

# Akerman Practice Update

REAL ESTATE: TAXATION

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## Property Taxes – Reductions Are Not What They Used To Be

**J. Travis Godwin**  
travis.godwin@akerman.com

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Local governments face a continuing decline in state and federal funding. Many are relying on proven revenue streams, like property taxes, for funding to provide local services, such as public schooling, police and fire protection, and other governmental services. The local Property Appraiser is required to issue a notice of property assessments (truth in millage (TRIM) notices), no later than the end of August. Property Appraisers are diligent in their valuation efforts and recognize likely decreases in property values, but the amount of decrease is most likely not going to be in agreement with the land owner's opinion. Given the potential negative financial impact on your real estate investment, you should anticipate receiving the TRIM notice, be well informed regarding the current proposed valuation of your property, and recognize the process for challenging the assessment.

### Reviewing TRIM Notices

The TRIM notice will reflect the Property Appraiser's estimated value of the property as of January 1, 2009. Florida Statutes require the Property Appraiser to utilize the following criteria when performing their valuation: 1) present cash value; 2) the highest and best use of the property; 3) the location of the property; 4) the quantity or size of the property; 5) the cost of the property; 6) the condition of the property; 7) the income of the property; and 8) the net proceeds of the sale of the property. The Property Appraiser is obligated to consider, but not necessarily apply, each of the eight factors. With the continuing decline in the real estate market, it is critical that you review the TRIM notice to ensure that the valuation accurately reflects these criteria.

You can challenge the Property Appraiser's valuation if you determine that it doesn't depict the true current value. The Property Appraiser will often meet with you in an

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attempt to resolve your concerns. Whether at a meeting with the Property Appraiser or at a subsequent formal hearing, it will be necessary to produce facts that support your claim for a reduction. Legal counsel can help you with developing and presenting the most effective information to accomplish this goal. The Property Appraiser will present facts to substantiate their appraisal. Legal counsel can often anticipate these arguments and assist you with presenting evidence negating the appraisal.

### **Role of the Value Adjustment Board**

If you are unable to resolve the discrepancy, you may file a petition with the Value Adjustment Board (VAB). The VAB consists of two members of the governing body of the county (county commissioners), one member of the school board and two citizen members. They are charged with resolving any alleged discrepancy regarding your property taxes. You are required to file the VAB petition within twenty-five (25) days of the date of the TRIM notice with the clerk of the VAB of the county where the property is located. It is best to file your petition as soon as you determine that you intend to challenge the valuation to ensure your right to present your case. A petition can be withdrawn if a resolution is reached with the Property Appraiser prior to a hearing. The VAB will provide you with an acknowledgment of receipt of the petition, and you must furnish the acknowledgment to the Property Appraiser. The petition should include the approximate time you will need to present your argument to the VAB.

Many counties appoint Special Magistrates to take testimony and make recommendations to the VAB. The VAB may act upon the recommendations without further hearing. The VAB will not overturn a decision of the Special Magistrate, absent a gross misapplication of the law or a denial of due process. There are procedures and evidence requirements at every phase of the process. It is recommended that you have competent counsel to represent you in these proceedings to ensure your rights at every stage.

### **Changes to the Florida Statutes**

A taxpayer must be mindful of recent revisions to the Florida Statutes in bringing their appeal. The old statute gave the Property Appraiser’s assessment a presumption of correctness and required the taxpayer to prove by a preponderance of the evidence that the appraiser failed to use the required criteria. The burden is now on the Property Appraiser to show satisfaction of the assessment criteria by a preponderance of evidence. Prior to the 2009 revisions if the Property Appraiser’s presumption was maintained the taxpayer had to establish by clear and convincing evidence that the

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assessment was excessive. The clear and convincing standard has been replaced in its entirety with the more easily achieved preponderance standard. While the revisions may offer a glimmer of hope, legal counsel is still recommended in navigating the complexities of the appeal process.

### **Appealing a VAB Ruling**

If you are dissatisfied with the VAB’s ruling, you may appeal the case to the Circuit Court. The Circuit Courts have original jurisdiction as to all matters relating to property taxes, and venue is in the county where the property is located. Prior to bringing an action, a property owner must pay the collector not less than what the tax payer believes to be a good-faith amount owed under a correct valuation. The tax collector is required to issue a receipt of payment and that receipt must be filed with the complaint. The payment of the tax shall not be deemed an admission.

Failure to adequately review your TRIM notice can result in an unnecessary, and oftentimes, substantial expense. Consider consulting with competent legal counsel and determining facts supporting your assessment of the value of your property prior to receiving your TRIM notice. Counsel can develop an effective strategy to battle the Property Appraiser’s assessment and evidence.

High real estate taxes can strangle a property owner’s ability to function in today’s business climate. The reduction in taxes gained through a successful challenge will free up funds for the land owner and act as a catalyst for the sale and leasing of property. Local governments will also receive the financial benefit, albeit from a different income stream.

**J. Travis Godwin is a Shareholder in Akerman’s Tampa office. He represents various clients in property tax appeals throughout Florida.**

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For more information about property tax matters, please contact an attorney in any of the Akerman offices listed below.

**Dallas**

Plaza of The Americas  
600 North Pearl Street, Suite 51900  
Dallas, TX 75201  
214.720.4300

**Denver**

511 Sixteenth Street, Suite 420  
Denver, CO 80202  
303.260.7712

**Ft. Lauderdale**

Las Olas Centre II  
350 East Las Olas Boulevard  
Suite 1600  
Ft. Lauderdale, FL 33301-2229  
954.463.2700

**Jacksonville**

50 North Laura Street, Suite 2500  
Jacksonville, FL 32202-3646  
904.798.3700

**Los Angeles**

725 South Figueroa Street, 38th Floor  
Los Angeles, CA 90017-5438  
213.688.9500

**Madison**

222 West Washington Avenue, Suite 380  
Madison, WI 53703  
608.257.5335

**Miami**

One Southeast Third Avenue  
25th Floor  
Miami, FL 33131-1714  
305.374.5600

**New York**

335 Madison Avenue, Suite 2600  
New York, NY 10017-4636  
212.880.3800

**Orlando**

CNL Center II at City Commons  
420 South Orange Avenue, Suite 1200  
Orlando, FL 32801-3336  
407.423.4000

**Tallahassee**

Highpoint Center, 12th Floor  
106 East College Avenue  
Tallahassee, FL 32301  
850.224.9634

**Tampa**

SunTrust Financial Centre  
401 East Jackson Street, Suite 1700  
Tampa, FL 33602-5250  
813.223.7333

**Tysons Corner**

8100 Boone Boulevard, Suite 700  
Vienna, VA 22182-2683  
703.790.8750

**Washington, D.C.**

801 Pennsylvania Avenue N.W., Suite 600  
Washington, DC 20004  
202.393.6222

**West Palm Beach**

Esperante Building  
222 Lakeview Avenue, Suite 400  
West Palm Beach, FL 33401-6183  
561.653.5000

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