

THE FLORIDA HOMESTEAD EXEMPTION: HOW IT WILL BE  
IMPACTED BY THE NEW FEDERAL BANKRUPTCY REFORM ACT

Christine L. Derr  
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# THE FLORIDA HOMESTEAD EXEMPTION: HOW IT WILL BE IMPACTED BY THE PROPOSED BANKRUPTCY REFORM ACT

## I. INTRODUCTION

In the legal setting, the Florida homestead is known by colorful names such as "the legal chameleon", "the sacred cow" and "the castle" because it is both a protector of the Florida homeowner and an obstruction to creditors.<sup>1</sup> The chameleon is invoked because the original coiners of the term concluded this area of the law possesses "chameleon-like qualities" since application of the homestead is conditioned upon requirements that vary under different conditions.<sup>2</sup> The homestead has also been referred to as a "sacred cow" because it may not be alienated contrary to the interests of those to be protected by the homestead property.<sup>3</sup> The homestead is also frequently referred to as a "castle" because Florida's homestead exemption defends against creditors and because many prudent debtors take advantage of the ability to shelter both their estates and their families in the homestead.<sup>4</sup> Before one can decide whether the vivid names bestowed upon the homestead are deserved, it is important to be acquainted with the homestead's different facets.

In the Florida Constitution, there are three main components to the homestead: the exemption from forced sale,<sup>5</sup> the tax exemption,<sup>6</sup> and the limitations on devise.<sup>7</sup> First, and most

importantly, with few exceptions, the homestead property may not be foreclosed upon to satisfy the debts of creditors.<sup>8</sup> These exceptions will be discussed in detail later in this Article. Second, the homestead affords a tax exemption of \$25,000 per homestead property, which translates into an annual tax savings of approximately \$500.<sup>9</sup> Finally, the homestead has some limitations on how it may be devised. The homeowner should carefully consider the limitations on the devise of the homestead property when he is engaged in estate planning.<sup>10</sup> An estate planner will also consider the way the homestead property is titled.<sup>11</sup> The homestead is not always owned by one person in fee simple absolute or by a married couple as a tenancy by the entirety and the form of ownership chosen by the homeowner may have effects on the homestead.<sup>12</sup>

The vast subject matter of the Florida homestead and limitations of space in this Article dictate that the scope will be restricted to analyzing only the one part of the homestead: the exemption of homestead realty from forced sale. A thorough analysis will be made of this exemption, exceptions to the exemption, recent case law in Florida, the provision's relationship to federal bankruptcy law, and how the proposed Bankruptcy Reform Act may affect Floridians.

## II. BACKGROUND

This section will explore the origin and purpose of Florida homestead exemption law. A discussion of the requirements and exception of the exemption from forced sale will follow. Finally, an examination of the relationship between federal bankruptcy law and state collection rights will reveal the public policy reasons behind these regulations. In this section, Florida's decision to opt out of the federal rules on homestead exemption will be explained and other states' treatment of the homestead exemption will be examined.

### ***A. Origin and Purpose of the Florida Homestead Exemption***

The homestead was introduced in the Florida Constitution of 1868.<sup>13</sup> Florida was the fourth state to enact some type of homestead privilege for the debtor.<sup>14</sup> The policy underlying Florida homestead exemption laws was to protect the family and its shelter.<sup>15</sup> The goal of the State was to prevent debtors from becoming destitute, losing their homes and becoming public charges.<sup>16</sup> In the words of Mr. Chief Justice Jefferson B. Browne, "[the homestead's] obvious purpose is to secure each family a home and means of livelihood, irrespective of financial misfortune, and beyond the reach of creditors; security of the State from the burden of pauperism, and the individual citizen from destitution."<sup>17</sup>

One must be a resident of Florida to claim the homestead exemption. However, the owner of the homestead is not required to live in the house as long as the family of the individual claiming the homestead lives on the property.<sup>18</sup> In addition to the real property exemption, the Florida Constitution provides for a personal property exemption of \$1,000.<sup>19</sup> Prior to the revisions of the 1984 Constitution, only the "head of household" could claim the homestead. After the 1984 revision to the Constitution, dependency is no longer a consideration. Now, the property must be owned by a "natural person."<sup>20</sup>

The Supreme Court of Florida has long emphasized that the homestead exemption is to be liberally construed in the interest of protecting the family home.<sup>21</sup> However, the exemption is not to be so liberally construed as to make it an instrument of fraud or imposition upon the creditors.<sup>22</sup> Under the U.S. Bankruptcy Code, actual fraud is defined as when the debtor, within one year of filing bankruptcy, made a transfer with actual intent to delay, hinder or defraud the creditor.<sup>23</sup> It is established law that the homestead exemption law is intended to be a shield, not a sword, and should not be applied as to make it an instrument of fraud or as an imposition upon creditors.<sup>24</sup> Currently, in Florida, the debtors' protection is unlimited upon the cost, size or construction of the residence and the homestead property is bound only by the debtor's means.<sup>25</sup>

The corporate failings in recent years of Enron, Tyco International and WorldCom and the multi-billion dollar accounting scandals that followed have motivated many lawmakers to call for reform of current federal bankruptcy laws. In recent sessions, bills have been introduced with many different provisions and have not had the votes to pass. The bills currently being proposed are likely to be similar to those that have been introduced in recent sessions and failed. However, one popular provision the new proposed legislation includes a cap on the homestead exemption of between \$100,000 and \$125,000. Many lawmakers appear to be in accord on this issue. Median home prices in Florida exceed \$125,000 in many parts of the state,<sup>26</sup> so if the homestead cap becomes law, the home may no longer shelter the assets of the debtor.<sup>27</sup>

#### **B. Requirements and Exceptions of the Exemption from Forced Sale**

There are several steps the court will follow to ascertain the existence of homestead realty exemption including: (1) Whether the obligation qualifies as an exemption; (2) Whether the obligor is a natural person; (3) Whether the one claiming the exemption resides on the property claimed as exempt; (4) Whether he owned an estate in the property; and (5) Whether these factors were in effect at the time the obligation arose.<sup>28</sup> If the underlying obligation does not fall within one of the

limited exemptions, forced sale is forbidden. Liens cannot attach to the homestead property, except for specific debts and taxes.<sup>29</sup> Some of the specific debts that do not qualify as exemptions include tax liens and liens for the purchase or improvement to the homestead property.<sup>30</sup> For example, a construction contractor who completes work on a homestead property and has not had his debt satisfied by the homeowner may file a lien against the homestead property.

