

1 A bill to be entitled
2 An act relating to mobile homes; amending s. 723.006,
3 F.S.; revising certain notice requirements for written
4 complaints; requiring the Division of Florida
5 Condominiums, Timeshares, and Mobile Homes to adopt
6 rules relating to board member training for mobile
7 home park homeowners' associations; requiring the
8 department to publish a notice of the proposed rules;
9 providing rule requirements; amending s. 723.031,
10 F.S.; authorizing a mobile home park owner to pass on
11 non-ad valorem assessments to a tenant under certain
12 circumstances; providing that a mobile home park owner
13 is deemed to have disclosed the passing on of certain
14 taxes and assessments under certain circumstances;
15 providing a definition; requiring the non-ad valorem
16 assessments to be a part of the lot rental amount;
17 requiring that a renewed rental agreement remain under
18 the same terms unless certain notice is provided;
19 amending s. 723.059, F.S.; authorizing a mobile home
20 purchaser to cancel or rescind the contract to
21 purchase under certain circumstances; amending s.
22 723.075, F.S.; revising the rights that mobile home
23 owners exercise if they form an association;
24 authorizing mobile home owners to become members upon
25 incorporation of the association; defining the terms
26 "member" and "shareholder"; deleting provisions

27 relating to memberships of successors to home owners;
 28 revising when the association becomes the
 29 representative of all the mobile home owners; amending
 30 s. 723.078, F.S.; specifying voting requirements for
 31 homeowners' associations; specifying the requirements
 32 for a majority of votes; authorizing members to vote
 33 by secret ballot and absentee ballot; prohibiting the
 34 tape recording or videotaping of meetings between the
 35 board or committee and the park owner; amending s.
 36 723.0781, F.S.; delaying applicability of certain
 37 board member training requirements; specifying a
 38 future date after which directors who fail to comply
 39 with the training requirements are deemed to commit a
 40 violation; providing an effective date.

41

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

43

44 Section 1. Subsection (6) of section 723.006, Florida
 45 Statutes, is amended, and subsection (15) is added to that
 46 section, to read:

47 723.006 Powers and duties of division.—In performing its
 48 duties, the division has the following powers and duties:

49 (6) With regard to any written complaint alleging a
 50 violation of any provision of this chapter or any rule adopted
 51 ~~promulgated~~ pursuant thereto, the division shall, within 30 days
 52 after receipt of a written complaint, ~~periodically~~ notify, in

53 writing, the person who filed the complaint of the status of the
54 complaint. Thereafter, the division shall notify the complainant
55 of the status of the investigation within 90 days after receipt
56 of the written complaint. Upon completion of the investigation,
57 the division investigation, whether probable cause has been
58 found, and the status of any administrative action, civil
59 action, or appellate action, and if the division has found that
60 probable cause exists, it shall notify, in writing, the
61 complainant and the party complained against of the results of
62 the investigation and disposition of the complaint.

63 (15) The division shall adopt rules to implement the board
64 member training requirements for educational programs as
65 provided in this chapter. The division shall publish a notice of
66 the proposed rules pursuant to s. 120.54(3)(a), by October 1,
67 2016. The rules must include content and notice requirements for
68 the board member training program to ensure that providers meet
69 minimum training requirements.

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

72 723.031 Mobile home lot rental agreements.—

73 (5) The rental agreement shall contain the lot rental
74 amount and services included. An increase in lot rental amount
75 upon expiration of the term of the lot rental agreement shall be
76 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),
77 whichever is applicable, provided that, pursuant to s.
78 723.059(4), the amount of the lot rental increase is disclosed

79 and agreed to by the purchaser, in writing. An increase in lot
 80 rental amount shall not be arbitrary or discriminatory between
 81 similarly situated tenants in the park. A ~~No~~ lot rental amount
 82 may not be increased during the term of the lot rental
 83 agreement, except:

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

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

88 (c) That a ~~no~~ charge may not be collected which ~~that~~
 89 results in payment of money for sums previously collected as
 90 part of the lot rental amount. The provisions hereof
 91 notwithstanding, the mobile home park owner may pass on, at any
 92 time during the term of the lot rental agreement, ad valorem
 93 property taxes, non-ad valorem assessments, and utility charges,
 94 or increases of either, provided that the ad valorem property
 95 taxes, non-ad valorem assessments, and ~~the~~ utility charges are
 96 not otherwise being collected in the remainder of the lot rental
 97 amount and provided further that the passing on of such ad
 98 valorem taxes, non-ad valorem assessments, or utility charges,
 99 or increases of either, was disclosed prior to tenancy, was
 100 being passed on as a matter of custom between the mobile home
 101 park owner and the mobile home owner, or such passing on was
 102 authorized by law. A park owner shall be deemed to have
 103 disclosed the passing on of ad valorem property taxes and non-ad
 104 valorem assessments if ad valorem property taxes or non-ad

