

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 342

INTRODUCER: Senator Thrasher

SUBJECT: Rental of Homestead Property

DATE: February 5, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

SB 342 provides that a homestead property may be rented for up to 30 days per calendar year without being considered abandoned or affecting the homestead status of the property. If the homestead is rented for more than 30 days, the current provisions of section 196.061, F.S., apply which can include the loss of the property’s homestead exemption.

This bill substantially amends section 196.061, Florida Statutes.

**II. Present Situation:**

**Exemptions and Property Classifications**

Sections 3, 4, and 6, Article VII of the Florida Constitution, provide for exemptions and property classifications. Generally, after the property appraiser has considered the just value of a property and produced an assessed value, the assessed value is then reduced by any exemptions to produce the taxable value.<sup>1</sup>

“Property Classification” or “Classification” means a classification of property for assessment purposes according to applicable statutory criteria, including those in ch. 193, Part II, F.S., and an assessment of the property at its classified use value.

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<sup>1</sup> See s. 196.031, F.S.

“Classified use value” means the value of a property that is based solely on the property’s character or use and based on the applicable statutory criteria, without regard to the property’s highest and best use.<sup>2</sup>

### **Homestead Assessment Limitation: Save Our Homes**

In 1992, Florida voters approved an amendment to s. 4, Art.VII of the State Constitution which is popularly known as the Save Our Homes amendment. This amendment limited the increase in assessment of homestead property to the Consumer Price Index or 3 percent, whichever is lower.

### **Changes Affecting Save Our Homes**

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Thereafter, the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at the just value as of January 1 of the first year the property owner establishes homestead. Thereafter, the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after its initial assessment this property is subject to Save Our Homes assessment limitation. If the homestead is terminated the property is assessed at just value.

### **Homestead Exemption**

Article VII, section 6 of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate, and who maintains thereon the permanent residence<sup>3</sup> of the owner, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by schools.

### **Loss of Homestead Through Rental**

A 2010 Florida Bar Journal article summarizes many of the issues related to homesteads and rentals.<sup>4</sup> The authors trace the historical understanding that property owners who rent their entire dwelling for long periods of time forfeit the benefit of homestead.

The underlying rationale for the termination of homestead due to long-term rentals is that the owner’s long-term rental activity, coupled with his or her implied absence from the property, signifies the owner’s intent to reside elsewhere. Therefore, the owner’s

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<sup>2</sup> See s. 192.001(2), F.S.

<sup>3</sup> Pursuant to s. 196.012(18), F.S., “permanent residence” means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. Intention to establish a permanent residence in Florida is a factual determination to be made, in the first instance, by the property appraiser.

<sup>4</sup> Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental*, The Florida Bar Journal (January, 2010, Volume 84, No.1) available at <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument>.

departure and residence elsewhere, coupled with the conversion of his or her home into a commercially oriented use (a rental), reveals an “intent” to abandon the homestead.<sup>5</sup>

The Bar Journal article continues on to contemplate an alternative rental circumstance:

By contrast, there are occasions when property owners do not intend to abandon their residence through rental. For example, numerous Floridians rent out their homes for short periods of time and may even remain on the premises during the course of these rentals.<sup>6</sup>

Examples of these types of short term rentals include those associated with annual sporting events, arts festivals, college graduations, or business-related symposiums and conventions.

### **Rental of Homestead to Constitute Abandonment**

Section 196.061, F.S., provides guidance on homestead status, rentals and abandonment as follows:

- Rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment of the dwelling as a homestead.<sup>7</sup>
- Abandonment continues until the dwelling is physically occupied by the owner.
- The abandonment of the homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as this provision is not used for two consecutive years.
- This provision does not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States.

Florida courts have traditionally emphasized that a determination of homestead abandonment is made on a case-by-case basis.<sup>8</sup> In particular, courts conduct a factual inquiry as to whether the owner’s rental activity constituted abandonment of the homestead.<sup>9</sup>

### **Tax Liens Imposed for Persons Improperly Claiming a Homestead Exemption**

Pursuant to s. 196.161(1)(b), F.S., if a property appraiser determines that a person who was not entitled to a homestead exemption was granted the exemption for any year within the prior 10 years, the property appraiser is required to serve a notice of tax lien against property owned by

<sup>5</sup> *Ibid.* Section 196.012(13), F.S., defines “real estate used and owned as a homestead” to mean real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion used for commercial purposes. Property rented for more than 6 months is presumed to be used for commercial purposes.

<sup>6</sup> *Ibid.*

<sup>7</sup> Ch. 2012-193, s. 18, Laws of Fla., introduced the “all or substantially all of a” dwelling language. Owners sometimes rented the majority of a dwelling but retained possession of a closet or similar limited space in an effort to retain a homestead exemption.

<sup>8</sup> Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental*, The Florida Bar (January, 2010, Volume 84, No.1) available at

<http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument>.

<sup>9</sup> See generally *Poppell v. Padrick*, 117 So. 2d 435 (Fla. 2d D.C.A. 1959); *Jacksonville v. Bailey*, 30 So. 2d 529 (Fla. 1947).

the person. The tax lien subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, if the exemption was granted as the result of a clerical error, the person receiving the exemption is not assessed penalties or interest. Before a lien is filed, the owner is given 30 days to pay the taxes, penalties, and interest.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 196.061, F.S., to allow the rental of a homestead property for up to 30 days per calendar year without the property being considered abandoned or affecting the homestead status of the property. If the homestead is rented for more than 30 days, the current provisions of s. 196.061, F.S., would apply. The statute is also bifurcated into subsections.

**Section 2** provides an effective date of July 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

Property owners who have a homestead exemption will be eligible to rent their dwellings for up to 30 days a year and still retain their homestead status and any Save our Homes assessment limitation. An indeterminate number of additional short term rental opportunities may emerge in the state as a result of homestead owners deciding to rent their properties.

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<sup>10</sup> See s. 196.161(1)(b), F.S.

**C. Government Sector Impact:**

While the Revenue Estimating Conference has not yet met to review the fiscal impact of SB 342, it is possible that schools and local governments may realize an indeterminate reduction in their property tax revenues as a result of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.