

New Migration Pattern: Snow Bird Levels Fall, Debt Bird Levels Rise

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According to a recent University of Florida population projection study, the U.S. economy has triggered a steep decline in the number of new Floridians.¹ Undoubtedly, this has resulted in many snowbirds staying "up north" for the winter. However, as much as the recession may have reduced Floridian snowbird activity, it has most likely served as a catalyst for others — we'll call them "debt birds" — to flee to Florida to escape their creditors.

Although Florida has long been associated with bingo halls, beautiful beaches and spring break, its reputation for providing generous creditor exemptions to its resident debtors continues to gain popularity. Without a doubt, this is due in large part to the current state of the economy where debtors are catching wind of friendlier debtor laws and migrating south.

The Allure of Unlimited Homestead Protection

Typically, the move to Florida is contemplated by debtors who have assets they wish to keep out of the hands of their looming creditors. For most of these debtors, the primary source of protection from creditors is their home state's exemption laws. Unfortunately, most states offer only limited protection for a debtor's property — unless you live in Florida, where the property exemptions are about as plentiful and generous as beaches and sunshine.

In Florida, a homestead enjoys potentially *unlimited* protection from the claims of creditors — i.e., if you owe \$1 billion to creditors and you live in Florida, you can sleep easily at night knowing that your million dollar home is protected from the claims of your creditors.

Florida is one of only a few states with unlimited homestead protection,² which, together with Florida's warm climate, likely has been the motivating factor for debt bird migration. The only other states that offer such protection are Texas,³ Iowa,⁴ Kansas,⁵ Oklahoma,⁶ Arkansas⁷ and South Dakota.⁸ However, part of the appeal of fleeing from creditors is to flee to a state where you can protect your assets *and* have an ocean view.

Florida Homestead Defined

Before addressing the asset protection aspects of a Florida homestead, it is important to identify the property that qualifies for such protection. The Florida homestead property that qualifies for these benefits is limited to a certain amount of

acreage, depending on whether the homestead is located inside or outside of a municipality. If the homestead is located inside of a municipality, then ½ acre of contiguous land qualifies. A homestead located outside of a municipality qualifies to the extent of 160 acres of contiguous land. Although this article focuses on the asset protection features provided by the Florida homestead, it is important to note that the Florida Constitution also provides certain property tax benefits⁹ and inheritance rights to family members.¹⁰

Purpose of the Homestead Protection

As recognized by several Florida courts, the homestead protection exists to promote the stability and welfare of the state not only by encouraging property ownership and independence on the part of its citizens but, more importantly, by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune.¹¹

Establishing a Florida Homestead

Florida courts will construe homestead status liberally in favor of the debtor but will consider the debtor's testimony, in addition to the testimony of any other witnesses and pleadings and records on file, in determining whether a debtor has established a Florida homestead. In order to establish a Florida homestead, a debtor must meet both an objective and subjective test. "First, the owner must actually use and occupy the home. Second, he or she must express an actual intent to live permanently in the home."¹²

Factors the Courts Will Consider

A recent bankruptcy case, *In re Lloyd*, illustrates the creditor's burden, in addition to the factors that a court will examine in determining homestead status.¹³ After establishing a homestead by living in Key West with her husband and children, the debtor in *In re Lloyd* divorced her husband and moved to California in February 2003. In California, the debtor moved in with her new boyfriend and worked for her new employer but did not sell the Key West property.

In 2005, the creditor domesticated and attached its initial judgment lien against the Key West property. The creditor objected to the debtor's claim of exempt status for her Key West property and pointed to various facts to support the objection. In addition to physically residing in California, the debtor had enrolled her children in school in California, had opened bank accounts in California, and had obtained a California driver's license. The debtor had also registered to vote in Los Angeles County, using her California address as her domicile/principal address, and had executed a sworn affidavit/registration form to that effect. The debtor had opted not to surrender her Florida voter's registration card.¹⁴

The debtor claimed that it was easier for her to make a living in California but that she had always intended on returning to Florida. In support of her argument, the debtor had five witnesses testify in her defense. The court found that the debtor had

never abandoned her homestead and found it compelling that: (1) the debtor had never surrendered her Florida license and had continued to renew her Florida license (and had not renewed her California license), (2) had kept her Florida registration card (and had canceled her California registration card) and (3) had filed her 2004–2006 income tax returns indicating the Key West address as her home address.

