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## **To Appeal or Not to Appeal: Property Taxes 2009**

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It should come as no surprise that many experts believe that 2009 will be a record year for property tax appeals due to the near-historic decrease in real estate values. Accordingly, many county property appraisers will be challenged to keep up with changing values. While most Floridians realize that their property taxes pay for schools, police and other essential services, most desire to only pay their fair share. The following is a basic analysis of some of the property tax appeal issues that can be expected to arise in 2009.

In late summer, property owners can expect to receive a notice indicating proposed property taxes (a "Truth In Millage", or "TRIM" notice) for 2009. This notice will include the value that the county property appraiser places on the property. Most appeals are brought when an owner believes that the assessed value of the property is higher than the fair market value of the property. However, there may be circumstances when the assessment seems to be higher than the fair market value when an appeal may not be warranted.

A classic example of this may be found on homestead property (usually one's primary residence) that has been owned and occupied by the same owner for many years. Without the 'Save Our Homes' provision of the Florida Constitution, the tax would be the total millage rate for all taxing authorities, multiplied by the assessed value, which, without Save Our Homes, is the same as the fair market value. But under the 'Save Our Homes' provision, which capped increases in valuations for property tax purposes to 3% per year, many long time homeowners are paying taxes based upon an assessment that is a fraction of the fair market value of their home.

These facts may be the basis for both good news and bad news. For example, if a husband and wife purchased their home 15 years ago for a purchase price of \$100,000 and the home qualified as their homestead for the entire period of their ownership, their increase in property taxes would be capped at 3% per year even if the market value of the property increased by, say 5% per year. Now, let's say that for 2007 and 2008 (years 14 and 15), the value of the property went down. This would create a condition where, for the first 13 years, the owner paid taxes at an ever-lower effective rate as compared to the actual fair market value. Therefore, even if the home dramatically decreased in value in years 14 and 15, it is unlikely that the net decrease in value would be substantial enough to offset the first 13 years of compounded discounting. Thus, the

good news is that for the better part of 13 years, the owners in this example would have paid less property taxes than they would have had without the relief provided by 'Save Our Homes.' The bad news is that they are unlikely to see any property tax relief in 2009.\*

For the most part, the residential portion of the real estate market has seen the greatest decline in property values. Recently, other parts of the real estate market have started to experience negative growth. The 'Save Our Homes' issues do not apply to the commercial, office, industrial, agricultural and other parts of the real estate market, although other unique issues may still impact property tax appeals. The starting point for considering a property tax appeal remains the comparison of the assessed value to the fair market value. There are many factors and methods that should be considered when determining the fair market value of real property. An owner may undertake her own investigation, use outside experts such as appraisers, or work through an attorney to analyze valuation issues. One important advantage of working through an attorney is that the investigation will remain privileged as attorney work product. In many situations, Dean Mead will hire an appraiser that is well versed in property tax appeals to assist in the appeal process.

The appraisal is at the heart of many property tax appeals. One judge recently said, "an appraisal is neither an art nor a science, but is always a mystery." In many situations, it is advantageous to work with both an advocate - the attorney, and an independent expert - the appraiser. This approach keeps the appraiser from appearing as having an interest in the outcome of the appeal.

The period for bringing an appeal is very brief. Typically, one has less than a month from the receipt of their TRIM notice to file an appeal. Assessments can be challenged and reviewed at the staff level, by the value adjustment board and/or by the circuit court. As is the case with other types of disputes, most matters are resolved without the need to go to court; often at the staff level.

Finally, an owner should consider whether a property tax appeal is warranted given the amount in controversy. The amount in controversy is not the difference between the assessed value and the fair market value, but is the actual taxes paid upon this difference. Issues to consider here include the cost of hiring an attorney/appraiser and whether the desired adjustment to the assessment will be in place for more than one year. For smaller matters, an owner may wish to undertake a less aggressive appeal or bring the appeal with only minimal support from outside experts. For larger matters, the considerations are the same as exist in any litigation, weighing the possible upside against the risk and cost. An attorney who is knowledgeable of property tax appeals and valuation issues should provide the owner with some initial understanding of these issues.

\* Even where there is no increase in rates, one could see a slight increase in property taxes on some homestead properties. Under Florida law, owners who are paying below market values because of savings realized through 'Save Our Homes' may see an inflation adjustment to their property tax bill.

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**About Dean Mead:**

Dean Mead is a commercial law firm that provides full-service legal representation to businesses and individuals throughout Florida. The firm has 48 lawyers practicing in Orlando, Fort Pierce and Viera.