

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Latvala offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (6) of section 723.006, Florida
 8 Statutes, is amended and subsection (15) of section 723.006,
 9 Florida Statutes is created to read:

10 723.006 Powers and duties of division.—In performing its
 11 duties, the division has the following powers and duties:

12 (6) With regard to any written complaint alleging a
 13 violation of any provision of this chapter or any rule adopted
 14 ~~promulgated~~ pursuant thereto, the division shall, within 30 days
 15 after receipt of a written complaint, ~~periodically~~ notify, in
 16 writing, the person who filed the complaint of the status of the
 17 complaint. Thereafter, the division shall notify the complainant

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18 of the status of the investigation within 90 days after receipt
19 of the written complaint. Upon completion of the investigation,
20 the division investigation, whether probable cause has been
21 found, and the status of any administrative action, civil
22 action, or appellate action, and if the division has found that
23 probable cause exists, it shall notify, in writing, the
24 complainant and the party complained against of the results of
25 the investigation and disposition of the complaint.

26 (15) The division shall adopt rules to implement the board
27 member training requirements for educational programs as
28 provided in this chapter. The agency shall publish a notice of
29 proposed rule pursuant to s. 120.54(3)(a), by October 1, 2016.
30 Such rules shall include the requirements for content and notice
31 of the board member training program to assure that providers
32 meet minimum training requirements.

33 Section 2. Subsection (5) of section 723.031, Florida
34 Statutes, is amended to read:

35 723.031 Mobile home lot rental agreements.—

36 (5) The rental agreement shall contain the lot rental
37 amount and services included. An increase in lot rental amount
38 upon expiration of the term of the lot rental agreement shall be
39 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),
40 whichever is applicable, provided that, pursuant to s.
41 723.059(4), the amount of the lot rental increase is disclosed
42 and agreed to by the purchaser, in writing. An increase in lot
43 rental amount shall not be arbitrary or discriminatory between

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44 similarly situated tenants in the park. A ~~No~~ lot rental amount
45 may not be increased during the term of the lot rental
46 agreement, except:

47 (a) When the manner of the increase is disclosed in a lot
48 rental agreement with a term exceeding 12 months and which
49 provides for such increases not more frequently than annually.

50 (b) For pass-through charges as defined in s. 723.003.

51 (c) That a ~~no~~ charge may not be collected which ~~that~~
52 results in payment of money for sums previously collected as
53 part of the lot rental amount. The provisions hereof
54 notwithstanding, the mobile home park owner may pass on, at any
55 time during the term of the lot rental agreement, ad valorem
56 property taxes, non-ad valorem assessments, and utility charges,
57 or increases of either, provided that the ad valorem property
58 taxes, non-ad valorem assessments, and ~~the~~ utility charges are
59 not otherwise being collected in the remainder of the lot rental
60 amount and provided further that the passing on of such ad
61 valorem taxes, non-ad valorem assessments, or utility charges,
62 or increases of either, was disclosed prior to tenancy, was
63 being passed on as a matter of custom between the mobile home
64 park owner and the mobile home owner, or such passing on was
65 authorized by law. A park owner shall be deemed to have
66 disclosed the passing on of ad valorem property taxes and non-ad
67 valorem assessments if ad valorem property taxes or non-ad
68 valorem assessments were disclosed as a factor for increasing
69 the lot rental amount in the prospectus or rental agreement.

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70 Such ad valorem taxes, non-ad valorem assessments, and utility
71 charges shall be a part of the lot rental amount as defined by
72 this chapter. The term "non-ad valorem assessments" has the same
73 meaning as provided in s. 197.3632(1)(d). Other provisions of
74 this chapter notwithstanding, pass-on charges may be passed on
75 only within 1 year of the date a mobile home park owner remits
76 payment of the charge. A mobile home park owner is prohibited
77 from passing on any fine, interest, fee, or increase in a charge
78 resulting from a park owner's payment of the charge after the
79 date such charges become delinquent. Nothing herein shall
80 prohibit a park owner and a homeowner from mutually agreeing to
81 an alternative manner of payment to the park owner of the
82 charges.

83 (d) If a notice of increase in lot rental amount is not
84 given 90 days before the renewal date of the rental agreement,
85 the rental agreement shall remain under the same terms until a
86 90-day notice of increase in lot rental amount is given. The
87 notice may provide for a rental term shorter than 1 year in
88 order to maintain the same renewal date.

89 Section 3. Subsection (1) of section 723.059, Florida
90 Statutes, is amended to read:

91 723.059 Rights of purchaser.—

92 (1) The purchaser of a mobile home within a mobile home
93 park may become a tenant of the park if such purchaser would
94 otherwise qualify with the requirements of entry into the park
95 under the park rules and regulations, subject to the approval of

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116 the park owner, but such approval may not be unreasonably
117 withheld. The purchaser of the mobile home may cancel or rescind
118 the contract for purchase of the mobile home if the purchaser's
119 tenancy has not been approved by the park owner 5 days before
120 the closing of the purchase.

