

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 826

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Mobile Homes

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 requires the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) to notify a person who filed a complaint involving a mobile home park of the status of the investigation within 30 days of receipt of the complaint. The bill also requires the division to notify the complainant of the status of the investigation within 90 days after receipt of a written complaint. The division must also notify the complainant and the party complained against about the results of the investigation and disposition of the complaint.

The bill permits mobile home park owners to pass on to the tenant, at any time during the term of the rental agreement, non-ad valorem assessments, or increases of non-ad valorem assessments, if the passing on of this charge was disclosed prior to the tenancy. The bill also requires the park owner to give the tenant notice of a rent increase 90 days before the renewal date of the rental agreement. If the 90-day notice is not provided the rental amount will remain with the same terms until a 90-day notice of increase in lot rental amount is given.

Next, the purchaser of a mobile home is permitted to cancel or rescind a contract if the tenancy has not been approved by the park owner 5 days before the closing of the purchase.

Additionally, the bill provides that upon incorporation of an association, all consenting mobile home owners in the park may become members or shareholders, and they consent to be bound by the articles of incorporation, bylaws, and policies of the incorporated homeowners' association.

All the successors of the consenting homeowner are no longer bound to the articles of incorporation, the bylaws, and restrictions of the homeowners' association.

Finally, the bill provides that the joint owner of a mobile home or subdivision lot must be counted as one when determining the number of votes required for a majority and that only one vote may be counted per mobile home or subdivision lot. It permits association members to vote by secret ballot, including an absentee ballot.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., is known as the "Florida Mobile Home Act" (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation.

The act was enacted in 1984.¹ 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:

Once 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.²

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.³

Section 723.003(12), F.S., defines the term "mobile home park" or "park" as:

A use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 723.003(14), F.S., defines the term "mobile home subdivision" as:

¹ Chapter 84-80, L.O.F. Formerly ch. 720, F.S.

² Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.

³ Section 723.002(1), F.S.

A subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

The terms “mobile home park,” “park,” and “mobile home subdivision” have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.⁴

Complaints

Section 723.006(6), F.S., requires the division to give periodic, written notice to a person who files a written complaint that alleges a violation of ch. 723, F.S., or rule of the division. The notice must inform the complainant whether probable cause has been found and the status of any administrative action, civil action, or appellate action. However, current law does not provide a timeframe for this notification. If the division has found that probable cause exists, the division must notify, in writing, the party complained against of the results of the investigation and disposition of the complaint.⁵

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.⁶ 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.⁷ The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.⁸

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.⁹ Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner must deliver to the homeowner a prospectus that has been approved by the division.¹⁰ The division maintains copies of each prospectus and all amendments to each prospectus that it has approved. The division must also provide copies of documents within 10 days of receipt of a written request.¹¹

The park owner must 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.¹² Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.¹³

⁴ See ch. 84-80, L.O.F. The definitions in s. 723.003, were formerly in s. 720.103, F.S. (1984).

⁵ Section 723.006(6), F.S.

⁶ Section 723.012, F.S.

⁷ *Id.*

⁸ Section 723.011(3), F.S.

⁹ Section 723.011(1)(a), F.S.

¹⁰ *Id.*

¹¹ Section 723.011(1)(d), F.S.

¹² Section 723.011(2), F.S.

¹³ *Id.*

If a prospectus is not provided to the prospective lessee before the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the lessee receives the prospectus.¹⁴ If the homeowner cancels the rental agreement, he or she is entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.¹⁵

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 certain specified circumstances.¹⁶

Written Notification in the Absence of a Prospectus

Section 723.013, F.S., provides that when a park owner does not give a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner must give written notification of specified information prior to the purchaser's occupancy, including zoning information, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf, and 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.¹⁷ 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.¹⁸

Rental Agreements

Rental agreements in a mobile home park must be consistent with ch. 723, F.S.¹⁹ The provisions of ch. 723, F.S., are deemed to apply to every tenancy in a mobile home park whether or not a tenancy is covered by a valid written rental agreement.²⁰

Park owners are prohibited from offering a rental agreement for a term of less than 1 year.²¹ If there is no written rental agreement, the rental term may not be less than 1 year from the date of initial occupancy, but the initial term may be less than 1 year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms must be for a minimum of 1 year.²² Currently, s. 723.031(4), F.S., allows a rental term for less than a year only for the initial term so that all rental agreements start at the same time.

