

## **SUMMARY OF FINAL ORDER UPHOLDING THE VALIDITY OF THE AMENDMENT 10 (SAVE OUR HOMES) RULE – See Rule 12D-8.0062, F.A.C.**

The purpose of this summary is to explain the Department of Revenue's rule regarding increases in assessed value under the Save Our Homes constitutional amendment and the results of the 1995 challenge to that rule.

**The Department of Revenue's Rule:** The constitution requires that homestead assessments change annually, but the change cannot exceed the increase in the Consumer Price Index (CPI) or 3%, whichever is less. In addition, the assessed value of the homestead can never exceed its just value. The Department's rule reflected these limitations, requiring that in any year in which just value exceeds assessed value (that is, the value as limited by the Save Our Homes amendment), the assessed value is required to be increased by the lower of the percentage increase in the CPI or 3%, subject to the requirement that assessed value not exceed just value.

**Rule Challenge:** The Department's proposed rule was noticed on March 3, 1995 and subsequently challenged by the Broward County Property Appraiser. The Property Appraiser's contention was that there was an additional limitation on any increase in assessed value under the Save Our Homes amendment. The Property Appraiser's perceived additional limitation was grounded on market movement, contending that if the percentage change in the property's market value was less than either the CPI or 3%, the assessed value could increase no faster than the percentage increase in market value.

**Example:** A Property Appraiser determines that a homestead with a market value of \$150,000 and an assessed value, as limited by Save Our Homes, of \$100,000, in 2006 did not appreciate in value during that year and, therefore, the market value remains at \$150,000 on the 2007 tax roll. Under the Department's proposed rule, if the permitted increase under the constitution was 3%, the assessed value would increase to \$103,000 even though the market value of the house did not change. Under the scheme proposed by the Broward County Property Appraiser, the assessed value would remain at \$100,000 reflecting the fact that no change occurred in market value.

**The DOAH Ruling:** The Division of Administrative Hearings (DOAH) considered and rejected the Property Appraiser's contention, finding that the Constitutional language is plain and unambiguous, that there is no mention of market movement in either, and that the market movement limitation is inconsistent with the Constitution's ballot summary. By express terms, the only time the constitution and statute provide for no change in assessments is when the property is assessed at just value, which is the constitutional standard throughout Article VII.

The final order also determined as a matter of law that 1) the rule does not conflict with the statute because it follows the statute; 2) the rule does not conflict with the Constitution because its terms do not depart from the language of the Constitution and both the rule and statute conform to the Constitution; and 3) the rule is not vague because it reaches "exactly the result required by the statute and Constitution."

The DOAH administrative law judge is the representative of the agency head (in this case, the Governor and Cabinet which had previously approved the rule on a 3-2 vote, with two members

absent), responsible for taking final agency action for purposes of determining the legality of agency rules. Unlike orders relating to agency enforcement actions which are recommended orders subject to change by the agency, the Legislature has made rule challenge orders final, subject to appeal to a District Court of Appeal. As with circuit court final orders, rule challenge final orders must be appealed within 30 days. In this case, the time for appeal expired on July 21, 1995, and no appeal of this final order was taken.

In summary, this final order, which was not appealed, determined that the rule is valid because it is consistent with the statute and Constitution, and that the proposed alternative to the rule advocated at the hearing would be impermissible under the Constitution.