HOMESTEADS & HURRICANES: WHAT'S NEW WITH THE SAVE OUR HOMES CAP

The Save Our Homes Cap (SOH) found in Article VII, § 4(c) of the Florida Constitution and implemented by Section 193.155 of the Florida Statutes almost caused more victims of the 2004 Florida Hurricane season. Thanks to a recent change to Section 193.155, the homeowners in Florida have been granted some relief from the impact of last year's hurricane season as they rebuild their damaged homesteads. Other SOH developments worthy of note are also discussed in this article.

THE BASICS OF THE SOH CAP[1]

In 1992 the Florida voters approved Constitutional Amendment Number 10 aimed at limiting the amount of the increases to the annual valuation of one's Florida homestead for ad valorem tax purposes. Article VII, § 4(c)(1)a. and b. of the Florida Constitution limits the amount of increase in the assessed valuation of a homestead to the lower of three percent (3%) of the prior year's assessment or the percent change in the Consumer Price Index (CPI) for all urban consumers (U.S. City Average all items 1967=100, or successor reports for the preceding calendar year as initially reported by U.S. Department of Labor, Bureau of Labor Statistics).[2] Since January 1, 1994 when all property was assessed at just value, the CPI has only surpassed 3% in the years 1997 (3.30%); 2001 (3.40%) and 2005 (3.30%).[3] Thus, notwithstanding the recent rapid increases in the true fair market value of Florida properties, especially waterfront, the increases in assessed values of Florida homesteads in 2005 were limited to three percent (3%). A representative showing of increases in real property values (residential real estate is not broken out) from 2003 to 2004 demonstrates just how dramatic the increases in real property values have been and, therefore, how significant the SOH Cap is to Florida taxpayers.[4]

County	Percent Increase 2003-2004
Alachua	16.19
Brevard	17.79
Broward	14.49
Charlotte	19.46
Dade	19.38
Flagler	27.66
Gulf	25.73
Okeechobee	46.68

HURRICANES AND THE SOH CAP

The onslaught of the 2004 hurricanes has found many Floridians rebuilding, replacing and substantially improving their ravaged homes. This has created an issue under the SOH Cap Implementation Statute 193.155(4)(b). Section 193.155(4)(a) states that changes, additions or improvements shall be assessed at just value (my emphasis) as of January 1 after the work is substantially completed. Section 193.155(4)(b) states that "Changes, additions, or improvements do not include replacement of a portion of real property damaged or destroyed by misfortune or calamity when the just value of the damaged or destroyed portion as replaced is not more than 125 percent of the just value of the damaged or destroyed portion. The value of any replaced real property, or portion thereof, which is in excess of 125 percent of the just value of the damaged or destroyed property shall be deemed to be a change, addition, or improvement." Thus, any substantial changes or improvements exceeding 125 percent of just value of the damaged or destroyed property as a result of the hurricanes would be a change and thus not covered by the SOH Cap.

The legislature addressed this problem with the passage of SB 1194 on May 4, 2005, which amends Section 193.155(4). This amendment states that, notwithstanding the existing language of Section 193.155(4), if there are changes, additions or improvements to homestead

property which was rendered uninhabitable by one or more of the named storms of 2004, then the assessment for just value is limited to the square footage that exceeds 110% of the homestead's total square footage. Repairs must be completed by January 1, 2008. Thus regardless of how much value has been added to one's homestead, the SOH Cap stays in place as long as the new square footage does not exceed 110% of the existing square footage. Additionally, if a home has square footage of 1,350 square feet or less, then it is not considered a change, addition or improvement if rebuilt up to 1,500 square feet. The law is retroactive to January 1, 2005.

DISCLOSURE REQUIREMENTS

A new homeowner who buys a home thinking that his real property taxes may be a certain amount based on the existing tax bill at the time of closing may be in for a shock when he gets his first bill. To prevent this kind of problem, the 2004 legislature passed Florida Statute 689.261. Effective January 1, 2005, Section 689.261 requires that a prospective purchaser of residential property be presented with a disclosure summary at or before the execution of the contract for sale. The form must be substantially similar to this:

> **Property Tax Disclosure Summary.** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE IN OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

If it is not in the contract, then the summary must be provided by the seller although, in that event, the contract must refer to and incorporate by reference the Disclosure Summary. In addition, the contract must include, in prominent language, a statement that the potential purchaser should not sign the contract until he has read the Disclosure Summary.