¹⁴ Section 723.014(1), F.S.

¹⁵ Section 723.014(2), F.S.

¹⁶ See rule 61B-31.001, F.A.C.

¹⁷ Section 723.002(1), F.S.

¹⁸ Section 723.011(1)(a), F.S.

¹⁹ Section 723.031(1), F.S.

²⁰ Section 723.031(2), F.S.

²¹ Section 723.031(4), F.S.

²² *Id.*

Mobile Home Park Rent Increases

The mobile home park owner has the right to increase rents “in an amount deemed appropriate by the mobile home park owner.”²³ The park owner must give affected mobile home owners and the board of directors of the homeowners’ association, if one has been formed, at least a 90-day notice of a lot rental increase.²⁴

The amount of the lot rental increase must be disclosed to the purchaser of a mobile home and agreed to in writing by the purchaser.²⁵ Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park,²⁶ and may not increase during the term of the rental agreement. However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.²⁷

A committee of up to five people, designated by a majority of the owners or by the board of directors of the homeowners’ association (if formed), and the park owner must meet no later than 60 days before the effective date of the change to discuss the reasons for the change.²⁸ At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.²⁹

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the homeowners may petition the division to initiate mediation.³⁰ If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.³¹

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.³² A lot rental amount that exceeds market rent shall be considered unreasonable.³³ Market rent is defined as rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.³⁴

²³ See s. 723.059, F.S., concerning the rights of purchasers. A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and seller. The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement.

²⁴ Section 723.037(1), F.S.

²⁵ Section 723.031(5), F.S.

²⁶ *Id.*

²⁷ Section 723.031(5)(c), F.S.

²⁸ Section 723.037(4)(a), F.S.

²⁹ Section 723.037(4)(b), F.S.

³⁰ Section 723.037(5)(a), F.S.

³¹ Section 723.0381, F.S.

³² Section 723.033(1), F.S.

³³ Section 723.033(5), F.S.

³⁴ Section 723.033(4), F.S.

In determining market rent, the court may consider “rents charged by comparable mobile home parks in its competitive area. To be comparable, a mobile home park must offer similar facilities, services, amenities, and management.”³⁵ In determining whether a rent increase or resulting lot rental amount is unreasonable, the court may consider “economic or other factors, including, but not limited to, increases or decreases in the consumer price index, published by the Bureau of Labor Statistics of the Department of Labor; increases or decreases in operating costs or taxes; and prior disclosures.”³⁶ These same standards are to be employed by the arbitrator or mediator in any arbitration or mediation under ch. 723, F.S.³⁷

Homeowners’ Associations

If a mobile home park owner offers a mobile home park for sale, s. 723.071, F.S., requires him or her to notify the officers of the mobile homeowners’ association who have the right to purchase the park under the provisions of that section.

Section 723.075, F.S., provides that in order for a mobile homeowners’ association to exercise the right to purchase the mobile home park pursuant to s. 723.071, F.S., the association’s bylaws must contain a number of statutory provisions. Two-thirds consent of the mobile home owners is required to form the association.³⁸ All the members of the association who consent to the formation of the homeowners’ association and their successors are bound to the articles of incorporation, the bylaws, and restrictions that may be promulgated pursuant to the articles or bylaws.³⁹

Quorum; Voting Requirements; and Proxies

Section 723.078(2)(b)(1), F.S., provides that unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. Section 723.078(2)(b)(2), F.S., provides that a member may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Regarding voting by proxy:

- Limited proxies and general proxies may be used to establish a quorum; and
- Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws, and any other matters that ch. 723, F.S., requires or permits a vote of members, except that no proxy may be used in the election of board members.

