

By Senator Hooper

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1 A bill to be entitled
2 An act relating to the Florida Mobile Home Act;
3 amending s. 723.005, F.S.; revising powers and duties
4 of the Division of Florida Condominiums, Timeshares,
5 and Mobile Homes of the Department of Business and
6 Professional Regulation relating to the act;
7 specifying that the Office of the Attorney General has
8 the power and duty to enforce certain provisions
9 relating to the act; amending s. 723.022, F.S.;
10 revising duties of a mobile home park owner; amending
11 s. 723.037, F.S.; conforming provisions to changes
12 made by the act; amending s. 723.038, F.S.; revising
13 requirements relating to mediations; amending s.
14 723.0381, F.S.; revising the circumstances under which
15 a party may file an action in the circuit court;
16 amending s. 723.068, F.S.; authorizing courts to award
17 treble damages under certain circumstances; amending
18 s. 723.079, F.S.; revising the powers and duties of
19 homeowners' associations; reenacting ss. 723.024(2)
20 and 723.0615(1), F.S., relating to compliance by
21 mobile home park owners and mobile home owners and
22 retaliatory conduct, respectively, to incorporate the
23 amendments made to s. 723.022, F.S., in references
24 thereto; reenacting s. 723.004(5), F.S., relating to
25 construction, to incorporate the amendments made to
26 ss. 723.022 and 723.038, F.S., in references thereto;
27 reenacting ss. 723.003(7)(b) and 723.033(7), F.S.,
28 relating to definitions and unreasonable lot rental
29 agreements, respectively, to incorporate amendments

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30 made to s. 723.038, F.S., in references thereto;
 31 reenacting s. 723.002(2), F.S., relating to
 32 application of chapter, to incorporate amendments made
 33 to ss. 723.038 and 723.068, F.S., in references
 34 thereto; reenacting s. 723.075(1) and (2), F.S.,
 35 relating to homeowners' associations, to incorporate
 36 an amendment made to s. 723.079, F.S., in references
 37 thereto; providing an effective date.
 38

39 Be It Enacted by the Legislature of the State of Florida:
 40

41 Section 1. Section 723.005, Florida Statutes, is amended to
 42 read:

43 723.005 Regulation by division and the Office of the
 44 Attorney General.—The division has the power and duty to ~~enforce~~
 45 ~~and ensure compliance with the provisions of~~ this chapter and
 46 rules adopted promulgated pursuant to this chapter. The Office
 47 of the Attorney General has hereto relating to the rental,
 48 ~~development, and sale of mobile home parks. However, the~~
 49 ~~division does not have the power and or~~ duty to enforce
 50 provisions relating to protections in this chapter, including,
 51 but not limited to, mobile home park rules and regulations or to
 52 ~~enforce the provisions of~~ ss. 723.022, 723.023, and 723.033.

53 Section 2. Present subsections (3), (4), and (5) of section
 54 723.022, Florida Statutes, are redesignated as subsections (4),
 55 (5), and (6), respectively, a new subsection (3) and subsections
 56 (7) and (8) are added to that section, and present subsection
 57 (3) of that section is amended, to read:

58 723.022 Mobile home park owner's general obligations.—A

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59 mobile home park owner shall at all times:

60 (3) Maintain improvements located on the lot for which the
61 park owner is responsible in a good state of repair and in a
62 good state of appearance, safety, and cleanliness.

63 (4) ~~(3)~~ Provide park residents and their guests and
64 homeowners' associations and other homeowner-organized groups or
65 entities with use of and access to the common areas, including
66 buildings and improvements thereto, at all reasonable times and
67 without requiring an additional fee or requiring additional
68 insurance coverage if the use is already covered by an existing
69 insurance policy held by the mobile home park owner ~~for the~~
70 benefit of the park residents and their guests.

71 (7) Refrain from enforcing any park rule or regulation not
72 adopted in accordance with s. 723.037.

73 (8) Refrain from collecting any lot rental increase that is
74 the subject of pending mediation or litigation.

75 Section 3. Paragraphs (a) and (b) of subsection (5) of
76 section 723.037, Florida Statutes, are amended to read:

77 723.037 Lot rental increases; reduction in services or
78 utilities; change in rules and regulations; mediation.—

79 (5) (a) Within 30 days after the date of the last scheduled
80 meeting described in subsection (4), the homeowners may ~~petition~~
81 ~~the division to~~ initiate mediation of the dispute pursuant to s.
82 723.038 if a majority of the affected homeowners have
83 designated, in writing, that:

84 1. The rental increase is unreasonable;

85 2. The rental increase has made the lot rental amount
86 unreasonable;

87 3. The decrease in services or utilities is not accompanied

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88 by a corresponding decrease in rent or is otherwise
89 unreasonable; or

90 4. The change in the rules and regulations is unreasonable.