The homestead and its exemptions do not automatically attach simply because the homeowner meets all the qualifications for homestead. The method of setting apart the homestead property by the owner before a levy from a creditor is addressed in Section 222.01 of the Florida Statutes.<sup>31</sup> An individual who claims the tax deduction allowed by homestead without completing the proper formalities is subject to monetary penalties. The claimant of the homestead must complete a simple form and submit it to the county tax assessor's office in which the claimed property is located.<sup>32</sup> There is no fee for filing the homestead. Once the homestead is attached to the realty, it will be presumed to stay with that property until the property is sold.<sup>33</sup> A property may only have one homestead attach at a time.<sup>34</sup>

The homestead imposes an acreage limitation, an ownership requirement and a residency requirement.<sup>35</sup> The acreage limitation varies depending upon whether the homestead is within



municipality or outside of it.<sup>36</sup> If the homestead is located within a municipality, the exemption is limited to one-half acre lot and improvements on the land.<sup>37</sup> If located outside a municipality, the homestead is limited to one hundred sixty acres of contiguous lands plus the improvements on the land.<sup>38</sup> If the homestead property is outside the municipality when the homestead is filed but subsequently becomes part of a municipality, the homestead is reduced to one-half acre without notice to or the consent of the owner.<sup>39</sup>

To qualify as a homestead, a natural person must own the real property.<sup>40</sup> This means no business or corporation may homestead property. Finally, to claim a homestead, the claimed property is limited to the residence of the owner or the owner's family.<sup>41</sup> If the claimant is married, he or she may not alienate the property during his or her lifetime, without the spouse's joinder or consent.<sup>42</sup>

### ***C. Federal Bankruptcy Law and State Law Collection Rights***

Federal bankruptcy law and state law collection rights were designed as parallel complementary segments of an integrated system of debt resolution.<sup>43</sup> Article I, section 8 of the U.S. Constitution grants Congress the power to establish uniform laws on bankruptcies.<sup>44</sup> In bankruptcy, a Chapter 7 is the complete liquidation of the debtor's assets. The purpose of a Chapter 7,

is to provide an honest debtor with a fresh start in exchange for the debtor's handing over to a trustee all of the debtor's non-exempt assets for liquidation for the benefit of the debtor's creditors.<sup>45</sup> This method of distribution, in concept, provides for a uniform system of debt collection and assures an equitable method to divide a debtor's non-exempt assets. The public policy of the Bankruptcy Code is to balance the interests of debtors and creditors.<sup>46</sup> Specifically, the Code balances the debtor's "fresh start" against the creditor's effort to be paid its claim.<sup>47</sup>

Under state law, creditors have several remedies available to collect debt. One of the most common is the filing of an adversary proceeding by a creditor against debtor in an attempt to win a judgment from the court. Next, the creditor follows the state law requirements to collect on the judgment. If a debtor files a petition seeking relief in bankruptcy, Section 362 of the Federal Bankruptcy Code, known as the "automatic stay" provision, is activated.<sup>48</sup> The purpose of the automatic stay is set out in the legislative history of the Bankruptcy Act.<sup>49</sup> The history states, "[the automatic stay] gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions."<sup>50</sup> It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that

drove him into bankruptcy.<sup>51</sup> Creditors are duly notified that the debtor has filed for bankruptcy protection and the creditor files a claim with the court.<sup>52</sup> The public policy reason for the automatic stay provision is to prevent a "race to the courthouse" whereby only the debts of the quickest or peskiest creditors are satisfied.<sup>53</sup>

After the creditors make their claims and the court identifies the non-exempt assets, the funds are distributed to provide for a more equitable and cost-efficient asset distribution of the bankrupt debtor's estate. Finally, the debtor claims assets designated under state law as exempt from creditors and the remainder of the debtor's assets are pooled and distributed pro-rata. In Florida, because the individual debtor can claim an unlimited exemption of the homestead, creditors often emerge from the system feeling very dissatisfied with the result. The system frequently leads to what is seen by many as an inequitable outcome for the creditors.

#### **i. The Federal Law "Common Pool"**

Under state law, each debt is viewed in isolation.<sup>54</sup> The goal of state collection law is to provide an individual creditor with an avenue to pursue the collection of an unpaid obligation.<sup>55</sup> Once the debtor files for bankruptcy, this system of individual debt collection is no longer the most efficient. The competition among creditors for the available assets of the

debtor will make the creditors worse off as a group. A collective forum, created by pooling the debtor's assets and then dividing them is seen by most as the most equitable.

### **ii. Florida Opts Out of Federal Rules**

Florida had the choice to accept the federal exemptions for the debtor stipulated in Section 522 of the United States Bankruptcy Code or opt for its own set of exemptions.<sup>56</sup> Code Section 522(b)(1) creates a limited federal homestead exemption: ". . .[the] debtor's aggregate interest, not to exceed \$16,150 in value in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent uses as a residence. . ."<sup>57</sup>

Florida opted out of the federal exemptions.<sup>58</sup> Florida Statutes section 222.20 enumerates the Florida debtor's exemptions as granted in the Florida Constitution. Clearly, the federal exemptions are much more conservative than the exemptions allowed under the Florida Constitution.

### **iii. Other States' Treatment**

The state in which a debtor files his or her bankruptcy petition for relief can make a tremendous impact on the amount of assets the debtor may claim as exempt. Florida is known as a "debtor's state" since its exemption laws are some of the most liberal in the United States. Other states' homestead statutes

are not uniform. Northern states tend to be pro-creditor and reflect the pro-commerce attitudes of that region. For example, Vermont has a \$30,000 limitation on a homestead.<sup>59</sup> Spanish exemption laws influences several southern states' homestead laws. Exemption laws in most southern and western states were enacted in response to the devastating effects of the economic depressions in the eighteenth and nineteenth centuries. Bankrupt owners in many states are allowed to keep basic dwellings. Five states including Florida, Texas, Iowa, Kansas and South Dakota have an unlimited homestead exemption.

### **III. ANALYSIS**

*"Fraud in bankruptcy planning appears to enjoy the same precise definition as pornography; the federal courts know it when they see it"*<sup>60</sup>

This quotation expresses the feeling of frustration for many bankruptcy practitioners, creditors and consumer debtors in Florida. Some experts have noted the courts' holdings in recent cases involving matters of the federal bankruptcy law, the Florida Statutes, and the Florida homestead, have not been consistent and the outcomes have been surprising.<sup>61</sup> In this section, the limits of pre-bankruptcy planning and the precise definition of fraudulent transfers will be discussed. Recent court decisions will be analyzed in an attempt to synthesize the

current rules of the courts. An examination of the consequences of Florida's current homestead exemption law including the effect of creditor lending in Florida, and how, under the current system creditors are lawfully defrauded will follow. Finally, this section will examine current proposed legislation and the impact of the proposed changes.

