involvement and participation as “actively farming.”

Actively Farming generally applies in situations where no one lives on the farm and it also requires a greater degree of participation/work and a share in any profits or losses of the farm. The person must participate in the day-to-day decision-making and labor on the farm. They must contribute to the administration and management of the farming operation and they must assume all or a portion of the financial risks and sharing in any profits or losses of the farm.

Using the Flow Chart (See Module 9 – Supplemental Information)

The flow chart is organized around three key questions:

- Who owns the property?**
- Who lives on the property?**
- Who farms the property?**

REMEMBER: It is assumed that the owner has enough ownership interest in the property to claim homestead, and it is assumed that the land meets the requirements for the agricultural classification as specified under Minnesota Statutes, section 273.13, subdivision 23.

Actively Engaged in Farming Scenarios

The following scenario allows homestead treatment for those “actively engaged in farming” (someone occupies the farm).

This provision is limited to those entities with 12 or fewer members, shareholders, or partners that are authorized to own and farm land under Minnesota Statutes, section 500.24. **If there are 13 or more shareholders, members, partners, the entity cannot receive any homesteads.** Assessors will need to verify the number of shareholders, members or partners involved in the entity. This information is typically specified in the legal documents (i.e. articles of incorporation, etc.) that are drawn up when the entity is formed. It should also be noted that if a shareholder, member, or partner is married, the spouse is not automatically considered a separate shareholder, member, or partner. Again, you must view the organizational documents to determine exactly who the shareholders, members, or partners are in the entity.

Agricultural property is owned by an authorized entity and occupied by a qualified person of that entity.

- The qualified person must be actively engaged in farming on behalf of the authorized entity.
- There are no additional land size requirements (other than what exists for the agricultural classification in M.S. 273.13).
- PTR is available on each HGA (up to 12) that is occupied by a qualified person.
- This homestead is granted in the name of the shareholder, member or partner that occupies the property.

Minnesota Statutes, section 273.124, subdivision 8, states that:

Subd. 8. Homestead owned by or leased to family farm corporation, joint farm venture, limited liability company, or partnership. (a) Each family farm corporation, each joint family farm venture, each limited liability company, and each partnership operating a family farm is entitled to class 1b under section 273.13, subdivision 22, paragraph (b), or class 2a assessment for one homestead (emphasis added) occupied by a shareholder, member, or partner thereof who is residing on the land, and actively engaged in farming of the land owned by the family farm corporation, joint family farm venture, limited liability company, or partnership operating a family farm. Homestead treatment applies even if legal title to the property is in the name of the family farm corporation, joint family farm venture, limited liability company, or partnership operating the family farm, and not in the name of the person residing on it. "Family farm corporation," "family farm," and "partnership operating a family farm" have the meanings given in section 500.24, except that the number of allowable shareholders, members, or partners under this subdivision shall not exceed 12. "Limited liability company" has the meaning contained in sections 322B.03, subdivision 28, and 500.24, subdivision 2, paragraphs (l) and (m). "Joint family farm venture" means a

Special Agricultural Homesteads

cooperative agreement among two or more farm enterprises authorized to operate a family farm under section 500.24.

(b) In addition to property specified in paragraph (a), any other residences owned by family farm corporations, joint family farm ventures, limited liability companies, or partnerships operating a family farm described in paragraph (a) which are located on agricultural land and occupied as homesteads by its shareholders, members, or partners who are actively engaged in farming on behalf of that corporation, joint farm venture, limited liability company, or partnership must also be assessed as class 2a property or as class 1b property under section 273.13.

It is the department's position that paragraph (a) above allows one homestead for each family farm corporation, joint family farm venture, limited liability company, and each partnership operating a family farm authorized under section 500.24 no matter how many members, shareholders, or partners there are in the entity. Paragraph (b) allows up to 11 additional homestead benefits for family farm corporations, joint family farm ventures, limited liability companies, and partnerships operating family farms authorized to own and farm land under section 500.24.

In conclusion, each family farm corporation, joint family farm venture, limited liability company, and partnership operating a family farm with 12 or fewer members is allowed up to 12 homestead benefits for property occupied by a qualified person of the authorized entity.

Primary Statutory Reference: 273.124, subd. 8; 500.24

Actively Farming Scenarios

Actively farming homesteads generally occur where no one occupies the farm. In order to qualify for an “actively farming” homestead, there are several special provisions to keep in mind:

- If a property is entirely enrolled in CRP/CREP/RIM, it is NOT eligible for an actively farming homestead, because by definition, it cannot be farmed.
 - Over 50% of the class 2a agricultural land excluding CRP, RIM, CREP, etc. (on either the parcel or the contiguous land mass) must be actively farmed by the person receiving the homestead.
 - Property with an actively farming homestead is NOT eligible for PTR because there is no HGA that receives the homestead.
1. Agricultural property that is owned by a natural person, but not occupied, and is actively farmed by the owner, the owner's spouse, OR the sibling, child, or grandchild of the owner or their spouse. It may be farmed on behalf of an authorized entity of which the active farmer is a qualified person.
- The agricultural property must be at least 40 acres in size.
 - Both the owner and the active farmer must be Minnesota residents.
 - Neither the owner nor the owner's spouse may claim another agricultural homestead in Minnesota.
 - Neither the owner nor active farmer can live farther than 4 cities/townships or a combination thereof, from the actively farmed agricultural property (unless the owner or the owner's spouse is required to live in employer-provided housing).

