

STORAGE NAME: h1299s2.ca

DATE: April 17, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1299

RELATING TO: Florida Mobile Home Act

SPONSOR(S): Committee on Community Affairs, Committee on Real Property & Probate,
Representative Crow & others

STATUTE(S) AFFECTED: Amending sections 723.006, 732.021, 723.037, 723.0381, 723.063,
and 723.07, Florida Statutes

COMPANION BILL(S): SB 750 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE YEAS 6 NAYS 1
- (2) COMMUNITY AFFAIRS YEAS 6 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

This bill revises the Florida Mobile Home Act. The powers and duties of the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR) are amended to:

- * Prohibit the Division from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation;
- * Direct the Division to adopt rules for the implementation of all civil penalties or administrative actions; and
- * Authorize the Division to enter into consent orders.

The bill allows either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. The bill allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel.

The bill extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. The home owners' right of first refusal is extended to apply to bona fide offers to purchase the park under specified conditions.

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The bill should not have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 723, F.S., is known as the "Florida Mobile Home Act" and provides for regulation of mobile homes by the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR).

Section 723.006, F.S., provides powers and duties of the Division. Included in such powers is the authority to issue an order requiring a mobile home park owner, or its assignee or agent, to cease and desist from an unlawful practice and take such affirmative action as the Division judges will carry out the purposes of this chapter. The affirmative action may include:

- * Refunds of rent increases, improper fees, charges and assessments;
- * Filing and utilization of documents which correct a statutory or rule violation;
- * Reasonable action necessary to correct a statutory or rule violation.

Section 723.021 provides provisions governing obligations of good faith and fair dealing. The section declares every rental agreement or duty within this chapter imposes an obligation of good faith and fair dealings in its performance or enforcement.

Section 723.035, F.S., governs rules and regulations. Subsection (1) provides for posting of all rules and regulations in the recreation hall or other conspicuous place in the park. Subsection (2) prohibits the park owner from imposing a rule or regulation providing for payment of a fine, fee, assessment or charge, except as provided in the prospectus or offering circular filed pursuant to section 723.012, F.S., if required, and until the park owner has complied with the notice requirements of section 723.037, F.S.

Further, the Division has adopted Rule 61B-32.004(1), F.A.C., which requires the park owner to disclose in good faith all material factors resulting in the decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations. The rule further requires the park owner to disclose specific information about the basis for said increases.

Section 723.037, F.S., governs notice procedures afforded mobile home owners by the park owner when he or she increases lot rentals, reduces services or utilities, or changes the park rules or regulations. The park owner must give written notice to each affected mobile home owner, or the home owners' association, if applicable, at least 90 days prior to any such changes. Subsection (4) requires that the park owner meet with a committee representing the affected home owners within 30 days of receipt of the notice to discuss the reasons for the lot rental increase, reduction in services or utilities, or change in the rules or regulations. Subsection (5) authorizes the home owners and the park owner to petition the division, within 30 days after the meeting, to initiate mediation of a dispute over such changes. Before petitioning the division, a majority of the home owners must designate in writing that the rental increase is unreasonable; the rental increase has made the lot rental amount unreasonable; the decrease in services or utilities is not accompanied by a decrease in rent or is otherwise unreasonable; or the change in the rules or regulations is unreasonable.

Section 723.0381, F.S., addresses arbitration in civil actions. Subsection (2) requires the circuit court to refer a pending rental increase dispute between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement, the parties may pursue the case in circuit court. However, the party that rejected the arbitration decision and requested to proceed in circuit court must pay all costs and fees if the trial decision is less favorable than the arbitration decision. In addition, section 723.037, F.S., authorizes the home owners and the park owner to initiate mediation by a request to the Division.

Section 723.063, F.S., authorizes home owners to raise the defense of material noncompliance with Chapter 723, F.S., in any action against him or her for nonpayment of rent. Subsection (1) requires that the defense be raised after seven days have elapsed since the home owner notified the park owner of his intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with Chapter 723, F.S. Subsection (2) requires the home owner to pay into the court's registry the amount of the rent relating to the claim of material noncompliance. Subsection (3) allows the park owner to apply to the court for disbursement of the registry funds if the park owner shows personal hardship or that he or she is in actual danger of loss of the premises as a result of the failure to pay the subject rent.

Section 723.071, F.S., governs the sale of mobile home parks. Subsection (1)(a) requires a park owner who offers the park for sale to notify the home owners' association, if the mobile home owners have created a home owners' association, pursuant to section 723.075, F.S., through section 723.079, F.S.. Paragraph (b) gives the association the right of first refusal on the park; the association must meet the price and terms by executing a contract with the owner within 45 days from the date of mailing the notice. If no contract is executed within 45 days, the park owner has no further obligation to the association; however paragraph (c) provides the association with an additional 10 days to meet the price and terms of the park owner if he or she elects to offer the park at a lower price than that specified in the notice to the association. Subsection (2) provides that the right of first refusal does not apply to receipt, by the park owner, of a bona fide offer to purchase the park. In such cases, his or her only obligation to the association is to notify the officers of receipt of the offer and disclose the price and other material terms and conditions under which he or she would consider selling the park, and consider any offer of the association. Subsection (3) defines the term "notify" as to place notice in the U.S. mail addressed to the officers of the association, and "offer" as any solicitation by the park owner to the general public. Subsection (4) provides the following exceptions to the first right of refusal by home owners:

- (a) Sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate;
- (b) Any transfer by gift, devise or operation of law;
- (c) Any transfer by a corporation to an affiliate; "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation;

- (d) Any transfer by a partnership to one of its partners;
- (e) Any conveyance of interest in the park incidental to the financing of the park;
- (f) Any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property;
- (g) Any sale or transfer between or among joint tenants or tenants in common owning the park;
- (h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot, or
- (I) Any purchase of the park by a government entity exercising its eminent domain powers.

