

**Constitution Revision Commission  
Finance and Taxation Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: CS/P 17

Relating to: MISCELLANEOUS, Homestead; exemptions

Introducer(s): General Provisions Committee and Commissioner Gaetz

Article/Section affected: Article X, Section 4

Date: January 8, 2018

	REFERENCE	ACTION
1.	<u>GP</u>	<u>Fav/CS</u>
2.	<u>FT</u>	<u>Pre-meeting</u>

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**I. SUMMARY:**

The Florida Constitution grants broad protection for an owner of a homestead from forced sale or liens by creditors. This is commonly known as homestead exemption protection.

The proposal removes the homestead exemption protection from creditor claims if a creditor:

- Establishes in an action against the owner of the homestead that the creditor's funds were fraudulently used by the owner to acquire or improve the homestead; or
- Obtains a judgment against the owner of the homestead for damages caused by an intentional tort or intentional criminal or fraudulent act by the owner of the homestead, so long as the homestead was not the primary residence for the owner's spouse or minor child when the tort or act occurred or at the time of the judgment in the action.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

**Florida Homestead Exemption**

Section 4 of Article X of the Florida Constitution provides an exemption from forced sale of a natural person's homestead. A homestead includes:

- If located outside a municipality, one hundred sixty acres of contiguous land and improvements; or
- If located within a municipality, one half-acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family; and
- Personal property up to the value of one thousand dollars.

There are several exceptions to the homestead exemption, including:

- Payment of taxes and assessments;
- Obligations contracted for the purchase, improvement or repair; and
- Obligations contracted for house, field or other labor performed on the realty.

Historically, courts have liberally construed the homestead exemption in favor of the owner, including protecting the homestead from civil and criminal forfeiture,<sup>1</sup> and when the homestead was acquired with funds from illicit proceeds.<sup>2</sup> Courts have also provided that homesteads are shielded from creditors when non-exempt funds were used to purchase the homestead with the specific intent of hindering, delaying, or defrauding creditors.<sup>3</sup> However, Florida courts have held that a homestead purchased with the proceeds of fraud may be subject to an equitable lien in limited circumstances.<sup>4</sup>

Florida has several prominent examples of public figures embroiled in scandal shielding themselves from creditors by using the homestead exemption.<sup>5</sup> These include white collar crimes,<sup>6</sup> and sexual harassment lawsuits.<sup>7</sup> In a recent case in Walton County, a woman was shot in the face by a former intimate partner and nearly died.<sup>8</sup> The defendant in the case was unemployed, and his only asset was a home he had inherited from a deceased

<sup>1</sup> See *Butterworth v. Caggiano*, 605 So.2d 56 (Fla. 1992).

<sup>2</sup> *Tramel v. Stewart*, 697 So.2d 821 (Fla. 1997). The court noted that, "However, to permit the State to forfeit a homestead based upon criminal activity in Florida requires a constitutional revision. We call this to the attention of the Constitutional Revision Commission." The court also noted in footnote 10, that "In the event of a constitutional revision including an exception to the homestead guarantee for forfeiture pursuant to the Forfeiture Act, the legislature would need to address with particularity forfeiture of homesteads. For example, is there a threshold percentage of the amount used to purchase a homestead which would allow forfeiture? Does it have to be one hundred percent, more or less than fifty percent, or could one percent be the basis for forfeiture? Is there any limitation on the time between the obtaining of the proceeds in violation of the Forfeiture Act and the acquisition of the property?"

<sup>3</sup> See *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018 (Fla. 2001). Answering a certified question from the U.S Court of Appeals for the 11<sup>th</sup> Circuit.

<sup>4</sup> Phillip M. Hanaka, *Recent Developments in Florida Homestead Law* at 2 (2006). See *Palm Beach Savings & Loan Ass'n v. Fishbein*, 619 So.2d 267 (Fla. 1993).

<sup>5</sup> *Enron's Many Strands: The Executives; Home as Shield from Creditors is Under Fire*, New York Times, April 4, 2002. <http://www.nytimes.com/2002/04/04/business/enron-s-many-strands-the-executives-home-as-shield-from-creditors-is-under-fire.html> (last visited 11/22/17).

<sup>6</sup> *Ruth Madoff Files Homestead Exemption in Palm Beach on Same Day Authorities Announce Investigation*, New York Daily News, March 17, 2009. <http://www.nydailynews.com/news/money/ruth-madoff-files-homestead-exemption-palm-beach-day-authorities-announce-investigation-article-1.368394> (last visited 11/22/17).

<sup>7</sup> *Roger Ailes Poured the Bulk of his Fox Severance Package into Palm Beach Mansion. Say \$36 Million Cash*, Miami Herald, May 18, 2017. <http://www.miamiherald.com/entertainment/ent-columns-blogs/jose-lambiet/article151338922.html> (last visited 11/22/17).

<sup>8</sup> *Gaetz: Welcome home, O.J. Fla. is Your Kind of Place*, Pensacola News Journal, July 29, 2017. <http://www.pnj.com/story/news/2017/07/29/welcome-home-oj-florida-kind-place/104028184/> (last visited 11/22/17).

relative. The defendant was judgment proof, leaving the victim with mounting medical bills and no recourse.<sup>9</sup>

## **B. EFFECT OF PROPOSED CHANGES:**

The proposal removes the homestead exemption protection from creditor claims if a creditor:

- Establishes in an action against the owner of the homestead that the creditor's funds were fraudulently used by the owner to acquire or improve the homestead; or
- Obtains a judgment against the owner of the homestead for damages caused by an intentional tort or intentional criminal or fraudulent act by the owner of the homestead, so long as the homestead was not the primary residence for the owner's spouse or minor child when the tort or act occurred or at the time of the judgment in the action.

The proposal requires the creditor to take affirmative steps to establish certain conditions for the owner of the homestead to lose the protection of the homestead exemption.

## **C. FISCAL IMPACT:**

None.

## **III. Additional Information:**

### **A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

#### **General Provisions Committee on November 30, 2017:**

The amended proposal requires a creditor to do the following in order for an owner to lose homestead exemption protection:

- Establish in an action against the owner of the homestead that the creditor's funds were fraudulently used by the owner to acquire or improve the homestead; or
- Obtain a judgment against the owner of the homestead for damages caused by an intentional tort or intentional criminal or fraudulent act by the owner of the homestead, so long as the homestead was not the primary residence for the owner's spouse or minor child when the tort or act occurred or at the time of the judgment in the action.<sup>10</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> See amendment barcode 620722 <http://www.flcrc.gov/Proposals/Commissioner/2017/0017/Amendment/620722/PDF> (last visited 01/05/18).

The amended proposal requires the creditor to take affirmative steps to establish certain conditions for the owner of the homestead to lose the protection of the homestead exemption. The previous version did not specify steps that a creditor must take to establish conditions necessary for the loss of homestead protection.

The amendment also removed language from the proposal allowing for the implementation of the amendment by the legislature.

**B.** Amendments:

None.

**C.** Technical Deficiencies:

None.

**D.** Related Issues:

None.