Based on the foregoing, a debtor seeking Florida's homestead protection should — in addition to filing a Florida Declaration of Domicile — establish as much factual support of his or her mental intent as possible. As stated by the court in *In re Lloyd*, this includes maintaining a Florida driver's license, voter registration, tax receipts, and mail receipts. Furthermore, the debtor also should create Florida estate planning documents (such as a Florida Will, Trust, Power of Attorney, Health Care Surrogate, and Living Will) to help establish the permanent intent to reside in Florida.

The Strength of Constitutional Homestead Protection

Florida's homestead exemption is found in Article X, § 4(a) of Florida's Constitution. Obviously, sinking money into a Florida homestead with the sole intent of avoiding the reach of present creditors sounds suspicious. In fact, the transfer of assets with the intent to hinder, delay or defraud the collection of a claim is considered a fraudulent transfer under every state's statutory rules governing fraudulent transfers. Under applicable fraudulent transfer laws, the remedy is one in equity — to ignore that the transfer ever happened and to allow the creditor to reach the transferred assets.

However, Florida courts have long held that because Florida's fraudulent transfer laws rest on *statutory* authority and Florida's homestead protection derives from *constitutional* authority, the fraudulent transfer laws will not defeat the constitutional homestead protection.¹⁵ But this fact by itself does not set Florida apart from the other states that offer unlimited constitutional homestead protection.¹⁶ Florida's homestead is typically viewed as more powerful since the Florida Supreme Court has ruled that a fraudulent transfer will not act to prevent application of the unlimited homestead protection.¹⁷ Thus, Florida debtors who seek to avoid the claims of creditors can sink their money into a homestead and not worry about losing the home based solely on a fraudulent transfer argument. Instead, the Florida debtors need worry only about jumping the "homestead hurdles."

Florida Homestead Hurdles Numbers One Through Three — Constitutional Hurdles

The first three hurdles are enumerated in Article X, § 4(a) of Florida's Constitution.¹⁸ Under those provisions, the homestead is not exempt from forced sale in cases involving (1) the payment of taxes; (2) obligations for the purchase, improvement or repair of the homestead; and (3) obligations contracted for the house, field or other labor performed on the property.¹⁹

Homestead Hurdle Number Four — Equitable Lien Doctrine

The fourth hurdle is a judicially-created means of denying relief to debtors who engage in "fraud or reprehensible conduct." For this reason, Bernie Madoff and the like need not bother seeking protection in Florida. The Florida courts have consistently held that if the money used to purchase a Florida homestead was obtained through fraudulent means, then all bets are off. As just one example, the United States Court of Appeals for the Eleventh Circuit affirmed a bankruptcy court order creating an equitable lien on a homestead property purchased with the proceeds of a Ponzi scheme in *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 880 (11th Cir. 2003). Additionally, courts have imposed an equitable lien on homestead property to secure the payment of alimony and child support under certain circumstances.²⁰

Homestead Hurdle Number Five — Federal Law

The fifth hurdle simply acknowledges that federal law generally trumps state law.²¹ Therefore, the Florida homestead protection should not be expected to provide immunity from the laws of the federal government, where such laws specifically provide that the federal government may take a debtor's interest in a homestead, regardless of the fact that it may be owed in a tenancy by the entirety²² or that it qualifies as a constitutional homestead.²³

Much publicity was generated by O.J. Simpson and Enron executives²⁴ seeking refuge from their creditors behind unlimited homestead exemptions in Texas and Florida. Primarily in response to these high-profile cases, Congress enacted tougher federal bankruptcy laws ("Mansion Loophole" laws) by passing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), which limits the amount that a debtor can protect in a homestead if the debtor is essentially running from creditors.²⁵ Specifically, a debtor can protect only up to \$125,000²⁶ from the claims of the debtor's bankruptcy creditors if the debtor has not established residency in the unlimited homestead state (such as Florida) for a period of 1,125 days (40 months) prior to filing for bankruptcy.

