

By the Committees on Community Affairs, Real Property & Probate and Representatives Crow, Kelly, Spratt, Safley, Culp, Fasano, Sindler, Brown and Byrd

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A bill to be entitled
An act relating to the Florida Mobile Home Act;
amending s. 723.006, F.S.; revising language
with respect to the powers and duties of the
Division of Florida Land Sales, Condominiums,
and Mobile Homes; directing the division not to
require refunds under certain circumstances;
providing a fine for minor violations;
providing for certain rules; authorizing the
division to enter into certain consent orders;
amending s. 723.021, F.S.; providing for
reasonable costs and attorney's fees when the
obligation of good faith and fair dealing is
breached; amending s. 723.037, F.S.; revising
language with respect to lot rental increases;
amending s. 723.0381, F.S.; revising
arbitration procedures; amending s. 723.063,
F.S.; authorizing mobile home owners'
associations to defend actions for rent or
possession; amending s. 723.071, F.S.; revising
language with respect to the sale of mobile
home parks; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 723.006, Florida Statutes, 1996 Supplement, is amended, present subsections (6), (7), and (8) are renumbered as subsections (8), (9), and (10), respectively, and new subsections (6) and (7) are added to said section, to read:

1 723.006 Powers and duties of division.--In performing
2 its duties, the division has the following powers and duties:

3 (5) Notwithstanding any remedies available to mobile
4 home owners, mobile home park owners, and homeowners'
5 associations, if the division has reasonable cause to believe
6 that a violation of any provision of this chapter or any rule
7 promulgated pursuant hereto has occurred, the division may
8 institute enforcement proceedings in its own name against a
9 developer, mobile home park owner, or homeowners' association,
10 or its assignee or agent, as follows:

11 (a) The division may permit a person whose conduct or
12 actions may be under investigation to waive formal proceedings
13 and enter into a consent proceeding whereby orders, rules, or
14 letters of censure or warning, whether formal or informal, may
15 be entered against the person.

16 (b) The division may issue an order requiring the
17 mobile home park owner, or its assignee or agent, to cease and
18 desist from an unlawful practice and take such affirmative
19 action as in the judgment of the division will carry out the
20 purposes of this chapter. The affirmative action may include
21 the following:

22 1. Refunds of rent increases, improper fees, charges
23 and assessments, including pass-throughs and pass-ons
24 collected in violation of the terms of this chapter.

25 2. Filing and utilization of documents which correct a
26 statutory or rule violation.

27 3. Reasonable action necessary to correct a statutory
28 or rule violation.

29 (c) The division shall not require a refund of rent
30 increases, improper fees, charges and assessments, including
31 pass-throughs and pass-ons, unless there is evidence of a

1 major violation. Minor violations of the chapter shall be
2 limited to a fine of \$250.

3 (d)~~(e)~~ In determining the amount of civil penalty or
4 affirmative action to be imposed under this section, if any,
5 the division must consider the following factors:

- 6 1. The gravity of the violation.
- 7 2. Whether the person has substantially complied with
8 the provisions of this chapter.
- 9 3. Any action taken by the person to correct or
10 mitigate the violation of this chapter.

11 (e)~~(d)~~ The division may bring an action in circuit
12 court on behalf of a class of mobile home owners, mobile home
13 park owners, lessees, or purchasers for declaratory relief,
14 injunctive relief, or restitution.

15 (f)~~(e)~~1. The division may impose a civil penalty
16 against a mobile home park owner or homeowners' association,
17 or its assignee or agent, for any violation of this chapter, a
18 properly promulgated park rule or regulation, or a rule or
19 regulation promulgated pursuant hereto. A penalty may be
20 imposed on the basis of each separate violation and, if the
21 violation is a continuing one, for each day of continuing
22 violation, but in no event may the penalty for each separate
23 violation or for each day of continuing violation exceed
24 \$5,000. All amounts collected shall be deposited with the
25 Treasurer to the credit of the Division of Florida Land Sales,
26 Condominiums, and Mobile Homes Trust Fund.

