

By Senator Rouson

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1                                   A bill to be entitled  
2       An act relating to mobile home parks; amending s.  
3       723.004, F.S.; revising construction; amending s.  
4       723.005, F.S.; revising the duties of the Division of  
5       Florida Condominiums, Timeshares, and Mobile Homes of  
6       the Department of Business and Professional Regulation  
7       relating to mobile home parks; amending s. 723.006,  
8       F.S.; expanding the duties of the division relating to  
9       mobile home parks to include certification of certain  
10      mobile home park operators; providing for renewal of  
11      such certification; requiring the division to adopt  
12      rules; amending s. 723.011, F.S.; revising  
13      requirements relating to the delivery of a prospectus;  
14      revising provisions relating to the adequacy of a  
15      prospectus or offering circular; revising documents  
16      that must be received by homeowners to include rental  
17      agreements; requiring a park owner to provide  
18      specified information to the division when more than  
19      one prospectus is filed and approved for use in a  
20      park; amending s. 723.012, F.S.; revising disclosures  
21      that must be contained in a prospectus or offering  
22      circular; amending s. 723.033, F.S.; making conforming  
23      changes; prohibiting a court or arbitrators from  
24      considering certain mobile home parks when determining  
25      market rent; requiring a mediator, arbitrator, or  
26      court to consider certain factors when determining  
27      whether a rental amount is unreasonable; amending s.  
28      723.037, F.S.; deleting provisions prohibiting park  
29      owners from limiting comparable mobile home park

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30 disclosures to certain mobile home parks; amending s.  
31 723.038, F.S.; conforming a provision to changes made  
32 by the act; amending s. 723.0381, F.S.; authorizing  
33 either party to submit a rent dispute to the division  
34 for binding arbitration; providing procedures and  
35 requirements for such binding arbitration; authorizing  
36 either party to file an action in circuit court to  
37 resolve a rent dispute if binding arbitration is not  
38 elected within a specified timeframe; requiring a  
39 circuit court action to be filed within a specified  
40 timeframe; authorizing the division to adopt rules;  
41 amending s. 723.061, F.S.; requiring that an eviction  
42 notice be provided to the division and the executive  
43 director of the Florida Mobile Home Relocation  
44 Corporation within a specified timeframe; amending s.  
45 723.068, F.S.; conforming a provision to changes made  
46 by the act; amending s. 723.076, F.S.; requiring  
47 homeowners' associations to notify park owners upon  
48 the election or appointment of new officers or  
49 members; amending s. 723.078, F.S.; revising  
50 requirements for board elections and ballots;  
51 requiring an impartial committee to be responsible for  
52 overseeing the election process and complying with  
53 ballot requirements; defining the term "impartial  
54 committee"; requiring that association bylaws provide  
55 a method for determining the winner of an election in  
56 which two or more candidates receive the same number  
57 of votes; prohibiting certain persons from seeking  
58 election to a board and from being eligible for board

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59 membership; specifying that actions taken by a board  
60 are not invalid because a member is later determined  
61 to be ineligible for board membership; requiring the  
62 division to adopt rules; expanding the types of  
63 meetings that are not required to be open to members;  
64 making technical changes; providing an exception to a  
65 provision requiring an officer of an association to  
66 provide an affidavit affirming certain information;  
67 providing that the minutes of certain board and  
68 committee meetings are privileged and confidential;  
69 conforming provisions to changes made by the act;  
70 amending s. 723.079, F.S.; revising homeowners'  
71 association recordkeeping requirements; revising the  
72 timeframe for which records are required to be made  
73 available for inspection or photocopying; capping the  
74 amount of damages for which an association is liable  
75 when a member is denied access to official records;  
76 requiring that certain disputes be submitted to  
77 mandatory binding arbitration with the division;  
78 amending s. 723.1255, F.S.; requiring that certain  
79 disputes be submitted to mandatory binding arbitration  
80 with the division; providing requirements for such  
81 arbitration; requiring the division to adopt rules;  
82 providing an effective date.

83

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

85

86 Section 1. Subsection (5) of section 723.004, Florida  
87 Statutes, is amended to read:

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88 723.004 Legislative intent; preemption of subject matter.-

89 (5) Nothing in this chapter shall be construed to prevent  
90 the enforcement of a right or duty under this section, s.

91 723.022, s. 723.023, s. 723.031, s. 723.032, ~~s. 723.033~~, s.

92 723.035, s. 723.037, s. 723.038, s. 723.061, s. 723.0615, s.

93 723.062, s. 723.063, or s. 723.081 by civil action, or under s.

94 723.033 by binding arbitration, after the party has exhausted  
95 its administrative remedies, if any.

96 Section 2. Section 723.005, Florida Statutes, is amended to  
97 read:

98 723.005 Regulation by division.-The division has the power  
99 and duty to enforce and ensure compliance with ~~the provisions of~~  
100 this chapter and rules promulgated pursuant hereto ~~relating to~~  
101 ~~the rental, development, and sale of mobile home parks. However,~~  
102 ~~the division does not have the power or duty to enforce mobile~~  
103 ~~home park rules and regulations or to enforce the provisions of~~  
104 ~~ss. 723.022, 723.023, and 723.033.~~

105 Section 3. Subsection (16) is added to section 723.006,  
106 Florida Statutes, to read:

107 723.006 Powers and duties of division.-In performing its  
108 duties, the division has the following powers and duties:

109 (16) The division must certify that an operator of a mobile  
110 home park which also has the authority to manage such park is  
111 competent in the provisions of this chapter and the rules  
112 adopted thereunder. Upon certification, the division must issue  
113 a certificate to the operator, and the operator must post the  
114 certificate in a public place within the park or community  
115 office. The certification must be renewed every 2 years. The  
116 division must adopt rules to implement this subsection.

