

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 29 Mobile Home Park Lot Tenancies

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Pilon and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Chapter 723, F.S., addresses the unique relationship between a mobile home owner and a mobile home park owner. The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner, and is intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.

The bill repeals alternative provisions for when a lessee has not been provided a prospectus. The park owner will be held to the requirement of providing the lessee or prospective lessee with a copy of the prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, whichever occurs first.

The bill clarifies that the park owner is permitted to increase the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the park owner, so long as the amount is disclosed to the purchaser prior to the execution of the rental agreement or his or her occupancy, whichever occurs first, and is imposed in a manner consistent with the annual rent increase as provided in the seller's prospectus.

The bill requires the seller to notify the park owner when the purchase agreement is signed that the mobile home is being sold. Furthermore, in order to ensure full disclosure, the bill requires the park owner to provide additional documents pertaining to the terms of the rental of the lot to the purchaser prior to the execution of the rental agreement or the purchaser's occupancy, whichever occurs first.

Prior to the execution of the rental agreement or the purchaser's occupancy, whichever occurs first, the purchaser and park owner must execute an election form indicating whether the purchaser elects to assume the seller's prospectus or accepts a new prospectus from the park owner. Finally, the election form notifies the park owner of his or her obligation to maintain a copy of the form and provide a copy to the purchaser, and that it is subject to verification by the Department of Business and Professional Regulation.

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Chapter 723, F.S., is known as the “Florida Mobile Home Act” and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) within the Department of Business and Professional Regulation (Department). The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides in part that:

[O]nce occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.<sup>1</sup>

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.<sup>2</sup> The Florida Supreme Court, in addressing mobile home park issues, has stated that “a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.”<sup>3</sup>

#### **Mobile Home Park Owner’s Obligations**

Section 723.022, F.S., sets forth the park owners obligations. Park owners shall:

- Comply with the requirements of applicable building, housing, and health codes.
- Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.
- Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.
- Maintain utility connections and systems for which the park owner is responsible in proper operating condition.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

#### **Mobile Home Owner’s Obligations**

Section 723.023, F.S., sets forth the mobile home owner’s general obligations. A mobile home owner shall:

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<sup>1</sup> Section 723.004(1), F.S.

<sup>2</sup> Section 723.002(1), F.S.

<sup>3</sup> Stewart v. Green, 300 so.2d 889, 892 (Fla. 1974).

- Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.
- Keep the mobile home lot which he or she occupies clean and sanitary.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

### **Prospectus or Offering Circular**

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park.<sup>4</sup> The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.<sup>5</sup>

Pursuant to s. 723.011(1), F.S., in a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the Division for approval. Also prior to entering into an enforceable rental agreement for a mobile home lot, the park owner shall deliver to the homeowner a prospectus approved by the Division. The Division maintains copies of each prospectus and all amendments to each prospectus which are approved by the Division, and shall provide copies of documents requested in writing.

In mobile home parks containing more than 25 lots, the park owner shall furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first.<sup>6</sup> Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.<sup>7</sup>

If a prospectus is not provided to the prospective lessee prior to the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the receipt by the lessee of the prospectus.<sup>8</sup>

According to Rule 61B-31.001, F.A.C., the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the following circumstances:

- Amendments consented to by each affected home owner and the park owner.
- Amendments to reflect new rules or rules that have been changed in accordance with procedures described in s. 723.037, F.S., and the prospectus.
- Amendments to reflect changes in the name or address of the owner of the park, name or address of the mobile home park or the name or address of the park manager or management company.
- Amendments to reflect changes in zoning.
- Amendments to reflect a change in the person authorized to receive notices and demands on the park owner's behalf.
- Amendments to reflect changes in the entity furnishing utility or other services.
- Amendments required by the Division.
- Amendments required as a result of revisions of ch. 723, F.S.
- Amendments to add, delete or modify user fees for homeowners, so long as the park owner does not violate s. 723.031, F.S., by charging a user fee for a service previously included in lot rental amount unless a corresponding reduction in lot rental amount is provided.

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<sup>4</sup> Section 723.011(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 723.011(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 723.014(1), F.S.