Furthermore, even if a debtor can establish residency for 40 months prior to filing for bankruptcy, the Bankruptcy Code takes aim at fraudulent transfers by disallowing the use of the homestead exemption for a period of *ten years* if the homestead was purchased with the intent to hinder, delay, or defraud creditors.²⁷

Notwithstanding the foregoing, a married debt bird couple who do not share the same attacking creditor may potentially sidestep the Bankruptcy Code's residency requirement and fraudulent transfer rule by utilizing Florida's protection for property held as a tenancy by the entirety.²⁸ This approach might be successful since the Bankruptcy Code specifically allows for the exemption of property that a debtor owns in a tenancy by the entirety.²⁹

Republic Credit v. Upshaw (2009)

Suppose a debtor, who has a judgment in California for \$1 million and \$500,000 of equity in his California home, successfully jumps the homestead hurdles. The debtor can sell the home in California (which has a \$75,000 limit of protected home equity) and use the proceeds to purchase a home in Florida without having to worry. And that's exactly what the Upshaws did in *Republic Credit Corporation I v. Upshaw* (34 Fla. L. Weekly D635, March 2009).

In *Republic Credit*, Mr. Upshaw, a Californian, defaulted on three promissory notes in a cumulative amount of approximately \$1 million, prompting the creditor, Republic Credit, to file suit for damages in Iowa. Six weeks before judgment, Mr. and Mrs. Upshaw sold their California home and gained slightly over \$400,000 in equity from the sale.

The Iowa court ruled in favor of Republic Credit — and without missing a beat, the Upshaws wired \$350,000 to a Florida attorney's trust account to be used as a down payment on the purchase of a home in sunny Palm Beach Gardens, Florida.

Republic Credit didn't give up, however. It domesticated its judgment in Florida and then filed a complaint seeking to set aside the Upshaw's monetary transfers under the fraudulent transfer statute.

Counsel's brief for Republic Credit stated that the Upshaws never had any connection with Florida, never lived there and had no relatives in Florida. According to the brief, the Upshaws' elaborate scheme exemplified the "quintessential debtor running to Florida and hiding their assets" from creditors.³⁰

The trial court found in favor of the Upshaws based on the premise that the monetary transfers could not have been fraudulently transferred because the funds were held in a joint tenancy by the entirety in California and retained that protected status in Florida.

Republic Credit appealed, and the appellate court found a flaw in the trial court's reasoning: California does not recognize tenancy by the entirety. The appellate court then remanded the case back to the trial court but, in doing so, noted:

We remand for a determination as to whether the Upshaws fraudulently transferred the proceeds from the sale of their California home pursuant to the Uniform Fraudulent Transfer Act. *We note that "[t]he transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors is not one of the three exceptions to the homestead exemption provided in article X, section 4."* *Havoco of Am., Ltd. v. Hill*, 790 So.2d 1018, 1028 (Fla. 2001). On remand, it shall be in the discretion of the trial court whether to hold additional evidentiary proceedings. (Emphasis added).

Even if the Upshaws intended to defraud Republic Credit, it appears that Republic Credit is out of luck since the Upshaws have apparently jumped all five homestead hurdles. Presumably, Republic Credit will now look to the Upshaws' remaining unprotected assets.

In addition to California-based debt bird migration, case law exists that shows successful debt bird migration from other states as well, including New Jersey,³¹ Illinois,³² California,³³ Pennsylvania,³⁴ Alabama,³⁵ and Tennessee.³⁶

Creditor Strategies — Raising the Hurdles

A creditor can successfully challenge the homestead protection by showing that the debtor either consented to a lien or failed to establish a homestead, *ab initio*. However, if the debtor has not consented to a lien and has successfully established a Florida homestead, the creditor can try to raise one or more homestead hurdles to defeat the claimed protection.

Since a creditor can presumably establish a fairly straightforward and successful attack under one or more of the first three hurdles (i.e., either the debtor took out a loan to buy or improve a home, or simply owes taxes), the more intensive analysis usually involves the last two hurdles.

If fraud or reprehensible conduct exists, a creditor can request that an equitable lien be placed on the homestead. Note, however, that the courts have interpreted this remedy narrowly. In one case, the court denied the application of an equitable lien on the homestead of drug dealers who used drug sales proceeds to purchase or improve their homestead.³⁷

Under the fifth hurdle, a creditor may force the debtor into involuntary bankruptcy³⁸ to utilize the Mansion Loophole laws. Generally, an involuntary filing must be brought by three or more entities who hold an aggregate of claims of at least \$13,475. However, if a debtor has less than 12 creditors, then only one creditor may commence an involuntary bankruptcy as long as the aggregate of claims is at least \$13,475. Furthermore, the claim or claims must not be contingent as to liability or subject to a bona fide dispute as to liability or amount.

