

Save Our Homes Amendment, eminent domain

Number: INFORMAL

Date: October 09, 2006

The Honorable Bob Henriquez
Representative, District 58
4221 North Himes Avenue, Suite 102
Tampa, Florida 33607

Dear Representative Henriquez:

Attorney General Charlie Crist has asked me to respond to your letter on behalf of your constituent, Mr. David Miesch.

According to your letter, Mr. Miesch's home is being purchased by the Florida Department of Transportation under eminent domain as part of the widening of Interstate 275. Mr. Miesch is concerned that he will lose the benefits he has accrued as a result of the "Save Our Homes" constitutional amendment when he moves to his new homestead in Hernando County.

In 1992, Florida citizens amended the Florida Constitution by adopting a provision that limited ad valorem taxation on homesteads. The amendment, which became effective January 5, 1993, levied a base year "just value" assessment for each homestead as of January 1, 1994 (the year following the effective date of the amendment), and restricted subsequent increases in assessments to the lower of either (a) three percent of the prior year's assessment, or (b) a percent change in the Consumer Price Index.[1] The purpose of the amendment was to encourage the preservation of homestead property in the face of ever-increasing opportunities for real estate development and rising property values and assessments.[2]

Subsection 4(c)3. of Article VII, Florida Constitution, however, provides:

"After *any* change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein." (e.s.)

In 1994, the Legislature enacted legislation implementing the homestead amendment that had been approved by the electorate.[3] This legislation is codified in section 193.155, Florida Statutes. Subsection (3) of the statute provides:

"(3) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change in ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection. There is no change of ownership if:

(a) Subsequent to the change or transfer, the same person is entitled to the homestead

exemption as was previously entitled *and*:

1. The transfer of title is to correct an error; or
2. The transfer is between legal and equitable title;
- (b) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;
- (c) The transfer occurs by operation of law under s. 732.4015; or
- (d) 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 upon the owner." (e.s.)

Section 193.155(3), Florida Statutes, thus reflects the intent of Article VII, section 4(c), Florida Constitution, that any change in ownership requires that the property be reassessed at just value as of January 1 of the year following the change in ownership.[4]

While this office understands that Mr. Miesch's property is being purchased by eminent domain, there is no provision in either the constitutional amendment or its implementing legislation which permits the transfer of the benefits accrued under its provisions from one homestead to another homestead even though such a change in the ownership of the homestead property is due to eminent domain. Nor does this office have the authority to read such an exception or exemption into the Constitution.

I hope that the above informal advisory comments may be of assistance. I would be happy to discuss with you any changes to the Florida Statutes that you may seek to introduce to remedy Mr. Miesch's situation and those similar situations. Thank you for contacting this office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

[1] See Art. VII, s. 4(c), Fla. Const., which provides in part:

"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.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be

assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

(5) Changes, additions, reductions or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law. . . ."

[2] See *Smith v. Welton*, 710 So. 2d 135 (Fla. 1st DCA 1998), *affirmed on other grounds*, 729 So. 2d 371 (Fla. 1999).

[3] See s. 62, Ch. 94-353, Laws of Florida.

[4] And see Rule 12D-8.0061(2), F.A.C., providing in part:

"Real property shall be assessed at just value as of January 1 of the year following any change of ownership. . . . For purposes of this section, a change of ownership includes any transfer of homestead property receiving the exemption"