

## FLORIDA CONSTITUTIONAL LAW SHORT OUTLINE

- **HOMESTEAD PROPERTY** – Protected from levy by creditors of the owner. It also restrains voluntary conveyances away from the spouse of minor children.
  - **Requirements** -
    - HS must be established before the levy of a judgment creditor
    - Only natural persons can claim HS
    - Person claiming must be a FL resident w/intent to make the real prop a permanent residence
    - ½ acre of “contiguous” land w/n municipality
    - Up to 160 acres of “contiguous” land outside municipality
  - **Exceptions to Protection**- Property subject to forced sale if:
    - Taxes and Assessments
    - Mortgage
    - Mechanics’ or Improvement Liens
  - **Restraints on Devise** – ONLY APPLIES TO SOLELY OWNED PROPERTY. Real property owned by the decedent and surviving spouse as TIE is NOT HS property. It passes by right of survivorship.
    - HS may NOT be devised if owner is survived by a spouse or minor children. Otherwise, devise fails and spouse receives a LIFE ESTATE and the minor children receive a REMAINDER.
    - If no minor children, HS MUST be devised to spouse. Otherwise, devise fails and spouse receives a LIFE ESTATE with REMAINDER to LINEAL DESCENDENTS.
    - If no spouse or minors, HS may be devised to whomever.
  - **Waiver of Homestead Protection** - The constitution does not prohibit a waiver of the homestead exemption; it simply requires that such waivers be accomplished as the Florida Constitution prescribes - by “mortgage, sale, or gift.” It prohibits a general waiver in an otherwise unsecured instrument. Requiring that a waiver of the homestead exemption be made in the context of a mortgage assures that the waiver is made knowingly, intelligently, and voluntarily.
  - **Additional Information** –
    - If HS abandoned, the protection is forfeited.
    - If HS sold, the proceeds are considered to retain a HS exemption status, provided the owner has a good faith intent to reinvest in another HS property w/n a reasonable period of time.
    - A spouse can waive her HS rights by a prenuptial agreement.
- **UNCONSTITUTIONAL STATUTES** – FC requires that statutes cannot be VAGUE (average person of reasonable intelligence will understand) or OVERBROAD (cannot prohibit constitutionally protected activities), and they should be REASONABLY RELATED TO PUBLIC PURPOSE (health, safety, morals, welfare).
  - **Procedural Requirements** – (if these requires are not met, the law is a nullity)
    - **Single Subject** – law may cover only ONE subject and connected matter
    - **Adequate Title** – subject must be briefly expressed in title
    - **Must be Set Out** – a law may NOT be amended by reference to title only. Appropriate portions of original text must be SET OUT in the amending act.
    - **Enabling Clause** – “Be It Enacted by the Legislature of the State of FL.”
  - Bills of Attainder, Ex Post Facto laws, and laws impairing the obligation of contract are unconstitutional.
- **CATEGORIES FOR LAWS**
  - **General Laws** - Apply uniformly throughout the state even if it currently has limited real applicability
    - **General Law of Local Application** – Limited to a geographic area established by population.
      - Distinguishable from special law because it DOES NOT require notice or referendum.
    - **EXAM TIP: GENERAL LAWS THAT CLEARLY APPLY TO KNOWN, SPECIFIC INDIVIDUALS OR GEOGRAPHIC AREAS AND THAT EXCLUDE OTHERS ARE SUBJECT TO ATTACK BOTH AS EQUAL PROTECTION AND AS IMPROPERLY ENACTED SPECIAL LAWS.**
  - **Special Laws** – Laws that relate to, or are designed to operate on, known specific persons or things in a specially indicated part of the state.

