

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 744

INTRODUCER: Senator Altman

SUBJECT: Homestead Assessments

DATE: March 19, 2009 REVISED: 03/24/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/1 amendment
2.			FT	
3.			EA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill revises the criteria by which a transfer of homestead property is not considered a change of ownership for purposes of reassessing the property at just value.

This bill substantially amends section 193.155, Florida Statutes.

II. Present Situation:

“Save Our Homes” Assessment Limitation (Section 4(d), Art. VII, State Constitution)

Section 4, Art. VII, State Constitution, was amended in 1992 when the assessment limitation popularly known as “Save Our Homes” was adopted by 54 percent of the voters voting on the proposed amendment. The amendment provided that all persons entitled to a homestead exemption under s. 6, Art. VII, would have their homestead assessed at just value as of January 1 of the year following the effective date of the amendment. Thereafter, homestead assessments were to be changed annually on January 1 of each year, but the changes could not exceed the lower of the following:

- Three percent of the assessment for the prior year, or
- 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.

No assessment may exceed just value. After any change of ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year, except that for property owners who establish a new homestead and who received a homestead exemption in either of the two years immediately preceding the establishment of a new homestead is entitled to have their homestead assessed at less than just value (portability of the Save Our Homes assessment limitation.)

Homestead Exemption (Section 6, Art. VII, State Constitution)

Paragraph (a), section 6, Art. VII, State Constitution, provides that every person who has legal or equitable title to real estate and who maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, is exempt from taxation, except assessments for special benefits, in an amount equal to \$25,000 and, for all levies except school district levies, on the assessed valuation greater than \$50,000 and up to \$75,000. The real estate may be held in legal or equitable title, by the entireties, joint, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. Not more than one exemption shall be allowed to any individual or family unit or with respect to any residential unit.

Section 193.155, F.S. (1994)

The 1994 Legislature enacted chapter 94-353, Laws of Florida, to implement the "Save Our Homes" amendment. Subsection (3) of s. 193.155, F.S., provides for the assessment of property at just value after a change in ownership. A change of ownership means any sale, foreclosure, or transfer of legal or beneficial title in equity to any person unless:

- Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:
 - The transfer of title is to correct an error;
 - The transfer is between legal and equitable title;¹ or
 - The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if an individual additionally named as a grantee applies for a homestead exemption on the property, the application must be considered a change of ownership.
- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to divorce;
- The transfer occurs by operation of law under s. 732.4015, F.S.,² or

¹ Black's Law Dictionary 539, 897 (6th ed. 1990) defines legal title as "one cognizable or enforceable in a court of law, or one which is complete and perfect so far as regards the apparent right of ownership and possession but which carries no beneficial interest in the property," and equitable ownership (equitable title) as "the ownership interest of one who as equitable as contrasted with legal ownership of the property as in the case of a trust beneficiary. Ownership rights which are protected in equity."

- Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent on the owner.

No exception is provided for transfer of property between equitable interests.

Higgs v Warrick (994 So.2d 492)

In *Higgs v Warrick*, the District Court of Appeals, 3rd District, held that the homestead exemption statutes recognized 98-year plus lessees of permanently occupied residences as eligible for the homestead exemption. In this case, Mr. Warrick created a trust using his single family residence as the subject matter of the trust. After he placed his home in the trust, he continued to reside in the home, and he applied for and received a homestead exemption. After receiving the exemption, he transferred the trust to his heirs in return for a 99-year lease on the property. After the transfer, he was denied a homestead exemption even though he continued in residence. Mr. Warrick appealed to the Value Adjustment Board and was granted an exemption. The property appraiser appealed to the Circuit Court which also found in favor of Mr. Warrick, and the property appraiser appealed again.

The 3rd DCA held that the plain and ordinary meaning of ss. 196.031 and 196.041, F.S., provided that a 98-year plus lessee of a residential parcel permanently occupied as a residence qualifies for a homestead exemption and affirmed the judgment of the circuit court.