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117 Section 4. Section 723.011, Florida Statutes, is amended to  
118 read:

119 723.011 Disclosure before ~~prior to~~ rental of a mobile home  
120 lot; prospectus, offering circular, filing, approval.—

121 (1) (a) In a mobile home park containing 26 or more lots,  
122 the park owner shall file a prospectus with the division. Before  
123 ~~Prior to~~ entering into an enforceable rental agreement for a  
124 mobile home lot, the park owner shall deliver to the homeowner  
125 or prospective homeowner the initial a prospectus approved by  
126 the division and all amendments to such prospectus which are  
127 filed with the division for the lot. If the park owner has  
128 prepared an integrated prospectus, it must be approved by the  
129 division before the park owner may distribute it to the  
130 homeowners. This subsection does not invalidate those lot rental  
131 agreements for which an approved prospectus was required to be  
132 delivered and which was delivered on or before July 1, 1986, if  
133 the mobile home park owner had:

134 1. Filed a prospectus with the division prior to entering  
135 into the lot rental agreement;

136 2. Made a good faith effort to correct deficiencies cited  
137 by the division by responding within the time limit set by the  
138 division, if one was set; and

139 3. Delivered the approved prospectus to the mobile home  
140 owner within 45 days of approval by the division.

141  
142 This paragraph does not preclude the finding that a lot rental  
143 agreement is invalid on other grounds and does not limit any  
144 rights of a mobile home owner or preclude a mobile home owner  
145 from seeking any remedies allowed by this chapter, including a

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146 determination that the lot rental agreement or any part thereof  
147 is unreasonable.

148 (b) The division shall determine whether the proposed  
149 prospectus or offering circular is adequate to meet the  
150 requirements of this chapter and shall notify the park owner by  
151 mail, within 45 days after receipt of the document, that the  
152 division has found that the prospectus or offering circular is  
153 adequate or has found specified deficiencies that are a direct  
154 violation of this chapter. If the division does not make either  
155 finding within 45 days, the prospectus or offering circular is  
156 considered to be ~~shall be deemed to have been found~~ adequate.

157 (c)1. Filings for mobile home parks in which lots have not  
158 been offered for lease prior to June 4, 1984, shall be  
159 accompanied by a filing fee of \$10 per lot offered for lease by  
160 the park owner; however, the fee shall not be less than \$100.

161 2. Filings for mobile home parks in which lots have been  
162 offered for lease before ~~prior to~~ the effective date of this  
163 chapter shall be accompanied by a filing fee as follows:

- 164 a. For a park in which there are 26-50 lots: \$100.  
165 b. For a park in which there are 51-100 lots: \$150.  
166 c. For a park in which there are 101-150 lots: \$200.  
167 d. For a park in which there are 151-200 lots: \$250.  
168 e. For a park in which there are 201 or more lots: \$300.

169 (d) The division shall maintain copies of each prospectus  
170 and all amendments to each prospectus which are considered  
171 adequate by the division. The division shall provide copies of  
172 documents requested in writing under this subsection within 10  
173 days after the written request is received.

174 (2) The park owner shall furnish a copy of the prospectus

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175 or offering circular together with all of the exhibits thereto  
176 to each prospective lessee. Delivery shall be made prior to  
177 execution of the lot rental agreement or at the time of  
178 occupancy, whichever occurs first. Upon delivery of a prospectus  
179 to a prospective lessee, the lot rental agreement is voidable by  
180 the lessee for a period of 15 days. However, the park owner is  
181 not required to furnish a copy of the prospectus or offering  
182 circular if the tenancy is a renewal of a tenancy and the mobile  
183 home owner has previously received the prospectus or offering  
184 circular.

185 (3) The prospectus or offering circular together with its  
186 exhibits is a disclosure document intended to afford protection  
187 to homeowners and prospective homeowners in the mobile home  
188 park. The purpose of the document is to disclose the  
189 representations of the mobile home park owner concerning the  
190 operations of the mobile home park.

191 (4) With regard to a tenancy in existence on the effective  
192 date of this chapter, the prospectus or offering circular  
193 offered by the mobile home park owner shall contain the same  
194 terms and conditions as rental agreements offered to all other  
195 mobile home owners residing in the park on the effective date of  
196 this act, excepting only rent variations based upon lot location  
197 and size, and shall not require any mobile home owner to install  
198 any permanent improvements.

199 (5) The mobile home park owner may request that the  
200 homeowner sign a receipt indicating that the homeowner has  
201 received a copy of the prospectus, the rules and regulations,  
202 the rental agreement, and other pertinent documents so long as  
203 any such documents are clearly identified in the receipt itself.

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204 Such a receipt shall indicate nothing more than that the  
205 documents identified herein have been received by the mobile  
206 home owner. The receipt, if requested, shall be signed at the  
207 time of delivery of the identified documents. If the homeowner  
208 refuses to sign the receipt, the park owner shall still deliver  
209 to the homeowner a copy of the prospectus, rules and  
210 regulations, rental agreement, and ~~any~~ other pertinent documents  
211 which otherwise would have been delivered upon execution of the  
212 receipt. However, the homeowner shall thereafter be barred from  
213 claiming that the park owner has failed to deliver such  
214 documents. The refusal of the homeowner to sign the receipt  
215 shall under no circumstances constitute a ground for eviction of  
216 the homeowner or of a mobile home or for the imposition of any  
217 other penalty.

218 (6) If more than one prospectus is filed and approved for  
219 use in the park, the park owner must inform the division which  
220 prospectus applies to each lot as follows:

221 (a) If known at the time of filing, the information must be  
222 stated in the appropriate spaces on the Park Owner Prospectus  
223 Filing Statement.

224 (b) If the park owner does not know at the time of filing  
225 which prospectus will be delivered to each lot, or if the  
226 information provided in the Park Owner Prospectus Filing  
227 Statement changes after filing, the park owner must, no later  
228 than March 1 and September 1 of each year, submit a listing of  
229 each lot number to the division with the corresponding  
230 prospectus identification number assigned by the division. If  
231 there have been no changes from the previous report, no  
232 additional notification is required.



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233 Section 5. Paragraph (b) of subsection (9) of section  
234 723.012, Florida Statutes, is amended to read:

235 723.012 Prospectus or offering circular.—The prospectus or  
236 offering circular, which is required to be provided by s.  
237 723.011, must contain the following information:

238 (9) An explanation of the manner in which the lot rental  
239 amount will be raised, including, but not limited to:

240 (b) Disclosure of any factors that ~~which may~~ affect the lot  
241 rental amount, if applicable, including, but not limited to:

242 1. Water rates.