By forcing a debtor into bankruptcy court, a creditor can use BAPCPA and its prohibition against debtors seeking to use the unlimited homestead if they have not established a domicile within 40 months of the date of the bankruptcy filing. Additionally, a creditor may seek to utilize the Bankruptcy Code's 10 year "claw-back provision" if a fraudulent transfer was involved.

Where a creditor fails to pursue any of the foregoing strategies, the courts have routinely ruled in favor of the debtor by upholding the unlimited homestead protection.³⁹

Practical Concerns

Even if a debtor can jump the homestead hurdles, the prospect of taking on a new debt through a mortgage may raise some practical issues. In the event that most of the debtor's wealth is invested into the Florida homestead, the debtor must determine where the funds will originate to pay the new mortgage.

Additionally, the new lender may be concerned about offering a new loan to a debtor who is currently fleeing from an existing creditor. Similarly, if the new lender is aware of the debtor's intent to stiff such existing creditor, the new lender may be subject to equitable subordination.

In addition to the foregoing new/existing creditor concerns, a debtor may unintentionally trigger unforeseen consequences under federal law. In the event that a creditor forgives all or part of the existing debt, the Internal Revenue Code provides that such forgiveness of debt may constitute income. In turn, the generation of a sizeable amount of income can produce a sizeable tax liability.

The debtor's actions may also trigger disastrous bankruptcy consequences as well. In the event that the debtor winds up in bankruptcy, the bankruptcy court may deny a discharge of the debt but still subject the debtor's assets to the creditors' claims.

Conclusion

Despite various strategies available to creditors, as enhanced by the passage of BAPCPA, the sanctuary of an unlimited Florida homestead is still a possibility for fleeing debt birds. Although the economy has shown some signs of life, many experts agree that a full recovery is still years away. As such, the current debt bird migratory pattern should continue to present an increasing number of cases forcing the debt bird to jump the homestead hurdles, the outcome of which will determine whether the debt bird will land, "home-free," in the Sunshine State.

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The author would like to thank Jay D. Adkisson, Esq., of Riser Adkisson LLP, Lori A. Clary of Porter Wright Morris & Arthur LLP, and Sara M. Kannensohn, student at the University of Miami School of Law, for their invaluable assistance.

¹ *Recession Discouraging People from Moving to Florida*, University of Florida News, March 23, 2009. "The collapse of the housing market and the lingering effects of what has been the worst economic crisis since the Great Depression have put a real crimp on migration and are likely to keep Florida's population growth at very low levels for the next few years," notes Stan Smith, director of UF's Bureau of Economic and Business Research.

² The exemptions in nearly every warm climate state are limited to a fixed monetary amount, ranging from \$5,000 per debtor in Alabama to \$550,000 per debtor in Nevada, with the sole exception of Texas, which, like Florida, also has an unlimited homestead protection.

³ Tex. Prop Code Ann. § 41.001.

⁴ Iowa Code Ann. §§ 499A.18, 561.2, 561.16.

⁵ Kan. Stat. Ann. § 60-2312.

⁶ Okla. Stat. § 31-1.

⁷ Ark. Const. Art. 9, § 3. For a discussion of the value subject to protection, see also "The Arkansas Homestead Exemption Under the Revised Bankruptcy Code: A Crack in the Foundation?", *Arkansas Lawyer*, Vol. 41, No. 2, Spring 2006, Harry A. Light and Donald M. Warren, where the authors stated, "[a]lthough there is some discrepancy in the constitutional provisions as to the value of the homestead, courts, recognizing that homestead exemptions under the Arkansas Constitution are to be liberally construed in favor of the exemption, have uniformly found that there is no monetary ceiling on the value of the homestead."

⁸ S.D. Codified Laws §§ 43-31-1 to 43-31-3.

⁹ "All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment." Changes in assessments shall not exceed the lower of "[t]hree percent (3%) of the assessment for the prior year" or "[t]he percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics."

¹⁰ 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.