Members may vote in person at member meetings.⁴⁰ Current law does not provide whether members may vote by secret ballot or by absentee ballot.

III. Effect of Proposed Changes:

Section 1 amends s. 723.006(6), F.S., to require the division to notify a complainant of the status of the investigation within 30 days of receipt of the complaint. The bill also requires the division

³⁵ Section 723.033(5), F.S.

³⁶ Section 723.033(6), F.S.

³⁷ Section 723.033(7), F.S.

³⁸ Section 723.075(1), F.S.

³⁹ *Id.*

⁴⁰ Section 723.078(2)(b)(2), F.S.

to notify the complainant of the status of the investigation within 90 days after receipt of a written complaint. Upon completion of the investigation, the bill requires that the division notify the complainant and the party complained against about the results of the investigation and disposition of the complaint. The bill adds s. 723.006(15), F.S., requiring the division to adopt rules to implement the board member training requirements for educational programs as provided in ch. 723. The department shall publish a notice of proposed rule by October 1, 2016.

Section 2 amends s. 723.031(5), F.S., to permit mobile home park owners to pass on, at any time during the term of the rental agreement, non-ad valorem assessments, or increases of non-ad valorem assessments, if the passing on of this charge was disclosed prior to the tenancy. The bill provides that the park owner is deemed to have been disclosed the passing on of ad valorem taxes and non-ad valorem assessments are deemed if these charges were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement. Additionally, this section requires the park owner to give the tenant notice of a rent increase 90 days before the renewal date of the rental agreement. If the 90-day notice is not provided the rental amount will remain the same terms until a 90-day notice of increase in lot rental amount is given. The bill permits the notice to provide for a rental term shorter than 1 year in order to maintain the same renewal date.

Section 3 amends s. 723.059(1), F.S., to permit the purchaser of a mobile home to cancel or rescind a contract if the tenancy has not been approved by the park owner 5 days before the closing of the purchase.

Section 4 amends s. 723.075(1), F.S., to provide that the mobile home owners must form the association in order to exercise their rights under ch. 723, F.S. It deletes the provision that the association is formed to exercise the right to purchase the mobile home park pursuant to s. 723.071, F.S.⁴¹ The bill provides that membership in the association is voluntary for consenting members by providing that all consenting members of the association may become members or shareholders of the association. It defines the term “member” or “shareholder” to mean a mobile homeowner who consents to be bound by the association. The bill deletes the provision that all the successors of the consenting homeowner are also bound to the articles of incorporation, the bylaws, and restrictions that may be promulgated pursuant to the articles or bylaws. The bill also provides that the association is the representative for all the mobile home owners in all matters relating to ch. 723, F.S., upon incorporation and notice to the mobile home park owner, and regardless if the homeowner is a member of the association.

Section 5 amends s. 723.078(2), F.S., to provide that the joint owner of a mobile home or subdivision lot must be counted as one when determining the number of votes required for a majority. It further provided that only one vote may be counted per mobile home or subdivision lot. The bill provides that a majority is any number greater than 50 percent of the total number of votes. Members may vote in person at member meetings, or by secret ballot, including absentee ballots, as defined by the division. Additionally, any member may tape record or videotape meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners’ committee and the park owner.

⁴¹ Section 723.071, F.S., are the provisions relating to the sale of a mobile home park.

Section 6 amends s. 723.0781, F.S., adding subsection (5), providing that the section becomes effective on October 1, 2016. Any member of the board of directors of homeowners' association not in compliance with the requirements of the section may not be considered in violation of this section until after October 1, 2017.

Section 7 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 723.006, 723.031, 723.059, 723.075, 723.078, and 723.0781.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 26, 2016:

Provides a reference for the definition of “non-ad valorem assessments;” clarifies that all mobile home owners will be represented by the mobile homeowners’ association, regardless if they are a member of the association; provides a reference for secret and absentee ballots; provides that any member may tape record meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners’ committee and the park owner; and adds a subsection providing an effective date for s. 723.0781, F.S.

- B. **Amendments:**

None.