243 2. Sewer rates.

244 3. Waste disposal rates.

245 4. Maintenance costs, including costs of deferred  
246 maintenance.

247 5. Management costs.

248 6. Property taxes.

249 7. Major repairs or improvements.

250 8. Any other fees, costs, entrance fees, or charges to  
251 which the mobile home owner may be subjected.

252 Section 6. Subsections (1), (2), (5), and (6) of section  
253 723.033, Florida Statutes, are amended to read:

254 723.033 Unreasonable lot rental agreements; increases,  
255 changes.—

256 (1) If the court, or the arbitrators in a binding  
257 arbitration under s. 723.0381(1), as a matter of law, find ~~finds~~  
258 a mobile home lot rental amount, rent increase, or change, or  
259 any provision of the rental agreement, to be unreasonable, the  
260 court or arbitrators may:

261 (a) Refuse to enforce the lot rental agreement.

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- 262 (b) Refuse to enforce the rent increase or change.
- 263 (c) Enforce the remainder of the lot rental agreement  
264 without the unreasonable provision.
- 265 (d) Limit the application of the unreasonable provision so  
266 as to avoid any unreasonable result.
- 267 (e) Award a refund or a reduction in future rent payments.
- 268 (f) Award such other equitable relief as deemed necessary.
- 269 (2) When it is claimed or appears to the court or  
270 arbitrators that a lot rental amount, rent increase, or change,  
271 or any provision thereof, may be unreasonable, the parties shall  
272 be afforded a reasonable opportunity to present evidence as to  
273 its meaning and purpose, the relationship of the parties, and  
274 other relevant factors to aid the court or arbitrators in making  
275 the determination.
- 276 (5) In determining market rent, the court or arbitrators  
277 may consider rents charged by comparable mobile home parks in  
278 its competitive area. To be comparable, a mobile home park must  
279 offer similar facilities, services, amenities, and management.  
280 Mobile home parks in this state owned or controlled by the  
281 subject park owner and any mobile home parks that have been  
282 purchased or sold within 12 months before the effective date of  
283 the increase in lot rental amount may not be considered to be a  
284 comparable park for the purposes of this subsection.
- 285 (6) In determining whether a rent increase or resulting lot  
286 rental amount is unreasonable, the mediator, arbitrator, or  
287 court shall ~~may~~ consider economic or other factors, including,  
288 but not limited to, increases or decreases in the Consumer Price  
289 Index for Urban Wage Earners and Clerical Workers, published by  
290 the Bureau of Labor Statistics of the Department of Labor;

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291 increases or decreases in operating costs or taxes; and prior  
292 disclosures.

293 Section 7. Paragraph (b) of subsection (4) of section  
294 723.037, Florida Statutes, is amended to read:

295 723.037 Lot rental increases; reduction in services or  
296 utilities; change in rules and regulations; mediation.—

297 (4)

298 (b)~~1~~. At the meeting, the park owner or subdivision  
299 developer shall in good faith disclose and explain all material  
300 factors resulting in the decision to increase the lot rental  
301 amount, reduce services or utilities, or change rules and  
302 regulations, including how those factors justify the specific  
303 change proposed. The park owner or subdivision developer may not  
304 limit the discussion of the reasons for the change to  
305 generalities only, such as, but not limited to, increases in  
306 operational costs, changes in economic conditions, or rents  
307 charged by comparable mobile home parks. For example, if the  
308 reason for an increase in lot rental amount is an increase in  
309 operational costs, the park owner must disclose the item or  
310 items which have increased, the amount of the increase, any  
311 similar item or items which have decreased, and the amount of  
312 the decrease. If an increase is based upon the lot rental amount  
313 charged by comparable mobile home parks, the park owner shall  
314 disclose, and provide in writing to the committee at or before  
315 the meeting, the name, address, lot rental amount, and any other  
316 relevant factors relied upon by the park owner, such as  
317 facilities, services, and amenities, concerning the comparable  
318 mobile home parks. The information concerning comparable mobile  
319 home parks to be exchanged by the parties is to encourage a

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320 dialogue concerning the reasons used by the park owner for the  
321 increase in lot rental amount and to encourage the home owners  
322 to evaluate and discuss the reasons for those changes with the  
323 park owner. The park owner shall prepare a written summary of  
324 the material factors and retain a copy for 3 years. The park  
325 owner shall provide the committee a copy of the summary at or  
326 before the meeting.

327 ~~2. The park owner shall not limit the comparable mobile~~  
328 ~~home park disclosure to those mobile home parks that are owned~~  
329 ~~or operated by the same owner or operator as the subject park,~~  
330 ~~except in certain circumstances, which include, but are not~~  
331 ~~limited to:~~

332 ~~a. That the market area for comparable mobile home parks~~  
333 ~~includes mobile home parks owned or operated by the same entity~~  
334 ~~that have similar facilities, services, and amenities;~~

335 ~~b. That the subject mobile home park has unique attributes~~  
336 ~~that are shared with similar mobile home parks;~~

337 ~~c. That the mobile home park is located in a geographic or~~  
338 ~~market area that contains few comparable mobile home parks; or~~

339 ~~d. That there are similar considerations or factors that~~  
340 ~~would be considered in such a market analysis by a competent~~  
341 ~~professional and would be considered in determining the~~  
342 ~~valuation of the market rent.~~

343

344 This subsection is not intended to be enforced by civil or  
345 administrative action. Rather, the meetings and discussions are  
346 intended to be in the nature of settlement discussions prior to  
347 the parties proceeding to mediation of any dispute.

348 Section 8. Subsection (6) of section 723.038, Florida

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349 Statutes, is amended to read:

350 723.038 Dispute settlement; mediation.-

351 (6) No resolution arising from a mediation proceeding as  
352 provided for in s. 723.037 or this section shall be deemed final  
353 agency action. Any party, however, may initiate an action in the  
354 circuit court, or for binding arbitration for rent disputes, to  
355 enforce a resolution or agreement arising from a mediation  
356 proceeding which has been reduced to writing. The court shall  
357 consider such resolution or agreement to be a contract for the  
358 purpose of providing a remedy to the complaining party.

