

By the Committees on Fiscal Policy; and Community Affairs; and
Senator Latvala

594-03338-16

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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

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32 committees and the park owner; amending s. 723.0781,
33 F.S.; providing a date on 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

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61 provided in this chapter. The Department of Business and
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

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90 property taxes, non-ad valorem assessments, and utility charges,
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,

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119 the rental agreement must remain under the same terms until a
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 of a homeowners'
139 association as provided in this chapter s. 723.071, the mobile
140 home owners shall form an association in compliance with this
141 section and ss. 723.077, 723.078, and 723.079, which shall be a
142 corporation for profit or not for profit and of which not less
143 than two-thirds of all of the mobile home owners within the park
144 shall have consented, in writing, to become members or
145 shareholders. Upon incorporation of the association ~~such consent~~
146 ~~by two-thirds of the mobile home owners~~, all consenting mobile
147 home owners in the park may become members or shareholders. The

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

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

164 723.078 Bylaws of homeowners' associations.—

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

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

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

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

172 2. A member may not vote by general proxy but may vote by
173 limited proxies substantially conforming to a limited proxy form
174 adopted by the division. Limited proxies and general proxies may
175 be used to establish a quorum. Limited proxies may be used for
176 votes taken to amend the articles of incorporation or bylaws

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177 pursuant to this section, and any other matters for which this
178 chapter requires or permits a vote of members, except that no
179 proxy, limited or general, may be used in the election of board
180 members. If a mobile home or subdivision lot is owned jointly,
181 the owners of the mobile home or subdivision lot must be counted
182 as one for the purpose of determining the number of votes
183 required for a majority. Only one vote per mobile home or
184 subdivision lot shall be counted. Any number greater than 50
185 percent of the total number of votes constitutes a majority.
186 Notwithstanding ~~the provisions of~~ this section, members may vote
187 in person at member meetings or by secret ballot, including
188 absentee ballots, as defined by the division.

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

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

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

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

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

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

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

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

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235 included on the notice may be taken up on an emergency basis by
236 at least a majority plus one of the members of the board. Such
237 emergency action shall be noticed and ratified at the next
238 regular meeting of the board. Any member may tape record or
239 videotape meetings of the board of directors and its committees,
240 except meetings between the board of directors or its appointed
241 homeowners' committee and the park owner. The division shall
242 adopt reasonable rules governing the tape recording and
243 videotaping of the meeting.

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

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

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

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

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

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

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

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

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

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

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

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

291 723.0781 Board member training programs.—

292 (1) Within 90 days after being elected or appointed to the

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

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

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

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

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322 (5) This section becomes effective on October 1, 2016. Any
323 member of the board of directors of a homeowners' association
324 not in compliance with the requirements of this section may not
325 be considered in violation of this section until after October
326 1, 2017.

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