

**Grand County
Ordinance No. 422**

**AN ORDINANCE PROVIDING FOR A PROCEDURE
AND CRITERIA IN GRANTING RESIDENTIAL
PROPERTY TAX EXEMPTIONS**

PREAMBLE

WHEREAS, the Utah Constitution, Article XIII, Section 2 (8) authorizes a property tax exemption for residential property, and the Legislature, pursuant to the constitutional authorization, has enacted 59-2-102 (23) & 103 (2) of the Utah Code which grant a residential exemption for “any property used for residential purposes as a primary residence..” and,

WHEREAS, the Utah Code does not define ‘primary residence,’ except to state that a “transient residential use or condominiums used in rental pools” are not considered “primary residences,” Utah Code Ann 59-2-102 (23), and

WHEREAS, the Utah Code does not establish a procedure for applying for the residential exemption and,

WHEREAS, the Utah State Tax Commission, by rule, defines “primary residence” as the location where domicile has been established” and establishes a non-exclusive list of factors or evidence determinative of domicile, Utah Admin. Code R884-24P-52,

WHEREAS, the Utah State Tax Commission, by rule, has not defined “domicile” nor established a procedure for applying for the exemption; and,

WHEREAS, Title 59, Chapter 2, Part II of the Utah Code discusses property tax exemptions in general, but is silent as to the “residential exemption;” and,

WHEREAS, Title 59, Chapter 2, Part II of the Utah Code provides for an exemption application process, which includes the filing of an affidavit, prior to the granting of property tax exemptions, other than the residential exemption: and,

WHEREAS, the Utah Code gives the County the authority to ““make and enforce any rule which is consistent with statute and commission rule, and necessary for the government of the [Board of Equalization], the preservation of order and the transaction of business;” Utah Code Ann 59-2-100 (6) and,

WHEREAS, Grand County contains property with a diverse variety of ownership, occupancy and uses that make it difficult to effectively administer the residential exemption without an established application procedure and defining criteria; and,

WHEREAS, the eligibility for the residential exemption should be determined by the nature, quality, and quantity of the actual occupancy or use of the structure and not by the classification nor the intended use of the structure, Dennis V Summit County, 933 P.2^d 387 (Utah 1997); and,

WHEREAS, it is in the best interest of Grand County to provide a standardized procedure and criteria for determining eligibility for the residential exemption, where the Tax Code is silent and the Tax Commission regulations are incomplete;

NOW THEREFORE, the County Legislative Body of the County of Grand, State of Utah; hereby establishes the following procedures and criteria to determine eligibility for the residential exemption:

Section 1. Procedure.

A. Application.

A property owner or the owner's designee shall submit an application for a residential exemption from property taxes to the Grand County Assessor no later than May 22 of the tax year for which the owner seeks the exemption. An application shall be in the form of an affidavit and shall contain, at a minimum, the following information:

- (1) property identification (serial number, address, etc.),
- (2) identity of property owner or taxpayer,
- (3) identity of the person signing the application,
- (4) basis of the person's knowledge of the use of the property and of the statements made in the application,
- (5) authority of the person signing the application to make the application on behalf of the owner (if applicable),
- (6) county where property is located, and
- (7) description of the nature of use of the property including references to the factors listed in Utah Administrative Code R884-24P-52 E.

Any misrepresentation in the application subjects the owner to a penalty equal to the tax on the property's full value.

The County Assessor shall develop and distribute a form application that property owners may use to apply for the residential exemption. This form application will include a copy of the Ordinance and of Utah Administrative Code R884-24P-52. It will also state the submission of the application authorizes the Grand County Assessor to request or collect information sufficient to verify primary residence status, from the owner, the building's occupants, or third parties.

B. Assessor Determination

The Grand County Assessor is responsible for initially determining whether property qualifies for the residential exemption. In connection with this determination, the Assessor may also request or collect information from the building's occupants or third parties.

If the owner or the owner's designee does not prove eligibility for the exemption or does not provide any requested information, the Assessor shall deny the exemption. If an application is not timely filed, the Assessor shall disallow the exemption.