359 Section 9. Section 723.0381, Florida Statutes, is amended  
360 to read:

361 723.0381 Civil actions; arbitration.-

362 (1) After mediation of a dispute pursuant to s. 723.038 has  
363 failed to provide a resolution of the dispute, either party may  
364 file an action in the circuit court or elect to submit the rent  
365 dispute to the division for binding arbitration.

366 (a) If a party elects for binding arbitration:

367 1. A request for arbitration must be filed with the  
368 division within 60 days after the date of the mediator's notice  
369 to the division that the mediation has concluded.

370 2. An action to resolve the rent dispute may not be filed  
371 in the circuit court.

372 3. Notwithstanding s. 723.037(1) and (5) (a), a homeowners'  
373 association is not required to obtain majority consent from the  
374 homeowners to submit the rent dispute to binding arbitration  
375 pursuant to this section and the homeowners' association has  
376 standing regardless of whether it chooses to obtain permission  
377 from the majority of the homeowners.

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378 4. If a homeowners' association or park owner elects for  
379 binding arbitration, the arbitration procedure must be in  
380 accordance with the arbitration procedures established for  
381 recalls under s. 723.1255. A notice of election for binding  
382 arbitration must be served on the opposing party within 10 days  
383 from the date of filing such notice with the division.

384 5. Notwithstanding any other provision of this section,  
385 once a party files an election to proceed with binding  
386 arbitration, the parties may, by mutual agreement, select two  
387 additional arbitrators to sit with the division's arbitrator and  
388 hear the presentations of the parties. If the parties agree to  
389 add two additional arbitrators, a decision on the rent dispute  
390 must be by majority vote of the three arbitrators. If the  
391 parties do not agree to add two additional arbitrators, a  
392 decision on the rent dispute must be made solely by the  
393 division's arbitrator. The decision rendered by the arbitrator  
394 or arbitrators is final and binding upon the parties and  
395 enforceable in the circuit court as a contract.

396 6. Each party is responsible for paying its own attorney  
397 fees, expert and investigator fees, and other associated costs.  
398 The cost of the arbitrators must be divided equally between the  
399 parties regardless of the outcome.

400 7. If the homeowners' association or the park owner does  
401 not elect for binding arbitration within the time period  
402 specified, either party may file an action in circuit court  
403 pursuant to this section.

404 (b) If a party elects to file an action in the circuit  
405 court:

406 1. The action must be filed within 60 days after the date

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407 of the mediator's notice to the division that the mediation has  
408 concluded.

409 2.(2) The court may refer the action to nonbinding  
410 arbitration pursuant to s. 44.103 and the Florida Rules of Civil  
411 Procedure. The court shall order the hearing to be held  
412 informally with presentation of testimony kept to a minimum and  
413 matters presented to the arbitrators primarily through the  
414 statements and arguments of counsel. The court shall assess the  
415 parties equally to pay the compensation awarded to the  
416 arbitrators if neither party requests a trial de novo. If a  
417 party has filed for a trial de novo, the party shall be assessed  
418 the arbitration costs, court costs, and other reasonable costs  
419 of the opposing party, including attorney's fees, investigation  
420 expenses, and expenses for expert or other testimony or evidence  
421 incurred after the arbitration hearing if the judgment upon the  
422 trial de novo is not more favorable than the arbitration  
423 decision. If subsequent to arbitration a party files for a trial  
424 de novo, the arbitration decision may be made known to the judge  
425 only after he or she has entered his or her order on the merits.

426 (2) The division may adopt rules to facilitate the option  
427 of binding arbitration under this section.

428 Section 10. Paragraph (d) of subsection (1) of section  
429 723.061, Florida Statutes, is amended to read:

430 723.061 Eviction; grounds, proceedings.—

431 (1) A mobile home park owner may evict a mobile home owner,  
432 a mobile home tenant, a mobile home occupant, or a mobile home  
433 only on one or more of the following grounds:

434 (d) Change in use of the land comprising the mobile home  
435 park, or the portion thereof from which mobile homes are to be

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436 evicted, from mobile home lot rentals to some other use, if:

437 1. The park owner gives written notice to the homeowners'  
438 association formed and operating under ss. 723.075-723.079 of  
439 its right to purchase the mobile home park, if the land  
440 comprising the mobile home park is changing use from mobile home  
441 lot rentals to a different use, at the price and under the terms  
442 and conditions set forth in the written notice.

443 a. The notice shall be delivered to the officers of the  
444 homeowners' association by United States mail. Within 45 days  
445 after the date of mailing of the notice, the homeowners'  
446 association may execute and deliver a contract to the park owner  
447 to purchase the mobile home park at the price and under the  
448 terms and conditions set forth in the notice. If the contract  
449 between the park owner and the homeowners' association is not  
450 executed and delivered to the park owner within the 45-day  
451 period, the park owner is under no further obligation to the  
452 homeowners' association except as provided in sub-subparagraph  
453 b.

454 b. If the park owner elects to offer or sell the mobile  
455 home park at a price lower than the price specified in her or  
456 his initial notice to the officers of the homeowners'  
457 association, the homeowners' association has an additional 10  
458 days to meet the revised price, terms, and conditions of the  
459 park owner by executing and delivering a revised contract to the  
460 park owner.

461 c. The park owner is not obligated under this subparagraph  
462 or s. 723.071 to give any other notice to, or to further  
463 negotiate with, the homeowners' association for the sale of the  
464 mobile home park to the homeowners' association after 6 months



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465 after the date of the mailing of the initial notice under sub-  
466 subparagraph a.

467 2. The park owner gives the affected mobile home owners and  
468 tenants at least 6 months' notice of the eviction due to the  
469 projected change in use and of their need to secure other  
470 accommodations. Within 20 days after giving an eviction notice  
471 to a mobile home owner, the park owner must provide the division  
472 with a copy of the notice and the division must provide the  
473 executive director of the Florida Mobile Home Relocation  
474 Corporation with a copy of each notice.