105 valorem assessments were disclosed as a factor for increasing
106 the lot rental amount in the prospectus or rental agreement.
107 Such ad valorem taxes, non-ad valorem assessments, and utility
108 charges shall be a part of the lot rental amount as defined by
109 this chapter. For purposes of this paragraph, the term "non-ad
110 valorem assessments" has the same meaning as provided in s.
111 197.3632(1)(d). Other provisions of this chapter
112 notwithstanding, pass-on charges may be passed on only within 1
113 year of the date a mobile home park owner remits payment of the
114 charge. A mobile home park owner is prohibited from passing on
115 any fine, interest, fee, or increase in a charge resulting from
116 a park owner's payment of the charge after the date such charges
117 become delinquent. Nothing herein shall prohibit a park owner
118 and a homeowner from mutually agreeing to an alternative manner
119 of payment to the park owner of the charges.

120 (d) If a notice of increase in lot rental amount is not
121 given 90 days before the renewal date of the rental agreement,
122 the rental agreement shall remain under the same terms until a
123 90-day notice of increase in lot rental amount is given. The
124 notice may provide for a rental term shorter than 1 year in
125 order to maintain the same renewal date.

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

128 723.059 Rights of purchaser.—

129 (1) The purchaser of a mobile home within a mobile home
130 park may become a tenant of the park if such purchaser would

131 otherwise qualify with the requirements of entry into the park
 132 under the park rules and regulations, subject to the approval of
 133 the park owner, but such approval may not be unreasonably
 134 withheld. The purchaser of the mobile home may cancel or rescind
 135 the contract for purchase of the mobile home if the purchaser's
 136 tenancy has not been approved by the park owner 5 days before
 137 the closing of the purchase.

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

140 723.075 Homeowners' associations.—

141 (1) In order to exercise the rights of a homeowners'
 142 association as provided in this chapter s. 723.071, the mobile
 143 home owners shall form an association in compliance with this
 144 section and ss. 723.077, 723.078, and 723.079, which shall be a
 145 corporation for profit or not for profit and of which not less
 146 than two-thirds of all of the mobile home owners within the park
 147 shall have consented, in writing, to become members or
 148 shareholders. Upon incorporation of the association ~~such consent~~
 149 ~~by two-thirds of the mobile home owners~~, all consenting mobile
 150 home owners in the park may become members or shareholders. The
 151 term "member" or "shareholder" means a mobile home owner who
 152 consents to be bound by the articles of incorporation, bylaws,
 153 and policies of the incorporated homeowners' association ~~and~~
 154 ~~their successors shall become members of the association and~~
 155 ~~shall be bound by the provisions of the articles of~~
 156 ~~incorporation, the bylaws of the association, and such~~

157 ~~restrictions as may be properly promulgated pursuant thereto.~~
158 The association may not ~~shall~~ have a ~~no~~ member or shareholder
159 who is not a bona fide owner of a mobile home located in the
160 park. Upon incorporation and service of the notice described in
161 s. 723.076, the association shall become the representative of
162 all the mobile home owners in all matters relating to this
163 chapter, regardless of whether the homeowner is a member of the
164 association.

165 Section 5. Paragraphs (b) and (c) of subsection (2) of
166 section 723.078, Florida Statutes, are amended to read:

167 723.078 Bylaws of homeowners' associations.—

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

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

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

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

175 2. A member may not vote by general proxy but may vote by
176 limited proxies substantially conforming to a limited proxy form
177 adopted by the division. Limited proxies and general proxies may
178 be used to establish a quorum. Limited proxies may be used for
179 votes taken to amend the articles of incorporation or bylaws
180 pursuant to this section, and any other matters for which this
181 chapter requires or permits a vote of members, except that no
182 proxy, limited or general, may be used in the election of board

183 members. If a mobile home or subdivision lot is owned jointly,
184 the owners of the mobile home, or subdivision lot, shall be
185 counted as one for the purpose of determining the number of
186 votes required for a majority. Only one vote per mobile home or
187 subdivision lot shall be counted. Any number greater than 50
188 percent of the total number of votes constitutes a majority.
189 ~~Notwithstanding the provisions of this section,~~ members may vote
190 in person at member meetings or by secret ballot, including
191 absentee ballots, as defined by the division.

192 3. A proxy is effective only for the specific meeting for
193 which originally given and any lawfully adjourned meetings
194 thereof. In no event shall any proxy be valid for a period
195 longer than 90 days after the date of the first meeting for
196 which it was given. Every proxy shall be revocable at any time
197 at the pleasure of the member executing it.

198 4. A member of the board of directors or a committee may
199 submit in writing his or her agreement or disagreement with any
200 action taken at a meeting that the member did not attend. This
201 agreement or disagreement may not be used as a vote for or
202 against the action taken and may not be used for the purposes of
203 creating a quorum.

