

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 101

Homestead Assessments

SPONSOR(S): Hukill

TIED BILLS:

IDEN./SIM. BILLS: SB 744

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	14 Y, 0 N	Noriega	Hoagland
2)	Economic Development & Community Affairs Policy Council		Noriega	Tinker
3)	Finance & Tax Council			
4)	PreK-12 Appropriations Committee			
5)	Full Appropriations Council on Education & Economic Development			

SUMMARY ANALYSIS

Section 193.155, F.S., implements the Florida Constitution’s Save Our Homes (SOH) provisions of Article VII, section 4(d), which limit annual changes in assessments until a change of ownership takes place. Section 193.155, F.S., also specifies criteria under which a transfer is not considered a change of ownership requiring a just value reassessment of the homestead property.

This bill adds another criterion under which a transfer of homestead property is not considered a change of ownership requiring reassessment. More specifically, this bill provides that transfers of ownership interests, whether legal or equitable, pursuant to which the same person or that person’s spouse continues to hold legal or equitable title of the homestead real property or otherwise continues to qualify for the homestead exemption, will not be treated as a “change of ownership” requiring reassessment.

The bill also makes a change to a cross-reference regarding probate laws so there is no change of ownership when the transfer occurs by operation of law under s. 732.401, F.S., which addresses “descent of homestead.”

On February 6, 2009, the Revenue Estimating Conference determined that this bill would have a negative indeterminate fiscal impact on local governments and no fiscal impact on state government revenues or expenditures.

The bill has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Background

Article VII, section 4(d), of the Florida Constitution created an assessment limitation for homesteads, popularly known as the Save Our Homes (SOH) amendment, and provides that:

- 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;
- Assessments subject to this provision shall be changed annually on January 1 of each year; but those changes in assessments shall not exceed the lower of the following:
  - Three percent (3%) of the assessment for the prior year; and
  - The percent change in the 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 the United States Department of Labor, Bureau of Labor Statistics.

Section 193.155, F.S., implements this constitutional provision. Subsection 193.155(3), F.S., provides that there is no change in ownership when, following a change or transfer, the same person is entitled to the homestead exemption as was previously entitled and the transfer is between legal and equitable title.<sup>1</sup>

##### Transfer Options Not Resulting in Change of Ownership

The following types of homestead transfers currently do not result in a change of ownership:

- Any transfer in which the person who receives the homestead exemption is the same person who was entitled to receive homestead exemption on that property before the transfer, and

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<sup>1</sup> Legal title refers to the duties and responsibilities of maintaining and controlling some property, while equitable title refers to the benefits and enjoyment of that property. The essence of a trust is splitting the legal title and equitable title in some piece of property such that one or more people (the trustees) have the legal title and control the property while others (the beneficiaries) own the equitable title and get the use and enjoyment of the property.

- The transfer of title is to correct an error;
  - The transfer is between legal and equitable title; 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, a change of ownership occurs if any additional individual named as grantee applies for a homestead exemption on the property;
- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage, provided that the transferee applies for the exemption and is otherwise entitled to the exemption;
  - The transfer, upon the death of the owner, is between the owner and a legal or natural dependent who permanently resides on the property; or
  - The transfer occurs by operation of law under s. 732.4015, F.S., which addresses “devise of homestead.” Under this provision, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or children, except that the homestead may be devised to the owner’s spouse if there is no minor child or children.

#### Qualified Personal Residence Trust

A type of equitable title permitted under the Internal Revenue Code is a Qualified Personal Residence Trust (QPRT). A QPRT is an estate planning device whereby the settler creates an irrevocable trust funded by the transfer of a personal residence to the trustee while retaining in the transferor a right to reside on the property for a term of years.<sup>2</sup> This strategy is part of the federal income tax code which allows homeowners to transfer property to their children while avoiding future estate taxes.<sup>3</sup>

According to the Real Property Probate and Trust Law (RPPTL) Section of the Florida Bar, this transfer of a personal residence allows the individual to retain the right to use the residence rent-free for a specified period of time (also called the “retained term interest”). In these cases, the tax savings occur only if the grantor of the trust survives the period of his or her retained interest. Two district courts of appeal in Florida have held that the individual continues to be eligible to receive the homestead ad valorem tax exemption during the retained term interest.<sup>4</sup>

In addition, because a title is transferred to a beneficiary upon expiration of the retained term interest, RPPTL has stated that after the end of the time period during which the individual possessed the retained term interest, sometimes the individual wishes to continue to possess, reside in, and enjoy the homestead. Under these circumstances, the individual can enter into a lease for a term of at least 98 years (leasehold interest<sup>5</sup>), which should enable the individual to continue to receive the homestead ad valorem tax exemption.<sup>6</sup>

However, according to RPPTL, at least one property appraiser’s office has taken the position that a change or transfer of ownership between two equitable titles will result in the homestead real property being reassessed for purposes of determining ad valorem taxes subsequent to the transfer. This apparently includes equitable interest held by the individual from a beneficial interest in the QPRT to the 98-year or greater leasehold

<sup>2</sup> Jeffrey A. Baskies, *Understanding Estate Planning with Qualified Personal Residence Trusts*, 73 Fla. B.J. 72 (1999).

<sup>3</sup> I.R.C. § 2702; Peter A. Borrok, *Four Estate Planning Devices to Get Excited About*, N.Y.St.B.J., Jan. 1995, at 32; David C. Humphreys, Jr., *Qualified Personal Residence Trusts: “Have Your Grits and Eat Them, Too!”*, S.C.Law., Nov.-Dec. 1994, at 45.

