

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 826

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; and Senator Latvala

SUBJECT: Mobile Homes

DATE: February 10, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Caldwell</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/CS</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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 the complainant of the status of the investigation within 30 days and within 90 days after receipt of a written complaint and notify the complainant and the party complained against of 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 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.

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.

The bill clarifies that in order to exercise the rights of a homeowners' association provided under ch. 723, F.S., mobile home owners must form an association. Additionally, 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.

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.

This bill has no fiscal impact to state government.

## **II. Present Situation:**

### **Mobile Home Act**

Chapter 723, F.S., the "Florida Mobile Home Act" (act) was created to address the unique relationship between a mobile home owner and a mobile home park owner.<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>

A "mobile home park" or "park" is defined 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.<sup>3</sup> The term "mobile home subdivision" means 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.<sup>4</sup>

### **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 a division rule. The notice must inform the complainant whether probable cause has been found, however, it does not provide a timeframe for this notification. If the division finds 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.<sup>5</sup>

### **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.<sup>6</sup> 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. The

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

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

<sup>3</sup> Section 723.003(12), F.S.

<sup>4</sup> *Id.* at (14).

<sup>5</sup> Section 723.006(6), F.S.

<sup>6</sup> Section 723.012, F.S.

purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.<sup>7</sup>

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.<sup>8</sup> The division maintains copies of each prospectus and all amendments to each prospectus that it has approved.<sup>9</sup>

The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. The lot rental agreement is voidable by the lessee for a period of 15 days after receipt.<sup>10</sup>

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.<sup>11</sup>

### **Rental Agreements**

Rental agreements in a mobile home park must be consistent with ch. 723, F.S.<sup>12</sup> 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.<sup>13</sup>

Park owners are prohibited from offering a rental agreement for a term of less than 1 year.<sup>14</sup> If there is no written rental agreement, the rental term may not be less than 1 year from the date of initial occupancy. 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.<sup>15</sup>

### **Mobile Home Park Rent Increases**

The mobile home park owner has the right to increase rent “in an amount deemed appropriate by the mobile home park owner.”<sup>16</sup> 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.<sup>17</sup>

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<sup>7</sup> Section 723.011(3), F.S.

<sup>8</sup> Section 723.011(1)(a), F.S.

<sup>9</sup> Section 723.011(1)(d), F.S.

<sup>10</sup> Sections 723.011(2) and 723.014(1), F.S.

<sup>11</sup> See Rule 61B-31.001, F.A.C.

<sup>12</sup> Section 723.031(1), F.S.

<sup>13</sup> *Id.* at (2).

<sup>14</sup> Section 723.031(4), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> 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.

<sup>17</sup> Section 723.037(1), F.S.

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. Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

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 mobile home owners may petition the division to initiate mediation.<sup>21</sup> 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.<sup>22</sup>

### **Homeowners' Associations**

If a mobile home park owner offers a mobile home park for sale, s. 723.071, F.S., requires notice to the officers of the mobile homeowners' association who have the right to purchase the park.

In order to purchase the mobile home park pursuant to s. 723.071, F.S., the mobile home owners must form an association and two-thirds the mobile home owners must consent to become members or shareholders. 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, bylaws, and restrictions that may be promulgated pursuant to the articles or bylaws.<sup>23</sup>

### ***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. 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

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<sup>18</sup> Section 723.031(5), F.S.

<sup>19</sup> Section 723.037(4)(a), F.S.

<sup>20</sup> Section 723.037(4)(b), F.S.

<sup>21</sup> Section 723.037(5)(a), F.S.

<sup>22</sup> Section 723.0381, F.S.

<sup>23</sup> Section 723.075(1), F.S.

- 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.<sup>24</sup>

Members may vote in person at member meetings.<sup>25</sup> 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 and then 90 days of receipt of the complaint. Upon completion of the investigation, the division must notify the complainant and the party complained against of the results of the investigation and disposition of the complaint.

The bill also requires the division to adopt rules to implement the board member training requirements for educational programs provided in ch. 723, F.S. The rules must include the requirements for content and notice of the board member training program to assure that providers meet the minimum training requirements. The department must 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 park owner is deemed to have disclosed the passing on of ad valorem taxes and non-ad valorem assessments if these charges were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement. The bill defines “non-ad valorem assessments” as only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution.

Additionally, the bill requires notice to be given 90 days before the renewal date of the rental agreement, if there is an increase in the lot rental amount. If the 90-day notice is not provided, then the rental agreement will remain the same until a 90-day notice of the increase in the lot rental amount is given. The notice may 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 purchaser’s 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 clarify that in order to exercise the rights of a homeowners’ association provided under ch. 723, F.S., mobile home owners must form an association. The bill deletes the provision that the association must be formed in order to purchase a mobile home park.

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<sup>24</sup> Section 723.078(2)(b)2., F.S.

<sup>25</sup> *Id.*

The bill allows all consenting mobile home owners to become members or shareholders of the association. The term “member” or “shareholder” is defined to mean a mobile homeowner who consents to be bound by the articles of incorporation, bylaws, and policies of the association.

The bill removes the requirement that all the successors of the consenting homeowner are also bound to the articles of incorporation, bylaws, and restrictions promulgated pursuant to the articles or bylaws. The bill specifies 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 require the joint owners of a mobile home or subdivision lot be counted as one vote when determining the number of votes required for a majority. 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. Any member may tape record or videotape meetings of the board of directors and its committees, except for meetings between the board of directors or its appointed homeowners’ committee and the park owner.

**Section 6** amends s. 723.0781, F.S., relating to board member training programs, to provide 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 the bill is effective 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:**

The bill requires the division to adopt rules to implement the board member training requirements for educational programs provided in ch. 723, F.S. The rules must include the requirements for content and notice of the board member training program to assure that providers meet the minimum training requirements. The department must publish a notice of proposed rule by October 1, 2016.

**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/CS by Fiscal Policy on February 10, 2016:**

The CS clarifies that a homeowners' association must be created in order to exercise the rights provided in ch. 723, F.S., to homeowners' associations.

**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.