91 (b) A park owner, within the same time period, may also
92 ~~petition the division to~~ initiate mediation of the dispute
93 pursuant to s. 723.038.
94

95 The purpose of this subsection is to encourage discussion and
96 evaluation by the parties of the comparable mobile home parks in
97 the competitive market area. The requirements of this subsection
98 are not intended to be enforced by civil or administrative
99 action. Rather, the meetings and discussions are intended to be
100 in the nature of settlement discussions prior to the parties
101 proceeding to litigation of any dispute.

102 Section 4. Section 723.038, Florida Statutes, is amended to
103 read:

104 (Substantial rewording of section see
105 s. 723.038, F.S., for present text.)

106 723.038 Presuit mediation.—A party may submit a dispute
107 arising from this chapter to presuit mediation in accordance
108 with s. 720.311. Election and recall disputes are not eligible
109 for mediation under this section, and such disputes must be
110 arbitrated by the division or filed in a court. Evictions
111 pursuant to s. 723.061 are not eligible for mediation under this
112 section.

113 Section 5. Subsection (1) of section 723.0381, Florida
114 Statutes, is amended to read:

115 723.0381 Civil actions; arbitration.—

116 (1) If the parties to a dispute choose to request mediation

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117 and either party refuses or fails to participate in such
118 mediation or, after mediation of a dispute pursuant to s.
119 723.038 has failed to provide a resolution of the dispute,
120 either party may file an action in the circuit court.

121 Section 6. Section 723.068, Florida Statutes, is amended to
122 read:

123 723.068 Attorney ~~Attorney's~~ fees; damages.—Except as
124 provided in s. 723.037, in any proceeding between private
125 parties to enforce ~~provisions of this chapter~~ or for damages
126 arising out of a failure of a party to comply with this chapter,
127 the prevailing party is entitled to a reasonable attorney
128 attorney's fee. A court may treble the damages awarded to a
129 prevailing mobile home owner or homeowners' association and must
130 state the basis for the treble damages award, if any, in its
131 judgment.

132 Section 7. Subsection (1) of section 723.079, Florida
133 Statutes, is amended to read:

134 723.079 Powers and duties of homeowners' association.—

135 (1) An association may contract, sue, or be sued with
136 respect to the exercise or nonexercise of its powers. For these
137 purposes, the powers of the association include, but are not
138 limited to, the maintenance, management, and operation of the
139 park property and the power to institute, maintain, settle, or
140 appeal actions or hearings in its name on behalf of all
141 homeowners concerning matters of common interest to most or all
142 owners, including, but not limited to, disputes arising out of
143 this chapter.

144 Section 8. For the purpose of incorporating the amendments
145 made by this act to section 723.022, Florida Statutes, in a

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146 reference thereto, subsection (2) of section 723.024, Florida
147 Statutes, is reenacted to read:

148 723.024 Compliance by mobile home park owners and mobile
149 home owners.—Notwithstanding any other provision of this chapter
150 or of any local law, ordinance, or code:

151 (2) A lien, penalty, fine, or other administrative or civil
152 proceeding may not be brought against a mobile home owner or
153 mobile home for any duty or responsibility of the mobile home
154 park owner under s. 723.022 or against a mobile home park owner
155 or mobile home park property for any duty or responsibility of
156 the mobile home owner under s. 723.023.

157 Section 9. For the purpose of incorporating the amendments
158 made by this act to section 723.022, Florida Statutes, in a
159 reference thereto, subsection (1) of section 723.0615, Florida
160 Statutes, is reenacted to read:

161 723.0615 Retaliatory conduct.—

162 (1) It is unlawful for a mobile home park owner to
163 discriminatorily increase a home owner's rent or
164 discriminatorily decrease services to a home owner, or to bring
165 or threaten to bring an action for possession or other civil
166 action, primarily because the park owner is retaliating against
167 the home owner. In order for the home owner to raise the defense
168 of retaliatory conduct, the home owner must have acted in good
169 faith and not for any improper purposes, such as to harass or to
170 cause unnecessary delay or for frivolous purpose or needless
171 increase in the cost of litigation. Examples of conduct for
172 which the park owner may not retaliate include, but are not
173 limited to, situations where:

174 (a) The home owner has in good faith complained to a

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175 governmental agency charged with responsibility for enforcement
176 of a building, housing, or health code of a suspected violation
177 applicable to the mobile home park;

178 (b) The home owner has organized, encouraged, or
179 participated in a homeowners' organization; or

180 (c) The home owner has complained to the park owner for
181 failure to comply with s. 723.022.

