



# GORDON & THALWITZER

ATTORNEYS AT LAW

257 North Orlando Avenue • Cocoa Beach, Florida 32931

Phone 321.799.4777 • Fax 321.735.0711

JASON M GORDON  
Admitted in FL, NY & CT  
jgordon@brevardlegal.com

AARON THALWITZER  
Admitted in FL, D.C.  
aaron@brevardlegal.com

## MEMORANDUM

TO: Members of the Orange County Value Adjustment Board

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: 2025 Legislative Update

DATE: April 10, 2025

---

Below is a summary of new, amended, and proposed legal authorities relevant to value adjustment boards (VABs). Please do not hesitate to contact me with any questions.

### Dept. of Revenue Rules, Forms, Bulletins, and Guidance

1. **Rule 12D-8.0064, F.A.C.** The purpose of the draft amendments to Rule 12D-8.0064, F.A.C., is to implement statutory procedure for calculating liens on portions of homestead property as described in s. 193.155(10), F.S., relating to the assessment increase limitation, s. 193.703(7), F.S., relating to parent or grandparent living quarters, s. 196.075(9), F.S., relating to the homestead exemption for persons 65 and older, and ss. 196.011(9), F.S., and 196.161(1)(b), F.S., relating to the homestead exemption. These statutes were recently amended to set forth new procedures beginning in 2025 in circumstances where property improperly received one of the previously-listed exemptions or assessment limitations. The amendments also require property appraisers (“**PAOs**”) to provide a property owner with notice of the reason why the owner is not entitled to an exemption, assessment limitation, or reduction in assessment and how back taxes, interest, and penalties due are calculated. The draft amendments also implement the Florida Supreme Court’s short order to upholding the Third DCA’s opinion and the Monroe County circuit court in *Russell vs. Hassett*, 373 So. 3d 1242 (2023), applying the 10% non-homestead assessment increase cap to the PAO’s retroactive homestead revocation liens. The draft amendments also provide that when property improperly receives a homestead exemption or limitation, the property must be reassessed at just value before it can receive the benefit of the 10% limitation in subsequent tax years.

### Florida Statutes and Constitution

1. **Section 196.1978(3), F.S.** Amended to clarify or update the affordable housing exemption. Amended subparagraph (3)(a)2. to narrow the definition of “newly constructed” to mean an improvement to real property which was substantially completed within 5 years before the date of an applicant’s first submission of a request for a certification notice. Amended subparagraph (3)(b)2.b. to include portions of property that are within a newly constructed multifamily project in an area of critical state concern designated by section 380.0552, F.S. or

chapter 28-36, Florida Administrative Code, which contain more than 10 units dedicated to housing natural persons or families meeting the income limitations provided in paragraph (3)(d). Created subparagraph (3)(d)2. providing that when determining the value of a unit for purposes of applying exemption, the PAO must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such unit. Amended paragraph (3)(k) to provide that units used as a transient public lodging establishment as defined in section 509.013, F.S. are not eligible for this exemption. See Chapter 2024-158, Section 13, Laws of Florida (HB 7073), effective upon becoming a law May 7, 2024 and Chapter 2024-188, Section 4, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024. These amendments to section 196.1978, F.S. apply retroactively to January 1, 2024. See Chapter 2024-158, Section 15, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024, and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024.