- Amendments to correct scrivener's errors.
- Amendments to reflect changes to the mobile home park property description due to a change in land use, condemnation or other legal action which changes the mobile home park property or a portion thereof.
- Amendments made to conform the prospectus to requirements of federal, state and local government ordinances, statutes, and regulations, including, but not limited to, the Fair Housing Act, the Americans with Disabilities Act, or the Telecommunications Act of 1996, where there is no charge to the home owner, except as provided in s. 723.031, F.S.
- Amendments to reflect changes in facilities or structural amenities after a natural disaster, as long as the requirements of s. 723.037, F.S., are met.
- Amendments to revise, renew, or extend an underlying ground lease.
- Amendments to reflect reduction in services or utilities in accordance with the procedures described in s. 723.037, F.S.
- Amendments to describe new facilities, services or utilities in the park.

### **Written Notification in the Absence of a Prospectus**

Section 723.013, F.S., provides that when a park owner does not give a provide a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner shall give written notification of the following information prior to the purchaser's occupancy:

- The nature and type of zoning under which the mobile home park operates; the name of the zoning authority which has jurisdiction over the land comprising the mobile home park; and a detailed description containing all information available to the mobile home park owner, including the time, manner, and nature, of any definite future plans which he or she has for future changes in the use of the land comprising the mobile home park or a portion thereof.
- The name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf.
- All fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

This provision only applies to mobile home parks containing at least 10 lots but no more than 25 lots. Section 723.011, F.S., requires mobile home park owners to provide a prospectus to all prospective lessees in mobile home parks containing 26 lots or more.

### **The Sale of a Mobile Home**

The purchaser of a mobile home within a mobile home park may become a tenant of the park if the purchaser would qualify with the requirements of entry into the park under the park's rules and regulations, subject to the park owner's approval.<sup>9</sup> Section 723.059(3), F.S., provides that "the purchaser of a mobile home who becomes a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient."

Section 723.059(4), F.S., provides in part that a park owner is not prohibited "from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial prospectus and this act." Therefore the park owner is permitted to apply an increase in the rent to be paid by the purchaser at the end of the assumed rental agreement, so long as it's disclosed prior to occupancy *and* is imposed in a manner consistent with the seller's prospectus.

A number of mobile home owners have attempted to sell their mobile homes, entered into purchase agreements with potential buyers, and then been informed that the park owners intended to raise the

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<sup>9</sup> Section 723.059(1), F.S.  
**STORAGE NAME:** h0029.BPRS  
**DATE:** 3/19/2014

rent of the purchaser to an amount above that permitted by the seller's prospectus.<sup>10</sup> The purchaser of mobile home may assume the remaining time on the seller's lot rental agreement at the rent being paid by the seller under that agreement, but must enter into a new lot rental agreement and accept the increased rental rate at the end of the term if the park owner imposes the increase in a manner set out in the prospectus.<sup>11</sup>

## **Effect of the Bill**

### **Written Notification in the Absence of a Prospectus**

Section 723.011, F.S., requires the park owner who owns or operates a mobile home park with 26 lots or more to provide a copy of the prospectus or offering circular to each prospective lessee. The bill repeals s. 723.013, F.S., deleting the alternative provisions for when a lessee has not been provided a prospectus. The park owner will be held to the requirement of providing the lessee or prospective lessee with a copy of the prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, whichever occurs first.

### **Assumption of the Seller's Rent Agreement and Prospectus**

The bill clarifies that the purchaser of a mobile home may assume both the seller's rental agreement and the seller's prospectus. The bill, however, provides that the purchaser must be provided the opportunity to accept and must affirmatively elect the seller's prospectus.

### **Initial Increase in Rent Following Purchase**

The bill clarifies that the park owner is permitted to increase the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the park owner, so long as the amount is disclosed to the purchaser prior to the execution of the rental agreement or his or her occupancy, whichever occurs first, and is imposed in a manner consistent with the annual rent increase as provided in the seller's prospectus. This language clarifies that the term "initial recipient" as used in the current statutory language, is intended to mean the seller, and that the increase is required to be imposed consistent with the terms regarding rent increases in the seller's prospectus.

### **Required Disclosures**

The bill requires the seller to notify the park owner when the purchase agreement is signed that the mobile home is being sold. This is to provide the park owner with time to ensure he or she has the documents needed to comply and to provide timely notice of the seller's intent to sell.

Furthermore, in order to ensure full disclosure, the bill requires the park owner to provide the following documents to the purchaser prior to the execution of the rental agreement or the purchaser's occupancy, whichever occurs first:

- A copy of the seller's prospectus, with the information that the purchaser may assume the seller's prospectus.
- A document explaining that, following the assumed rental agreement and the initial increase, if any, set pursuant to the seller's prospectus, any subsequent increases to rent or fees to be paid by the purchaser shall be subject to the prospectus that the purchaser elects to take, either the seller's assumed prospectus or a new prospectus from the park owner.