¹¹ *In re Adell*, 321 B.R. 562 (Bankr. M.D. Fla. 2005); *In re Colwell*, 208 B.R. 85 (Bankr. S.D. Fla. 1997); *In re Bubnak*, 176 B.R. 601 (Bankr. M.D. Fla. 1994); *In re McAtee*, 154 B.R. 346 (Bankr. M.D. Fla. 1993); *In re Ehnlé*, 124 B.R. 361 (Bankr. M.D. Fla. 1991).

¹² *In re Franzese*, 383 B.R. 197 (Bankr. M.D. Fla. 2008); *In re Brown*, 165 B.R. 512, 514 (Bankr. M.D. 1994); *Hillsborough Investment Co. v. Wilcox*, 152 Fla. 889 (1943).

¹³ *In re Lloyd*, 394 B.R. 605 (Bankr. S.D. Fla. 2008). Although this case pertains to abandonment of an existing Florida homestead, it provides a sound analysis of the issues that the court will consider in determining homestead status and the liberal construction of such factors in favor of the debtor.

¹⁴ The creditor went so far as using the testimony of the debtor's ex-husband, who testified that the debtor always hated living in Florida because it was too hot. The court found the ex-husband to be a "disgruntled witness" and placed "zero value" on his testimony. *Id.* at 609.

¹⁵ "Under basic rules of construction, statutory laws enacted by legislative bodies cannot impair rights given under a constitution." *In re Young*, 235 B.R. 666, 671 (Bankr. M.D. Fla. 1999).

¹⁶ Article XVI, § 50 of the Texas Constitution provides, "[t]he homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon." Other states with constitutionally-based unlimited protection are Kansas, under the Kansas Constitution, Article 15, § 9, and Arkansas, under the Arkansas Constitution, Article 9, § 3.

¹⁷ *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018 (Fla. S.Ct. 2001).

¹⁸ Florida Constitution, Article X, § 4, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty"

¹⁹ *Miller v. Burns (In re Burns)*, 395 B.R. 756 (Bankr. M.D. Fla. 2008).

²⁰ *Anderson v. Anderson*, 44 So.2d 652, 654–55 (Fla. 1950); *Dep't of Revenue v. Bush*, 838 So.2d 653, 655 (Fla. 2d DCA 2003) (noting that the homestead exemption is not generally construed to defeat obligations for family support); *Brose v. Brose*, 750 So.2d 717, 719 (Fla. 2d DCA 2000). *But see Havaco*, 790 So.2d at 1030 n.12, where the Florida Supreme Court stated, "[w]e recognize that several District Courts have allowed equitable liens beyond the exceptions provided under article X, section 4 where a husband has used the homestead exemption to avoid his alimony and child support obligations. *See Brose*, 750 So.2d at 719; *Rosenblatt v. Rosenblatt*, 635 So.2d 132 (Fla. 3d DCA 1994); *Radin v. Radin*, 593 So.2d 1231 (Fla. 3d DCA 1992); *Gepfrich v. Gepfrich*, 582 So.2d 743 (Fla. 4th DCA 1991); *cf. Smith v. Smith*, 761 So.2d 370 (Fla. 5th DCA, 2000); *Isaacson v. Isaacson*, 504 So.2d 1309 (Fla. 5th DCA 1987). We express no opinion as to the validity of this approach. "

²¹ "This question is basically one of congressional intent. Did Congress, in enacting the Federal Statute, intend to exercise its constitutionally delegated authority to set aside the laws of a State? If so, the Supremacy Clause requires courts to follow federal, not state, law." *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996). *See also United States v. Wagoner County Real Estate*, 278 F.3d 1091, 1096–97 (10th Cir. 2002).

²² Courts have ruled against Florida debtors where the federal law at issue illustrates congressional intent to bring the property within the operation of federal law. *See United States v. Craft*, 535 U.S. 274 (2002), where the Supreme Court construed 26 U.S.C. § 6321 as granting the Internal Revenue Service authority to place tax liens on "all property and rights to property...belonging to" a delinquent taxpayer, notwithstanding the fact that the property was owned as a tenancy by entirety.