27 2. If a violator fails to pay the civil penalty, the
28 division shall thereupon issue an order directing that such
29 violator cease and desist from further violation until such
30 time as the civil penalty is paid or may pursue enforcement of
31 the penalty in a court of competent jurisdiction. If a

1 homeowners' association fails to pay the civil penalty, the
2 division shall thereupon pursue enforcement in a court of
3 competent jurisdiction, and the order imposing the civil
4 penalty or the cease and desist order shall not become
5 effective until 20 days after the date of such order. Any
6 action commenced by the division shall be brought in the
7 county in which the division has its executive offices or in
8 which the violation occurred.

9 (6) The division shall adopt rules for the
10 implementation of all civil penalties or administrative
11 actions, including, but not limited to, establishing major and
12 minor violations. A major violation means a violation of this
13 chapter which endangers the public health, safety, and welfare
14 or causes substantial economic harm to the mobile home park
15 residents.

16 (7) The division is authorized to enter into consent
17 orders in which the violator does not admit nor deny the
18 factual matters or the conclusions of law reached by the
19 division, solely for the purpose of entering into the consent
20 order, which consent order shall not be admitted into a court
21 of law for the purpose of proving any fact or violation of law
22 set forth therein.

23 Section 2. Section 723.021, Florida Statutes, is
24 amended to read:

25 723.021 Obligation of good faith and fair
26 dealings.--Every rental agreement or duty within this chapter
27 imposes an obligation of good faith and fair dealings in its
28 performance or enforcement. Either party to a dispute under
29 this chapter may seek an order finding the other party has not
30 complied with the obligations of good faith and fair dealings.
31 Upon such a finding, the court shall award reasonable costs

1 and attorney's fees to the prevailing party for proving the
2 noncompliance.

3 Section 3. Subsection (4) of section 723.037, Florida
4 Statutes, is amended to read:

5 723.037 Lot rental increases; reduction in services or
6 utilities; change in rules and regulations; mediation.--

7 (4)(a) A committee, not to exceed five in number,
8 designated by a majority of the affected mobile home owners or
9 by the board of directors of the homeowners' association, if
10 applicable, and the park owner shall meet, at a mutually
11 convenient time and place within 30 days after receipt by the
12 homeowners of the notice of change, to discuss the reasons for
13 the increase in lot rental amount, reduction in services or
14 utilities, or change in rules and regulations.

15 (b) At the meeting, the park owner or subdivision
16 developer shall in good faith disclose and explain all
17 material factors resulting in the decision to increase the lot
18 rental amount, reduce services or utilities, or change rules
19 and regulations, including how those factors justify the
20 specific change proposed. The park owner or subdivision
21 developer may not limit the discussion of the reasons for the
22 change to generalities only, such as, but not limited to,
23 increases in operational costs, changes in economic
24 conditions, or rents charged by comparable mobile home parks.
25 For example, if the reason for an increase in lot rental
26 amount is an increase in operational costs, the park owner
27 must disclose the item or items which have increased, the
28 amount of the increase, any similar item or items which have
29 decreased, and the amount of the decrease. If an increase is
30 based upon the lot rental amount charged by comparable mobile
31 home parks, the park owner shall disclose the name, address,

1 lot rental amount, and any other relevant factors concerning
2 the mobile home parks relied upon by the park owner. The park
3 owner shall prepare a written summary of the material factors
4 and retain a copy for 3 years. Upon request, the park owner
5 shall provide the committee a copy of the summary.

6 Section 4. Subsection (2) of section 723.0381, Florida
7 Statutes, is amended to read:

8 723.0381 Civil actions; arbitration.--

9 (2) The court may ~~shall~~ refer the action to ~~a panel of~~
10 ~~three arbitrators for court-annexed~~ nonbinding arbitration
11 pursuant to s. 44.103 and the Florida Rules of Civil
12 Procedure, ~~except that compensation for the arbitrators shall~~
13 ~~be in accordance with the authorized rate for circuit court~~
14 ~~mediators in that judicial circuit.~~ The court shall order the
15 hearing to be held informally with presentation of testimony
16 kept to a minimum and matters presented to the arbitrators
17 primarily through the statements and arguments of counsel. The
18 court shall assess the parties equally to pay the compensation
19 awarded to the arbitrators if neither party requests a trial
20 de novo. If a party has filed for a trial de novo, the party
21 shall be assessed the arbitration costs, court costs, and
22 other reasonable costs of the opposing party, including
23 attorney's fees, investigation expenses, and expenses for
24 expert or other testimony or evidence incurred after the
25 arbitration hearing if the judgment upon the trial de novo is
26 not more favorable than the arbitration decision. If
27 subsequent to arbitration a party files for a trial de novo,
28 the arbitration decision may be made known to the judge only
29 after he has entered his order on the merits.