2. **Section 196.1978(3), F.S.** Amended by adding paragraph (3)(o) to the affordable housing exemption statute to provide that, beginning with the 2025 tax roll, a taxing authority may elect, by a two-thirds vote of the governing body, not to exempt property from its millage under sub-subparagraph (3)(d)1.a. which exempts 75% of the assessed value for units used to house natural persons or families whose annual household income is greater than 80% but not more than 120% of the median annual adjusted gross income. Under new subparagraph (3)(o)2. the units must also lie within a metropolitan statistical area or region where the number of affordable and available units is greater than the number of renter households in the area or region for the category entitled “0-120 percent AMI.” The election to opt out must be by ordinance or resolution that takes effect on the next January 1 after its adoption. The taxing authority must provide the adopted ordinance or resolution to the PAO by its effective date. Under new subparagraph (3)(o)7., a property owner who was granted an exemption pursuant to sub-subparagraph (3)(d)1.a. before the taxing authority’s decision to opt out, may continue to receive such exemption each subsequent consecutive year that the property owner applies for and is granted the exemption. This paragraph first applies to the 2025 tax roll. See Chapter 2024-158, Section 16, Laws of Florida, (HB 7073), effective July 1, 2024.
3. **Subsection 196.1978(4), F.S.** Created to provide an exemption to portions of property in a newly constructed multifamily project beginning with the January 1 assessment immediately succeeding the date the property was placed in service allowing the property to be used as an affordable housing property that provides housing to natural persons or families meeting the extremely-low-income, very-low income, or low-income limits specified in section 420.0004. The multifamily project must be subject to a land use restriction agreement with the Florida Housing Finance Corporation recorded in the official records that requires that the property be so used for 99 years, must contain more than 70 units that are so used, and must be an improvement to land where an improvement did not previously exist or be a new improvement where an old improvement was removed, which was substantially completed within 2 years before the first submission of an application for exemption. When determining the value of the portion of property used to provide affordable housing for purposes of applying the exemption, the PAO must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such portion of property. Property receiving an exemption pursuant to subsection 196.1978(3) or section 196.1979, F.S. is not eligible for this exemption. This subsection first applies to the 2026 tax roll. See Chapter 2024-158, Section 16, Laws of Florida, (HB 7073), effective July 1, 2024.
4. **Section 196.1979, F.S.** Amended to add new subsections (6) and (7) of the county and municipal affordable housing exemption, renumbering existing subsections as (8) and (9). New subsection (6) provides the PAO shall review each application for exemption and determine

whether the applicant meets all of the requirements of this section and is entitled to an exemption. A PAO may request and review additional information necessary to make such determination. A PAO may grant an exemption only for a property for which the local entity has certified as qualified property and which the PAO determines is entitled to an exemption. New subsection (7) provides when determining the value of a unit for purposes of applying the exemption, the PAO must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such unit. See Chapter 2024-158, Section 14, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024 and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024. The amendments to section 196.1979, F.S. apply retroactively to January 1, 2024. See Chapter 2024-158, Section 15, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024, and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024.

5. **Section 192.001(11)(d), F.S.** Amended the definition statute of the Taxation and Finance chapter to add that for the purpose of tangible personal property constructed or installed by an electric utility, construction work in progress shall not be deemed substantially completed unless all permits or approvals required for commercial operation have been received or approved. See Chapter 2024-158, Section 1, Laws of Florida (HB 7073). Section 192.001(11)(d), F.S. applies retroactively to January 1, 2024. See Chapter 2024-158, Section 2, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024.
6. **Section 193.155(4)(b)4., F.S.** Amended the homestead assessment statute to provide this paragraph applies to changes, additions, or improvements commenced within five years after the January 1 following the damage or destruction of the homestead. This extends the period from the previous provision, which was three years. See Chapter 2024-158, Section 4, Laws of Florida, (HB 7073), effective July 1, 2024.
7. **Section 196.031(7), F.S.** Amended the homestead exemption statute to provide if the property owner fails to begin the repair or rebuilding of the homestead property within five years after January 1 following the property's damage or destruction, it constitutes abandonment of the property as a homestead. After the five-year period, the expiration, lapse, nonrenewal, or revocation of a building permit issued to the property owner for the repairs or rebuilding also constitutes abandonment of the property as homestead. See Chapter 2024-158, Section 10, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to section 196.031, F.S. first apply to the 2025 property tax roll. See Chapter 2024-158, Section 17, Laws of Florida, (HB 7073), effective July 1, 2024.
8. **Section 193.624(1), F.S.** Amended renewable energy source devices assessment statute to add biogas (as defined in section 366.91, F.S.) as a type of energy that can be collected, transmitted, stored, or used as renewable energy. Created section 193.624(1)(n), F.S., to describe machinery integral to the collection and conversion of biogas. See Chapter 2024-158, Section 5, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to section 193.624, F.S. first apply to the 2025 property tax roll. See Chapter 2024-158, Section 6, Laws of Florida, (HB 7073), effective July 1, 2024.
9. **Subsection 196.011(5), F.S.** Created new subsection in the statute requiring exemption applications to provide that an annual application for exemption on property used to house a charter school is not necessary; requiring the owner or lessee of such property to notify the PAO in specified circumstances; providing penalties. See Chapter 2024-101, Section 4, Laws of Florida, (HB 1285), effective July 1, 2024.

