

The 10% Cap Trap Poem

Nowhere on earth since the Cat in the Hat has anyone experienced the 10% cap trap.

If you have Florida non-homestead property that has gone up in value this year much.

Don't transfer it to anyone or anything before you've been in touch.

With someone to advise you of consequences that may be dire.

Because forfeiting the 10% assessment limitation might cause a financial fire.

Under Florida's Constitution, the assessed value cannot exceed more than 10% of the prior year's assessed value, except as to School taxes (which may be about 36% of the 2% or less property tax),

But a transfer in title to an LLC or otherwise creates a loss of the Cap, that's a fact,

And if the property is commercial you can't even transfer it to your spouse so don't be lax.

The 10% Cap Trap Article



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In 2008, The Florida Constitution was amended to provide non-homestead property owners with protection against substantial increases in their annual property tax assessments. The Florida Constitution, as amended, now prohibits the assessment of certain non-homestead property from increasing by more than 10% per year, except for School Board expenses. Originally, the 10% cap was approved for a temporary 10-year period and was scheduled to sunset on January 1, 2019. However, Florida voters in 2018 approved another amendment to make the 10% cap permanent. The amendment is implemented through Florida Statutes 193.1554 (non-homestead residential property) and 193.1555 (certain residential and nonresidential real property).

The 10% cap applies to most types of commercial property, including non-homestead residential property (i.e. apartments and other rental properties) and nonresidential property (i.e. commercial property and vacant land). This 10% cap applies automatically, without the need to apply for the 10% cap status. The 10% cap does not apply to school district levies, agricultural or conservation property, or to certain other real estates that already qualifies for favorable ad valorem tax treatment.

The cap will remain year over year provided that certain actions by the landowner are not taken. Generally, an ownership change, application for the homestead exemption, splitting or combining property during the previous year, or the occurrence of construction or improvement will trigger the loss of the 10% cap, this is what we affectionately refer to as the “10% cap trap.” The big two “cap traps” are changes of ownership or control and qualifying improvements.

The protection of the 10% cap is forfeited when there is a change of ownership or control. A change of ownership or control means “any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value.” Therefore, property owners contemplating the transfer of their non-homestead residential or commercial properties to anyone or anything should first get in touch with their estate planner before finalizing such transfers.

Florida Statute 193.1554, relating to non-homestead residential property, excludes from the definition of change of ownership any transfer of title to correct an error, transfers between legal and equitable title, transfers between husband and wife (including a transfer to a surviving spouse or a transfer due to a dissolution of marriage), and for publicly traded companies, the cumulative transfer of more than 50 percent of the ownership if the transfer of the shares occurs through the buying and selling of shares on a public exchange.

Florida Statute 193.1555, relating to other certain residential and nonresidential real property, excludes from the definition of change of ownership the same list of transfers excluded for non-homestead residential property under 193.1554, except it does not exclude transfers between husband and wife from the definition of change of ownership or control. Therefore, a transfer of commercial property between husband and wife will trigger a loss of the 10% cap, whereas a transfer of non-homestead residential property between husband and wife will not trigger a loss of the 10% cap.

Additionally, if there is a change of ownership or control not recorded on a deed, any person or entity owning property subject to the 10% cap must notify the property appraiser promptly of any change of ownership or control. Failure to do so may subject the property owner to a lien of back taxes plus interest of 15% per annum and a penalty of 50% of the taxes avoided. When the change of ownership is recorded by deed or another instrument in the public records, that recorded instrument serves as notice to the property appraiser.

Beyond a change of ownership or control, another action that will trigger the loss of the 10% cap is when improvements are added to commercial property that increases the value by at least 25%. These are referred to under 193.1555 as “qualifying improvements.” 193.1555 defines “improvement” as an addition or change to land or buildings which increases their value and is more than a repair or a replacement.

By contrast, 193.1554, relating to non-homestead residential property, does not include the same provision regarding qualifying improvements. Although 193.1554 does provide that changes, additions, or improvements to non-homestead residential property shall be assessed at just value as of the first January 1 after the changes or improvements are substantially completed, it does not provide that the entire property must be assessed at just value as of January 1 of the year following a qualifying improvement. Therefore, improvements to commercial property that increase the value by at least 25% will trigger a loss of the 10% cap for commercial property, but improvements

that increase the value of non-homestead residential property by 25% will not trigger a loss of the 10% cap.