204 (c) Board of directors' and committee meetings.—

205 1. Meetings of the board of directors and meetings of its
206 committees at which a quorum is present shall be open to all
207 members. Notwithstanding any other provision of law, the
208 requirement that board meetings and committee meetings be open

209 to the members does not apply to board or committee meetings
210 held for the purpose of discussing personnel matters or meetings
211 between the board or a committee and the association's attorney,
212 with respect to potential or pending litigation, where the
213 meeting is held for the purpose of seeking or rendering legal
214 advice, and where the contents of the discussion would otherwise
215 be governed by the attorney-client privilege. Notice of meetings
216 shall be posted in a conspicuous place upon the park property at
217 least 48 hours in advance, except in an emergency. Notice of any
218 meeting in which assessments against members are to be
219 considered for any reason shall specifically contain a statement
220 that assessments will be considered and the nature of such
221 assessments.

222 2. A board or committee member's participation in a
223 meeting via telephone, real-time videoconferencing, or similar
224 real-time telephonic, electronic, or video communication counts
225 toward a quorum, and such member may vote as if physically
226 present. A speaker shall be used so that the conversation of
227 those board or committee members attending by telephone may be
228 heard by the board or committee members attending in person, as
229 well as by members present at a meeting.

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

233 4. The right to attend meetings of the board of directors
234 and its committees includes the right to speak at such meetings

235 with reference to all designated agenda items. The association
236 may adopt reasonable written rules governing the frequency,
237 duration, and manner of members' statements. Any item not
238 included on the notice may be taken up on an emergency basis by
239 at least a majority plus one of the members of the board. Such
240 emergency action shall be noticed and ratified at the next
241 regular meeting of the board. Any member may tape record or
242 videotape meetings of the board of directors and its committees,
243 except meetings between the board of directors or its appointed
244 homeowners' committee and the park owner. The division shall
245 adopt reasonable rules governing the tape recording and
246 videotaping of the meeting.

247 5. Except as provided in paragraph (i), a vacancy
248 occurring on the board of directors may be filled by the
249 affirmative vote of the majority of the remaining directors,
250 even though the remaining directors constitute less than a
251 quorum; by the sole remaining director; if the vacancy is not so
252 filled or if no director remains, by the members; or, on the
253 application of any person, by the circuit court of the county in
254 which the registered office of the corporation is located.

255 6. The term of a director elected or appointed to fill a
256 vacancy expires at the next annual meeting at which directors
257 are elected. A directorship to be filled by reason of an
258 increase in the number of directors may be filled by the board
259 of directors, but only for the term of office continuing until
260 the next election of directors by the members.

261 7. A vacancy that will occur at a specific later date, by
262 reason of a resignation effective at a later date, may be filled
263 before the vacancy occurs. However, the new director may not
264 take office until the vacancy occurs.

265 8.a. The officers and directors of the association have a
266 fiduciary relationship to the members.

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

272 9. In discharging his or her duties, a director may rely
273 on information, opinions, reports, or statements, including
274 financial statements and other financial data, if prepared or
275 presented by:

276 a. One or more officers or employees of the corporation
277 who the director reasonably believes to be reliable and
278 competent in the matters presented;

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

282 c. A committee of the board of directors of which he or
283 she is not a member if the director reasonably believes the
284 committee merits confidence.

285 10. A director is not acting in good faith if he or she
286 has knowledge concerning the matter in question that makes

287 reliance otherwise permitted by subparagraph 9. unwarranted.

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

292 Section 6. Section 723.0781, Florida Statutes, is amended
293 to read:

294 723.0781 Board member training programs.—

295 (1) Effective October 1, 2016:

296 (a) Within 90 days after being elected or appointed to the
297 board, a newly elected or appointed director shall certify by an
298 affidavit in writing to the secretary of the association that he
299 or she has read the association's current articles of
300 incorporation, bylaws, and the mobile home park's prospectus,
301 rental agreement, rules, regulations, and written policies; that
302 he or she will work to uphold such documents and policies to the
303 best of his or her ability; and that he or she will faithfully
304 discharge his or her fiduciary responsibility to the
305 association's members.

306 (b) In lieu of this written certification, within 90 days
307 after being elected or appointed to the board, the newly elected
308 or appointed director may submit a certificate of having
309 satisfactorily completed the educational curriculum approved by
310 the division within 1 year before or 90 days after the date of
311 election or appointment. The educational certificate is valid
312 and does not have to be resubmitted as long as the director

313 serves on the board without interruption.

314 (c) A director who fails to timely file the written
315 certification or educational certificate is suspended from
316 service on the board until he or she complies with this section.
317 The board may temporarily fill the vacancy during the period of
318 suspension.

319 (d) The secretary of the association shall retain a
320 director's written certification or educational certificate for
321 inspection by the members for 5 years after the director's
322 election or the duration of the director's uninterrupted tenure,
323 whichever is longer. Failure to have such written certification
324 or educational certificate on file does not affect the validity
325 of any board action.

326 (2) A director who fails to comply with the requirements
327 of subsection (1) before October 1, 2017, is not deemed to have
328 committed a violation of this section.

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