### **A. Current Law**

A "fresh start" for the debtor has long been understood to be one of the goals of bankruptcy.<sup>62</sup> Congress made a central purpose of the bankruptcy code was to give debtors a fresh start in life unburdened by the existence of old debt.<sup>63</sup> Most courts agree statutory exemptions should be interpreted in a manner to effectuate the policy of a "fresh start" not a "head start" or a "running start."<sup>64</sup> The actions that debtors take on the eve of bankruptcy will oftentimes determine whether the debtor will have a fresh start, a head start or a running start.<sup>65</sup> Both creditors' groups and consumer debtors' groups are voicing their concerns to legislators and pushing for reform.<sup>66</sup>

When attempting to collect from a bankrupt debtor, one of the most common complaints of creditors is that pre-bankruptcy planning on the part of the debtors may remove most of the debtor's assets to out of reach of the creditors by transferring assets from non-exempt property to exempt. The legislative

history of the bankruptcy code indicates that converting assets from non-exempt to exempt, without more, is not a fraudulent transfer.<sup>67</sup> The key provision is Code Section 548 which states in order to prove actual fraudulent transfer, the trustee or creditor must show the debtor had actual intent to hinder, delay or defraud the creditors.<sup>68</sup>

Some commentators assert the courts have been inconsistent in describing and defining under what circumstances pre-bankruptcy planning is permissible and when it becomes a fraudulent transfer.<sup>69</sup> While it is true that on nationwide scale, bankruptcy courts have been somewhat unpredictable their rulings,<sup>70</sup> in Florida, some recent cases have defined more clearly the limits of pre-bankruptcy planning.

#### **i. *Havoco v. Hill***

In *Havoco v. Hill*,<sup>71</sup> the question certified for the Supreme Court of Florida by the United States Court of Appeals for the Eleventh Circuit was whether article X, section 4 of the Florida Constitution exempted a Florida homestead where the debtor acquired the homestead using non-exempt funds with the specific intent of hindering, delaying or defrauding creditors in violation of Fla. Stat. § 726.105<sup>72</sup> or §§ 222.29 and 222.30<sup>73</sup>. The court affirmed the decision.<sup>74</sup> Conversions of assets by non-resident judgment debtors into Florida homesteads, even when there is ample evidence in the record to suggest pre-bankruptcy

planning, are an entitlement of Florida residents asserting their right to a homestead exemption in real property and to hold it exempt from levy by creditors.<sup>75</sup>

The facts in *Havoco* are fairly simple. In 1981, Havoco sued Elmer Hill in state court in Tennessee, claiming damages for fraud, conspiracy, tortuous interference with contractual relations, and breach of fiduciary duty in connection with Havoco's contract to supply coal to the Tennessee Valley Authority.<sup>76</sup> Nine years later, after many pre-trial motions and appeals to the Seventh Circuit, Havoco's state court case came before a jury trial.<sup>77</sup> The jury found against Hill and awarded Havoco \$15,000,000 in damages.<sup>78</sup>

The sequences of dates in the next section of facts are pertinent to the case. On December 19, 1990, the district court entered judgment in accordance with the jury verdict.<sup>79</sup> On December 30, 1990, Hill purchased, for cash, a \$650,000 home in Destin, Florida.<sup>80</sup> Hill, a long-time Tennessee resident, claimed he intended to make the Destin home his retirement residence.<sup>81</sup> On January 2, 1991, the judgment against Hill became enforceable.<sup>82</sup> On July 22, 1992, Hill filed a voluntary Chapter 7 bankruptcy petition in which he claimed a homestead exemption for the Destin, Florida home under Article X, section 4 of the Florida Constitution.<sup>83</sup>



Havoco filed an adversary proceeding against Hill challenging Hill's assertion of the homestead exemption pursuant to Florida state laws that prohibit the fraudulent transfer of assets.<sup>84</sup> Initially, the bankruptcy court held that Havoco "had not proved by a preponderance of the evidence that Hill acted with the specific intent to defraud his creditors" when he purchased the Destin home.<sup>85</sup> Havoco appealed this ruling and the district court reversed and ordered the bankruptcy court, on remand, to determine whether and under what circumstances Florida law prevented debtors from converting non-exempt property to exempt property.<sup>86</sup>

On remand, the bankruptcy court held that Hill was not prohibited from acquiring the Destin home with non-exempt assets even if he did have the specific intent to hinder or delay his creditors.<sup>87</sup> The Eleventh Circuit, noting the inconsistent treatment of the application of the homestead exemption in the bankruptcy courts certified the instant case to the Florida Supreme Court.<sup>88</sup> The Florida Supreme Court, by a five to one vote, held that it was not unsympathetic to the plight of the aggrieved creditor but merely resigned to the fulfillment of its constitutional duty.<sup>89</sup> Justice Bell wrote "we are certainly loathe to provide constitutional sanction to the conduct alleged by the petitioner and implicated by this certified question,

this Court is powerless to depart from the plain language of article X, section 4".<sup>90</sup>

**ii. In re Financial Federated Title and Trust, Inc.**

Financial Federated,<sup>91</sup> decided by the Eleventh Circuit in October 2003, was very important because it defined the limits of protection available under Florida Constitution Article X, Section 4. The facts of the instant case are somewhat convoluted, but the court concluded the actions of the principals of Financial Federated amounted to an illegal Ponzi scheme.<sup>92</sup> In essence, the principals of Financial Federated, a Florida corporation, and its sister company, used an elaborate scheme involving alter egos, insurance agents and financial advisors to raise money from investors to divert the proceeds to various other assets and individuals having nothing to do with the initial investment.<sup>93</sup> Over \$11 million dollars was fraudulently transferred from Financial Federated to other accounts controlled by the principals.<sup>94</sup> Both during and following the fraudulent transfers, an FBI investigation ensued.<sup>95</sup>

In August 1999, as the result of the FBI investigation, a grand jury returned a multi-count indictment in a Southern District of Florida criminal case consisting of fraud and conspiracy violations, among other charges.<sup>96</sup> The principal of Financial Federated was found guilty and sentenced to fifty-five

years in prison.<sup>97</sup> Several additional defendants who participated in the Financial Federal scheme had either pled guilty or been adjudicated guilty as of October 2003.<sup>98</sup> Financial Federated was forced into Chapter 11 bankruptcy in October 1999.<sup>99</sup> In May 2000, the Trustee appointed for Financial Federated pled guilty on behalf of Financial Federated and a sister company also involved in the litigation and a conviction was entered in August of 2000.<sup>100</sup>

