

By the Committee on Community Affairs; and Senator Latvala

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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 to implement board member training requirements;  
7           providing notice and requirements of such rules;  
8           amending s. 723.031, F.S.; authorizing a mobile home  
9           park owner to pass on non-ad valorem assessments to a  
10          tenant under certain circumstances; providing that a  
11          mobile home park owner is deemed to have disclosed the  
12          passing on of certain taxes and assessments under  
13          certain circumstances; requiring the non-ad valorem  
14          assessments to be a part of the lot rental amount;  
15          requiring that a renewed rental agreement remain under  
16          the same terms unless certain notice is provided;  
17          amending s. 723.059, F.S.; authorizing a mobile home  
18          purchaser to cancel or rescind the contract to  
19          purchase under certain circumstances; amending s.  
20          723.075, F.S.; revising the rights that mobile home  
21          owners exercise if they form an association;  
22          authorizing mobile home owners to become members upon  
23          incorporation of the association; defining the terms  
24          "member" and "shareholder"; deleting provisions  
25          relating to memberships of successors to home owners;  
26          amending s. 723.078, F.S.; specifying voting  
27          requirements for homeowners' associations; specifying  
28          the requirements for a majority of votes; authorizing  
29          members to vote by secret ballot and absentee ballot;  
30          prohibiting the tape recording or videotaping of  
31          meetings between the board of directors or its  
32          committees and the park owner; amending s. 723.0781,

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33 F.S.; providing a date by which certain provisions are  
34 effective; providing that board members may not be  
35 considered in violation of such provisions until after  
36 a specified date; providing an effective date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Subsection (6) of section 723.006, Florida  
41 Statutes, is amended, and subsection (15) is added to that  
42 section, to read:

43 723.006 Powers and duties of division.—In performing its  
44 duties, the division has the following powers and duties:

45 (6) With regard to any written complaint alleging a  
46 violation of any provision of this chapter or any rule adopted  
47 ~~promulgated~~ pursuant thereto, the division shall, within 30 days  
48 after receipt of a written complaint, periodically notify, in  
49 writing, the person who filed the complaint of the status of the  
50 complaint. Thereafter, the division shall notify the complainant  
51 of the status of the investigation within 90 days after receipt  
52 of the written complaint. Upon completion of the investigation,  
53 the division investigation, whether probable cause has been  
54 found, and the status of any administrative action, civil  
55 action, or appellate action, and if the division has found that  
56 probable cause exists, it shall notify, in writing, the  
57 complainant and the party complained against of the results of  
58 the investigation and disposition of the complaint.

59 (15) The division shall adopt rules to implement the board  
60 member training requirements for educational programs as  
61 provided in this chapter. The Department of Business and

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62 Professional Regulation shall publish a notice of proposed rule  
63 pursuant to s. 120.54(3)(a) by October 1, 2016. Such rules shall  
64 include the requirements for content and notice of the board  
65 member training program to assure that providers meet minimum  
66 training requirements.

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

69 723.031 Mobile home lot rental agreements.—

70 (5) The rental agreement shall contain the lot rental  
71 amount and services included. An increase in lot rental amount  
72 upon expiration of the term of the lot rental agreement shall be  
73 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),  
74 whichever is applicable, provided that, pursuant to s.  
75 723.059(4), the amount of the lot rental increase is disclosed  
76 and agreed to by the purchaser, in writing. An increase in lot  
77 rental amount shall not be arbitrary or discriminatory between  
78 similarly situated tenants in the park. A ~~No~~ lot rental amount  
79 may not be increased during the term of the lot rental  
80 agreement, except:

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

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

85 (c) That a ~~no~~ charge may not be collected which ~~that~~  
86 results in payment of money for sums previously collected as  
87 part of the lot rental amount. The provisions hereof  
88 notwithstanding, the mobile home park owner may pass on, at any  
89 time during the term of the lot rental agreement, ad valorem  
90 property taxes, non-ad valorem assessments, and utility charges,