The 1996 Mobile Home Study Commission

In response to continuing litigation concerning the duration, applicability, and amendments of the prospectus or offering circular offered to prospective mobile home residents, the Florida Legislature established the 1996 Mobile Home Study Commission. See section 2, chapter 96-394, Laws of Florida. The Commission was directed to review and recommend appropriate changes to the Florida Mobile Home Act. The Commission held five meetings and heard testimony from mobile home owners, park owners, groups representing these parties, and the DBPR. After thoroughly reviewing the issues, and an intervening decision by the First District Court of Appeal, the Commission determined to make no specific recommendations for statutory changes to the Act. The Final Report of the Mobile Home Study Commission (January, 1997), reviews the background of many contentious issues relating to mobile home parks, especially with regard to issues surrounding the prospectus offered to prospective tenants. The report reveals that during consideration by the members of the circumstances under which a prospectus should be amended, they discussed amendments to allow used mobile homes in a park, as long as they are no older than the average age of other mobile homes in the park. See Final Report of the Mobile Home Study Commission, Report B, page 15; and Appendix C, Minutes of the October 31, 1996 meeting.

B. EFFECT OF PROPOSED CHANGES:

This bill revises the Florida Mobile Home Act, Chapter 723, F.S.. The powers and duties of the Division of Land Sales, Condominiums and Mobile Homes (Division) are amended to:

- * Prohibits the Division from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. Minor violations of the chapter will be limited to a fine of \$250.

- * Directs the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.
- * Authorizes the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.

The bill allows either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

The bill provides for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations. This provision is nearly identical to an existing agency rule.

The bill allows, rather than requires, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel.

The bill extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

The bill extends the home owners' right of first refusal to apply to bona fide offers to purchase the park under specified conditions. If the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

The subsection defines "same terms and conditions" to mean that the consideration is the same and that the seller or the property or properties will be eligible for deferral of all federal and state income taxes to the same extent as if the unsolicited offer were accepted, and that the seller's business and personal estate planning objectives can be met by a sale to the homeowners or the homeowner's association.

APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:
 - (1) any authority to make rules or adjudicate disputes?

The Division is required to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.

In addition, this bill will allow a homeowner's association to litigate and have the same defenses as an individual homeowner in an action for rent or possession of a mobile home lot. The bill requires disclosure of all material factors resulting in a decision to increase lot rental amounts, reduce services or utilities, or change rules and regulations.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill makes changes in the Mobile Home Act. The inclusion of mobile home owners' associations as parties who may defend upon the ground of a material noncompliance with the provisions of Chapter 723, F.S., may provide home owners some assistance in seeking redress.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

C. SECTION-BY-SECTION RESEARCH:

Section 1. Subsection (5) of section 723.006, F.S., 1996 Supplement, is amended, and present subsections (6), (7), and (8) are renumbered as subsections (8), (9), and (10), and new subsections (6) and (7) are added to the section.

Subsection (5) is amended to prohibit the Division of Land Sales, Condominiums and Mobile Homes (Division) of the Department of Professional Regulation (DBPR) from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. The subsection is amended to provide that minor violations of the chapter will be limited to a fine of \$250.

New subsection (6) is created to direct the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations. A major violation is defined to mean a violation of this

chapter which endangers the public health, safety, and welfare or causes substantial economic harm to the mobile home park residents.

Subsection (7) authorizes the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.

Section 2. Section 723.021, F.S., relating to obligation of good faith and fair dealings, is amended to allow either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

Section 3. Section 723.037, F.S., relating to lot rental increases, reduction in services or utilities, change in rules and regulations, and mediation, is amended to create a new paragraph (b) regarding the disclosures required to be made by a park owner or subdivision developer to the home owners at meetings to discuss rental increases, or a notice of change in the park rules or regulations, or a reduction of services. The new language codifies the division's administrative rule, Rule 61B-32.004(1), F.A.C., with the exception of the last sentence. The last sentence requires the park owner to prepare a written summary of the material factors and retain a copy for 3 years. The park owner must provide the committee a copy of the summary, upon request.

Section 4. Section 723.0381, F.S., relating to civil actions, arbitration, is amended to allow, rather than require, a court to refer a pending rental increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The section is further amended to require the court to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. Current language requiring referral to a panel of three arbitrators is deleted.