Nonhomestead residential property is afforded greater protection from a potential forfeiture of the 10% cap than is commercial property. As mentioned above, transfers between husband and wife and qualifying improvements will trigger a loss of the 10% cap for commercial property only. These actions will not trigger a loss of the 10% cap for non-homestead residential property.

However, owners of both non-homestead residential property and commercial property alike should be mindful of the loss of the 10% cap following the change of ownership or control, including through sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value.

With no sign of the increases in Florida property values slowing down, now is not the time to lose this valuable property assessment limitation. According to data compiled by Florida Realtors, Tampa, St. Petersburg, Clearwater, Lakeland, Winter Haven, North Port, Sarasota, and Bradenton all saw at least a 20% increase in median sales prices for homes in the last year. Additionally, Zillow notes that Tampa Bay's home value index has increased by 24.9% since August of last year.

Be sure to speak with your advisor in order to avoid falling into these "10% cap traps."

Section by Section Comparison of 193.1554 & 193.1555

<p>F.S. 193.1554 - Assessment of non-homestead residential property</p>	<p>F.S. 193.1555 - Assessment of certain residential and nonresidential real property</p>
<p>(1) "non-homestead residential property" means residential real property that contains nine or fewer dwelling units, including vacant property zoned and platted for residential use, and that does not receive the exemption under s. 196.031.</p>	<p>(1) As used in this section, the term:</p> <p>(a) "Nonresidential real property" means real property that is not subject to the assessment limitations set forth in subsection 4(a), (b), (c), (d), or (g), Art. VII of the State Constitution.</p> <p>(b) "Improvement" means an addition or change to land or buildings which increases their value and is more than a repair or a replacement.</p>
<p>(2) For all levies other than school district levies, non-homestead residential property shall be assessed at just value as of January 1 of the year that the property becomes eligible for assessment pursuant to this section.</p>	<p>(2) For all levies other than school district levies, nonresidential real property and residential real property that is not assessed under s. 193.155 or s. 193.1554 shall be assessed at just value as of January 1 of the year that the property becomes eligible for assessment pursuant to this section.</p>
<p>(3) Beginning the year following the year the non-homestead property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such assessment may not exceed 10% of the assessed value for the prior year.</p>	<p>(3) Beginning in the year following the year the property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.</p>
<p>(4) If the assessed value of the property as calculated under subsection (3) exceeds the just value, the assessed value of the property shall be lowered to the just value of the property.</p>	<p>(4) If the assessed value of the property as calculated under subsection (3) exceeds the just value, the assessed value of the property shall be lowered to the just value of the property.</p>

<p>(5) 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 or control. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (3) and (4). For purpose of this section, a change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change of ownership if:</p> <p>(a) The transfer of title is to correct an error. (b) The transfer is between legal and equitable title. (c) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage. (d) For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or an acquisition by another company, including an acquisition by acquiring outstanding shares of the company.</p>	<p>(5) 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 qualifying improvement or change of ownership or control. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (3) and (4). For purpose of this section:</p> <p>(a) A qualifying improvement means any substantially completed improvement that increases the just value of the property by at least 25 percent. (b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change of ownership if: 1. The transfer of title is to correct an error. 2. The transfer is between legal and equitable title. 3. For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.</p>
<p>(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to non-homestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.</p>	<p>(6)(a) Except as provided in paragraph (b), changes, additions, or improvements to nonresidential real property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.</p>
<p>(6)(b)(1) Changes, additions, or improvements that replace all or a portion of non-homestead residential property, including ancillary improvements, damaged or destroyed by misfortune or calamity must be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using the non-homestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (3) and (4), when:</p> <p>a. The square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction; or b. The total square footage of the property as changed or improved does not exceed 1,500 square feet.</p>	<p>(6)(b)(1). Changes, additions, or improvements that replace all or a portion of nonresidential real property, including ancillary improvements, damaged or destroyed by misfortune or calamity must be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using the nonresidential real property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (3) and (4), when:</p> <p>a. The square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction; and b. The changes, additions, or improvements do not change the property's character or use.</p>
<p>(6)(b)(2)-(4) 2. The property's assessed value must be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction or of that portion exceeding 1,500 square feet. 3. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8). 4. Changes, additions, or improvements assessed pursuant to this paragraph shall be reassessed pursuant to subsection (3) in subsequent years. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.</p>	<p>(6)(b)(2)-(4) 2. The property's assessed value must be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction. 3. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8). 4. Changes, additions, or improvements assessed pursuant to this paragraph must be reassessed pursuant to subsection (3) in subsequent years. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.</p>
<p>(6)(c) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the non-homestead residential property by the owner or by an owner association, which improvements directly benefit the property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefitting from the improvement.</p>	<p>No (6)(c) in 193.1555</p>