Primary Statutory Reference: 273.124, subd. 14, para. (b), clause (i)

2. Agricultural property is owned by a natural person, but not occupied, and is leased from the owner who is a qualified person in the authorized entity, to that authorized entity, and the property is actively farmed by a qualified person of that entity.
- The agricultural property must be at least 40 acres in size.
 - The qualified person who is actively farming must be a Minnesota resident.
 - Neither the qualified person actively farming nor the farmer's spouse can claim another agricultural homestead in Minnesota.
 - Neither the owner nor the qualified person who is actively farming the property lives farther than 4 cities/townships or a combination thereof from the agricultural property. (There is no exception to this requirement!)

Primary Statutory Reference: 273.124, subd. 14, para. (g)

Special Agricultural Homesteads

3. Agricultural property is owned by an authorized entity, but is not occupied, and is actively farmed by a qualified person of that entity.
- The agricultural property must be at least 40 acres in size.
 - The qualified person who is actively farming the property on behalf of the entity must be a Minnesota resident.
 - Neither the qualified person who is actively farming nor their spouse can claim another agricultural homestead in Minnesota.
 - The qualified person who is actively farming cannot live farther than 4 cities/townships or a combination thereof from the agricultural property. (There is no exception to this requirement!)

Primary Statutory Reference: 273.124, subd. 14, para. (g)

4. Agricultural property is held under a trust, but is not occupied, and is actively farmed by the grantor of the trust, spouse of the grantor, sibling of the grantor or spouse of the grantor, or child of the grantor or the spouse of the grantor.
- The agricultural property must be at least 40 acres in size.
 - The property can be actively farmed on behalf of an authorized entity of which the active farmer is a qualified person.
 - Both the grantor of the trust and the active farmer must be Minnesota residents.
 - Neither the grantor nor the grantor's spouse can claim another agricultural homestead in Minnesota.
 - Neither the grantor nor the active farmer can live farther than 4 cities/townships or a combination thereof from the agricultural property (unless the grantor or the grantor's spouse is required to live in employer-provided housing).

Primary Statutory Reference: 273.124, subd. 14, para. (b), clause (ii)

5. Agricultural property is held by a trustee under a trust, is leased to an authorized entity, is occupied as a homestead by a qualified person of the entity, and the qualified person actively farms the property on behalf of the authorized entity.*
- There is no additional land size requirement (other than what exists for the agricultural classification under M.S. 273.13).
 - The qualified person must be a Minnesota resident.

**This appears to be the only exception to the rule when “actively farming” occurs when someone lives on the land.*

Primary Statutory Reference: 273.124, subd. 21, clause (3)

Special Ag Homestead Applications

SPECIAL AGRICULTURAL HOMESTEAD APPLICATIONS OR RE-APPLICATIONS

MUST BE FILED ANNUALLY. Special ag homestead applications and reapplications are updated annually and e-mailed to all county assessors. Applications for the current crop year are e-mailed to the counties annually. The “xx” noted in each form name denotes the crop year/assessment year of the form so that you can be assured you are using the appropriate form for the current year. The forms include:

- **CR-SAH-xx** – Application for Special Ag Homestead
- **CR-RSAH-xx** – Re-Application for Special Ag Homestead

- **CR-LAE-xx** – Application for Special Ag Homestead on Property Leased to an Authorized Entity
- **CR-RLAE-xx** – Re-Application for Special Ag Homestead on Property Leased to an Authorized Entity

- **CR-OAEO-xx** – Application for Special Ag Homestead on Property Owned by an Authorized Entity and Occupied by a Qualified Person
- **CR-ROAEO-xx** – Re-Application for Special Ag Homestead on Property Owned by an Authorized Entity and Occupied by a Qualified Person

- **CR-OAE-xx** – Application for Special Ag Homestead on Property Owned by an Authorized Entity
- **CR-ROAE-xx** – Re-Application for Special Ag Homestead on Property Owned by an Authorized Entity

- **CR-SAHT-xx** – Application for Special Ag Homestead on Property Held Under a Trust
- **CR-RSAHT-xx** – Re-Application for Special Ag Homestead on Property Held Under a Trust

- **CR-TLAE-xx** – Application for Special Ag Homestead for Property Held Under a Trust and Leased to an Authorized Entity
- **CR-RTLAE-xx** – Re-Application for Special Agricultural Homestead Property Held Under a Trust and Leased to an Authorized Entity

We realize that the sheer number of applications and re-applications makes for a complex administration process on the part of assessors. However, due to the number of different homestead situations and the requirement that there be a one-page reapplication, these forms are necessary. It is imperative that all applicants complete the proper form. Re-applications are only to be used for situations in which nothing has changed (ownership, farmer, property) from the original application. If anything does change, applicants must complete the appropriate full application.

NOTE: We do not post these forms to the Department of Revenue website because we do not want to add to the confusion for taxpayers, and we do not want the completed applications returned to the department.