10. **Section 196.092, F.S.** Created new statute to provide for a PAO to provide a person with tentative verification of their eligibility for exemption or discount, relating to ex servicepersons, under section 196.081, 196.082, or 196.091, F.S. See Chapter 2024-217, Section 4, Laws of Florida, (HB 1161), effective July 1, 2024.
11. **Liens on Homestead Property.** Adopted changes to several statutes to specify the procedure for calculating liens on portions of homestead property as described in section 193.155(10), F.S., relating to the assessment increase limitation, section 193.703(7), F.S., relating to parent or grandparent living quarters, section 196.075(9), F.S., relating to the homestead exemption for persons 65 and older, and sections 196.011(9), F.S., 196.161(1)(b), F.S., relating to the homestead exemption. Amended statutes to provide that the PAO must include information with the notice of tax lien that explains why the owner is not entitled to the property assessment limitation, the years for which unpaid taxes, penalties, and interest are due, and the way the unpaid taxes, penalties, and interest have been calculated. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes, penalties, and interest. Back taxes are not due for a clerical mistake or omission if the person who received the exemption or limitation as a result voluntarily discloses to the PAO that he or she was not entitled to the limitation before the PAO notifies the owner of the mistake or omission. Otherwise back taxes are due for any year or years, beginning with the 2025 tax year, that the owner was not entitled to the exemption or limitation within the 5 years before the PAO notified the owner of the mistake or omission. See Chapter 2024-158, Sections 4, 7, 9, 11, and 12, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to these statutes first apply to the 2025 property tax roll. See Chapter 2024-158, Section 17, Laws of Florida, (HB 7073), effective July 1, 2024. Adopted a provision in 192.0105(1)(g), F.S. to include the taxpayer's right to information regarding why the taxpayer was not entitled to the homestead exemption and how tax, penalties, and interest are calculated, See Chapter 2024-158, Section 3, Laws of Florida, (HB 7073), effective July 1, 2024.
12. **Florida Constitution Article VII, Section 6.** Adopted proposed amendment requiring an annual inflation-based adjustment for of the second \$25,000 homestead exemption to take effect January 1, 2025. The first adjustment would be January 1, 2025. It is only "the additional exemption of up to \$25,000 on the assessed valuation greater than \$50,000 for all levies other than school district levies" that would be adjusted so the homestead exemption holders that would benefit are the ones that have received some or all of the additional \$25,000 above \$50,000 starting January 1, 2025. The first \$25,000 exemption remains the same with no adjustment. See Chapter 2024-261, Laws of Florida, (HB 7019) and HJR 7017.

### **Proposed Legislation**

1. **S.B. 556/H.B. 1425.** Requires resale-restricted affordable housing to be assessed under specified law; specifies that resale-restricted affordable housing is land-use regulation and subject to certain limitation; requires PAO to consider such limitation to arrive at Just valuation; requires owners of resale-restricted affordable housing to submit specified application to PAO.
2. **S.B. 378/H.B. 227.** Authorizes taxpayer to rescind homestead exemption application; requires PAO to adjust tax roll; revises conditions under which property is entitled to a certain exemption; defines term "religious activities".
3. **S.B. 290/H.B. 217.** Authorizes surviving spouses of veterans who predecease the issuance of a certain letter from the Federal Government to produce the letter before the PAO.