182 Section 10. For the purpose of incorporating the amendments
183 made by this act to sections 723.022 and 723.038, Florida
184 Statutes, in references thereto, subsection (5) of section
185 723.004, Florida Statutes, is reenacted to read:

186 723.004 Legislative intent; preemption of subject matter.—

187 (5) Nothing in this chapter shall be construed to prevent
188 the enforcement of a right or duty under this section, s.
189 723.022, s. 723.023, s. 723.031, s. 723.032, s. 723.033, s.
190 723.035, s. 723.037, s. 723.038, s. 723.061, s. 723.0615, s.
191 723.062, s. 723.063, or s. 723.081 by civil action after the
192 party has exhausted its administrative remedies, if any.

193 Section 11. For the purpose of incorporating the amendments
194 made by this act to section 723.038, Florida Statutes, in a
195 reference thereto, paragraph (b) of subsection (7) of section
196 723.003, Florida Statutes, is reenacted to read:

197 723.003 Definitions.—As used in this chapter, the term:

198 (7)

199 (b) For purposes of mediation under ss. 723.037 and
200 723.038, the term "parties" means a park owner as defined in
201 subsection (13) and a homeowners' committee selected pursuant to
202 s. 723.037.

203 Section 12. For the purpose of incorporating the amendments

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204 made by this act to section 723.038, Florida Statutes, in a
205 reference thereto, subsection (7) of section 723.033, Florida
206 Statutes, is reenacted to read:

207 723.033 Unreasonable lot rental agreements; increases,
208 changes.—

209 (7) An arbitrator or mediator under ss. 723.037, 723.038,
210 and 723.0381 shall employ the same standards as set forth in
211 this section.

212 Section 13. For the purpose of incorporating the amendments
213 made by this act to sections 723.038 and 723.068, Florida
214 Statutes, in references thereto, subsection (2) of section
215 723.002, Florida Statutes, is reenacted to read:

216 723.002 Application of chapter.—

217 (2) The provisions of ss. 723.035, 723.037, 723.038,
218 723.054, 723.055, 723.056, 723.058, and 723.068 are applicable
219 to mobile home subdivision developers and the owners of lots in
220 mobile home subdivisions.

221 Section 14. For the purpose of incorporating the amendment
222 made by this act to section 723.079, Florida Statutes, in a
223 reference thereto, subsections (1) and (2) of section 723.075,
224 Florida Statutes, are reenacted to read:

225 723.075 Homeowners' associations.—

226 (1) In order to exercise the rights of a homeowners'
227 association as provided in this chapter, the mobile home owners
228 shall form an association in compliance with this section and
229 ss. 723.077, 723.078, and 723.079, which shall be a corporation
230 for profit or not for profit and of which not less than two-
231 thirds of all of the mobile home owners within the park shall
232 have consented, in writing, to become members or shareholders.

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233 Upon incorporation of the association, all consenting mobile
234 home owners in the park may become members or shareholders. The
235 term "member" or "shareholder" means a mobile home owner who
236 consents to be bound by the articles of incorporation, bylaws,
237 and policies of the incorporated homeowners' association. The
238 association may not have a member or shareholder who is not a
239 bona fide owner of a mobile home located in the park. Upon
240 incorporation and service of the notice described in s. 723.076,
241 the association shall become the representative of all the
242 mobile home owners in all matters relating to this chapter,
243 regardless of whether the homeowner is a member of the
244 association.

245 (2) It is the intent of the Legislature that any
246 homeowners' association properly created pursuant to chapter 715
247 prior to the effective date of this act be deemed an association
248 created pursuant to the provisions of this section and have all
249 rights and powers granted under this section and ss. 723.077 and
250 723.079. Any inconsistency in the provisions of the charter of
251 such previously created homeowners' association shall be deemed
252 amended to conform herewith.

253 Section 15. This act shall take effect July 1, 2023.