



May 9, 2014

Final Investigative Report Concerning Ombudsman Complaint 2014-0032

COMPLAINT

Two Anchorage citizens contacted the Municipal Ombudsman's Office after they were asked to produce a copy of their marriage license when one of them applied for a Municipal senior citizen property tax exemption. The couple, who have been married for 33 years, was asked by the Property Appraisal Division to provide a copy of their marriage certificate because they have different last names. The citizens believe this practice is unfair, because married couples generally who have the same last name are allowed to self-certify their applications without having to provide a copy of their marriage license.

FINDINGS

The complaint against the Municipality of Anchorage, Property Appraisal Division regarding the application process for senior citizen property tax exemptions for married couples who have different last names, or same sex couples, is **JUSTIFIED**.

ANALYSIS AND CONCLUSIONS

The complainants contacted the Ombudsman's Office on January 8, 2014. They have been married for 33 years, and had visited the Municipal Property Appraisal Division to apply for a senior citizen property tax exemption. They alleged that they had been told that in order to receive the full exemption which married couples are entitled to, even if only one of them is over 65 years of age, they would have to provide a copy of their marriage license because they have different last names. The complainants questioned this requirement, since it is not mentioned on the application form, application instructions, or on the Division's webpage. The complainants asked to speak with a supervisor, who confirmed the Division's policy. The complainants believe it is not fair that couples in certain groups, i.e. "non-traditional" marriages (different last names and same sex couples) must produce copies of their marriage licenses, and are not allowed to self-certify their spousal information, as are married couples generally who have the same last name.

The Ombudsman met with the Appraisal Supervisor, who confirmed the complainant's account. The Supervisor noted that the Division's policy is to require a marriage certificate if couples have different last names, are same sex couples (married in a jurisdiction where their marriage is recognized), or if there is a large age discrepancy between the spousal applicants. The Supervisor confirmed that the exemption application form, application instructions, and Division webpage do not inform the public that applicants may be asked to provide a marriage certificate as part of the application process. The Supervisor stated that the Division was considering revising the application and application instructions, and updating their webpage, to inform citizens that they might be required to provide a marriage certificate when filing for an exemption, in particular those applicants who have different last names, and same sex couples.

When the Ombudsman asked the Supervisor why the Division does not require all spousal applicants to produce a copy of their marriage licenses, the response was that the State of Alaska requires that real property parcel master files, including documents related to senior citizen tax exemptions, must be retained permanently. Asking every applicant for a senior citizen property tax exemption to provide a copy of their marriage license could generate thousands of pages of additional paperwork annually that would have to be retained permanently. The Ombudsman suggested that the Division scan the documents and store them electronically; the Supervisor replied that the State of Alaska does not accept scanned documents as legal documentation.

Following his conversation with the Supervisor, the Ombudsman reviewed the relevant state statutes, and contacted the State of Alaska Archivist and the Municipal Archivist. The Ombudsman determined that the Division has considerable latitude in formulating the parameters of their records retention schedule. There seems to have been some confusion around this issue, based on previous advice from the Municipal Department of Law. Although the State of Alaska's "Local Government Model General Administrative Records Retention Schedule" is only a template that local governments in Alaska can choose to implement, or not to implement, it can easily be misconstrued to be mandatory. Only one short sentence on page 15 of the 86 page document spells out that the document is "intended as a model schedule and contains recommendations for the minimum retention period." The Ombudsman briefed the Supervisor regarding what he had discovered regarding records retention, and she will brief the Municipal Assessor.

Alaska State Statute 29.45.030.e mandates that the real property owned and occupied as the primary residence and permanent place of abode of a resident 65 years of age or older is exempt from taxation on the first \$150,000 of the assessed value of the real property. This is a significant financial benefit, and it is not unreasonable for the Municipality to require proof of eligibility. Indeed, AS 26.45.030.f states that "The assessor shall require proof in the form the assessor considers necessary of the right to and amount of an exemption claimed under (e) of this section..." The assessor may also "require proof under this subsection at any time." While the Assessor is mandated to require proof of eligibility for an exemption, the Assessor has considerable discretion and latitude as to what constitutes "proof." The only "proof" mentioned on the current senior citizen exemption application form and in the application instructions is proof of age.

Although it is fair and reasonable for the Assessor to require proof of the right to and amount of exemption under AS 26.45.030.f, the question for the Ombudsman is whether the policy of only asking particular groups of applicants to provide a copy of their marriage certificate is fair and reasonable. In practice, the Property Appraisal Division has established an unwritten policy that requires persons in marriages that may be perceived to be "non-traditional" to provide documentation that married couples generally are not required to provide. A disparity in treatment between groups of married couples underscores the question raised: If, generally, married couples are allowed to self-certify, is it fair and reasonable to deny certain groups of married couples the same benefit? This is a simple question: Do we treat all citizens the same, or treat certain groups of citizens differently?

The Ombudsman believes that it is fair and reasonable for all citizen applicants to be treated the same: Either all citizen applicants for senior citizen property tax exemptions should be required to provide a copy of their marriage licenses, or all applicants should be allowed to self-certify their spousal information. Requiring a copy of an applicant's marriage license is not unreasonable given the financial benefits of the exemption, if all applicants are asked to provide the same documentation. Marriage is evolving in America, many women are keeping their last names, or are hyphenating their last names,

and the number of same-sex marriages is increasing daily. The Municipality's policies need to evolve with the times. Fairness and equity should be the norm for Anchorage's Municipal government. If a rationale for the distinction is legitimate, it should come in the form of findings (such as findings of actual exemption abuse particular to a "class" of applicants) to support a fair and reasonable distinction.

Because the Municipal Assessor is given considerable discretion and latitude regarding documentation required for Municipal senior citizen property tax exemptions, and because current policy is to require married couples with different last names and same-sex couples to provide copies of their marriage licenses when applying for an exemption, while married couples generally with the same last name are allowed to self-certify spousal information, the Ombudsman finds the complaint that the current policy is not fair and reasonable to be JUSTIFIED. *The Property Appraisal Division was provided with a copy of the Ombudsman's preliminary report.*

Based on the investigation of this case, the Municipal Ombudsman recommends the following:

That the Property Appraisal Division's policy regarding applications for senior citizen property tax exemptions be revised to:

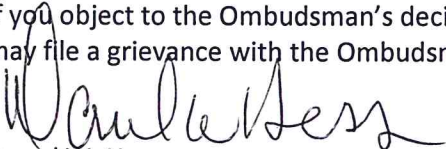
A) Allow all applicants to self-certify spousal information. *Property Appraisal concurs with this recommendation (A), and will implement the recommended self-certification of spousal information for all applicants effective immediately.*

or

B) Require that all applicants be required to provide a copy of their marriage licenses to confirm their spousal information. *Property Appraisal reviewed the report and recommendations the Ombudsman presented, and this recommendation (B) was determined to be burdensome for both the public and the division.*

Based upon this finding and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.


Darrel W. Hess
Municipal Ombudsman