

STORAGE NAME: h4151a.rpp

DATE: April 2, 1998

HOUSE OF REPRESENTATIVES

**COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4151

RELATING TO: Homestead Property

SPONSOR(S): Representatives Turnbull & Kelly

COMPANION BILL(S): S 0686 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

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I. SUMMARY:

HB 4151 amends section 222.01, Florida Statutes, to provide that statements declaring property to be homestead property must be signed and recorded in person. The bill provides that a homestead exemption granted pursuant to section 196.031, Florida Statutes, is deemed to be a designation of homestead for purposes of section 222,01, Florida Statutes.

This bill will have a fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 222.01, Florida Statutes, provides that a person "may" make a statement designating property as homestead to be exempt from forced sale. The language of this section is permissive and it is not necessary to make a designation of homestead under section 222.01, Florida Statutes, in order to protect homestead property from forced sale. Article X, Section 4 of the Florida Constitution provides for homestead exemption from forced sale; however, there is no provision that a designation of homestead must be made.

Section 196.031, Florida Statutes, subsection (1) provides a basic \$5,000 exemption to all qualified homeowners. Subsection (3)(d) increases the exemption to \$25,000 for school district levies for all qualified homestead owners. Subsection (3)(e) increases the exemption to \$25,000 for non-school district levies.

Article VII, Section 6 of the Florida Constitution authorizes an exemption from ad valorem taxation for homestead property used by taxpayers as their permanent residence.

There have been businesses which have advertised that they would file "designation of homestead" forms for a fee for property owners. Many property owners who employed these businesses to file their designation of homestead apparently understood that this included documentation required for the property owner to acquire a homestead exemption from taxation under section 196.031, Florida Statutes.

According to the Attorney General's office, thousands of property owners misunderstood the advertisements and responded. Often, these property owners were new to Florida or residents whose first language is not English. This confusion apparently resulted in many property owners eligible for homestead exemptions for taxation purposes not filing for and not receiving the exemption. See State v. State Recording Services, No. 94-1567 (Fla. 2d Cir. Ct. Feb. 25, 1998).

Presently, the property appraiser's offices provide a property tax roll list indicating those persons who have been granted homestead exemptions under section 196.031, Florida Statutes, to the offices of the circuit court.

B. EFFECT OF PROPOSED CHANGES:

HB 4151 will clarify that any statements declaring property to be homestead property pursuant to section 222.01, Florida Statutes, must be signed and recorded in person with the clerk of the circuit court. The bill provides that a homestead exemption granted pursuant to section 196.031, Florida Statutes, is deemed to be a designation of homestead, for protection against forced sale.

HB 4151 should reduce the potential confusion between the designation of homestead against forced sale which provides that a statement may be filed pursuant to section 222.01, Florida Statutes, as compared with the provisions of section 196.01, Florida

Statutes, which must be complied with in order to obtain a homestead exemption for taxation purposes.

The bill will eliminate the misconception that a business or any other person can apply for the homestead exemption on behalf of a property owner who is entitled to homestead protection from forced sale. Because the bill requires that property owners must file in person at the clerk of circuit court, it will be less likely that businesses will advertise services in direct violation of section 222.01, Florida Statutes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The office of the clerk of the circuit court may have some impact as a result of this legislation.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

By eliminating the misconception of the part of persons who have employed businesses to apply for their designation of homestead, more people may properly apply for and obtain their homestead exemption for taxation purposes.

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill clarifies that it is the property owner's responsibility to file for homestead designation in person if they choose to file.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 222.01 and 196.031, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

See B. Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown

2. Recurring Effects:

There may be a fiscal impact on ad valorem taxation if more property owners promptly apply for their homestead exemption for taxation purposes, who may have formerly been misled by deceptive advertising and failed to file to obtain their taxation exemption. According to the Attorney General's office, most persons who employed businesses to file "designation of homesteads" were either new residents

to the state or residents whose first language is not English. Generally, it is assumed that the property owners will recognize the need to file for homestead for taxation purposes after they receive their first tax bill.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

There may be increased filings for homestead exemptions, and thus more tax exemptions may be provided. In State v. State Recording Services, No. 94-1567 (Fla. 2d Cir. Ct. Feb. 25, 1998) the judgment awarded against the defendant included \$592,989 in lost homestead tax exemption savings and lost "Save Our Homes" amendment savings for losses incurred by consumers who believed they had applied for homestead exemptions for taxation purposes.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The provision that "a homestead exemption granted pursuant to s. 196.031 is deemed to be a designation of homestead as provided in this section" may create an ambiguity to imply a necessity for persons to file a designation of homestead. Because section 222.01, Florida Statutes, is permissive, it is unclear why the filing for homestead taxation purposes would need to be certified. The intent appears to be to clarify that the designation of homestead under section 222.01, Florida Statutes, is unnecessary if the property owner has applied for a homestead exemption pursuant to section 196.031, Florida Statutes.

Section 222.01, Florida Statutes, provides that a person "may" make a statement designating property as homestead to be exempt from forced sale. The language of this section is permissive and it is not necessary to make a designation of homestead under section 222.01, Florida Statutes, in order to protect homestead property from forced sale. Because the designation is not required, it is unclear whether there is a purpose to retaining section 222.01, Florida Statutes. Case law for more than one hundred years has held that designation of homestead, in and of itself, does not protect homestead property.

The bare fact of filing and recording a designation of homestead did not of itself exempt the land as a homestead from forced sale. See Drucker v. Rosenstein, 19 Fla. 191 (1882) Rosenstein had filed and recorded his statement as now provided in the predecessor of section 222.01, Florida Statutes, claiming an unoccupied lot as his homestead, then made a contract to erect upon it a residence for himself and family, and apparently had some building material delivered to the lot. Drucker filed a creditor's bill to subject the lot to the payment of the debt, and the court held that the lot was not exempt because it had not been occupied as homestead. The Drucker court also cited Oliver v. Snowden, 18 Fla. 486 (1869) where the court had denied the homestead exemption to a vacant lot, although the property owner had designated it as homestead property. The court reasoned that a long line of prior cases had required the "occupation of property as a home of the family is necessary to impress upon it the character of a homestead." Drucker, 19 Fla. at 195.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate adopted an amendment to clarify that the property owner shall sign the designation of homestead in person at the office of the circuit court and clarified the language so it did not suggest that the designation must be recorded while the person was at the office of the circuit court.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

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