Special Agricultural Homesteads

A “Schedule F” is an IRS form that is filed with income tax returns to report passive and non-passive income/losses from a farming operation. In most circumstances, it is required to be attached to the special ag homestead applications. It is rare that a farmer does not have to file a Schedule F to report individual income. These situations should be examined on a case-by-case basis by the assessor.

Business entities file the following types of forms with the IRS for income tax purposes:

- Form 1065 - U.S. Return of Partnership Income
- Form 1120 - U.S. Corporation Income Tax Return
- Form 1120S – U.S. Income Tax Return for an S Corporation

Acceptable alternatives to the Schedule F (or the appropriate alternative) may include:

- Schedule F (or alternative form) with dollar amounts blacked out – in this case the applicant should show a copy of the appropriate tax form to the assessor who can verify its authenticity and then make a copy of the form for the file with the dollar amounts blacked out.
- Signed affidavit from a tax preparer or attorney verifying that the Schedule F (or the alternative form) was filed.

Farm Service Agency (FSA) forms should indicate who or what entity is listed as the owner and operator of the farm. The FSA numbers of the owner and operator are requested on the special ag homestead applications. However, while this number is helpful in determining eligibility for the actively farming homestead, it is not absolutely necessary. Failure to have an FSA number is not, by itself, a reason to disqualify an applicant. However, it is an indicator for the assessor to ask more questions.

Glossary of Agricultural Terms

actively engaged in farming - participation on the farm on a regular and substantial basis; someone lives on the farm. The person who is actively engaged in farming must be a Minnesota resident.

actively farming - participation in the day-to-day decision making, labor, administration, and management of the farm, as well as assuming all or a portion of the financial risks and sharing in any profits or losses; generally no one lives on the farm. The person who is actively farming must be a Minnesota resident.

agricultural land – for purposes of special agricultural homesteads, agricultural land is real estate used for farming (production for sale of an agricultural product). Agricultural land means contiguous acreage of 10 acres or more, used during the preceding year for agricultural purposes. “Agricultural purposes” means the raising or cultivation of agricultural products for sale (see M.S. 273.13, subdivision 23). Agricultural classification for property shall be determined excluding the house, garage, and immediately surrounding one acre of land, and shall not be based upon the market value of any residential structures on the parcel or contiguous parcels under the same ownership. Property enrolled in CRP/RIM/CREP or other similar state or federal conservation programs may be classified as 2a agricultural land but is not considered farmed land for the purposes of special agricultural homesteads.

agricultural homestead - agricultural land that is occupied and used as a homestead by its owner, who must be a Minnesota resident, is an agricultural homestead (M.S. 273.124, subdivision 1(a)).

authorized entity - can be a family farm corporation, joint family farm venture, limited liability company or partnership operating a family farm (M.S. 273.124, subdivision 8(a)). This is limited to entities with 12 or fewer members, shareholders, or partners. The following entities would be eligible for homestead treatment:

- authorized farm limited liability company (operating a family farm)
- authorized farm partnership (operating a family farm)
- family farm
- family farm corporation
- family farm limited liability company (operating a family farm)
- family farm partnership
- family farm trust
- general partnership (operating a family farm)

authorized farm limited liability company - a limited liability company that has:

- no more than five members who are all natural persons or estates;
- only one class of membership interests;
- no more than 20 percent of its gross receipts derived from rents, royalties, dividends, interest, and annuities;

Special Agricultural Homesteads

- members who own at least 51 percent of the company either reside on the farm or are actively engaged in farming it;
- no interest in or ownership of more than 1,500 acres of agricultural land, either directly or indirectly;
- none of its members are members in other authorized farm limited liability companies if combined would directly or indirectly own more than 1,500 acres; AND
- members may not transfer their interests to ineligible persons (M.S. 500.24, subdivision 2(m)).

authorized farm partnership - a limited partnership formed for the purpose of farming and owning agricultural land, as documented on a certificate from the Secretary of State or on a document registered with the county recorder, and that has:

- no more than five partners who are all natural persons or estates;
- no more than 20 percent of its gross receipts derived from rents, royalties, dividends, interest, and annuities;
- its general partners own at least 51 percent of the interest in the land assets of the partnership and either reside on the farm or are actively engaged in farming not more than 1,500 acres as a general partner in an authorized limited partnership;
- its limited partners do not participate in the business of the limited partnership including operating, managing, or directing management of farming operations;
- no interest in or ownership of more than 1,500 acres of agricultural land, directly or indirectly; AND
- none of the limited partners are limited partners in other authorized farm partnerships that if combined would directly or indirectly own more than 1,500 acres (M.S. 500.24, subdivision 2(k)).

beneficiaries - anyone who received any kind of benefit from a trust is a beneficiary. For example, if you had the right to live on property held under a trust, you would be a beneficiary.

corporation - an artificial person or legal entity created under the laws of a state, having an existence separate and apart from that of its members or owners, vested with the capacity of continuous succession (Black's Law Dictionary, 5th Ed., West, 1979). Characteristics of a corporation include: (1) continuity of life, without interruption as a result of the death or withdrawal of the members; (2) centralized management by representatives selected by the members; (3) limited liability for the organization's debts, without recourse to the members; (4) free transferability of interests; and (5) the holding of title to property by the organization itself (*Morrissey v. Commissioner*, 298 U.S. 344, 1935). The corporate name must include the word (or abbreviation): "corporation," "incorporated," or "limited," or the word "company" or the abbreviation "Co." but may not contain "and company," or "& co." or a variation (M.S. 302A.115). Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Secretary of State (M.S. 302A.153).

