



ESTABLISHED 1924

**FARR LAW FIRM**

**FARR, FARR, EMERICH, HACKETT AND CARR, P.A.**

e-law

Newsletter

WWW.FARR.COM

PERSONAL INJURY &  
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE  
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL  
& LAND USE

BUSINESS

ELDER LAW

ASSET PROTECTION

ATTORNEYS

EARL DRAYTON FARR, JR.  
(Senior Counsel)

GUY S. EMERICH

JACK O. HACKETT II

MICHAEL P. HAYMANS

CHARLES T. BOYLE

DAROL H.M. CARR

DAVID A. HOLMES

GARY A. KAHLE

JENNIFER R. HOWELL

ROGER H. MILLER III

DOROTHY L. KORSZEN

WILL W. SUNTER

ERIC M. DECKER

## TAX WINDS BLOW HARD: DON'T LOSE YOUR CAP!

Guy S. Emerich  
March, 2004



Most Floridians have been the benefactor of the rapid appreciation in the value of their homes especially for those fortunate enough to live on the water. Their increase in property values is a mixed blessing. On the one hand one's net worth increases; on the other so often do one's real property taxes. This short article will talk about the Save Our Homes (SOH) Cap which keeps a homeowner's taxes artificially reduced and when and how that tax Cap can be lost.

The genesis of this issue goes back to 1992 when the voters of the State of Florida caused to be enacted an amendment to the Florida Constitution. That amendment limits the amount the tax assessor can increase the value of one's homestead property. The constitutional provision states that the value cannot be increased more than the lower of the Consumer Price Index (CPI) or 3%. 1995 was the first year that the Cap applied. Since its enactment the C PI has only exceeded 3% in two years, 1997 and 2001.

While a great benefit to the taxpayer when in place, the Cap can be lost. The Cap comes off upon the transfer of the property. Thus a sale from the current owner to a new owner triggers the loss of the Cap and generally an increase in the new owner's taxes. The Cap is also lost at death when the homestead property passes from the decedent to the heirs. The exception to that loss is if the homestead passes to the spouse who could qualify for the homestead exemption or to a child dependent on the decedent who stays in the property.

As a result of two relatively recent Florida Attorney General's opinions there is also a loss of the Cap under the following circumstances. In Attorney General Opinion (AGO) 2000-31 an individual added the name of someone to his deed as many single taxpayers desire to do. The Attorney General held that the addition of a name (other than a spouse) was a transfer, and the taxpayer lost his SOH Cap notwithstanding the fact that he continued to reside on the property. The reverse



ESTABLISHED 1924

# FARR LAW FIRM *Newsletter*

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

WWW.FARR.COM

PERSONAL INJURY &  
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE  
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL  
& LAND USE

BUSINESS

ELDER LAW

ASSET PROTECTION

of that was also considered in AGO 2001- 28. In that opinion a joint owner was removed from the deed. Again the Attorney General said a transfer had taken place and the SOH Cap was lost. In both of those relatively innocent transactions the consequences to the taxpayers were very significant.

The moral of this story is to consult your proper advisor before doing anything with the title to your Florida homestead.

Punta Gorda Office:  
99 Nesbit Street  
Punta Gorda, FL 33950  
Phone: 941.639.1158  
Fax: 941.639.0028

Englewood Office:  
33 S. Indiana Avenue  
Englewood, FL 34223  
Phone: 941.460.9334  
Fax: 941.460.9443

---

To subscribe to our monthly newsletters, please visit our website at [www.FARR.com](http://www.FARR.com)

---

This newsletter is for general information and education purposes only.

It is not offered as legal advice or legal opinion.

---

To the extent this message contains tax advice, the U.S. Treasury Department requires us to inform you that any advice in this letter is not intended or written by our firm to be used, and cannot be used by any taxpayer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code. Advice from our firm relating to Federal tax matters may not be used in promoting, marketing or recommending any entity, investment plan or arrangement to any taxpayer.