<p>(7)(a)-(c)</p> <p>(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.</p> <p>(a) For divided parcels, the amount by which the sum of the just values of the divided parcels exceeds what the just value of the parcel would be if undivided shall be attributable to the division. This amount shall be apportioned to the parcels pro rata based on their relative just values.</p> <p>(b) For combined parcels, the amount by which the just value of the combined parcel exceeds what the sum of the just values of the component parcels would be if they had not been combined shall be attributable to the combination.</p> <p>(c) A parcel that is combined or divided after January 1 and included as a combined or divided parcel on the tax notice is not considered to be a combined or divided parcel until the January 1 on which it is first assessed as a combined or divided parcel.</p>	<p>(7)(a)-(c)</p> <p>(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.</p> <p>(a) For divided parcels, the amount by which the sum of the just values of the divided parcels exceeds what the just value of the parcel would be if undivided shall be attributable to the division. This amount shall be apportioned to the parcels pro rata based on their relative just values.</p> <p>(b) For combined parcels, the amount by which the just value of the combined parcel exceeds what the sum of the just values of the component parcels would be if they had not been combined shall be attributable to the combination.</p> <p>(c) A parcel that is combined or divided after January 1 and included as a combined or divided parcel on the tax notice is not considered to be a combined or divided parcel until the January 1 on which it is first assessed as a combined or divided parcel.</p>
<p>(8) When property is destroyed or removed and not replaced, the assessed value of the parcel shall be reduced by the assessed value attributable to the destroyed or removed property.</p>	<p>(8) When property is destroyed or removed and not replaced, the assessed value of the parcel shall be reduced by the assessed value attributable to the destroyed or removed property.</p>
<p>(9)(a)-(c)</p> <p>(9) Erroneous assessments of non-homestead residential property assessed under this section may be corrected in the following manner:</p> <p>(a) If errors are made in arriving at any assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value must be recalculated for every such year, including the year in which the mistake occurred.</p> <p>(b) If changes, additions, or improvements are not assessed at just value as of the first January 1 after they were substantially completed, the property appraiser shall determine the just value for such changes, additions, or improvements for the year they were substantially completed. Assessments for subsequent years shall be corrected, applying this section if applicable.</p> <p>(c) If back taxes are due pursuant to s. 193.092, the corrections made pursuant to this subsection shall be used to calculate such back taxes.</p>	<p>(9)(a)-(c)</p> <p>9) Erroneous assessments of nonresidential real property assessed under this section may be corrected in the following manner:</p> <p>(a) If errors are made in arriving at any assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value must be recalculated for every such year, including the year in which the mistake occurred.</p> <p>(b) If changes, additions, or improvements are not assessed at just value as of the first January 1 after they were substantially completed, the property appraiser shall determine the just value for such changes, additions, or improvements for the year they were substantially completed. Assessments for subsequent years shall be corrected, applying this section if applicable.</p> <p>(c) If back taxes are due pursuant to s. 193.092, the corrections made pursuant to this subsection shall be used to calculate such back taxes.</p>
<p>(10) If the property appraiser determines that for any year or years within the prior 10 years a person or entity who was not entitled to the property assessment limitation granted under this section was granted the property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.</p>	<p>(10) If the property appraiser determines that for any year or years within the prior 10 years a person or entity who was not entitled to the property assessment limitation granted under this section was granted the property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.</p>