²³ "For all of these reasons, we hold that where the forfeiture of substitute property is concerned, 21 U.S.C. § 853(p) preempts Florida's homestead exemption and tenancy by the entireties laws." *United States v. Fleet*, 498 F.3d 1225 (11th Cir. 2007). However, where an innocent spouse is involved, the court may look at various factors in determining whether to authorize forced sale. *See United States v. Kroblin*, 2004-2 U.S. Tax Cas. (CCH) P50 (N.D. Okla. 2004).

²⁴ According to Jay D. Adkisson, Esq., who assisted staff for several Senators in formulating the language for the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, "the limitations on homestead came about primarily because of Ken Lay and the amount of wealth that he was sheltering in homesteaded property in Houston and in his qualified accounts. That is why there is not only a 40 month limitation, but also a limit of \$125,000 on homestead for things like breach of fiduciary duty, securities fraud, etc."

²⁵ During the Senate debates that led to the new bankruptcy laws, Senator Carper commented, "under current law, a wealthy individual in a State such as Florida or Texas can go out, if they are a millionaire, and take those millions of dollars and invest that money in real estate, a huge house, property, and land in the State, file for bankruptcy, and basically protect all of their assets.... With the legislation we have before us, someone has to figure out that 2½ years ahead of time people are going to want to file bankruptcy and be smart enough to put the money into a home..." 151 Cong. Rec. H2048, 2415 (daily ed. April 14, 2005).

²⁶ Bankruptcy Code § 522(p). This amount is currently \$136,875 since the protected bankruptcy amount is adjusted periodically for cost of living.

²⁷ "In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) in part to prevent debtors, who bought luxurious and palatial homes shortly before bankruptcy and then used liberal state homestead laws, such as those in Florida, to escape liability from certain wrongful acts. Sections 522(o), (p) and (q) of the Bankruptcy Code. The congressional intent appears clear - debtors who commit wrongful acts and then transfer non-exempt assets into protected homestead property can no escape responsibility in a bankruptcy case." *In re Burns*, 395 B.R. at 756.

²⁸ Under Florida law, property owned as tenancy by the entirety does not belong to either spouse. Instead, each spouse owns the whole, or entire, interest in the property. As such, a creditor of one spouse cannot seize the property. Florida courts have ruled that a fraudulent transfer does not automatically void the creation of a tenancy by the entirety.

However, a creditor may be able to pierce the entireties protection by obtaining a judgment against both spouses for fraudulent transfer. *In re Davis*, 403 B.R. 914 (Bankr. M.D. Fla. 2009).

²⁹ "Section 522(b) of the Bankruptcy Code generally permits a debtor to protect, or exempt, certain property of the estate from creditors' claims. Section 522(b)(3)(B) of the Bankruptcy Code specifically allows for the exemption of property owned by a debtor as a tenant by the entirety: ...in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law." *In re Franzese*, 383 B.R. at 197.

³⁰ Brief for the Petitioner, *Republic Credit Corporation I v. Upshaw* (34 Fla. L. Weekly DC 35, March 2009) (No. 4D08-1591).

³¹ *Bank Leumi Trust Co. v. Lang*, 898 F. Supp. 883 (S.D. Fla. 1995).

³² *In re Young*, 235 B.R. at 666.

³³ *In re Hendricks*, 237 B.R. 821 (Bankr. M.D. Fla. 1999).

³⁴ *In re Lazin*, 221 B.R. 982 (Bankr. M.D. Fla. 1998).

³⁵ *In re Clements*, 194 B.R. 923 (Bankr. M.D. Fla. 1996).

³⁶ *Havoco of America, Ltd. v. Hill*, 790 So.2d at 1018.

³⁷ *Tramel v. Stewart*, 697 So.2d 821 (Fla. 1997). In its decision, the court limited equitable liens based upon "fraud or reprehensible conduct" to instances in which funds were acquired from a specific person or entity and an equitable lien imposed on the property on behalf of the person or entity against whom the fraud was perpetrated.

³⁸ Bankruptcy Code § 303(b).

³⁹ "It requires no elaborate discussion that under *Havoco of America, Ltd. v. Hill*, Adell had an absolute right to purchase his home in Florida and claim it as homestead." *In re Adell* (M.D. Fla. 2007). "Non-exempt assets may be converted into an exempt homestead even if this is done with an actual intent to hinder, delay, or defraud creditors." *Willis v. Red Reef, Inc.*, 921 So.2d 681 (Fla. 4th DCA 2006).