One of the assets purchased by the debtors with funds that could be traced directly to the fraudulent companies was a home in Delray Beach, Florida, purchased for \$1.1 million and claimed as exempt from forced sale by virtue of a homestead filing.<sup>101</sup> In an adversary proceeding, the Trustee filed a complaint asking the court to impose an equitable lien or the establishment of a constructive trust for the equity proceeds of the sale of the Delray Beach property.<sup>102</sup> The court relied on several earlier decision including the Florida Supreme Court 1925 decision in *Jones v. Carpenter*, which established the principle that the homestead "cannot be employed as a shield and defense after fraudulently imposing on others."<sup>103</sup> The Florida Supreme Court emphasized the rule pronounced in *Jones in Palm Beach Savings & Loan Association, F.S.A. v. Fishbein* in 1993.<sup>104</sup> In *Fishbein*, the Florida Supreme Court approved an equitable lien to be placed on homestead property where the debtor obtained a loan and used the

loan to satisfy three existing mortgages on the homestead property.<sup>105</sup> Ultimately, the Eleventh Circuit adopted the decision by the United States Bankruptcy Court for the Southern District of Florida which held the Florida Constitution does not protect from an equitable lien or constructive trust homestead property that was purchased with fraudulently obtained funds.<sup>106</sup>

In distinguishing *Havoco* from *Financial Federated*, the courts seem to say that under the Florida Constitution, a debtor may convert his own non-exempt assets to purchase exempt real property and hold it exempt from levy by creditors, even if the homesteading was fraudulent, or, at the least, "suspiciously timed",<sup>107</sup> but the debtor may not use fraudulently obtained funds to protect his homestead.

### **iii. The Ever Expanding Homestead Exemption**

The next group of recent Florida bankruptcy decisions defies neat categorization, but is important to fully analyze the current limits and treatment of the homestead. The first case discusses whether exempt funds from the sale of a homestead may be used for living expenses. The next case decides how to treat claimed homestead property that exceeded the limitation set by the Florida Constitution. Then, the discussion turns to a recent case deciding whether a boat could be claimed as a homestead property. These cases demonstrate that homestead exemption law is ever expanding and becoming more defined as

different situations not explicitly treated in the Constitution or the Florida Statutes arise.

It was long the rule in Florida that proceeds from the voluntary sale of the homestead with the intent to reinvest in another homestead within a reasonable period of time are exempt as long as the funds are not commingled with other funds.<sup>108</sup> However, a Florida bankruptcy court recently held those funds could be used for living expenses. The facts from *In re Binko*,<sup>109</sup> are as follows: the debtors sold their homestead prior to bankruptcy and generated about \$40,000 in equity from the sale.<sup>110</sup> The debtors kept these funds segregated from other funds and used some of the segregated monies for living expenses.<sup>111</sup> The debtors claimed the remaining proceeds exempt as homestead proceeds under Florida law.<sup>112</sup> The bankruptcy trustee objected on the basis that the exempt character of all of the proceeds was lost when the debtor used some of the proceeds for another purpose.<sup>113</sup> The court overruled the trustee's objection and found the debtors' actions evidenced all the elements of good faith in attempting to reinvest in a homestead.<sup>114</sup>

In *re Englander*, the debtors' claimed homestead property exceeded the limitation on area set by the Florida Constitution and the court found it was indivisible.<sup>115</sup> The debtors' admitted their claimed property exceeded the allowable amount under

Florida law and attempted to designate a portion of the property, without access to roads, utilities or lake frontage and completely surrounded by the claimed exempted one-half acre of land as non-exempt.<sup>116</sup> The creditors and trustee objected and the court held the bankruptcy court could order the sale of a claimed homestead property, which exceeded the area limitation under the homestead provision since it could not be practically or legally subdivided, and then order an apportionment of the proceeds.<sup>117</sup> The bankruptcy court noted the debtors' "attempt at homestead exemption 'gerrymandering' was clearly made in bad faith."<sup>118</sup> Soon after, another court followed the reasoning in *Englander* and found a Chapter 11 debtor could not claim the entire 2.5 acres of his property as exempt on the ground that local zoning and building regulation prohibited subdivision of land.<sup>119</sup> The court found that had the property not already been sold, the court could have ordered its sale to satisfy creditors from the non-exempt portion of the proceeds of the sale.

The next case pushes the limits of what qualifies as homestead property. The issue before the court was whether a 34' Hatteras boat on which a Chapter 7 debtor and his wife resided, qualified as a homestead property under Florida homestead exemption statute Section 222.05.<sup>120</sup> The trustee filed a motion for turnover of the boat arguing the boat was capable of movement on the open water and because the debtor did not own

the dock or land attached to the berth to which the boat was docked.<sup>121</sup> The court held for the debtor.<sup>122</sup> This is an extension of some cases that have held condominium homes,<sup>123</sup> mobile homes and motor homes may all qualify for homestead protection as long as the requirements for residence at the time the petition was filed are met.<sup>124</sup> The bankruptcy courts appear to not have a single test for determining if homestead applies to non-traditional residences.<sup>125</sup> This court sets out a test that states homestead protection should be extended to any dwelling that the debtor lawfully possessed if the debtor resided there on the petition date and if the debtor had no other residence.<sup>126</sup>

#### ***B. Consequences of an Unlimited Homestead Exemption***

Florida's liberal bankruptcy laws impact both the business realm and individual Floridians. The consequences for the citizens of the state include the price Floridians pay for credit and the amount lenders are willing to loan. On the lighter side, the state is now the object of a lot of jokes about millionaires filing for bankruptcy and jilting their creditors yet living like kings in Florida.<sup>127</sup> On the darker side, many creditors are suffering serious repercussions as a result of dishonest debtors filing in Florida.

### **i. Impact on Creditor Lending in Florida**

A recent study demonstrated unlimited homestead exemption means more limits on loan availability. University of Houston Professor Jeremy Berkowitz and University of California at San Diego Professor Michael J. White discovered in their study, "*Bankruptcy and Small Firms' Access to Credit*", the higher a state's homestead exemption, the harder it is for small business owners to get favorable loan terms, if they can get loans at all.<sup>128</sup> It does not matter whether a business is incorporated since the lender is going to hold the business owner accountable for repayment regardless of the corporate status of the business.<sup>129</sup> In fact, the study found, an unincorporated small business has more assets available to repay than an incorporated small business because the owner's personal wealth is on the line along with the business assets.<sup>130</sup>

The professors looked for a correlation between various bankruptcy-related factors and a lender's decision to loan money to small businesses.<sup>131</sup> Their statistical model predicted that as exemption levels increase a creditor's willingness to make loans decreases.<sup>132</sup> As one would expect, the state's homestead exemption level was more important for companies with low net assets than it was for companies with greater worth.<sup>133</sup> The study also found higher interest rates are paid by small business owners in states with higher homestead exemptions.<sup>134</sup>