The owner or the owner's designee will be notified of the Assessor's determination on the property tax notices for the property in question.

C. Board of Equalization.

A property owner who is not satisfied with the Assessor's determination may Appeal the Assessor's decision to the Grand County Board of Equalization.

If the Assessor denied the exemption because of the owner's failure to file the application timely or to prove entitlement to the exemption, the Board of Equalization, on an appeal at its regularly scheduled hearing, may grant a residential exemption for the current tax year only if the owner presents evidence proving that the property is used as a primary residence. At the close of the Board of Equalization, no further appeals for exemptions will be considered until the following tax year.

D. Change of Ownership or of Use.

A new application must be filed when ownership or the property's use or Occupancy changes. The owner is responsible for updating the application to reflect any changes in the use or occupancy of the property. Failure to report changes may subject the owner to a penalty equal to the tax on the property's full value.

E. Burden of Proof.

The person seeking the residential exemption has the burden of proving to the Assessor or the Board of Equalization that the property is used as a primary residence.

F. Grandfather Provision.

If a person owns property that is currently being used as a primary residence and that has been given the residential exemption by the County Assessor for such use, the person need not file an application to continue the exemption.. These property owners however may be denied the exemption if the Assessor or the Board determines that their property is not in fact used as a primary residence. In addition if the ownership, occupants, or the property's use change, the property will not qualify for the exemption until an application is filed and the Assessor or Board determines that the property is used as a primary residence.

Section 2. Criteria for Determining Eligibility for the Residential Exemption.

A. Definitions:

1. A “primary residence” is the place where a “domicile has been established”, Utah Administrative Code R884-24P-52. It is not “property used for transient residential use [nor] condominiums used in rental pools.” Utah Code Ann 59-2-102 (29).

2. A “domicile” means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place he has (whenever he is absent) the intention of returning. It is the place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home. After domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for, before a person can be said to have changed his domicile, a new domicile must be shown.

B. Eligibility Guidelines.

1. Factors: in determining whether property is used as a primary residence, the County Assessor and the County Board of Equalization may consider the factors listed in R884-24P-52.

2. Multiple Dwellings: where a person owns and lives in more than one dwelling in Utah, or elsewhere, only one of the dwellings is a primary residence. A rebuttable presumption exists that the primary residence is the one occupied by the owner for more than six months out of the year.

3. Buildings Under Construction: Buildings that are not completely constructed and occupied as a primary residence on January 1 of the tax year do not qualify for the residential exemption. To qualify, the building must be: (a) complete, (b) valued by the Assessor for property tax purposes as a completed building, and (c) legally occupied by a person who uses it as their primary residence.

4. Non-Owner Occupied Dwelling: To qualify for the residential exemption, the property owner need not personally occupy the property. Residential property, which is used as a primary residence by a non-owner, would qualify for the residential exemption upon compliance with the procedures and criteria found in this ordinance.

5. Lot size: In addition to the primary residence itself, the land on which the primary residence is located may also qualify for the exemption. However no more than one acre of land per single residential unit qualifies for the residential exemption. Utah Code Ann. 59-2-103(3).
6. Year Round Access: A rebuttable presumption exists that dwellings are not primary residences unless they have year round access.

Section 4. Conflict.

In the event of any conflict between this Ordinance and State or Federal law, the provisions of the latter shall be controlling.

Section 5. Savings Clause.

In the event one or more of the provisions of this Ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under any applicable law, such unenforceability or invalidity shall not affect any other provision: and in such an event, this Ordinance shall be construed as if such unenforceable or invalid provision had never been contained herein.

Section 6. Effective Date.

This Ordinance shall apply for the tax year beginning on January 2, 2006 and for the tax years thereafter.

APPROVED, ADOPTED, AND PASSED and ordered published by the Grand County Council, this 7th day of February, 2006.

Those voting aye: Graham, Knight, Carmichael, Lewis, McNeely

Those voting nay: None

Absent: Tanner, Langianese

**COUNTY COUNCIL
GRAND COUNTY, STATE OF UTAH**

By: _____
Judy Carmichael, Vice-Chair

ATTEST:

Fran Townsend, Clerk/Auditor