- **Requirements:** A special law may not be passed unless
    - Public Notice in a newspaper of general circulation in each affect county
    - Approved by Referendum Vote
- **ACCESS TO COURTS** – The courts shall be open to every person for redress of injury, and justice shall be administered without sale, denial, or delay. If the legislature abolishes a cause of action:
  - A reasonable alternative **MUST** be provided **UNLESS**
  - There is a compelling necessity for abolition **AND**
  - No alternative method of meeting the public necessity can be established.
- **SEPARATION OF POWERS** – Unlike the US Constitution, the FL Constitution expressly incorporates the doctrine of separation of powers, mandating the separation of the executive branch, judicial and legislative branches of government. ENCROACHMENT occurs when one branch of government usurps the function of another branch of government.
  - **Delegation** – Legislature cannot delegate the power to make law or fundamental policy.
- **EQUAL PROTECTION** – Like the US Const, the FL Const provides basic equal protection and the same stds of review apply.
  - The FL Const expressly forbids discrimination based on RACE, RELIGION, NATIONAL ORIGIN, and PHYSICAL DISABILITY. **Strict Scrutiny** is applied. The law will be upheld if **NECESSARY** to achieve a **COMPELLING** state interest.
  - **Right to Work** is also a fundamental right and is subject to Strict Scrutiny.
- **DUE PROCESS** – The Due Process clauses of the 5<sup>th</sup> Amendment (applicable to fed gov) and the 14<sup>th</sup> Amendment (applicable to states) provide that the government **SHALL NOT** take a person’s life, liberty, or property without due process of law. Due process contemplates fair process/procedure, such as fair trial, which requires at least an opportunity to present objections to the proposed action to a **FAIR, NEUTRAL** decisionmaker.
  - **Substantive Due Process** concerns fundamental rights. The state must pass the **Strict Scrutiny** test to interfere with fundamental rights protected by the US and FL Constitutions. Examples are right to travel, privacy, vote, and all 1<sup>st</sup> Amendment rights.
  - **Procedural Due Process** in FL also extends to private organizations exercising quasi-public functions (ie. Professional Orgs)
- **SUNSHINE LAW** – Every person has a right to access public records and meeting of the state and local government. Public meetings must be open and the public must be given notice. The legislature may provide some exemptions by stating a public necessity justifying the exception so long as the law is no broader than necessary to accomplish the state purpose.
- **RIGHT TO PRIVACY** – The FL Const expressly provides a right of privacy (ie. Med Treatment, Pregnancy, Parental Rts). Every natural person has a right to be let alone and free from government intrusion into her/her private life. FL’s privacy right is considered to be more protective than the federal right.
- **FINANCE** – The state must be self sufficient. The state **MAY NOT** borrow money for **ORDINARY OPERATING EXPENSES**.
  - The state **MAY** borrow money for capital improvements such as buildings, bridges, roads, and airports.
  - The state may borrow funds using either **Revenue Bonds or General Obligation Bonds**
    - **Revenue Bonds** – these are not backed by the taxing power of the government. They are payable solely from the revenue of the project (ie. Tolls) and there is **NO REFERENDUM REQUIRED**. There must be a public purpose.
    - **General Obligation Bonds** – issued by the state or its subdivisions in order to finance capital projects that satisfy the public purpose requirement. Because the taxing power of the state is being used to secure payment of the bonds, there must be constitutional and statutory authority to issue the bonds. **REFERENDUM REQUIRED**. These bonds are payable from ad valorem taxes that mature more than 12 months after issuance.
- **AD VALOREM TAXES** – Property taxes.
  - Only **local government** not state may levy ad valorem taxes on real estate or tangible property

- Only **state** may levy ad valorem taxes on intangible property such as notes, bonds, and other obligations for pymt of money, but the tax CANNOT exceed 2 mills (\$1 per \$1000 value times the number of mills auth by the particular gov entity).
- NO ad valorem taxes on motor vehicles, boats, trailers, trailer coached, or mobile homes (although license fees on these items are available).
- **ASSESSMENT OF FEES** – Local governments may supplement revenue through the assessment of fees against users of government facilities. As fees aren't taxes, there need not be state enabling legislation.
  - **Restrictions of Amount and Use:**
    - The amount must be pegged to the per capita cost of the facility
    - Use of fee must be applied toward the facility
- **EMINENT DOMAIN** – The US Const prohibits governmental taking of private property for public use without “just compensation”. Florida has sovereign power to take private property for public purposes upon reasonable necessity and FULL COMPENSATION. Whether there has been a taking is a question of law for a judge. The owner is NOT entitled to a jury on this question.
- **AMENDMENTS TO FL CONSTITUTION** – Any changes must be approved by a vote of at least 60% of the people voting on the measure. MUST BE LIMITED TO A SINGLE SUBJECT.
- **IMPAIRMENT OF OBLIGATION OF CONTRACTS** – Both the FL and US Const prohibit state laws from retroactively impairing the obligation of contracts.
  - If a law substantially impairs the rts under an EXISTING contract, it will be valid only if:
    - It serves an important and legitimate gov interest AND
    - It is a reasonably and narrowly tailored means of promoting the interest.
  - When the state isn't a party to the contract, the courts have balanced the degree to which a party's contract rights are statutorily impaired against the evil the government is attempting to remedy.