**ii. Creditors are Defrauded and Florida  
Becomes a Haven for Dishonest Debtors**

Florida has long been known as a haven for notable bankrupt celebrities and businessmen.<sup>135</sup> For example, WorldCom leader Scott Sullivan owns a palatial home in Boca Raton valued at \$22.5.<sup>136</sup> Although Sullivan has not yet personally filed for bankruptcy, creditors will be watching during his upcoming securities-fraud trial.<sup>137</sup> Movie actor Burt Reynolds, O.J. Simpson, and Marvin Warner, the former ambassador to Switzerland, and owner of failed Ohio Savings & Loan, have sought refuge in Florida.<sup>138</sup> Other disgraced executives now declaring Florida as their residence who have not filed for personal bankruptcy yet, but are likely to, include Tyco's Dennis Kozlowski and WorldCom's Scott Sullivan.<sup>139</sup> Mr. Kozlowski's interior designer famously said of the \$6,000 shower curtain she acquired for him, "This only seems lavish if you shop at Crate & Barrel. This is business as usual."<sup>140</sup> Burt Reynolds, declared bankruptcy in 1996 claiming \$10 million in debt. Reynolds kept a home then valued at \$2.5 million while his creditor received 20 cents on the dollar.<sup>141</sup> The Goldman family won \$33.5 million in a civil judgment against O.J. Simpson for the deaths of Nicole Brown Simpson and the Goldman's son, Ron, but the Florida homestead exemption prevents the Goldmans from forcing Simpson to sell his South Florida home.<sup>142</sup>

There are other equally outrageous examples too numerous to mention here.<sup>143</sup>

### ***C. Reforming the Bankruptcy Code***

#### **i. Current Proposed Bankruptcy Reform Legislation**

The bankruptcy reform bill has failed in the past three Congresses.<sup>144</sup> It failed in the 107<sup>th</sup> Congress due primarily to a provision perceived by Republicans to ban abortion protesters from using the bankruptcy system to avoid paying fines for blocking clinics if they knowingly violated the law.<sup>145</sup> House Republications are threatening an extension of bankruptcy to help family farmers, known as Chapter 12, if Democrats do not accept the bankruptcy legislation without the abortion provision. On January 28<sup>th</sup> of this year, House Republicans were successful in substituting the text of H.R. 975, the omnibus bankruptcy reform bill, into S. 1920.

There are many who have dissenting views on the proposed bankruptcy reform.<sup>146</sup> Under H.R. 975 (now S. 1920) there are still exceptions and loopholes to the \$125,000 homestead exemption cap contained in the current bill.<sup>147</sup> The current bill has exemptions for transactions conducted more than approximately three years preceding the bankruptcy filing and for interests transferred from a debtor's previous principal residence acquired within the same state prior to that time.<sup>148</sup>

The dissenters argue that while the bill would presume that debtors of modest means are abusing the system if they can pay general unsecured creditors as little as \$100 a month in Chapter 13, it continues to permit the most notorious abuse of the consumer bankruptcy system of all.<sup>149</sup>

#### ii. **Affect of the Proposed Changes**

Wisconsin Senator Herb Kohl, in an open letter to his colleagues in the Senate, urged them to vote for a bill that targeted what he called, "the single most offensive abuse in the bankruptcy system, the homestead exemption."<sup>150</sup> It is very easy to stoke the anger of Americans by highlighting the blatant abuse and misuse of bankruptcy law and the homestead exemption. However, the proposed bill would also have a big impact on the small consumer debtor that makes up the majority of bankruptcies filed each year. The consumer debtor would have a more difficult time wiping out his credit card debts.

A debtor will not be able to easily file a Chapter 7 bankruptcy which eliminates credit card, medical bills, and other consumer debt and allows the debtor to keep his home and some personal possessions. Instead, the debtor would have to submit to a "means test" which would very likely have harsher consequences for the consumer. For example, if a bankruptcy court determines that under a Chapter 13 petition the debtor could pay back what he owed over three to five years, he would

be obligated to consult with a credit counseling company and probably a bankruptcy lawyer. The debtor would very likely end up paying more fees. Also, under the changes proposed in the Bankruptcy Reform Act, a bankruptcy will stay on a debtor's record for ten years.

### **iii. Where Do Our Leaders Stand?**

In an earlier edition of a bankruptcy reform bill from the 107<sup>th</sup> Congress on the critical issue of capping the federal homestead exemption, Democratic Presidential hopeful Senator John Kerry voted against a motion to table an amendment introduced by Wisconsin Senator Herb Kohl providing for a hard cap to supercede state law in a roll call on March 15, 2001.<sup>151</sup> Florida Senator Bob Graham voted to table the motion.<sup>152</sup>

## **IV. CONCLUSION**

There is a presumption of good faith built into the Bankruptcy Code as well as into the allowed homestead exemption and the permissible conversions to exempt property.<sup>153</sup> Many of the cases discussed in this Article discuss debtors who did not act in good faith. Many of the debtors managed to preserve assets and obtain a complete discharge, keeping large amounts of assets because of "eleventh-hour conversions" of non-exempt assets to exempt. However, the American Bankruptcy Institute reported that actually, fewer than four percent of those filing

for bankruptcy protection are guilty of abuse.<sup>154</sup> Even so, finance companies, banks and credit card companies are pressing hard on Senate and House members of both parties to vote for reform legislation arguing too many people abuse the current bankruptcy system when they should be paying their bills on time instead of walking away from debts.

For the average consumer, bankruptcy used to be the last alternative to solving debt problems. In 2002, 1.5 million Americans filed took the bankruptcy route and wiped out their bills.<sup>155</sup> Many legitimate credit counseling agencies promote individuals lowering their debt-to-income ratio and increasing their potential for earning money to pay off debts. Some would blame the credit card companies themselves for "bombarding" consumers with credit. However, in this author's view, before looking at bankruptcy first, consumers should instead seek credit-counseling, do a budget analysis and evaluate long-term income potential.

A federal cap on the homestead exemption will address many Americans' concerns about corporate executives taking advantage of the system by shielding assets in a lavish home in Florida. However, it will also affect average consumer debtors who fall on hard times through no fault of their own because of a family illness, unexpected unemployment, or a divorce. What is fairly certain is that in the wake of the corporate scandal or recent

years and the perceived abuses by celebrity deadbeats, the call for bankruptcy reform legislation is not likely to go away and it will become law six months after the President of the United States signs it.

