

ORDER OVERRULING OBJECTION TO CLAIMED EXEMPTIONS

A debtor in a Chapter 7 bankruptcy was trying to claim an exemption of equity in an amount over \$125,000 to his homestead. The Trustee is asserting that, pursuant to 11 U.S.C. §§ 522(b)(2) and (p)(1) of the newly enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the homestead exemption available to the debtor, a Florida resident, is limited to \$125,000 since he purchased his home within 1215 days of commencement of this case. The Debtor argues that he has not “elected” Florida’s homestead laws since he has no choice and therefore he is not bound by the new legislation which uses the term “elect”. The debtor further argues that the equity that he has accumulated is through years of living in Florida in different homestead properties. The debtor argues that it is appropriate to apply the exception to the \$125,000 cap since, although he has only lived in the last two residences less than the 1215 day requirement, the homestead residences that he lived in prior to those two fall outside of 1215 day requirement. In other words, the debtor has lived in Florida for over 15 years and should not be limited to 125,000 just because his last two residences were within the 1215 day window, equity should carry over from previous residences.

The Court determined that based on the legislative history, to exclude Florida residents from the limitations provided in § 522(p)(1) would be contrary to legislative intent. It is crystal clear that the intent of the legislature was to close the “mansion loophole”. Furthermore, it is clear that Florida was at the heart of the discussions in congress leading to the enactment of this provision. Therefore, a debtor who chooses to (a) reside in Florida (b) purchase a residence in Florida (c) makes that residence his/her permanent residence; and (d) having availed himself/herself of bankruptcy relief, **elects** to invoke the exemption provisions available under Florida Law.

The Court further determined that 522(p)(1) is clear that the limitation on interest in a homestead applies to that portion of the value of the debtor’s residence, acquired within 1215 days of the petition date which **exceeds \$125,000**. According to § 522(p)(2)(B) the extent of the limitation is determined **only after deducting** from the value of the debtor’s current residence that portion of the property’s value attributable to the debtor’s ownership of a previous residence in the same state acquired in excess of 1215 days before the petition date. To construe “previous principle residence” as narrow as only applying to the one previous home in the same state would not afford protection to those individuals who simply have benefitted as a result of their ownership of multiple residences over a period of time in the State of Florida. The gravamen of this provision is to prevent people from moving into “debtor friendly” states to shelter funds, not to prevent a debtor from enjoying the appreciation of their previous intra-state residences.