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91 or increases of either, provided that the ad valorem property  
92 taxes, non-ad valorem assessments, and ~~the~~ utility charges are  
93 not otherwise being collected in the remainder of the lot rental  
94 amount and provided further that the passing on of such ad  
95 valorem taxes, non-ad valorem assessments, or utility charges,  
96 or increases of either, was disclosed prior to tenancy, was  
97 being passed on as a matter of custom between the mobile home  
98 park owner and the mobile home owner, or such passing on was  
99 authorized by law. A park owner is deemed to have disclosed the  
100 passing on of ad valorem property taxes and non-ad valorem  
101 assessments if ad valorem property taxes or non-ad valorem  
102 assessments were disclosed as a factor for increasing the lot  
103 rental amount in the prospectus or rental agreement. Such ad  
104 valorem taxes, non-ad valorem assessments, and utility charges  
105 shall be a part of the lot rental amount as defined by this  
106 chapter. The term "non-ad valorem assessments" has the same  
107 meaning as provided in s. 197.3632(1) (d). Other provisions of  
108 this chapter notwithstanding, pass-on charges may be passed on  
109 only within 1 year of the date a mobile home park owner remits  
110 payment of the charge. A mobile home park owner is prohibited  
111 from passing on any fine, interest, fee, or increase in a charge  
112 resulting from a park owner's payment of the charge after the  
113 date such charges become delinquent. Nothing herein shall  
114 prohibit a park owner and a homeowner from mutually agreeing to  
115 an alternative manner of payment to the park owner of the  
116 charges.

117 (d) If a notice of increase in lot rental amount is not  
118 given 90 days before the renewal date of the rental agreement,  
119 the rental agreement must remain under the same terms until a

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120 90-day notice of increase in lot rental amount is given. The  
121 notice may provide for a rental term shorter than 1 year in  
122 order to maintain the same renewal date.

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

125 723.059 Rights of purchaser.—

126 (1) The purchaser of a mobile home within a mobile home  
127 park may become a tenant of the park if such purchaser would  
128 otherwise qualify with the requirements of entry into the park  
129 under the park rules and regulations, subject to the approval of  
130 the park owner, but such approval may not be unreasonably  
131 withheld. The purchaser of the mobile home may cancel or rescind  
132 the contract for purchase of the mobile home if the purchaser's  
133 tenancy has not been approved by the park owner 5 days before  
134 the closing of the purchase.

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

137 723.075 Homeowners' associations.—

138 (1) In order to exercise the rights provided in this  
139 chapter ~~s. 723.071~~, the mobile home owners shall form an  
140 association in compliance with this section and ss. 723.077,  
141 723.078, and 723.079, which shall be a corporation for profit or  
142 not for profit and of which not less than two-thirds of all of  
143 the mobile home owners within the park shall have consented, in  
144 writing, to become members or shareholders. Upon incorporation  
145 of the association ~~such consent by two-thirds of the mobile home~~  
146 ~~owners~~, all consenting mobile home owners in the park may become  
147 members or shareholders. The term "member" or "shareholder"  
148 means a mobile home owner who consents to be bound by the

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149 articles of incorporation, bylaws, and policies of the  
150 incorporated homeowners' association ~~and their successors shall~~  
151 ~~become members of the association and shall be bound by the~~  
152 ~~provisions of the articles of incorporation, the bylaws of the~~  
153 ~~association, and such restrictions as may be properly~~  
154 ~~promulgated pursuant thereto.~~ The association may not ~~shall~~ have  
155 a ~~no~~ member or shareholder who is not a bona fide owner of a  
156 mobile home located in the park. Upon incorporation and service  
157 of the notice described in s. 723.076, the association shall  
158 become the representative of all the mobile home owners in all  
159 matters relating to this chapter, regardless of whether the  
160 homeowner is a member of the association.

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

163 723.078 Bylaws of homeowners' associations.—

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

166 (b) *Quorum; voting requirements; proxies.*—

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

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

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

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178 proxy, limited or general, may be used in the election of board  
179 members. If a mobile home or subdivision lot is owned jointly,  
180 the owners of the mobile home or subdivision lot must be counted  
181 as one for the purpose of determining the number of votes  
182 required for a majority. Only one vote per mobile home or  
183 subdivision lot shall be counted. Any number greater than 50  
184 percent of the total number of votes constitutes a majority.  
185 Notwithstanding ~~the provisions of~~ this section, members may vote  
186 in person at member meetings or by secret ballot, including  
187 absentee ballots, as defined by the division.