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<sup>1</sup> Harold B. Crosby & George John Miller, *Our Legal Chameleon, The Florida Homestead Exemption: I-III*, 2 U. FLA. L. REV. 12 (1949); Harold B. Crosby & George John Miller, *Our Legal Chameleon, The Florida Homestead Exemption: IV*, 2 U. FLA. L. REV. 219 (1949), Harold B. Crosby & George John Miller *Our Legal Chameleon, The Florida Homestead Exemption: V*, 2 U. FLA. L. REV. 346 (1949); Note, *Our Legal Chameleon is a Sacred Cow: Alienation of Homestead Under the 1968 Constitution*, 24 U. FLA. L. REV. 701 (1972), J. Allen Maines & Donna Litman Maines, *Our Legal Chameleon Revisited: Florida's Homestead Exemption*, 30 U. FLA. L. REV. 2 (1978), Donna Litman Seiden, *An Update on the Legal Chameleon: Florida's Homestead Exemption and Restrictions*, U. FLA. L. REV. 919 (1988).

<sup>2</sup> Crosby & Miller, 2 U. FLA. L. REV. 346 at 12, Maines & Maines, 30 U. FLA. L. REV. 2 at 227.

<sup>3</sup> *Our Legal Chameleon is a Sacred Cow: Alienation of Homestead Under the 1968 Constitution*, *supra* note 1.

<sup>4</sup> Timothy D. Moratzka, *The "Castle" Under Attack: Homesteads & Bankruptcy*, 2001 ABI JNL. LEXIS 84 (May 2001)

<sup>5</sup> FLA. CONST. art. X, § 4(a).

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<sup>6</sup> FLA. CONST. art. VII, § 6(c). "By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. . . "

<sup>7</sup> FLA. CONST. art X, § 4(c).

<sup>8</sup> FLA. CONST. art. X, § 4.

<sup>9</sup> FLA. CONST. art. VII, § 6(a). "Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence to the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entirety, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b)Not more than one exemption shall be allowed any individual or family unit. . .



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(c) By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five dollars of the assessed value of the real estate for each school district levy. . ."

<sup>10</sup> For many practitioners in Florida, the limitations on the devise and derived exemption of the homestead are, in the words of estates and probate expert Rohan Kelley, "[in the] mist and darkness of chaos."

<sup>11</sup> Seiden at 920.

<sup>12</sup> *Id.*

<sup>13</sup> Crosby & Miller at 14.

<sup>14</sup> John Shapo, *Restraints on Alienation and Devise of Homestead: Monsters Unfettered from Florida's Past*, 19 U. MIAMI L. REV. 72, 74 (1964).

<sup>15</sup> Seiden at 919.

<sup>16</sup> Maines & Maines, 30 U. FLA. L. REV. 2, 229 (1978).

<sup>17</sup> Crosby & Miller at 14. See also *Wakeman v. Noble*, 73 So. 2d 873, 874 (Fla. 1954) (en banc) ("the purpose of homestead provisions is simply to shelter the family that lives or survives"); *In re Meola*, 158 B.R. 881, 882 (Bankr. S.D. Fla. 1993) (Florida homestead protection is designed to secure for the householder a home for himself and his family - regardless of his financial condition); *In re Kelley*, 21 B.R. 375, 376 (Bankr. M.D. Fla. 1982) (Florida's

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homestead law is based on public policy considerations designed "to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen).

<sup>18</sup> In re Estate of Milisi, 440 So.2d 584 (Fla. 4th DCA 1983).

<sup>19</sup> FLA. CONST. art. X, sec. 4(a)(2). There shall be exempt from forced sale under process of the court. . . (2) Personal property to the value of \$1,000.

<sup>20</sup> FLA. CONST. Art. X, § 4.

<sup>21</sup> See e.g., Milton v. Milton, 63 Fla. 533, 58 So. 718, 719 (Fla.

1912) (*overruled in part* by Pasco v. Harley, 73 Fla. 819, 75 So. 30 (Fla.

1917).

<sup>22</sup> Milton, 58 So. At 719.

<sup>23</sup> 11 U.S.C. §548(a)(1)(A) (2002).

The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily (A) mad such transfer or incurred such obligation with **actual intent to hinder, delay, or defraud** any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted;. . . (emphases added).

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<sup>24</sup> Palm Beach Savings & Loan Association F.S.A. v. Fishbein, 619 So.2d 267 (Fla. 1993); Orange Brevard Plumbing & Heating Company, 137 So.2d at 203; Hillsborough Inv. Co. v. Wilcox, 152 Fla. 889, 891, 13 So.2d 448, 450 (1943).

<sup>25</sup> Mith v. Gluckenheimer, 42 Fla. 1, 37, 27 So. 900, 911 (Fla. 1900).

<sup>26</sup> *Florida Home Sales, Median Price Soar*, FLA. BAY BUS. J., (Oct. 27 2003)

available at <http://>

[www.tampabaybizjournals.com/tampa/stories/2003/10/27/daily5.html](http://www.tampabaybizjournals.com/tampa/stories/2003/10/27/daily5.html) (last visited Mar. 11, 2004). In the Tampa-St. Petersburg-Clearwater market, the median sales price for single-family existing homes in 2003 was \$148,800.

The national median sales price for existing single-family homes in 2003 was \$177,500.

<sup>27</sup> Timothy D. Moratzka, *The "Castle" Under Attack: Homestead and Bankruptcy*, available at <http://www.mcmlaw.com/pubs/592259> (last visited Apr. 4, 2004).

<sup>28</sup> Crosby & Miller at 18.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> FLA. STAT. § 222.01(1) Whenever any natural person residing in this state desires to avail himself or herself of the benefit of the provisions of the constitution and laws exempting property as a homestead from forced sale

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under any process of law, he or she may make a statement, in writing, containing a description of the real property, mobile home, or modular home claimed to be exempt and declaring that the real property, mobile home, or modular home is the homestead of the party in whose behalf such claim is being made. Such statement shall be signed by the person making it and shall be recorded in the circuit court.

(2) When a certified copy of a judgment has been filed in the public records of a county pursuant to s. 55.10, a person who is entitled to the benefit of the provisions of the State Constitution exempting real property as homestead and who has a contract to sell or a commitment from a lender for a mortgage on the homestead may file a notice of homestead in the public records of the county in which the homestead property is located. . .

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> FLA. CONST. art X, §4(c).

"The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of the homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift, and, if married, may deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law."

<sup>43</sup> Richard V. Butler and Scott M. Gilpatric, *A Re-Examination of the Purposes and Goals of Bankruptcy*, 2 AM. BANKR. INST. L. REV. 269, 269, (Winter 1994).

<sup>44</sup> U.S. CONST. art. I, section 8(4) [Congress shall have the power. . .] To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies and throughout the United States.

<sup>45</sup> *In re Huckfeldt*, 39 F.3d 829,830 (8th Cir. 1994).

<sup>46</sup> *See Lines v. Frederick*, 400 U.S. 18, 19, 91 S.Ct. 113, 114, 27 L.Ed. 2d 124 (1970).