475 a. The notice of eviction due to a change in use of the  
476 land must include in a font no smaller than the body of the  
477 notice the following statement:

478  
479 YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA  
480 MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE  
481 FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC).  
482 FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE  
483 FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL  
484 REGULATION.

485  
486 b. The park owner may not give a notice of increase in lot  
487 rental amount within 90 days before giving notice of a change in  
488 use.

489 Section 11. Section 723.068, Florida Statutes, is amended  
490 to read:

491 723.068 Attorney ~~Attorney's~~ fees.—Except as provided in ss.  
492 ~~s.~~ 723.037 and 723.0381(1), in any proceeding between private  
493 parties to enforce provisions of this chapter, the prevailing

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494 party is entitled to a reasonable attorney fees ~~attorney's fee~~.

495 Section 12. Subsection (1) of section 723.076, Florida  
496 Statutes, is amended to read:

497 723.076 Incorporation; notification of park owner.—

498 (1) Upon receipt of its certificate of incorporation, the  
499 homeowners' association shall notify the park owner in writing  
500 of such incorporation and shall advise the park owner of the  
501 names and addresses of the officers of the homeowners'  
502 association by personal delivery upon the park owner's  
503 representative as designated in the prospectus or by certified  
504 mail, return receipt requested. Thereafter, the homeowners'  
505 association shall notify the park owner in writing by certified  
506 mail, return receipt requested, of any change of names and  
507 addresses of its president or registered agent. Upon election or  
508 appointment of new officers or members, the homeowners'  
509 association shall notify the park owner in writing by certified  
510 mail, return receipt requested, of the names and addresses of  
511 the new officers or members.

512 Section 13. Paragraphs (b) through (e) of subsection (2) of  
513 section 723.078, Florida Statutes, are amended, and paragraph  
514 (i) of that subsection is reenacted, to read:

515 723.078 Bylaws of homeowners' associations.—

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

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

519 1. Unless otherwise provided in the bylaws, 30 percent of  
520 the total membership is required to constitute a quorum.  
521 Decisions shall be made by a majority of members represented at  
522 a meeting at which a quorum is present.

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523           2.a. A member may not vote by general proxy but may vote by  
524 limited proxies substantially conforming to a limited proxy form  
525 adopted by the division. Limited proxies and general proxies may  
526 be used to establish a quorum. Limited proxies may be used for  
527 votes taken to amend the articles of incorporation or bylaws  
528 pursuant to this section, and any other matters for which this  
529 chapter requires or permits a vote of members. ~~A, except that no~~  
530 proxy, limited or general, may not be used in the election of  
531 board members in general elections or elections to fill  
532 vacancies caused by recall, resignation, or otherwise. Board  
533 members must be elected by written ballot or by voting in  
534 person. If a mobile home or subdivision lot is owned jointly,  
535 the owners of the mobile home or subdivision lot must be counted  
536 as one for the purpose of determining the number of votes  
537 required for a majority. Only one vote per mobile home or  
538 subdivision lot shall be counted. Any number greater than 50  
539 percent of the total number of votes constitutes a majority.  
540 Notwithstanding this section, members may vote in person at  
541 member meetings or by secret ballot, including absentee ballots,  
542 as defined by the division.

543           b. Elections shall be decided by a plurality of the ballots  
544 cast. There is no quorum requirement; however, at least 20  
545 percent of the eligible voters must cast a ballot in order to  
546 have a valid election. A member may not allow any other person  
547 to cast his or her ballot, and any ballots improperly cast are  
548 invalid. An election is not required unless there are more  
549 candidates nominated than vacancies that exist on the board.

550           c. Each member or other eligible person who desires to be a  
551 candidate for the board of directors shall appear on the ballot

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552 in alphabetical order by surname. A ballot may not indicate if  
553 any of the candidates are incumbent on the board. All ballots  
554 must be uniform in appearance. Write-in candidates and more than  
555 one vote per candidate per ballot are not allowed. A ballot may  
556 not provide a space for the signature of, or any other means of  
557 identifying, a voter. If a ballot contains more votes than  
558 vacancies or fewer votes than vacancies, the ballot is invalid  
559 unless otherwise stated in the bylaws.

560 d. An impartial committee shall be responsible for  
561 overseeing the election process and complying with all ballot  
562 requirements. For purposes of this section, the term "impartial  
563 committee" means a committee whose members do not include any of  
564 the following people or their spouses:

565 (I) Current board members.

566 (II) Current association officers.

567 (III) Candidates for the association or board.

568 e. The association bylaws shall provide a method for  
569 determining the winner of an election in which two or more  
570 candidates for the same position receive the same number of  
571 votes.

572 f. A person who has been convicted of a felony in this  
573 state or in a United States District or Territorial Court, or  
574 who has been convicted of any offense in another jurisdiction  
575 which would be considered a felony if committed in this state,  
576 may not seek election to the board and is not eligible for board  
577 membership unless the person's civil rights have been restored  
578 for at least 5 years before the date on which the person seeks  
579 election to the board. The validity of an action taken by the  
580 board is not affected if it is later determined that a member of

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581 the board is ineligible for board membership.

582 g. The division shall adopt procedural rules to govern  
583 elections, including, but not limited to, rules for providing  
584 notice by electronic transmission and rules for maintaining the  
585 secrecy of ballots.

586 3. A proxy is effective only for the specific meeting for  
587 which originally given and any lawfully adjourned meetings  
588 thereof. In no event shall any proxy be valid for a period  
589 longer than 90 days after the date of the first meeting for  
590 which it was given. Every proxy shall be revocable at any time  
591 at the pleasure of the member executing it.

592 4. A member of the board of directors or a committee may  
593 submit in writing his or her agreement or disagreement with any  
594 action taken at a meeting that the member did not attend. This  
595 agreement or disagreement may not be used as a vote for or  
596 against the action taken and may not be used for the purposes of  
597 creating a quorum.