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<sup>10</sup> More than 15 letters received by Representative Pilon from Constituents, re: increases in rent on their mobile homes upon sale, on file with the Business & Professional Regulation Subcommittee.

<sup>11</sup> Section 723.059(3), F.S., *See* Magnolia Vill. Homeowners Ass'n v. Magnolia Vill., Inc., 759 So.2d 1201 (Fla 5th DCA, 2000) (clarifying decision by finding that the purchasers of mobile homes assumed the seller's rights under the lease under s. 723.059(3), F.S., and were not assignees under the lease, so that previous owners were not members of the class action), *See also*, In Re: Petition for Declaratory Statement, Emerald Lake, SPE, LLC, Emerald Lake Mobile Home Community, Docket No. 2010050399. Declaratory Statements are based on the facts provided specific to the petitioner.

- A copy of s. 723.059, F.S.
- If the purchaser elects to accept a new prospectus from the park owner rather than assuming the seller's prospectus, a copy of the new prospectus with an explanation of the provisions.
- A one page summary of the prospectus requiring the address of the rented lot, contact information for the park owner, a description of the expected rent and fees, a description of the manner in which annual rent increases will be determined, and the term of the rental agreement.

### **Election Form**

Prior to the execution of the rental agreement or the purchaser's occupancy, whichever comes first, the purchaser and park owner must execute an election form. The bill provides that the election form requires both the purchaser's and seller's initials and signatures and the date of execution. The form requires the purchaser to affirmatively elect to assume the seller's prospectus or agree to a prospectus provided by the park owner. Additionally, the election form requires the purchaser and park owner to verify that the park owner has notified the purchaser of his or her right to assume the seller's prospectus and that the park owner has provided a copy of the prospectus to the purchaser. Finally, the election form notifies the park owner of his or her obligation to maintain a copy of the form and provide a copy to the purchaser, and that it is subject to verification by the Department.

#### **B. SECTION DIRECTORY:**

**Section 1** repeals s. 723.013, F.S., relating to written notification in the absence of a prospectus.

**Section 2** amends s. 723.059, F.S., to clarify that a purchaser of a mobile home may assume the seller's prospectus, to provide the purchaser must elect to assume the seller's prospectus, to authorize a mobile home park owner to increase the lot rental of the purchaser of a mobile home on a leased lot in the mobile home park subject to conditions, to require certain documents to be provided to a purchaser as disclosure prior to the purchaser's occupancy, to provide an election form to be completed by the mobile home park owner and the purchaser prior to the purchaser's occupancy, and to require the mobile home park owner to maintain a copy of the election form and provide a copy to the purchaser.

**Section 3** provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will require mobile home park owners to provide additional documentation to a purchaser of a mobile home upon the sale of the mobile home. Additionally, it requires a mobile home park owner to maintain a signed copy of the election form. These impacts should require minimal expenditures by park owners.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule 61B-29.001, F.A.C., references s. 723.013, F.S. Therefore, the Department would have to amend the rule to remove the reference.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department indicated that the repeal of s. 723.013, F.S., removes disclosure requirements for smaller parks consisting of at least 10, but no more than 25 lots. Section 723.059, F.S., does not apply to those smaller parks unless they voluntarily prepared a prospectus. Section 723.012, F.S., should be amended rather than repealed, to indicate that it applies to parks containing at least 10 but no more than 25 lots and clarifying the disclosure requirements to match those of the bill language. The sponsor has indicated that an amendment will be prepared addressing this issue.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The proposed committee substitute made the following changes to the filed version of the bill:

- Repealed s. 723.013, F.S., which provides alternative provisions for a mobile home park owner if the park owner does not provide a lessee with the prospectus.
- Clarified that the purchaser of a mobile home may assume both the seller's rental agreement and the seller's prospectus.
- Required the purchaser to affirmatively elect the seller's prospectus or a new prospectus from the park owner.
- Clarified that the park owner may increase the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the park owner, subject to disclosure and subject to the annual rent increase terms provided in the seller's prospectus.
- Required the seller to notify the park owner when the purchase agreement is signed that the mobile home is being sold.
- Set disclosure requirements for a park owner at the time a mobile home is sold.
- Required the purchaser and park owner to execute an election form, which is described in the bill.

- Required the park owner to maintain a copy of the election form and provide a copy to the purchaser, and that it is subject to verification by the Department.

The staff analysis is drafted to reflect the committee substitute.