Special Agricultural Homesteads

family farm - an unincorporated farming unit which has one or more owners residing on the farm or who are actively engaged in farming (M.S. 500.24, subdivision 2(b)).

family farm corporation - a corporation founded for farming and owning agricultural land that has:

- a majority of stock held by and a majority of the stockholders are persons (or their spouse) or current beneficiaries of family farm trusts who own stock in the family farm corporation and the persons and the beneficiaries are related to each other within the third degree of kindred;
- at least one of the related persons is residing on or actively operating the farm; AND
- no stockholders who are corporations (M.S. 500.24, subdivision 2(c)).

NOTE: Transfers of shares to persons related within the third degree of kindred, or to a trust of which the related recipient is a current beneficiary, will not cause a disqualification.

family farm limited liability company - a limited liability company founded for the purpose of farming and owning agricultural land that has:

- a majority of its members are persons or current beneficiaries of family farm trusts who own stock in the family farm limited liability company and the persons and the current beneficiaries are related to each other within the third degree of kindred;
- at least one of the related persons is actively operating the farm; AND
- no members who are corporations or limited liability companies (M.S. 500.24, subdivision 2(1)).

NOTE: Transfers of membership interests to persons related within the third degree of kindred, or to a trust of which the related recipient is a current beneficiary, will not cause a disqualification.

family farm partnership - a limited partnership formed for the purpose of farming and owning agricultural land that has:

- a majority of the partnership interests held by persons or current beneficiaries of family farm trusts who own stock in the family farm partnership and the persons or current beneficiaries are related to each other within the third degree of kindred; AND
- a majority of its partners are persons or current beneficiaries of family farm trusts who own stock in the family farm partnership and the persons or current beneficiaries are related to each other within the third degree of kindred; AND
- at least one of the related persons is residing on or actively operating the farm, or has owned the agricultural land for at least five years prior to its transfer to the limited partnership; AND
- no partners who are corporations (M.S. 500.24, subdivision 2(j)).

NOTE: Transfers of partnership interests to persons related within the third degree of kindred, or to a trust of which the related recipient is a current beneficiary, will not cause a disqualification.

Special Agricultural Homesteads

family farm trust - any one of the following may qualify as a family farm trust:

1. A trust in which:
 - a. a majority of current beneficiaries are persons (or spouses of persons) who are related to each other within the third degree of kindred;
 - b. all current beneficiaries are persons, nonprofit corporations or trusts organized for religious, charitable or scientific purposes; and
 - c. at least one of the family member current beneficiaries is residing on or actively operating the farm.
2. A charitable remainder trust.
3. A charitable lead trust that has:
 - a. a lead period that does not exceed 10 years; and
 - b. a majority of the remainder beneficiaries are related to the grantor within the third degree of kindred (M.S. 500.24, subdivision 2(d)).

farmer - a natural person who regularly participates in physical labor or operations management in the person's farming operation and files "Schedule F" as part of the person's annual Form 1040 filing with the United States Internal Revenue Service (M.S. 500.24 subdivision 2(n)).

farming - is defined in Minnesota law as the production for sale of agricultural products under M.S. 273.13, subdivision 23.

general partnership - an association of two or more persons to conduct a business for profit as co-owners (whether or not the persons intend to form a partnership) in which:

- "persons" includes individuals, corporations, estates, trusts, and any other type of legal or commercial entity;
- sharing gross profits does not by itself establish a partnership; and
- a person who receives a share of the profits of a business is presumed to be a partner in that business unless the profits were received in payment for goods or services, as rent, as repayment of a debt or interest, as an annuity, or on account of the sale of goodwill (M.S. 500.24, subdivision 3(a); M.S. 323A.1-01(8), (12); M.S. 323A.2-02*).

** This definition reflects the provisions of the Minnesota Uniform Partnership Act of 1994 (i.e., M.S. chapter 23A). Partnerships governed by a predecessor statute or a comparable statute of another state may have somewhat different attributes.*

grantor - is defined as the person creating or establishing a testamentary, inter vivos, revocable or irrevocable trust by written instrument or through the exercise of a power of appointment (M.S. 273.124, subdivision 21). For a property that is held under a trust to receive an agricultural homestead, the grantor must be a Minnesota resident and neither the grantor nor the spouse of the grantor can claim another ag homestead.

irrevocable trust - a trust which cannot be changed at any time.

inter vivos trust - see "revocable trust".

joint family farm venture - a means a cooperative agreement among two or more farm enterprises authorized to operate a family farm under section M.S. 500.24 (M.S. 273.124, subdivision 8(a)). For homestead purposes, it can only be a combination of other entities qualifying for homestead.

limited liability company - an unincorporated organization created by state law that affords its members limited liability for the organization's debts and the potential to avoid income taxes at the entity level, thus combining the characteristics of a corporation and a partnership (Lloyd G. Kepple, Esq.). The name of a limited liability company must contain the words "limited liability company" or "LLC." Other words or letters may be used when the members of the company provide certain professional services including medicine, veterinary, landscaping, accountancy, engineering, or law. The name must not contain the words (or abbreviations): "corporation" or "incorporated" (M.S. 322B.12 and 319B.05). Articles of organization are effective and limited liability company existence begins when the articles of organization are filed with the Secretary of State (M.S. 322B.175).