HOMESTEAD EXEMPTION, A PREREQUESITE TO GET THE SOH CAP

Although it may seem incomprehensible that a homeowner who qualifies for the exemption would not obtain a homestead exemption that is what happened in Zingale v. Powell[5]. A Florida Supreme Court case decided in September of 2004, Zingale dealt with the issue of whether or not a homeowner was still entitled to the benefit of the SOH Cap even though he was qualified for but had never applied for the homestead exemption. When the Zingales' home assessed value went from $2.3 million to almost $3.9 million resulting in an increase of almost $40,000 in real property taxes, they cried "uncle" and sought to have the SOH Cap applied to limit the increase in their assessment in the years 2000 to 2001, although the Zingales had not applied for the exemption until 2001. Justice Pariente, in a decision which reversed the Fourth District Court of Appeal, found that the lower court's decision was contrary to Section 193.155(6) which implements the constitutional cap. Section 193.155(6) states that "only property that receives a homestead exemption is subject to this Section." Thus with no existing homestead exemption having been granted, the Zingales could not claim an SOH Cap for the previous year. So, yes, they get their SOH Cap now but with a different baseline year that now includes all the appreciation from previous years.[6]

ADDING OR SUBTRACTING EQUALS TROUBLE!

Florida Statute 193.155(3) provides for a new assessment when there has been a change in ownership with certain exceptions which are beyond the scope of this article.[7] Two Attorney General opinions bring into clear focus the seemingly innocuous matters of adding or removing a name from a deed.

In AGO 2001-31, a tax assessor inquired as to whether the addition of a co-owner to a deed would cause the assessed value to be returned to its just value in its entirety or whether fifty

percent of the property would retain its SOH Cap. The Attorney General opined that such a change in ownership did not fall within one of the exceptions and, thus, the change in ownership required the entire property to be reassessed at just value. The reverse also holds true, i.e. the removal of a co-owner from a deed. In AGO 2002-28 the question was whether the removal of a co-owner from title caused the property to be reassessed at just value. Again, finding no exception to be applicable, the Attorney General answered the question in the affirmative stating that the removal of a name required the property to be reassessed as of the next January 1 at just value.[8]

CONCLUSION

As real property prices continue to skyrocket in Florida, the SOH Cap becomes ever more important. Tax winds blow hard – don't let your clients lose their Caps!

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[1] For a more extensive discussion of the SOH Cap See "Protecting and Preserving the Save Our Homes Cap," the Florida Bar Journal/October 2003 by Richard S. Franklin and Roi E. Baugher III.

[2] Article VII, SECTION 4.(c) reads as follows:

> "All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.
>
> (1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:
>
> a. Three percent (3%) of the assessment for the prior year.
>
> b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics."

[3] See Florida Department of Revenue (www.dor.state.fl.us.) website under State of Florida, Department of Revenue, Save Our Homes for a list of the Save Our Homes annual increases.

[4] See Florida Property Valuations & Tax Data, December 2004, State of Florida Department of Revenue at www.dor.state.fl.us.

[5] 885 So.2d 277 (Fla. 2004).

[6] As a matter of interest the Zingales moved into their house in 1990 and would have qualified for the baseline year of 1994 when the SOH Cap went into effect but did not apply for the homestead exemption until 2001. Obviously the Zingales had a high threshold of tax pain tolerance!

[7] Section 193.155 provides in general four exceptions to the loss upon transfer rule. Those exceptions are: (a) the same person is entitled to the homestead exemption as was previously entitled and the transfer was to correct an error or the transfer is between legal and equitable title; (b) the transfer is between husband and wife which includes a transfer to a surviving spouse or due to a divorce; (c) the transfer is due to operation of the homestead laws for descent and distribution; or (d) transfer on death is to a permanent resident who is a legal or natural dependent of the deceased.

[8] As a matter of general interest, the Attorney General has ruled that a general partner in a foreign limited liability company is not entitled to get a homestead exemption. See AGO 2004-45.