<sup>4</sup> *Robbins v. Welbaum*, 664 So.2d 1 (Fla. 3<sup>rd</sup>. DCA 1995), and *Nolte v. White*, 784 So.2d 493 (Fla. 4<sup>th</sup>. DCA 2001).

<sup>5</sup> A leasehold interest is a claim or right to enjoy the exclusive possession and use of an asset or property for a stated definite period, as created by a written lease.

<sup>6</sup> See s. 196.041, F.S., and *Higgs v. Warrick*, 2008 WL 4866310 (Fla.App. 3 Dist.).

interest. Thus, under the reasoning of at least one property appraiser's office, an individual who creates a new revocable inter vivos trust and transfers ownership of his or her homestead real property from the old trust to the new trust would also be subject to having his or her homestead real property reassessed and would lose the benefit of the SOH cap that had been in effect prior to the transfer. In other words, this "change in ownership" is not protected under the provisions of s. 193.155(3), F.S., and the homestead property must be reassessed when transferred from one inter vivos trust to another, even if the equitable owner remains the same.

## **Proposed Changes**

This bill amends s. 193.155(3), F.S., by adding another criterion under which a transfer of homestead property is not considered a change of ownership requiring reassessment. More specifically, this bill clarifies that transfers of ownership interests, whether legal or equitable, pursuant to which the same person or that person's spouse continues to hold legal or equitable title of the homestead real property or otherwise continues to qualify for the homestead exemption, will not be treated as a "change of ownership" requiring reassessment.

This proposed amendment would clarify that "transfers of ownership" in which the same person or that person's spouse continues to hold legal or equitable title of the homestead real property or otherwise qualifies for the homestead exemption under s. 196.031, F.S.,<sup>7</sup> will continue to enjoy the SOH cap as long as the interest held qualifies for the homestead exemption. This would cover individuals who are eligible to receive the homestead exemption and then change the qualifying interest in the homestead from a beneficial interest in a QPRT to a qualifying leasehold interest (i.e., 98 years or greater).

The bill also amends an existing factor under which a transfer of homestead property is not considered a change of ownership in s. 193.155(3), F.S., by making a change to a cross-reference regarding probate law (chapter 732, F.S.). This change provides for the transfer to occur by operation of law under s. 732.401, F.S., which addresses "descent of homestead" as it relates to the probate code. Descent of homestead provides that if property is not devised<sup>8</sup> as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property. However, the overriding consideration in probate law identified by this section is the spouse and minor child's (or children's) right to the property. Under s. 732.401, F.S., if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

The current statutory reference, s. 732.4015, F.S., addresses "devise of homestead," which provides that a homestead is not subject to devise<sup>9</sup> if the owner is survived by a spouse or a minor child or children, except that the homestead may be devised to the owner's spouse if there is no minor child or children.

### **B. SECTION DIRECTORY:**

Section 1: amends s. 193.155(3), F.S., regarding homestead assessments.

Section 2: provides an effective date of July 1, 2009.

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<sup>7</sup> Section 196.031, F.S., addresses the criteria associated with "exemption of homesteads" and allows individuals to claim a home exempt from ad valorem taxation if they hold legal or beneficial title to that home and, in good faith, make it their permanent residence. On the other hand, s. 193.155, F.S., addresses the assessments themselves and when the property is to be assessed at just value.

<sup>8</sup> Section 731.201, F.S., addresses the general provisions of the probate code and defines "devise" as follows: when used as a noun, "devise" refers to a testamentary disposition of real or personal property. When used as a verb, "devise" refers to disposing of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in the probate code, the will, or the trust.

<sup>9</sup> "Devise" is expanded upon in s. 732.4015, F.S., to include a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOR has indicated that the implementation, administration, and enforcement as provided by this bill will not result in any operational fiscal impact.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On February 6, 2009, the Revenue Estimating Conference determined that this bill would have a negative indeterminate fiscal impact on local governments.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate; however, even though this bill would have a negative indeterminate fiscal impact on local governments, an exemption applies because this impact is not expected to reach the \$1.9 million threshold applicable to mandates.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The DOR has indicated it will have to make minor changes to Rule 12D-8.0061 as a result of this bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Staff believes that this bill's proposed language may be subject to different interpretations by property appraisers throughout the state. Therefore, staff recommends amending the proposed language to clarify that the provisions of the bill are limited to the same person or that person's spouse.

The Real Property Probate and Trust Law (RPPTL) Section of the Florida Bar supports this bill because it believes that the provisions of s. 193.155(3), F.S., should be clarified to provide that any transfer of

ownership resulting in the transferor or the transferor's spouse possessing, immediately after the transfer, the legal title, equitable title, or other interest which qualifies for the homestead exemption under the provisions of s. 196.031, F.S., should not be treated as a change in ownership for purposes of determining whether homestead real property is to be reassessed so long as the transferor or the transferor's spouse would, independently of such transfer, meet the requirements of s. 196.031(1)(a), F.S.

In addition, RPPTL has stated that most property appraisers presented with this issue have taken the position that the individual continues to qualify for both the homestead ad valorem tax exemption and the SOH cap without a reassessment becoming necessary.

Overall, RPPTL's position is that this bill would clarify a narrow interpretation of the statute and provide guidance to all property appraisers throughout the state.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.