limited partnership - a partnership consisting of one or more general partners, jointly and severally responsible as ordinary partners, and be whom the business is conducted, and one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund so contributed (Black's Law Dictionary, 5th Ed., West, 1979). The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP" (M.S. 323A.1002). The partnership must file an annual registration with the Secretary of State. (M.S. 323A.1003).

owner – defined as an individual person or multiple people who own the property (i.e. it is not owned by a business or entity).

qualified person - can be a:

- member in an authorized entity;
- shareholder in an authorized entity; OR
- partner in an authorized entity.

qualifying relative or surviving relative – must be a Minnesota resident; definition depends on the type of property:

Residential property: a qualified relative of the owner or grantor can be a parent, stepparent, child, stepchild, grandparent, grandchild, sibling, aunt/uncle, or niece/nephew. The relationship may be by blood or by marriage (M.S. 273.124, subdivision 1(c)).

Agricultural property: a qualified relative can be a child, grandchild, sibling, or parent of the owner or grantor of the agricultural property, or a child, grandchild, sibling of the spouse of the owner or grantor of the agricultural property (M.S. 273.124, subdivision 1(d)).

Special Agricultural Homesteads

revocable trust - a trust created to handle the grantor's assets, often called a "living trust" or "inter vivos trust," which only becomes irrevocable on the death of the grantor.

third degree of kindred - for the purposes of M.S. 500.24, a person's first degree of kin includes parents and children; that person's kindred of the second degree include grandparents, grandchildren, and siblings; and that person's kindred of the third degree includes aunts, uncles, nieces, nephews, and great-grandparents (23 Am.Jur.2d, Descent and Distribution, section 55).

trust - a fiduciary relationship under which one party holds property for the benefit of another party.

trustee - means the party that holds property rights for the benefit of another party through a trust.

Examples of Special Agricultural Homestead Scenarios

1. Kirk is too elderly to live alone on his farm so he purchases a nice, maintenance-free condo in the city. The farm consists of a house and garage along with several outbuildings and 400 tilled acres. His son, Michael, is a good son and farms his father's land. Michael and his wife, Catherine, also own/occupy/farm their own property that is located just a hop, skip and a jump (within 4 cities/townships) of his father's farm. Can homestead be granted on both properties?

Kirk's Farm

- Who owns the property? **Answer:** Kirk, a natural person.
- Who occupies the property? **Answer:** No one.
- Is the property leased to an authorized entity from the owner who is a qualified person in the authorized entity? **Answer:** No.
- Who farms the property? **Answer:** Michael, Kirk's son.

Therefore, Kirk may be granted a special ag homestead under M.S. 273.124, subdivision 14(b), clause (i), in Kirk's name since his son, Michael, is farming the property.

Michael's Farm

Michael qualifies for a regular, owner-occupied ag homestead on the farm that he owns/occupies/farms with his lovely wife.

2. Dan lives in town on a residential parcel of property. He also works in town. Dan's son, McGwire occupies his father's farm. McGwire also owns his own land that he farms. It is within 4 cities/townships of the farm that he occupies. Can McGwire receive ag homestead on both the farm that he occupies and his farm that he owns?

Answer: No, but he can maximize his homestead benefits by receiving a RESIDENTIAL relative homestead on the HGA that he occupies on his father's farm. Since McGwire farms his father's property, Dan can receive a special agricultural homestead, in his own name on his ag land. McGwire can then qualify for a special ag homestead on his own ag property that he farms on his own behalf.

***If McGwire claimed an AGRICULTURAL relative homestead on his father's farm, he would not be able to receive a special ag homestead on his own land since he would already have an agricultural homestead (an ag relative homestead on his father's property).*

Special Agricultural Homesteads

3. Bob's Family Farm Partnership owns a 90-acre farm. Bob is a partner and lives on the farm. He is actively engaged in farming the land on behalf of the entity and he is a Minnesota resident. Does Bob qualify for homestead?
- Who owns the property? **Answer:** Bob's Family Farm Partnership (an authorized entity).
 - Is the property occupied by a qualified person of the authorized entity that owns the land? **Answer:** Yes. Bob is a partner (qualified person) of Bob's Family Farm Partnership (authorized entity).
 - Is the qualified person actively engaged in farming the ag property on behalf of the authorized entity? **Answer:** Yes. Bob farms on behalf of the family farm partnership of which he is a member.
 - Is the qualified person who is actively engaged in farming a Minnesota resident? **Answer:** Yes. Bob is the qualified person who is actively engaged in farming the property on behalf of the authorized entity (Bob's Family Farm Partnership) and is a Minnesota resident.

Bob qualifies for homestead under M.S. 273.124, subdivision 8(a).