4. **S.B. 192/H.B. 437**. Replaces term “tax assessor” with term “property appraiser”; revises definitions of terms “ad valorem tax” and “assessed value of property”; prohibits levy of non-ad valorem assessments on agricultural lands under certain circumstances; specifies that non-ad valorem assessments may become delinquent and bear penalties in the same manner as county taxes; authorizes non-ad valorem assessments to be levied to pay certain bonds issued.
5. **H.B. 1027/S.B. 1178**. Prohibits assessed value of real property used as homestead by person who has attained certain age from exceeding certain amount if certain conditions are met; requires such persons to apply for homestead in specified manner; requires the PAO who makes certain determination to serve notice of intent to record tax lien against property; requires property that no longer meets certain eligibility requirements to be reassessed in specified manner.

### **Case Law**

1. **City of Gulf Breeze v. Brown**, 397 So. 3d 1009 (Fla. 2024). Florida Supreme Court held that the City’s extensive control over a golf course property permitted a determination that the property was “used exclusively by” the City for purposes of the municipally-owned property tax exemption under Article VII, Section 3(a) of the Florida Constitution. The City had a management agreement with a management company which had a compensation structure based on revenue and expenses, which allowed the management company to retain profits or bear losses, but this did not negate the City’s exclusive use and control of the property.
2. **Rogers v. Zingale**, 50 Fla. L. Weekly D 54 (Fla. 1st DCA 2024). The notice requirements in s. 196.193(5), F.S., apply to the denial of homestead property tax exemptions. A PAO’s notice denying a homestead exemption must comply with s. 196.193(5)(b)’s requirement to include the specific facts used to determine that the applicant failed to meet the statutory requirements. If a PAO fails to provide a notice that complies with s. 196.193(5), any denial of an exemption is invalid.
3. **Freedman v. Garcia**, 49 Fla. L. Weekly D 2014 (Fla. 3d DCA 2024). Court affirmed principle that Florida’s homestead exemption extends to “every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner.” However, “not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.” The property owner must maintain on the property either (1) the permanent residence of the owner; *or* (2) the permanent residence of another legally or naturally dependent upon the owner.”). In other words, “a harmonious family unit ... cannot claim more than one homestead exemption in the State of Florida.”
4. **Pinellas Cnty. v. Joiner**, 389 So. 3d 1267 (Fla. 2024). “The Florida Constitution does not say, nor has the Florida Supreme Court ever said, that a county can assert the State’s sovereign immunity from taxation as to property outside the county’s territorial limits. These limits, drawn by the Legislature, tell the court where one county ceases its enjoyment of the State’s immunity from ad valorem taxation and another’s begins.” “Ownership of extraterritorial land is not an attribute of sovereignty; instead, the foreign sovereign owns such land subject to the laws of the sovereign where the property is located.”
5. **Walt Disney Parks & Resorts US, Inc. v. Mercado**, 2024 Fla. Cir. LEXIS 1613 (Fla. 9th Cir., Sep. 23, 2024). After Plaintiff successfully appealed trial court’s judgment, wherein the appellate court held that Appraiser’s use of the Rushmore method in a manner that failed to remove Plaintiff’s intangible business assets from the 2015 assessed value of the Property is

contrary to Florida law, rendering the assessment invalid. In remanding the case back to the trial court, the appellate court ordered the Appraiser to reassess the subject property for the 2015 tax year, and to assess the Property for the 2016 year, in a manner “consistent with” the appellate opinion, *i.e.*, by utilizing a methodology that properly excludes the value of Plaintiff’s intangible assets from the assessed value of the subject property. Moreover, under Florida law, those portions of an assessment which have not been declared illegal remain intact. Thus, the trial court struck Appraiser’s 2015 reassessment because the Appraiser revisited portions of the Court’s revised assessment that were not stricken and which therefore remain intact.