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

599 1. Meetings of the board of directors and meetings of its  
600 committees at which a quorum is present shall be open to all  
601 members. Notwithstanding any other provision of law, the  
602 requirement that board meetings and committee meetings be open  
603 to the members does not apply to meetings between the park owner  
604 and the board of directors or any of the board's committees,  
605 board or committee meetings held for the purpose of discussing  
606 personnel matters or meetings between the board or a committee  
607 and the association's attorney, with respect to potential or  
608 pending litigation, when ~~where~~ the meeting is held for the  
609 purpose of seeking or rendering legal advice, and when ~~where~~ the

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610 contents of the discussion would otherwise be governed by the  
611 attorney-client privilege. Notice of all meetings open to  
612 members shall be posted in a conspicuous place upon the park  
613 property at least 48 hours in advance, except in an emergency.  
614 Notice of any meeting in which dues ~~assessments against members~~  
615 are to be considered for any reason shall specifically contain a  
616 statement that dues ~~assessments~~ will be considered and the  
617 nature of such dues ~~assessments~~.

618 2. A board or committee member's participation in a meeting  
619 via telephone, real-time videoconferencing, or similar real-time  
620 telephonic, electronic, or video communication counts toward a  
621 quorum, and such member may vote as if physically present. A  
622 speaker shall be used so that the conversation of those board or  
623 committee members attending by telephone may be heard by the  
624 board or committee members attending in person, as well as by  
625 members present at a meeting.

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

629 4. The right to attend meetings of the board of directors  
630 and its committees includes the right to speak at such meetings  
631 with reference to all designated agenda items. The association  
632 may adopt reasonable written rules governing the frequency,  
633 duration, and manner of members' statements. Any item not  
634 included on the notice may be taken up on an emergency basis by  
635 at least a majority plus one of the members of the board. Such  
636 emergency action shall be noticed and ratified at the next  
637 regular meeting of the board. Any member may tape record or  
638 videotape meetings of the board of directors and its committees,

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639 except meetings between the board of directors or its appointed  
640 homeowners' committee and the park owner. The division shall  
641 adopt reasonable rules governing the tape recording and  
642 videotaping of the meeting.

643 5. Except as provided in paragraph (i), a vacancy occurring  
644 on the board of directors may be filled by the affirmative vote  
645 of the majority of the remaining directors, even though the  
646 remaining directors constitute less than a quorum; by the sole  
647 remaining director; if the vacancy is not so filled or if no  
648 director remains, by the members; or, on the application of any  
649 person, by the circuit court of the county in which the  
650 registered office of the corporation is located.

651 6. The term of a director elected or appointed to fill a  
652 vacancy expires at the next annual meeting at which directors  
653 are elected. A directorship to be filled by reason of an  
654 increase in the number of directors may be filled by the board  
655 of directors, but only for the term of office continuing until  
656 the next election of directors by the members.

657 7. A vacancy that will occur at a specific later date, by  
658 reason of a resignation effective at a later date, may be filled  
659 before the vacancy occurs. However, the new director may not  
660 take office until the vacancy occurs.

661 8.a. The officers and directors of the association have a  
662 fiduciary relationship to the members.

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

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668 9. In discharging his or her duties, a director may rely on  
669 information, opinions, reports, or statements, including  
670 financial statements and other financial data, if prepared or  
671 presented by:

672 a. One or more officers or employees of the corporation who  
673 the director reasonably believes to be reliable and competent in  
674 the matters presented;

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

678 c. A committee of the board of directors of which he or she  
679 is not a member if the director reasonably believes the  
680 committee merits confidence.

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

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

688 (d) *Member meetings.*—Members shall meet at least once each  
689 calendar year, and the meeting shall be the annual meeting. All  
690 members of the board of directors shall be elected at the annual  
691 meeting unless the bylaws provide for staggered election terms  
692 or for their election at another meeting. The bylaws shall not  
693 restrict any member desiring to be a candidate for board  
694 membership from being nominated from the floor. All nominations  
695 from the floor must be made at a duly noticed meeting of the  
696 members held at least 27 ~~30~~ days before the annual meeting. The



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697 bylaws shall provide the method for calling the meetings of the  
698 members, including annual meetings. The method shall provide at  
699 least 14 days' written notice to each member in advance of the  
700 meeting and require the posting in a conspicuous place on the  
701 park property of a notice of the meeting at least 14 days prior  
702 to the meeting. The right to receive written notice of  
703 membership meetings may be waived in writing by a member. Unless  
704 waived, the notice of the annual meeting shall be mailed, hand  
705 delivered, or electronically transmitted to each member, and  
706 shall constitute notice. Unless otherwise stated in the bylaws,  
707 an officer of the association shall provide an affidavit  
708 affirming that the notices were mailed, ~~or~~ hand delivered, or  
709 provided by electronic transmission in accordance with ~~the~~  
710 ~~provisions of~~ this section to each member at the address last  
711 furnished to the corporation. These meeting requirements do not  
712 prevent members from waiving notice of meetings or from acting  
713 by written agreement without meetings, if allowed by the bylaws.

714 (e) *Minutes of meetings.*—

715 1. Notwithstanding any other provision of law, the minutes  
716 of board or committee meetings that are closed to members are  
717 privileged and confidential and are not available for inspection  
718 or photocopying.

719 2. Minutes of all meetings of members of an association and  
720 meetings open for members of the board of directors, and a  
721 committee must be maintained in written form and approved by the  
722 members, board, or committee, as applicable. A vote or  
723 abstention from voting on each matter voted upon for each  
724 director present at a board meeting must be recorded in the  
725 minutes.

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726        ~~3.2~~ All approved minutes of open meetings of members,  
727 committees, and the board of directors shall be kept in a  
728 businesslike manner and shall be available for inspection by  
729 members, or their authorized representatives, and board members  
730 at reasonable times. The association shall retain these minutes  
731 within this state for a period of at least 5 7 years.

732        (i) *Recall of board members.*—Any member of the board of  
733 directors may be recalled and removed from office with or  
734 without cause by the vote of or agreement in writing by a  
735 majority of all members. A special meeting of the members to  
736 recall a member or members of the board of directors may be  
737 called by 10 percent of the members giving notice of the meeting  
738 as required for a meeting of members, and the notice shall state  
739 the purpose of the meeting. Electronic transmission may not be  
740 used as a method of giving notice of a meeting called in whole  
741 or in part for this purpose.