4. Fred, a widower, lives in the city of Rockville and receives a residential homestead. He also owns 2 agricultural parcels in Rockville. Parcel #1 consists of 80 acres, of which 69 are actively farmed by Fred. The remaining 11 acres are not farmed. Parcel #2 is contiguous to parcel #1 and consists of 12 acres, all of which are farmed. Fred operates a large hog operation on this parcel. Fred is a Minnesota resident. Does Fred qualify for an actively farming homestead?
- Who owns the property? **Answer:** Fred, a natural person.
 - Is the property occupied by the owner? **Answer:** No.
 - Does a qualifying relative occupy the property? **Answer:** No.
 - Is the agricultural property leased to an authorized entity from the owner who is a qualified person in the authorized entity? **Answer:** No.
 - Is the owner, owner's spouse or child of the owner or owner's spouse actively farming the ag property either on their own behalf or on behalf of the authorized entity of which they are a qualified person? **Answer:** Yes. Fred farms the land on his own behalf.
 - Are the other requirements met?
 - Is the property at least 40 acres? **Answer:** Yes, the property consists of 2 contiguous parcels which total 92 acres.
 - Are both the owner and the active farmer Minnesota residents? **Answer:** Yes, Fred (owner and active farmer) is a Minnesota resident.
 - Does the owner or owner's spouse claim another ag homestead in Minnesota? **Answer:** No, Fred has a residential homestead in Rockville.

Special Agricultural Homesteads

- Does the owner or the active farmer live more than 4 cities/townships from the ag property? **Answer:** No, Fred lives and farms within the Rockville city limits.

Fred farms 81 of the 92 total acres himself so he meets the over 50% rule.

Fred may be granted an actively farming homestead in his name on the agricultural property under M.S. 273.124, subdivision 14(b), clause (i).

5. John Jingle and his son Jacob Jingle own a 60-acre farm together. The Jingles both live in town (within 4 townships) and each claim their own separate residential homesteads with their wives. Both Jingles actively farm the 60-acre farm. Neither the father, nor the son, claims another agricultural homestead in Minnesota. Both John and Jacob are Minnesota residents.
- Who owns the property? **Answer:** John and Jacob Jingle, natural people.
 - Is the property occupied by the owner? **Answer:** No, neither owner occupies the property.
 - Does a qualifying relative occupy the property? **Answer:** No.
 - Is the agricultural property leased to an authorized entity from the owner who is a qualified person in the authorized entity? **Answer:** No.
 - Is the owner, owner's spouse or child of the owner or owner's spouse actively farming the ag property either on their own behalf or on behalf of a authorized entity of which they are a qualified person? **Answer:** Yes, both owners actively farm the property on their own behalf.
 - Are the other requirements met? **Answer:** Yes. Property is more than the required 40 acres; both owners/active farmers are Minnesota residents; neither the owners/farmers nor their spouses claim other agricultural homesteads in Minnesota; and all live within 4 townships of the property.

The property qualifies for a special ag homestead under M.S. 273.124, subdivision 14(b), clause (i). Each person may be granted a 50% special ag homestead in their own names.

Special Agricultural Homesteads

6. The Stone Family Farm Partnership consists of a mother, father, son, and daughter. The Stone Family Farm Partnership owns a 350-acre farm. The daughter and her husband farm the land held by the partnership but do so through a family farm corporation in which they are the only shareholders. No one lives on the farm. The daughter and son-in-law live in a residential property that is within four townships of the farm. All are Minnesota residents.
- Who owns the property? **Answer:** Stone Family Farm Partnership, an authorized entity.
 - Is the property occupied by a qualified person of the authorized entity that owns the land? **Answer:** No, the property is not occupied.
 - Is a qualified person of the authorized entity that owns the property actively farming the property on behalf of the authorized entity? **Answer:** No.

This property is **NOT** eligible for homestead because a different entity farms the land than owns the land. If the daughter and son-in-law farmed the property on behalf of the Stone Family Farm Partnership rather than the family farm corporation, it would be eligible for homestead.

7. Farm #1 is owned by Porky's Hog Farms, Inc., a family farm corporation. Aaron and Glen Porky are each 50% shareholders in the corporation. Farm #1 is occupied by Aaron, who is a Minnesota resident. Glen lives in South Dakota and is a South Dakota resident. Farm #1 is farmed by Porky's Hog Farms, Inc. It consists of 31 acres. Farm #2 is owned jointly by Aaron and Glen Porky as individuals. It is leased to and farmed by Porky's Hog Farms, Inc. It consists of 779 acres and does not contain a residence. Both farms are located in the same township but are not contiguous to each other.

Farm #1

- Who owns the property? **Answer:** Porky's Hog Farms, Inc. (an authorized entity).
- Is the property occupied by a qualified person of the authorized entity that owns the land? **Answer:** Yes. Aaron Porky occupied Farm #1. He is a shareholder (qualified person) of Porky's Hog Farms, Inc. (authorized entity).
- Is the qualified person actively engaged in farming the ag property on behalf of the authorized entity? **Answer:** Yes. Aaron Porky is actively engaged in farming Farm #1 on behalf of the authorized entity.
- Is the qualified person who is actively engaged in farming a Minnesota resident? **Answer:** Yes. Aaron Porky is a Minnesota resident.

Farm #1 should be granted homestead in Aaron Porky's name pursuant to section 273.124, sub. 8 (a) and (b). There is no 40-acre requirement for this specific type of special ag homestead situation.