121 Section 4. Subsection (1) of section 723.075, Florida
122 Statutes, is amended to read:

123 723.075 Homeowners' associations.—

124 (1) In order to exercise the rights provided in this
125 chapter s. 723.071, the mobile home owners shall form an
126 association in compliance with this section and ss. 723.077,
127 723.078, and 723.079, which shall be a corporation for profit or
128 not for profit and of which not less than two-thirds of all of
129 the mobile home owners within the park shall have consented, in
130 writing, to become members or shareholders. Upon incorporation
131 of the association ~~such consent by two-thirds of the mobile home~~
132 ~~owners~~, all consenting mobile home owners in the park may become
133 members or shareholders. The term "member" or "shareholder"
134 means a mobile home owner who consents to be bound by the
135 articles of incorporation, bylaws, and policies of the
136 incorporated homeowners' association ~~and their successors shall~~
137 ~~become members of the association and shall be bound by the~~
138 ~~provisions of the articles of incorporation, the bylaws of the~~
139 ~~association, and such restrictions as may be properly~~
140 ~~promulgated pursuant thereto.~~ The association may not shall have
141 a no member or shareholder who is not a bona fide owner of a

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122 mobile home located in the park. Upon incorporation and service
123 of the notice described in s. 723.076, the association shall
124 become the representative of all the mobile home owners in all
125 matters relating to this chapter, regardless of whether or not
126 the homeowner is a member of the association.

127 Section 5. Paragraphs (b) and (c) of subsection (2) of
128 section 723.078, Florida Statutes, is amended to read:

129 723.078 Bylaws of homeowners' associations.—

130 (2) The bylaws shall provide and, if they do not, shall be
131 deemed to include, the following provisions:

132 (b) Quorum; voting requirements; proxies.—

133 1. Unless otherwise provided in the bylaws, 30 percent of
134 the total membership is required to constitute a quorum.

135 Decisions shall be made by a majority of members represented at
136 a meeting at which a quorum is present.

137 2. A member may not vote by general proxy but may vote by
138 limited proxies substantially conforming to a limited proxy form
139 adopted by the division. Limited proxies and general proxies may
140 be used to establish a quorum. Limited proxies may be used for
141 votes taken to amend the articles of incorporation or bylaws
142 pursuant to this section, and any other matters for which this
143 chapter requires or permits a vote of members, except that no
144 proxy, limited or general, may be used in the election of board
145 members. If a mobile home or subdivision lot is owned jointly,
146 the owners of the mobile home, or subdivision lot, shall be
147 counted as one for the purpose of determining the number of

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148 votes required for a majority. Only one vote per mobile home or
149 subdivision lot shall be counted. Any number greater than 50
150 percent of the total number of votes constitutes a majority.
151 Notwithstanding ~~the provisions of~~ this section, members may vote
152 in person at member meetings or by secret ballot, including
153 absentee ballots, as defined by the Division.

154 3. A proxy is effective only for the specific meeting for
155 which originally given and any lawfully adjourned meetings
156 thereof. In no event shall any proxy be valid for a period
157 longer than 90 days after the date of the first meeting for
158 which it was given. Every proxy shall be revocable at any time
159 at the pleasure of the member executing it.

160 4. A member of the board of directors or a committee may
161 submit in writing his or her agreement or disagreement with any
162 action taken at a meeting that the member did not attend. This
163 agreement or disagreement may not be used as a vote for or
164 against the action taken and may not be used for the purposes of
165 creating a quorum.

166 (c) Board of directors' and committee meetings.-

167 1. Meetings of the board of directors and meetings of its
168 committees at which a quorum is present shall be open to all
169 members. Notwithstanding any other provision of law, the
170 requirement that board meetings and committee meetings be open
171 to the members does not apply to board or committee meetings
172 held for the purpose of discussing personnel matters or meetings
173 between the board or a committee and the association's attorney,

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174 with respect to potential or pending litigation, where the
175 meeting is held for the purpose of seeking or rendering legal
176 advice, and where the contents of the discussion would otherwise
177 be governed by the attorney-client privilege. Notice of meetings
178 shall be posted in a conspicuous place upon the park property at
179 least 48 hours in advance, except in an emergency. Notice of any
180 meeting in which assessments against members are to be
181 considered for any reason shall specifically contain a statement
182 that assessments will be considered and the nature of such
183 assessments.

184 2. A board or committee member's participation in a meeting
185 via telephone, real-time videoconferencing, or similar real-time
186 telephonic, electronic, or video communication counts toward a
187 quorum, and such member may vote as if physically present. A
188 speaker shall be used so that the conversation of those board or
189 committee members attending by telephone may be heard by the
190 board or committee members attending in person, as well as by
191 members present at a meeting.

192 3. Members of the board of directors may use e-mail as a
193 means of communication but may not cast a vote on an association
194 matter via e-mail.