742        1. If the recall is approved by a majority of all members  
743 by a vote at a meeting, the recall is effective as provided in  
744 this paragraph. The board shall duly notice and hold a board  
745 meeting within 5 full business days after the adjournment of the  
746 member meeting to recall one or more board members. At the  
747 meeting, the board shall either certify the recall, in which  
748 case such member or members shall be recalled effective  
749 immediately and shall turn over to the board within 5 full  
750 business days any and all records and property of the  
751 association in their possession, or shall proceed under  
752 subparagraph 3.

753        2. If the proposed recall is by an agreement in writing by  
754 a majority of all members, the agreement in writing or a copy

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755 thereof shall be served on the association by certified mail or  
756 by personal service in the manner authorized by chapter 48 and  
757 the Florida Rules of Civil Procedure. The board of directors  
758 shall duly notice and hold a meeting of the board within 5 full  
759 business days after receipt of the agreement in writing. At the  
760 meeting, the board shall either certify the written agreement to  
761 recall members of the board, in which case such members shall be  
762 recalled effective immediately and shall turn over to the board,  
763 within 5 full business days, any and all records and property of  
764 the association in their possession, or shall proceed as  
765 described in subparagraph 3.

766 3. If the board determines not to certify the written  
767 agreement to recall members of the board, or does not certify  
768 the recall by a vote at a meeting, the board shall, within 5  
769 full business days after the board meeting, file with the  
770 division a petition for binding arbitration pursuant to the  
771 procedures of s. 723.1255. For purposes of this paragraph, the  
772 members who voted at the meeting or who executed the agreement  
773 in writing shall constitute one party under the petition for  
774 arbitration. If the arbitrator certifies the recall of a member  
775 of the board, the recall shall be effective upon mailing of the  
776 final order of arbitration to the association. If the  
777 association fails to comply with the order of the arbitrator,  
778 the division may take action under s. 723.006. A member so  
779 recalled shall deliver to the board any and all records and  
780 property of the association in the member's possession within 5  
781 full business days after the effective date of the recall.

782 4. If the board fails to duly notice and hold a board  
783 meeting within 5 full business days after service of an

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784 agreement in writing or within 5 full business days after the  
785 adjournment of the members' recall meeting, the recall shall be  
786 deemed effective and the board members so recalled shall  
787 immediately turn over to the board all records and property of  
788 the association.

789         5. If the board fails to duly notice and hold the required  
790 meeting or fails to file the required petition, the member's  
791 representative may file a petition pursuant to s. 723.1255  
792 challenging the board's failure to act. The petition must be  
793 filed within 60 days after expiration of the applicable 5-full-  
794 business-day period. The review of a petition under this  
795 subparagraph is limited to the sufficiency of service on the  
796 board and the facial validity of the written agreement or  
797 ballots filed.

798         6. If a vacancy occurs on the board as a result of a recall  
799 and less than a majority of the board members are removed, the  
800 vacancy may be filled by the affirmative vote of a majority of  
801 the remaining directors, notwithstanding any other provision of  
802 this chapter. If vacancies occur on the board as a result of a  
803 recall and a majority or more of the board members are removed,  
804 the vacancies shall be filled in accordance with procedural  
805 rules to be adopted by the division, which rules need not be  
806 consistent with this chapter. The rules must provide procedures  
807 governing the conduct of the recall election as well as the  
808 operation of the association during the period after a recall  
809 but before the recall election.

810         7. A board member who has been recalled may file a petition  
811 pursuant to s. 723.1255 challenging the validity of the recall.  
812 The petition must be filed within 60 days after the recall is

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813 deemed certified. The association and the member's  
814 representative shall be named as the respondents.

815 8. The division may not accept for filing a recall  
816 petition, whether or not filed pursuant to this subsection, and  
817 regardless of whether the recall was certified, when there are  
818 60 or fewer days until the scheduled reelection of the board  
819 member sought to be recalled or when 60 or fewer days have not  
820 elapsed since the election of the board member sought to be  
821 recalled.

822 Section 14. Paragraphs (d) and (f) through (i) of  
823 subsection (4) and subsection (5) of section 723.079, Florida  
824 Statutes, are amended to read:

825 723.079 Powers and duties of homeowners' association.—

826 (4) The association shall maintain the following items,  
827 when applicable, which constitute the official records of the  
828 association:

829 (d) The approved minutes of all meetings of the members of  
830 an association and meetings open for members of~~7~~ the board of  
831 directors~~7~~ and committees of the board, which minutes must be  
832 retained within this ~~the~~ state for at least 5 ~~7~~ years.

833 (f) All of the association's insurance policies or copies  
834 thereof, which must be retained within this state for at least 5  
835 7 years after the expiration date of the policy.

836 (g) A copy of all contracts or agreements to which the  
837 association is a party, including, without limitation, any  
838 written agreements with the park owner, lease, or other  
839 agreements or contracts under which the association or its  
840 members has any obligation or responsibility, which must be  
841 retained within this state for at least 5 ~~7~~ years after the

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842 expiration date of the contract or agreement.

843 (h) The financial and accounting records of the  
844 association, kept according to good accounting practices. All  
845 financial and accounting records must be maintained within this  
846 state for a period of at least 5 7 years. The financial and  
847 accounting records must include:

848 1. Accurate, itemized, and detailed records of all receipts  
849 and expenditures.

850 2. A current account and a periodic statement of the  
851 account for each member, designating the name and current  
852 address of each member who is obligated to pay dues or  
853 assessments, the due date and amount of each assessment or other  
854 charge against the member, the date and amount of each payment  
855 on the account, and the balance due.

856 3. All tax returns, financial statements, and financial  
857 reports of the association.

858 4. Any other records that identify, measure, record, or  
859 communicate financial information.

860 (i) All other written records of the association not  
861 specifically included in the foregoing which are related to the  
862 operation of the association must be retained within this state  
863 for at least 5 years or at least 5 years after the expiration  
864 date, as applicable.

