

Clients and Practitioners Should Be Aware of a Recent Homestead Case
Frehling v. Garcia, 48 Fla. L. Weekly D1944, 2023 WL 6450464 (Oct. 4, 2023)

Frehling v. Garcia, 48 Fla. L. Weekly D1944, 2023 WL 6450464 (Oct. 4, 2023) demonstrates the importance of timely transferring Save Our Homes (“SOH”) from a prior homestead to a new homestead.

In *Frehling*, the District Court of Appeals of Florida, Third District, affirmed the trial court’s holding that the constitutional amendment, which extended the transfer period of SOH assessment cap from two years to three years, did not apply retroactively, and thus, homeowners’ application to transfer SOH benefit to their new home three years after they abandoned their prior homestead, but before the amendment was passed, was untimely.

In Florida, the constitutional SOH assessment cap limits annual increases on the assessed value of a homestead. A 2008 constitutional amendment permits homeowners to transfer the benefit accrued under the SOH to a new homestead established within two years of abandonment of the prior homestead.

In 2020, an amendment was approved to change the transfer period from two years to three years, effective January 1, 2021. There are two parts to the 2020 constitutional amendment, as follows:

- (1) The first part amended article VII, section 4, subsection (d)(8)(a) of the Florida Constitution by changing the two-year transfer period to three years:

A person who establishes a new homestead as of January 1 and who has received a homestead exemption pursuant to Section 6 of this Article as of **any of the three years immediately preceding the establishment of the new homestead** is entitled to have the new homestead assessed at less than just value.

Art. VII, § 4(d)(8)(a), Fla. Const.

- (2) The second part adds section 40 to article XII of the Florida Constitution, which clearly and unambiguously provides for an effective date of January 1, 2021:

Transfer of the accrued benefit from specified limitations on homestead property tax assessments; increased portability period.—**This section and the amendment to Section 4 of Article VII, which extends to three years the time period during which the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead, shall take effect January 1, 2021.**

Art. XII, § 40, Fla. Const.

The 2020 constitutional amendment and the implementing legislation expressly provide that the change from a two-year to a three-year transfer period takes effect at the beginning of the year (January 1) in 2021.

The benefits of transferring SOH from a prior homestead to a new homestead can be significant. We encourage clients to review these issues with their real estate attorneys.

Note: The opinion in *Frehling* has not yet been released for publication in the permanent law reports and until it is released, it is subject to revision or withdrawal.