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<sup>47</sup> *Id.*

<sup>48</sup> 11 U.S.C. §362 (2002). Under Section 362, no new liens may be created, all collection must stop, and the creditor is not allowed to setoff any debt owing to the debtor that arose before the commencement of the case.

<sup>49</sup> H.R.Rep.No. 595, 95th Cong., 1st Sess., *reprinted in* 1978, U.S. Code Cong. & Ad. News 6296-7.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Hormsy v. Floyd (In re Vitek, Inc.)* 51 F.3d 530, 535 (5th Cir. 1995). A "race to the courthouse. . .offends one of the most fundamental policies underlying bankruptcy law: preservation of the debtor's estate and the status quo ante long enough to allow a fair, ratable, systematic liquidation of the estate's assets among all claimants."

<sup>54</sup> *Butler & Gilpatric* at 270.

<sup>55</sup> Elizabeth Warren, *Bankruptcy Policymaking in a Imperfect World*, 92 MICH L. REV. 336, 346 (1993)

<sup>56</sup> 11 U.S.C. §522(b)(1) (2002).

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(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. . .

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2) (A) of this subsection specifically does not so authorize;

<sup>57</sup> 11 U.S.C. §522(d) (1) (2002).

<sup>58</sup> FLA. STAT. § 222.20 (2004) In accordance with the provision of § 522(b) of the Bankruptcy Code of 1978, residents of this state shall not be entitled to the federal exemptions provided in § 522(d) of the Bankruptcy Code of 1978. Nothing herein shall affect the exemptions given to residents of this state by the State Constitution and the Florida Statutes.

<sup>59</sup> In re Evans, 51 B.R. 47,50 (Bankr.D. Vt. 1985).

<sup>60</sup> John M. Norwood and Marianne M. Jennings, *Before Filing Bankruptcy, Move to Florida and Buy a House*, 28 SW. U.L. REV. 439, 442 (1999).

<sup>61</sup> Compare Havoco v. Hill, *supra* note 71 with Financial Federated, *supra* note (University of Florida Levin College of Law Professor Jeffrey Davis addressed the issue of pre-bankruptcy planning in the advanced bankruptcy class held on

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April 2, 2004. The students, this author included, spend a large portion of class discussion attempting to distinguish *Havoco* with *Financial Federated*).

<sup>62</sup> In re Stoltz, 315 F.3d 80,94 (2d Cir. 2002).

<sup>63</sup> In re Bogdanovich, 292 F.3d 104, 107 (2d Cir. 2002).

<sup>64</sup> In re Hill, 95 B.R. 293, 297 (Bankr. N.D.N.Y 1988).

<sup>65</sup> See e.g. Timothy D. Morartzka, *Fresh Start, Head Start or Running Start: Bankruptcy Exemption Planning*, 2003 ABI J. Lexis 57, (April 2003).

<sup>66</sup> Two examples of opposing viewpoints on bankruptcy reform follow. Both sides agree the system must be reformed, but each would target a different area of the current law to change. Vern McKinley and Joseph Pomykala, *Bankruptcy Reform: Dead for this Year But Still Badly Needed*, CATO INSTITUTE, (Oct. 30, 1998) available at <http://cato.org/dailys/10-30-98.html> (last visited Apr. 3, 2004) (Creditors' view: "Congress has improperly viewed bankruptcy as a creditor-funded social welfare program"); Consumer Bankruptcy Attorney Mark J. Markus, *Some Thoughts for Those Who Feel Guilty About Contemplating Bankruptcy*, available at <http://www.bklaw.com> (last visited Apr. 7, 2004.) ("There are many factors to consider before filing for bankruptcy but one of them should not be a guilty conscience").



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<sup>67</sup> H.R. Rep. No. 595, 95th Cong., 2d Sess. 361 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 76 (1978).

<sup>68</sup> 11 U.S.C. § 548 (2002).

<sup>69</sup> Lawrence Pondroff and Stephen K. Knippenberg, *Debtors Who Convert Their Assets on the Eve of Bankruptcy*, 70 N.Y.U. L. REV. 235, May 1995.

<sup>70</sup> See e.g. Timothy D. Morartzka, *Fresh Start, Head Start or Running Start: Bankruptcy Exemption Planning*, 2003 ABI J. Lexis 57, (April 2003).

<sup>71</sup> *Havoco of America, Ltd., v. Hill*, 26 FLA. L. WKLY. S416 (Fla. 2001).

<sup>72</sup> FLA. STAT. § 726.105 (2004).

<sup>73</sup> FLA. STAT. §§222.29 and 222.30 (2004).

<sup>74</sup> *Havoco*, *supra* note 71 at 1.

<sup>75</sup> Stephen C. Hunt & Charles M. Tatelbaum, *The Castle Defense: Florida Homesteads and the Havoco Rule*, 119 BANKING L.J. 238 (2002).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 2.

<sup>87</sup> *Id.* at 2.

<sup>88</sup> *Id.*

<sup>89</sup> Justice Bell wrote the opinion and Chief Justice Wells, and Justices Harding, Pariente, Lewis and Quince concurred. Justice Anstead dissented without comment.

<sup>90</sup> *Id.*

<sup>91</sup> *In re Financial Federated Title and Trust, Inc.*, 2003 WL 2271621, 1 (11th Cir. Fla. 2003).

<sup>92</sup> *In re Financial Federated Title and Trust, Inc.*, 2003 WL 2271621, 1 (11th Cir. Fla. 2003).

<sup>93</sup> *Id.* at 1, note 1. The Court said the solicitation was "an elaborate Ponzi scheme to defraud". The funds were solicited from investors for the purported purpose of purchasing investments known as viatical investments. A viatical settlement is an investment through which a terminally ill person

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sells his life insurance policy and when he dies, the investor collects the death benefits. The amount an investor pays for a viatical settlement is based on medical predictions of how long the ill person will survive and other factors. The return on a viatical investment is extremely risky

<sup>94</sup> *Id.* at 3.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 4.

<sup>101</sup> *Id.*

<sup>102</sup> The instant case was filled nefarious characters. The debtor's attorney held money to purchase the Delray Beach home in his firm trust account and closed on the property. He later pled guilty to conspiracy to commit mail fraud and was awaiting sentencing at the time of this opinion.

<sup>103</sup> *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127 (Fla. 1925).

<sup>104</sup> *Palm Beach Savings & Loan Association, F.S.A. v. Fishbein*, 619 So.2d 267 (Fla. 1993).

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Hunt & Tatelbaum, *supra* note 75 at 238.

<sup>108</sup> See e.g. Orange Brevard Plumbing & Heating Co. v. La Crois, 137 So.2d 201 (Fla. 1962), Suntrust Bank/Miami, N.A. v. Papadopolous, 740 So.2d 594 (Fla. 3d DCA 1999).