865 (5) The official records ~~shall be maintained within the~~  
866 ~~state for at least 7 years and~~ shall be made available to a  
867 member for inspection or photocopying within 20 ~~10~~ business days  
868 after receipt by the board or its designee of a written request  
869 submitted by certified mail, return receipt requested. The  
870 requirements of this subsection are satisfied by having a copy

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871 of the official records available for inspection or copying in  
872 the park or, at the option of the association, by making the  
873 records available to a member electronically via the Internet or  
874 by allowing the records to be viewed in electronic format on a  
875 computer screen and printed upon request. If the association has  
876 a photocopy machine available where the records are maintained,  
877 it must provide a member with copies on request during the  
878 inspection if the entire request is no more than 25 pages. An  
879 association shall allow a member or his or her authorized  
880 representative to use a portable device, including a smartphone,  
881 tablet, portable scanner, or any other technology capable of  
882 scanning or taking photographs, to make an electronic copy of  
883 the official records in lieu of the association's providing the  
884 member or his or her authorized representative with a copy of  
885 such records. The association may not charge a fee to a member  
886 or his or her authorized representative for the use of a  
887 portable device.

888 (a) The failure of an association to provide access to the  
889 records within 20 ~~10~~ business days after receipt of a written  
890 request submitted by certified mail, return receipt requested,  
891 creates a rebuttable presumption that the association willfully  
892 failed to comply with this subsection.

893 (b) A member who is denied access to official records is  
894 entitled to ~~the actual damages or minimum~~ damages for the  
895 association's willful failure to comply with this subsection in  
896 the amount of. ~~The minimum damages are to be~~ \$10 per calendar  
897 day up to 10 days, not to exceed \$100. The calculation for  
898 damages begins ~~to begin~~ on the 21st ~~11th~~ business day after  
899 receipt of the written request, submitted by certified mail,

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900 return receipt requested.

901 (c) A dispute between a member and an association regarding  
902 inspecting or photocopying official records must be submitted to  
903 mandatory binding arbitration with the division, and the  
904 arbitration must be conducted pursuant to s. 723.1255 and  
905 procedural rules adopted by the division.

906 (d) The association may adopt reasonable written rules  
907 governing the frequency, time, location, notice, records to be  
908 inspected, and manner of inspections, but may not require a  
909 member to demonstrate a proper purpose for the inspection, state  
910 a reason for the inspection, or limit a member's right to  
911 inspect records to less than 1 business day per month. The  
912 association may impose fees to cover the costs of providing  
913 copies of the official records, including the costs of copying  
914 and for personnel to retrieve and copy the records if the time  
915 spent retrieving and copying the records exceeds 30 minutes and  
916 if the personnel costs do not exceed \$20 per hour. Personnel  
917 costs may not be charged for records requests that result in the  
918 copying of 25 or fewer pages. The association may charge up to  
919 25 cents per page for copies made on the association's  
920 photocopier. If the association does not have a photocopy  
921 machine available where the records are kept, or if the records  
922 requested to be copied exceed 25 pages in length, the  
923 association may have copies made by an outside duplicating  
924 service and may charge the actual cost of copying, as supported  
925 by the vendor invoice. The association shall maintain an  
926 adequate number of copies of the recorded governing documents,  
927 to ensure their availability to members and prospective members.  
928 Notwithstanding this paragraph, the following records are not



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929 accessible to members or home owners:

930 1. A record protected by the lawyer-client privilege as  
931 described in s. 90.502 and a record protected by the work-  
932 product privilege, including, but not limited to, a record  
933 prepared by an association attorney or prepared at the  
934 attorney's express direction which reflects a mental impression,  
935 conclusion, litigation strategy, or legal theory of the attorney  
936 or the association and which was prepared exclusively for civil  
937 or criminal litigation, for adversarial administrative  
938 proceedings, or in anticipation of such litigation or  
939 proceedings until the conclusion of the litigation or  
940 proceedings.

941 2. E-mail addresses, telephone numbers, facsimile numbers,  
942 emergency contact information, any addresses for a home owner  
943 other than as provided for association notice requirements, and  
944 other personal identifying information of any person, excluding  
945 the person's name, lot designation, mailing address, and  
946 property address. Notwithstanding the restrictions in this  
947 subparagraph, an association may print and distribute to home  
948 owners a directory containing the name, park address, and  
949 telephone number of each home owner. However, a home owner may  
950 exclude his or her telephone number from the directory by so  
951 requesting in writing to the association. The association is not  
952 liable for the disclosure of information that is protected under  
953 this subparagraph if the information is included in an official  
954 record of the association and is voluntarily provided by a home  
955 owner and not requested by the association.

956 3. An electronic security measure that is used by the  
957 association to safeguard data, including passwords.

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958 4. The software and operating system used by the  
959 association which allows the manipulation of data, even if the  
960 home owner owns a copy of the same software used by the  
961 association. The data is part of the official records of the  
962 association.

963 Section 15. Section 723.1255, Florida Statutes, is amended  
964 to read:

965 723.1255 Alternative resolution of recall, election, and  
966 inspection and photocopying of official records disputes.-

967 (1) A dispute between a mobile home owner and a homeowners'  
968 association regarding the election and recall of officers or  
969 directors under s. 723.078(2)(b) or regarding the inspection and  
970 photocopying of official records under s. 723.079(5) must be  
971 submitted to mandatory binding arbitration with the division.  
972 The arbitration shall be conducted in accordance with this  
973 section and the procedural rules adopted by the division.

974 (2) Each party shall be responsible for paying its own  
975 attorney fees, expert and investigator fees, and associated  
976 costs. The cost of the arbitrators shall be divided equally  
977 between the parties regardless of the outcome.

978 (3) The division shall adopt procedural rules to govern  
979 mandatory binding arbitration proceedings ~~The Division of~~  
980 ~~Florida Condominiums, Timeshares, and Mobile Homes of the~~  
981 ~~Department of Business and Professional Regulation shall adopt~~  
982 ~~rules of procedure to govern binding recall arbitration~~  
983 ~~proceedings.~~

984 Section 16. This act shall take effect July 1, 2020.