Farm #2 –

- Who owns the property? **Answer:** Aaron and Glen Porky jointly as individuals (natural persons).
- Is the property occupied by the owner? **Answer:** No.
- Does a qualifying relative occupy the property? **Answer:** No.
- Is the agricultural property leased to an authorized entity from the owner who is a qualified person in the authorized entity? **Answer:** Yes, The property is leased to and farmed by Porky's Hog Farms, Inc. (an authorized entity).
- Are all of the other requirements met? **Answer:** No. Although the property is more than 40 acres, and it is located in the same township as Farm #1, the property cannot be homesteaded because the two properties are held in the names of different entities. Homesteads can only extend to additional parcels of land if the land is under the same ownership as the occupied parcel. Aaron Porky already homesteads farm #1. Glen cannot qualify because he is not a Minnesota resident.

8. Widow White has agricultural land in a revocable trust of which she is the grantor (Farm #1). She lives on Farm #1. Adjacent to Farm #1 is a farm that is owned in a fee simple arrangement by Widow White (Farm #2). Sammy White, the widow's son, farms both Farm #1 and Farm #2. Sammy owns and lives on his own farm (Farm #3) which he also farms. All of the properties are within four townships and/or cities from each other and each is larger than 40 acres in size. Everyone is a Minnesota resident.

Farm #1

- Who owns Farm #1? **Answer:** Widow White's revocable trust. Widow White is the grantor of the trust.
- Does the grantor or surviving spouse of the grantor occupy the property? **Answer:** Yes.

Participation level is not a factor in this scenario. Since Widow White is a resident of Minnesota and she lives on the property, she qualifies for an owner-occupied homestead.

In addition, since Widow White is the grantor of the trust on Farm #1 and owns Farm #2 individually, she may extend her homestead to Farm #2. Again, it does not matter who farms the property in this case.

Farm #3

- Who owns Farm #3? **Answer:** Sammy White, a natural person.
- Is the property occupied by the owner? **Answer:** Yes.

Participation level is not a factor in this scenario. As long as Sammy is a Minnesota resident (he is), he would qualify for an owner-occupied homestead on Farm #3.

Special Agricultural Homesteads

9. Four Brothers Family Farm Corporation owns and farms property located in Whiskey Township. There are four shareholders (Jim, Johnny, Jack, and Jose). All of the shareholders are Minnesota residents. The corporation owns and farms four, 600-acre parcels (Parcels #1, #2, #3, & #4). Each parcel is valued by the assessor at \$600,000. Jim lives on parcel #1. Johnny, Jack, and Jose each live in their own residential property (and receive residential homesteads) in Whiskey Junction, a small town that is within four townships of the corporately owned land. How should the homesteads be structured?

Parcel #1 –

- Who owns the Parcel #1? **Answer:** Four Brothers FFC.
- Who lives on Parcel #1? **Answer:** Jim, a shareholder (qualified person) of Four Brothers FFC (an authorized entity).
- Who farms Parcel #1? **Answer:** Jim. Therefore, Jim receives a Special Ag Homestead (actively engaged – someone occupies) in his name on behalf of the FFC for parcel #1.

Parcel #2 –

- Who owns Parcel #2? **Answer:** Four Brothers FFC.
- Who lives on Parcel #2? **Answer:** No one. Johnny lives on a residential parcel in Whiskey Junction where he receives a residential homestead in his name.
- Who farms Parcel #2? **Answer:** Johnny farms the parcel on behalf of Four Brothers FFC. Therefore, Johnny receives a Special Ag Homestead (Actively Farming – no one occupies) in his name on behalf of the FFC for parcel #2.

Parcel #3 –

- Who owns Parcel #3? **Answer:** Four Brothers FFC.
- Who lives on Parcel #3? **Answer:** No one. Jack lives on a residential parcel in Whiskey Junction where he receives a residential homestead in his name.
- Who farms Parcel #3? **Answer:** Jack farms the parcel on behalf of Four Brothers FFC. Therefore, Jack receives a Special Ag Homestead (Actively Farming – no one occupies) in his name on behalf of the FFC for parcel #3.

Parcel #4 –

- Who owns Parcel #4? **Answer:** Four Brothers FFC.
- Who lives on Parcel #4? **Answer:** No one. Jose lives on a residential parcel in Whiskey Junction where he receives a residential homestead in his name.
- Who farms Parcel #3? **Answer:** Jose farms the parcel on behalf of Four Brothers FFC. Therefore, Jose receives a Special Ag Homestead (Actively Farming – no one occupies) in his name on behalf of the FFC for parcel #4.

Special Agricultural Homesteads

10. Mother Rose has two sons, Robert and Ted. Mother Rose lives on Farm #1, which is owned by Robert but farmed by Ted. Rose currently receives an agricultural relative homestead on Farm #1. Farm #2 is bare land that is owned by Rose who retains a life estate and Ted who has a remainderman interest. Ted farms Farm #2. Farm #3 has the same ownership arrangement and features as Farm #2. Farm #4 is contiguous to Farm #3 and is owned, occupied and farmed by Ted.