195 4. The right to attend meetings of the board of directors
196 and its committees includes the right to speak at such meetings
197 with reference to all designated agenda items. The association
198 may adopt reasonable written rules governing the frequency,
199 duration, and manner of members' statements. Any item not

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200 included on the notice may be taken up on an emergency basis by
201 at least a majority plus one of the members of the board. Such
202 emergency action shall be noticed and ratified at the next
203 regular meeting of the board. Any member may tape record or
204 videotape meetings of the board of directors and its committees,
205 except meetings between the board of directors or its appointed
206 homeowners' committee and the park owner. The division shall
207 adopt reasonable rules governing the tape recording and
208 videotaping of the meeting.

209 5. Except as provided in paragraph (i), a vacancy occurring
210 on the board of directors may be filled by the affirmative vote
211 of the majority of the remaining directors, even though the
212 remaining directors constitute less than a quorum; by the sole
213 remaining director; if the vacancy is not so filled or if no
214 director remains, by the members; or, on the application of any
215 person, by the circuit court of the county in which the
216 registered office of the corporation is located.

217 6. The term of a director elected or appointed to fill a
218 vacancy expires at the next annual meeting at which directors
219 are elected. A directorship to be filled by reason of an
220 increase in the number of directors may be filled by the board
221 of directors, but only for the term of office continuing until
222 the next election of directors by the members.

223 7. A vacancy that will occur at a specific later date, by
224 reason of a resignation effective at a later date, may be filled

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225 before the vacancy occurs. However, the new director may not
226 take office until the vacancy occurs.

227 8.a. The officers and directors of the association have a
228 fiduciary relationship to the members.

229 b. A director and committee member shall discharge his or
230 her duties in good faith, with the care an ordinarily prudent
231 person in a like position would exercise under similar
232 circumstances, and in a manner he or she reasonably believes to
233 be in the best interests of the corporation.

234 9. In discharging his or her duties, a director may rely on
235 information, opinions, reports, or statements, including
236 financial statements and other financial data, if prepared or
237 presented by:

238 a. One or more officers or employees of the corporation who
239 the director reasonably believes to be reliable and competent in
240 the matters presented;

241 b. Legal counsel, public accountants, or other persons as
242 to matters the director reasonably believes are within the
243 persons' professional or expert competence; or

244 c. A committee of the board of directors of which he or she
245 is not a member if the director reasonably believes the
246 committee merits confidence.

247 10. A director is not acting in good faith if he or she has
248 knowledge concerning the matter in question that makes reliance
249 otherwise permitted by subparagraph 9. unwarranted.

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250 11. A director is not liable for any action taken as a
251 director, or any failure to take any action, if he or she
252 performed the duties of his or her office in compliance with
253 this section.

254 Section 6. Section 723.0781, Florida Statutes, is amended
255 to read:

256 723.0781 Board member training programs.—

257 (1) Within 90 days after being elected or appointed to the
258 board, a newly elected or appointed director shall certify by an
259 affidavit in writing to the secretary of the association that he
260 or she has read the association's current articles of
261 incorporation, bylaws, and the mobile home park's prospectus,
262 rental agreement, rules, regulations, and written policies; that
263 he or she will work to uphold such documents and policies to the
264 best of his or her ability; and that he or she will faithfully
265 discharge his or her fiduciary responsibility to the
266 association's members.

267 (2) In lieu of this written certification, within 90 days
268 after being elected or appointed to the board, the newly elected
269 or appointed director may submit a certificate of having
270 satisfactorily completed the educational curriculum approved by
271 the division within 1 year before or 90 days after the date of
272 election or appointment. The educational certificate is valid
273 and does not have to be resubmitted as long as the director
274 serves on the board without interruption.

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275 (3) A director who fails to timely file the written
276 certification or educational certificate is suspended from
277 service on the board until he or she complies with this section.
278 The board may temporarily fill the vacancy during the period of
279 suspension.

280 (4) The secretary of the association shall retain a
281 director's written certification or educational certificate for
282 inspection by the members for 5 years after the director's
283 election or the duration of the director's uninterrupted tenure,
284 whichever is longer. Failure to have such written certification
285 or educational certificate on file does not affect the validity
286 of any board action.

287 (5) This section becomes effective on October 1, 2016. Any
288 member of the board of directors of a homeowners' association
289 not in compliance with the requirements of this section shall
290 not be considered in violation of this section until after
291 October 1, 2017.

292 Section 7. This act shall take effect July 1, 2016.

294 -----
295 **T I T L E A M E N D M E N T**

296 Remove line 26 and insert:
297 secret ballot and absentee ballot; prohibiting the tape
298 recording or videotaping of meetings between the board or
299 committee and the park owner; amending s. 723.0781, F.S.;
300 providing for an effective date of the section; providing a date

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301 | by which board members may be in violation of the section;
302 | providing an