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

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

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

201 1. Meetings of the board of directors and meetings of its  
202 committees at which a quorum is present shall be open to all  
203 members. Notwithstanding any other provision of law, the  
204 requirement that board meetings and committee meetings be open  
205 to the members does not apply to board or committee meetings  
206 held for the purpose of discussing personnel matters or meetings

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207 between the board or a committee and the association's attorney,  
208 with respect to potential or pending litigation, where the  
209 meeting is held for the purpose of seeking or rendering legal  
210 advice, and where the contents of the discussion would otherwise  
211 be governed by the attorney-client privilege. Notice of meetings  
212 shall be posted in a conspicuous place upon the park property at  
213 least 48 hours in advance, except in an emergency. Notice of any  
214 meeting in which assessments against members are to be  
215 considered for any reason shall specifically contain a statement  
216 that assessments will be considered and the nature of such  
217 assessments.

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

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

229         4. The right to attend meetings of the board of directors  
230 and its committees includes the right to speak at such meetings  
231 with reference to all designated agenda items. The association  
232 may adopt reasonable written rules governing the frequency,  
233 duration, and manner of members' statements. Any item not  
234 included on the notice may be taken up on an emergency basis by  
235 at least a majority plus one of the members of the board. Such



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236 emergency action shall be noticed and ratified at the next  
237 regular meeting of the board. Any member may tape record or  
238 videotape meetings of the board of directors and its committees,  
239 except meetings between the board of directors or its appointed  
240 homeowners' committee and the park owner. The division shall  
241 adopt reasonable rules governing the tape recording and  
242 videotaping of the meeting.

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

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

257 7. A vacancy that will occur at a specific later date, by  
258 reason of a resignation effective at a later date, may be filled  
259 before the vacancy occurs. However, the new director may not  
260 take office until the vacancy occurs.

261 8.a. The officers and directors of the association have a  
262 fiduciary relationship to the members.

263 b. A director and committee member shall discharge his or  
264 her duties in good faith, with the care an ordinarily prudent

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265 person in a like position would exercise under similar  
266 circumstances, and in a manner he or she reasonably believes to  
267 be in the best interests of the corporation.

268 9. In discharging his or her duties, a director may rely on  
269 information, opinions, reports, or statements, including  
270 financial statements and other financial data, if prepared or  
271 presented by:

272 a. One or more officers or employees of the corporation who  
273 the director reasonably believes to be reliable and competent in  
274 the matters presented;

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

278 c. A committee of the board of directors of which he or she  
279 is not a member if the director reasonably believes the  
280 committee merits confidence.

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

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

288 Section 6. Section 723.0781, Florida Statutes, is amended  
289 to read:

290 723.0781 Board member training programs.—

291 (1) Within 90 days after being elected or appointed to the  
292 board, a newly elected or appointed director shall certify by an  
293 affidavit in writing to the secretary of the association that he

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294 or she has read the association's current articles of  
295 incorporation, bylaws, and the mobile home park's prospectus,  
296 rental agreement, rules, regulations, and written policies; that  
297 he or she will work to uphold such documents and policies to the  
298 best of his or her ability; and that he or she will faithfully  
299 discharge his or her fiduciary responsibility to the  
300 association's members.

301 (2) In lieu of this written certification, within 90 days  
302 after being elected or appointed to the board, the newly elected  
303 or appointed director may submit a certificate of having  
304 satisfactorily completed the educational curriculum approved by  
305 the division within 1 year before or 90 days after the date of  
306 election or appointment. The educational certificate is valid  
307 and does not have to be resubmitted as long as the director  
308 serves on the board without interruption.

309 (3) A director who fails to timely file the written  
310 certification or educational certificate is suspended from  
311 service on the board until he or she complies with this section.  
312 The board may temporarily fill the vacancy during the period of  
313 suspension.

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

321 (5) This section becomes effective on October 1, 2016. Any  
322 member of the board of directors of a homeowners' association

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323 not in compliance with the requirements of this section may not  
324 be considered in violation of this section until after October  
325 1, 2017.

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