<u>Farm #1</u>	<u>Farm #2</u>	<u>Farm #3</u>	<u>Farm #4</u>
Ag. Rel. HS to mom	Bare land	Bare land	Reg. Ag. HS to Ted

- | | | | | |
|-----------------|--------|--------------|--------------|------|
| • Who Owns? | Robert | Rose and Ted | Rose and Ted | Ted\ |
| • Who Occupies? | Rose | No one | No one | Ted |
| • Who Farms? | Ted | Ted | Ted | Ted |

Can Ted receive homestead on the contiguous Farm #3 as well as Farm #2 since he has a remainderman interest on both? **Answer:** No. Since Mother Rose has a life estate, she is considered the owner for homestead purposes, even if she is not living on either Farm #2 or Farm #3.

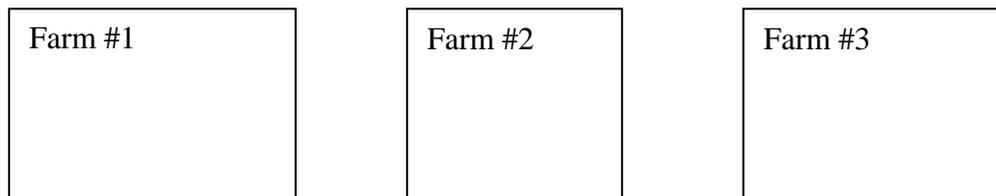
Would Farm #2 and Farm #3 be eligible for a special ag homestead?

Answer: Not under the current ownership/occupancy/farming situation. Since Mother Rose already receives an agricultural relative homestead on Farm #1, she is not eligible to receive a special ag homestead on Farms #2 and #3. In addition, since Ted already receives a regular ag homestead on Farm #4, he is not eligible to receive a special ag homestead on Farms #2 and #3.

Special Agricultural Homesteads

11. Ward and June recently retired from farming and have moved to town. They receive a residential homestead on the residential property they occupy. Ward owns two farms that are titled in his name only. Wally, Ward's son, is the sole shareholder in Wally's Family Farm Corporation. Wally occupies Farm #1 that Ward owns and actively farms it on behalf of his corporation. Ward also owns another farm (Farm #2) that is leased to his second son's entity – Beaver's Family Farm Corporation. Beaver is the sole shareholder in his corporation. Beaver also owns and occupies his own farm with his wife Penny (Farm #3). What can qualify for homestead?

It might be helpful to show this graphically:



Owner:	Ward	Ward	Beaver's FFC
Occupant:	Wally	No one	Beaver & Penny
Farmer:	Wally's FFC	Beaver's FFC	Beaver's FFC

Farm #1

Wally can qualify for an agricultural relative homestead since he occupies the property even if he is farming it on behalf of Wally's FFC.

Farm #2

Beaver CANNOT qualify for a special ag homestead in this case even if he is farming it on behalf of Beaver's FFC because he already has his own special agricultural homestead on Farm #3. The parcels cannot be linked, nor can Beaver's homestead be extended because the ownership entities are different.

Farm #3

Beaver can receive a special ag homestead on this property because he is a qualified person (shareholder) of the authorized entity (Beaver's FFC) that owns the land, he occupies the property, and he is actively engaged in farming the property on behalf of that entity.

Special Agricultural Homesteads

12. Sam lives in town. He is the sole shareholder in Cheers, Inc. his family farm corporation. Cheers, Inc. leases the farm land to Sam as an individual and he farms it on his own behalf. Does the property qualify for a special ag homestead?

- Who owns the property? **Answer:** Cheers, Inc. – an authorized entity.
- Who occupies the property? **Answer:** No one.
- Who farms the property? **Answer:** Sam, a shareholder of Cheers, Inc., farms it on his own behalf.

Result – no homestead. IF Sam farmed it on behalf of the authorized entity (Cheers, Inc.), he could be granted a special ag homestead.

13. Woody individually owns a quarter-section of land (160 acres). He does not occupy the property. On the north 50 acres, he grazes his cattle. The remaining 110 acres is tilled and rented to Cliff, his know-it-all neighbor. Can Woody qualify for homestead on the entire 160 acres?

Answer: No. Since Woody is not farming over 50% of the class 2a land (80+ acres) himself, he does not qualify for a special ag homestead.

14. Two unrelated women, Paris and Nicole, purchased a 640-acre farm in order to live the simple life in rural Minnesota. The building site of this farm (house, garage, and 5 acres) was split off and is owned and occupied by Nicole and her husband. The remaining 635 acres were put into a partnership (Divas Partnership) consisting solely of Paris and Nicole. Both Paris and Nicole are actively engaged in farming this property on behalf of the partnership. Paris and her husband solely own and occupy another 160-acre farm that is located within four cities/townships of the partnership-owned land. Can the partnership property be homesteaded?

- Who owns the property? **Answer:** Divas Partnership, an authorized entity.
- Who lives on the property? **Answer:** No one occupies.
- Who farms the property? **Answer:** Nicole, a qualified person of the authorized entity.

Nicole and her husband should receive a residential homestead on the house, garage, and 5 acres that they solely own and occupy. Since the partnership land is owned by an authorized entity and a qualified person (Nicole) is actively engaged in farming the property, Nicole may receive a special ag homestead on the partnership land, provided she meets all of the other requirements. However, Paris could not qualify for a special ag homestead on this property because she and her husband already have a regular ag homestead on the 160-acre farm that they own and occupy.