Section 5. Section 723.063, F.S., relating to defenses to action for rent or possession, and procedure, is amended to extend to a home owners' association the same defenses available to an individual home owner in an action for rent or possession based on nonpayment of rent. The bill also amends this section to authorize the home owner or association to raise the defense of material noncompliance, as well as other available defenses, in an action based on a rent increase. The section is further amended to provide for such defense to be made pursuant to Rule 1.220, Florida Rules of Civil Procedure (relating to class actions).

Section 6. Subsection (2) of section 723.071, F.S., relating to sale of mobile home parks, is amended to revise the existing exemption from the right of first refusal granted to a home owners' association when the park owner receives a bona fide offer to purchase the park.

The subsection is amended to provide that the mobile home park is free to execute a contract for the sale of the park to a party or parties other than the homeowners or the association, if:

- * It is clear from the face of the bona fide offer that the homeowners or homeowner's association could not match the terms and conditions contained in the bona fide offer by making an offer containing the same terms and conditions.

However, if the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

The subsection defines "same terms and conditions" to mean that the consideration is the same and that the seller or the property or properties will be eligible for deferral of all federal and state income taxes to the same extent as if the unsolicited offer were accepted, and that the seller's business and personal estate planning objectives can be met by a sale to the homeowners or the homeowner's association.

Section 7. An effective date of October 1, 1997, is provided.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown

2. Direct Private Sector Benefits:

Mobile home owners within parks could benefit from the changes in section 723.037, F.S., which foster better communication between the park owner and home owners prior to initiating an action based on rental increases, reduction of services or a change in the rules or regulations. Increased communication regarding these issues may reduce litigation, which would financially benefit both park owners and home owners.

3. Effects on Competition, Private Enterprise and Employment Market:

Unknown.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Comparison of CS/HB 1299 and CS/CS/HB 1299

The Committee on Community Affairs adopted two amendments that are incorporated into the CS/CS/HB 1299. The CS/CS/HB 1299 is substantially different from the CS/HB 1299.

CS/CS/HB 1299 includes several provisions not included in CS/HB 1299. These include:

- * Prohibiting the Division of Land Sales, Condominiums and Mobile Homes (Division) from requiring a refund of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons, unless there is evidence of a major violation. Minor violations of the chapter will be limited to a fine of \$250.
- * Directing the Division to adopt rules for the implementation of all civil penalties or administrative actions, including, but not limited to, establishing major and minor violations.
- * Authorizing the Division to enter into consent orders in which a violator does not admit nor deny the factual matters or the conclusions of law reached by the Division, solely for the purpose of entering into the consent order. Such consent orders may not be admitted into a court of law for the purpose of proving any fact or violation of law set forth in the consent order.
- * Allowing either party to a dispute under this chapter to seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court must award reasonable costs and attorney's fees to the prevailing party for proving the noncompliance.

CS/HB 1299 defines the term "pass-on charge." This new definition is not included in CS//CS/HB.

The provision in CS/CS/HB 1299 providing for disclosure by the park owner to home owners of factors leading to an increase in lot rentals, reduction in services or utilities, or changes in rules or regulations is substantially similar to that in CS/HB 1299. The provision in CS/CS/HB is revised to more accurately reflect an existing agency rule. The provision in CS/HB 1299 providing that any reasons not disclosed at the meeting by the park owner are not admissible into evidence in any subsequent administrative procedure or civil action between the parties is not included in CS/CS/HB 1299.

CS/HB 1299 deletes a requirement for nonbinding arbitration of certain disputes between park owners and home owners, and extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. CS/CS/HB 1299 also extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association. CS/CS/HB 1299 does not delete this requirement. Rather, CS/CS/HB 1299 allows, rather than requires, a court to refer a pending rental

increase dispute to nonbinding arbitration pursuant to section 44.103, F.S., and the Florida Rules of Civil Procedure. The court is required to order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to arbitrators primarily through statements and arguments of counsel. CS/CS/HB 1299 also extends the defenses and duties applicable to a mobile home owner in a civil action to a mobile home owners' association.

CS/HB 1299 deletes exemptions to the home owners' right of first refusal, and extends the first right of refusal to apply to bona fide offers to purchase the park. CS/CS/HB 1299 extends the home owners' right of first refusal to apply to bona fide offers to purchase the park under specified conditions. If the bona fide offer contains terms and conditions the homeowners could match, the mobile park owner is required to negotiate in good faith with the homeowner or homeowner's association for the sale of the park.

Comparison of HB 1299 and CS/HB 1299

The Committee on Real Property & Probate adopted the following amendments that are incorporated into the CS/HB 1299:

- 1) Technical amendment, correcting a reference;
- 2) Removed the language that provided for payment of pass-on charges to the park owner in reimbursement of the charges paid by the park owner;
- 3) Removed a provision prohibiting rules or regulations that would not allow previously owned mobile homes from being permanently located in a mobile home park; and,
- 4) Removed the section of the bill amending section 723.083, F.S. This section currently requires governmental entities to determine that adequate mobile home parks or "other suitable facilities" exist for the relocation of the mobile home owners before approving any application for rezoning, or taking any other official action that would result in the removal or relocation of a mobile home park. The original bill would have removed "other suitable facilities" from this section.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Legislative Research Director:

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