30 Section 5. Section 723.063, Florida Statutes, is
31 amended to read:

1 723.063 Defenses to action for rent or possession;
2 procedure.--
3 (1) In any action based upon nonpayment of rent or
4 seeking to recover unpaid rent, or a portion thereof, or a
5 rent increase, the mobile home owner or mobile home owners'
6 association pursuant to Rule 1.220, Florida Rules of Civil
7 Procedure, may defend upon the ground of a material
8 noncompliance with any portion of this chapter or may raise
9 any other defense, whether legal or equitable, which he may
10 have. The defense of material noncompliance may be raised by
11 the mobile home owner or mobile home owners' association only
12 if 7 days have elapsed after he has notified the park owner in
13 writing of his intention not to pay rent, or a portion
14 thereof, based upon the park owner's noncompliance with
15 portions of this chapter, specifying in reasonable detail the
16 provisions in default. A material noncompliance with this
17 chapter by the park owner is a complete defense to an action
18 for possession based upon nonpayment of rent, or a portion
19 thereof, and, upon hearing, the court or the jury, as the case
20 may be, shall determine the amount, if any, by which the rent
21 is to be reduced to reflect the diminution in value of the lot
22 during the period of noncompliance with any portion of this
23 chapter. After consideration of all other relevant issues,
24 the court shall enter appropriate judgment.

25 (2) In any action by the park owner or a mobile home
26 owner or mobile home owners' association brought under
27 subsection (1), the mobile home owner or mobile home owners'
28 association shall pay into the registry of the court that
29 portion of the accrued rent, if any, relating to the claim of
30 material noncompliance as alleged in the complaint, or as
31 determined by the court. The court shall notify the mobile

1 home owner or mobile home owners' association of such
2 requirement. The failure of the mobile home owner or mobile
3 home owners' association to pay the rent, or portion thereof,
4 into the registry of the court as required herein constitutes
5 an absolute waiver of the mobile home owner's or mobile home
6 owners' association's defenses other than payment, and the
7 park owner is entitled to an immediate default.

8 (3) When the mobile home owner or mobile home owners'
9 association has deposited funds into the registry of the court
10 in accordance with the provisions of this section and the park
11 owner is in actual danger of loss of the premises or other
12 personal hardship resulting from the loss of rental income
13 from the premises, the park owner may apply to the court for
14 disbursement of all or part of the funds or for prompt final
15 hearing, whereupon the court shall advance the cause on the
16 calendar. The court, after preliminary hearing, may award all
17 or any portion of the funds on deposit to the park owner or
18 may proceed immediately to a final resolution of the cause.

19 Section 6. Subsection (2) of section 723.071, Florida
20 Statutes, is amended to read:

21 723.071 Sale of mobile home parks.--

22 (2) If a mobile home park owner receives a bona fide
23 offer to purchase the park that he intends to consider or make
24 a counteroffer to, his only obligation shall be to notify the
25 officers of the homeowners' association that he has received
26 an offer and disclose the price and material terms and
27 conditions upon which he would consider selling the park and
28 consider any offer made by the homeowners, provided the
29 homeowners have complied with ss. 723.075-723.079. The park
30 owner shall be under no obligation to sell to the homeowners
31 or to interrupt or delay other negotiations, and ~~he~~ shall be

1 free at any time to execute a contract for the sale of the
2 park to a party or parties other than the homeowners or the
3 association, if it is clear from the face of the bona fide
4 offer that the homeowners or homeowners' association could not
5 match the terms and conditions contained in the bona fide
6 offer by making an offer containing the same terms and
7 conditions. If, however, the bona fide offer contains terms
8 and conditions that the homeowners could match, the mobile
9 home park owner shall negotiate in good faith with the
10 homeowners or the association for the sale of the park. The
11 same terms and conditions means that the consideration is the
12 same and that the seller of the property or properties will be
13 eligible for deferral of all federal and state income taxes to
14 the same extent as if the unsolicited offer were accepted, and
15 that the seller's business and personal estate planning
16 objectives can be met by a sale to the homeowners or the
17 homeowners' association.

18 Section 7. This act shall take effect October 1, 1997.
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