

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

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

Proposal #: P 17

Relating to: MISCELLANEOUS, Homestead; exemptions

Introducer(s): Commissioner Gaetz

Article/Section affected:

Date: November 25, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	FT	

I. SUMMARY:

The proposal excludes from the constitutional homestead exemption: 1) homesteads that were obtained using the proceeds from a fraudulent or dishonest act, and 2) homesteads that caused the creditor's damages or losses by an intentional criminal or fraudulent act (fraudulent conveyance).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Homestead Exemption

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

- If located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements; or
- If located within a municipality, to the extent of 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,¹ and when the homestead was acquired with funds from illicit proceeds.² 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.³ However, Florida courts have held that a homestead purchased with the proceeds of fraud may be subject to an equitable lien in limited circumstances.⁴

Florida has several prominent examples of public figures embroiled in scandal shielding themselves from creditors by using the homestead exemption.⁵ These include white collar crimes,⁶ and sexual harassment lawsuits.⁷ In a recent case in Walton County, a woman was shot in the face by a former intimate partner and nearly died.⁸ The defendant in the case was unemployed, and his only asset was a home he had inherited from a deceased relative. The defendant was judgment proof, leaving the victim with mounting medical bills and no recourse.⁹

B. EFFECT OF PROPOSED CHANGES:

This proposal removes the homestead exemption from creditor claims if an owner:

1. Purchased the homestead using the proceeds from a fraudulent or dishonest act; or
2. Caused the creditors damages or losses by an intentional criminal or fraudulent act.

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

² *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?”

³ 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 11th Circuit.

⁴ 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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *Id.*

The proposal also provides that the legislature may implement legislation consistent with the purposes of this amendment, and such legislation may include, but is not limited to, limitations periods and protections for an innocent spouse or dependents.one.

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

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

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.