Prewitt Management Corporation v Nikolits, as Palm Beach County Property Appraiser (795 So.2d. 1001)

Prewitt Management Corp. (PMC) appealed from a final summary judgment entered in favor of the Palm Beach County Property Appraiser for denial of a homestead exemption. In this case, Mr. Prewitt, the sole shareholder of PMC, a subchapter S corporation,³ loaned money to PMC to purchase residential property in which Mr. Prewitt and his family resided. PMC applied for a homestead exemption and was denied, and appealed to the Value Adjustment Board and was granted an exemption. The Palm Beach County property appraiser then appealed to the circuit court which entered a judgment in favor of the property appraiser. PMC then appealed to the 4th DCA.

In affirming the decision of the trial court, the 4th DCA held that the Legislature provided an exclusive list of equitably owned properties entitled to a homestead exemption. A subchapter S corporation is not part of the list and is therefore not eligible for the exemption.

III. Effect of Proposed Changes:

The bill amends s. 193.155, F.S., to delete the exception for a transfer of ownership under the devise of homestead as provided in s. 732.4015, F.S., and create an exception for transfer of ownership under the descent of homestead in s. 732.401, F.S., which provides:

² Section 732.4015, F.S., provides that the homestead is not subject to devise upon the death of the owner when the owner is survived by a spouse or minor children, and may be devised to the owner's spouse if there are no minor children.

³ Under the Internal Revenue Code, S corporations generally do not pay income taxes and the corporation's income or losses are divided among the shareholders who report the income or loss on their individual tax returns.

- If not devised as permitted by law and the Florida Constitution, homestead property will descend in the same manner as other intestate property.⁴ However, if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, and the descendants take a vested remainder per stirpes.⁵
- Homestead property of a decedent and a surviving spouse which was owned as tenants by the entirety⁶ is not subject to the descent of homestead requirements.

The bill creates an additional exception for transfer of ownership by providing that:

- Subsequent to the change or transfer of ownership, the transferor or the transferor's spouse possesses legal or equitable title, or otherwise qualifies for the homestead exemption under s. 196.031, F.S.,⁷ so long as the transferor or the transferor's spouse would meet the requirements of s. 196.031(1)(a), F.S., independently of such transfer.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Because this bill does not qualify for one of the exceptions or exemptions provided in s. 18, Art. VII, State Constitution, and creates new exceptions to the reassessment of homestead property at just value upon a change in ownership, the bill does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ To die without a will. (Black's Law Dictionary, 821 (6th. ed. 1990))

⁵ Each branch taking an equal share, and each group of descendants from the branch taking the equal share to which their deceased was entitled. (Black's Law Dictionary, 1144 (6th ed., 1990))

⁶ Equal rights and equal possession in the property, each person owns 100 percent of the property. At death, ownership passes from one owner to the other.

⁷ Section 196.031, F.S., provides for homestead exemptions for ad valorem tax purposes.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This bill creates additional exemptions for the reassessment of homestead property at just value upon a change of ownership. These additional exemptions will reduce ad valorem taxes.

B. Private Sector Impact:

Property owners eligible under the new exemptions will see a reduction in ad valorem tax revenues.

C. Government Sector Impact:

The Revenue Estimating Conference adopted an indeterminate negative fiscal impact to local government in January 2009. Based on new information, the conference may reconsider this proposal and the fiscal impact may be revised.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It appears that this bill provides a perpetual exemption from the assessment of homestead property at just value upon change of ownership by creating an exception for a surviving spouse with a life estate, and a vested distribution to the descendants per stirpes, and by providing an exception for homestead property that descends in the same manner as other intestate property.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:**Barcode 619948 by Community Affairs on March 24, 2009:**

This amendment provides that for purposes of reassessing homestead property at just value upon a change of ownership, by providing additional exemptions to the change of ownership provisions. No change of ownership occurs when:

- A transfer of property is between equitable and equitable title and no additional person applies for the homestead exemption.
- The transfer of property occurs by operation of law to the surviving spouse or minor child or children under s. 732.401, F.S.
- Legal or equitable title is changed or transferred between a husband and a wife, including a change to a surviving spouse, or due to a dissolution of marriage.

The amendment clarifies that a leasehold interest that qualifies for the homestead exemption under s. 196.031 or s. 196.041, F.S., shall be treated as an equitable interest. The issue of a perpetual homestead exemption passing from family member to family member as discussed in the “Related Issues” is resolved. (WITH TITLE AMENDMENT)

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