<sup>109</sup> In re Binko, 258 B. R. 515 (Bankr. S.D. Fla. 2001).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Englander v. Mills, 95 F.3d 1028, 1030 (11th DCA 1996).

<sup>116</sup> *Id.* at 1028-1029.

<sup>117</sup> *Id.* at 1030.

<sup>118</sup> *Id.* at 1030 *quoting* In re Englander, 156 B.R. 862, 864 (Bankr. M.D. Fla. 1992).

<sup>119</sup> In re Baxt, 188 B.R. 322 (Bankr. S.D. Fla. 1995).

<sup>120</sup> In re Mead, 225 B.R. 80,82 (Bankr. S.D. Fla. 2000).

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<sup>121</sup> *Id.* at 6.

<sup>122</sup> *Id.*

<sup>123</sup> Condominium homes have long been eligible for homestead exemption in Florida. See e.g. *In re Dean*, 177 B.R. 727 (Bankr. S.D. Fla. 1995); *In re Wilbur*, 217 B.R. 314 (Bankr. M.D. Fla. 1998); *Blecker v. Simms (In re Blecker)*, 9 B.R. 31 (Bankr. S.D. Fla. 1980).

<sup>124</sup> See e.g. *Miami Country Day School v. Bakst*, 641 So.2d 467 (3d DCA 1994) (holding a house boat was a dwelling house within Florida Statute §222.05, and the debtor's houseboat qualified as homestead property); *but see In re Walter*, 230 B.R. 200 (Bankr. S.D. Fla. 1999) (denying homestead protection for a 48' boat because it was designed to serve as a recreational vehicle rather than a permanent dwelling); *In re Major*, 166 B.R. 457 (Bankr. M.D. Fla. 1994) (denying homestead protection for a 34' boat because it was not designed to serve as a permanent dwelling and it was immobile only because its owners lacked sufficient funds to repair the engine); *In re Brissont*, 250 B.R. 413 (Bankr. M.D. Fla. 2000) (denying homestead protection to a 37' cabin cruiser because it was designed exclusively for use as marine transportation).

<sup>125</sup> *Id.* at 85.

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<sup>126</sup> *Id.*

<sup>127</sup> The author has conscientiously chosen to write "he" rather than "she" when referring to the dishonest debtor because of all of the "outrageous" cases studied for this Article; none was a female debtor filing alone.

<sup>128</sup> National Bureau of Economic Research, NBER Working Paper Series, Working Paper 9010, (2002) at [www.nber.org/papers/w9010](http://www.nber.org/papers/w9010) (last visited March 30, 2004).

<sup>129</sup> *Id.* at 23.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 27.

<sup>132</sup> *Id.* at 32.

<sup>133</sup> *Id.* at 23.

<sup>134</sup> *Id.* at 17.

<sup>135</sup> Jules S. Cohen, *The Use of the Florida Homestead to Defraud Creditors*, 72 FLA. B.J. 35 (Dec. 1998).

<sup>136</sup> Linda Rawls, *Sullivan House Exemplar in Attack on Homestead*, PALM BEACH POST, Feb. 15, 2003, at Business, 1F.

<sup>137</sup> *Id.*

<sup>138</sup> Linda Rawls, *Sullivan House Exemplar in Attack on Homestead*, PALM BEACH POST, Feb. 15, 2003, at F-1.

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<sup>139</sup> *Id.*

<sup>140</sup> Jennifer Wells, *Lifestyles of the Rich and Rotten*, Toronto Star, Business, D1, (Sept. 26, 2002).

<sup>141</sup> Eliot Kleinberg, *Reynolds Gets Out From Under Bankruptcy*, THE PALM BEACH POST (Oct. 8, 1998).

<sup>142</sup> Jennifer Wells, *Lifestyles of the Rich and Rotten*, TORONTO STAR, Sept. 26, 2002 at D-1.

<sup>143</sup> But this Article would not be complete without at least mentioning a few other notable bankrupts that used Florida's unlimited homestead exemption to avoid creditors. Jennifer Wells, *Lifestyles of the Rich and Rotten*, TORONTO STAR, Sept. 26, 2002 at D-1. Corporate raider and convicted felon Paul Bilzerian used Florida's unlimited homestead exemption to avoid his creditors. He retains his \$5 million 36,000 square foot Tampa home complete with indoor basketball court and a nine foot Strauss crystal chandelier. Bilzerian completely avoided the \$200 million in debt owed his creditors; David J. Morrow, *Key to a Cozier Bankruptcy: Location, Location, Location*, N.Y. TIMES, Jan. 7, 1998, at A-1. Dr. Carlos Garcia-Rivera, a Miami physician with no malpractice insurance who was named in four separate malpractice, filed for bankruptcy protection, and kept a \$500,000 home with a 100 foot

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swimming pool; Larry Rohter, *Rich Debtors Finding Shelter Under a Populist Florida Law*, N.Y. Times, July 25, 1993, at A-1. Martin A. Siegel is a former Wall Street investment banker convicted of insider trading. While facing a \$2.75 billion civil suit, he bought a \$3.25 million 7,000 square foot beachfront home in Ponte Vedra Beach.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> National Association of Consumer Bankruptcy Attorneys, Legislation Page, at <http://www.nacba.com/homestead.html>, last visited Apr. 6, 2004. In an open letter to Senator Patrick Leahy (D-Vt.) and Congressman James Sensenbrenner (R-Wi.), a diverse group of NACBA members who teach bankruptcy and commercial law, urged lawmakers to close the "luxury loophole" that wealthy debtors now enjoy. They note that they are not all in agreement about what a homestead cap should be, but that a "hard cap" is needed. Those signing the open letter include the University of Florida's bankruptcy professor, Jeffrey Davis. The list also includes the esteemed Professors Lynn LoPucki of the University of California at Los Angeles, Elizabeth Warren of Harvard Law School, Jay Lawrence Westbrook of the University of Texas, and Dean and Professor Nancy Rapoport of the University of Texas.



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<sup>147</sup> [www.thomas.loc.gov](http://www.thomas.loc.gov); See also Commercial Law League available at

<http://www.clla.org> (last visited Apr. 7, 2004).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Kohl Letter Urges Colleagues to Keep Homestead Cap*, 2002 ABI J. LEXIS 70

(May 2002).

<sup>151</sup> *Presidential Hopefuls Take Differing Views on Bankruptcy Reform*, AM. BANKR.

INST. J., (Oct. 2003).

<sup>152</sup> *Id.*

<sup>153</sup> See generally 11 U.S.C. §522 (2002).

<sup>154</sup> Available at <http://www.abiworld.org> (last visited Apr. 7, 2004).

<sup>155</sup> *Id.*