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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2016	.	
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The Committee on Community Affairs (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(6) With regard to any written complaint alleging a



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11 violation of any provision of this chapter or any rule adopted
12 ~~promulgated~~ pursuant thereto, the division shall, within 30 days
13 after receipt of a written complaint, periodically notify, in
14 writing, the person who filed the complaint of the status of the
15 complaint. Thereafter, the division shall notify the complainant
16 of the status of the investigation within 90 days after receipt
17 of the written complaint. Upon completion of the investigation,
18 the division investigation, whether probable cause has been
19 found, and the status of any administrative action, civil
20 action, or appellate action, and if the division has found that
21 probable cause exists, it shall notify, in writing, the
22 complainant and the party complained against of the results of
23 the investigation and disposition of the complaint.

24 (15) The division shall adopt rules to implement the board
25 member training requirements for educational programs as
26 provided in this chapter. The Department of Business and
27 Professional Regulation shall publish a notice of proposed rule
28 pursuant to s. 120.54(3)(a) by October 1, 2016. Such rules shall
29 include the requirements for content and notice of the board
30 member training program to assure that providers meet minimum
31 training requirements.

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

34 723.031 Mobile home lot rental agreements.-

35 (5) The rental agreement shall contain the lot rental
36 amount and services included. An increase in lot rental amount
37 upon expiration of the term of the lot rental agreement shall be
38 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),
39 whichever is applicable, provided that, pursuant to s.



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40 723.059(4), the amount of the lot rental increase is disclosed
41 and agreed to by the purchaser, in writing. An increase in lot
42 rental amount shall not be arbitrary or discriminatory between
43 similarly situated tenants in the park. A ~~Ne~~ lot rental amount
44 may not be increased during the term of the lot rental
45 agreement, except:

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

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

50 (c) That a ~~ne~~ charge may not be collected which ~~that~~
51 results in payment of money for sums previously collected as
52 part of the lot rental amount. The provisions hereof
53 notwithstanding, the mobile home park owner may pass on, at any
54 time during the term of the lot rental agreement, ad valorem
55 property taxes, non-ad valorem assessments, and utility charges,
56 or increases of either, provided that the ad valorem property
57 taxes, non-ad valorem assessments, and ~~the~~ utility charges are
58 not otherwise being collected in the remainder of the lot rental
59 amount and provided further that the passing on of such ad
60 valorem taxes, non-ad valorem assessments, or utility charges,
61 or increases of either, was disclosed prior to tenancy, was
62 being passed on as a matter of custom between the mobile home
63 park owner and the mobile home owner, or such passing on was
64 authorized by law. A park owner is deemed to have disclosed the
65 passing on of ad valorem property taxes and non-ad valorem
66 assessments if ad valorem property taxes or non-ad valorem
67 assessments were disclosed as a factor for increasing the lot
68 rental amount in the prospectus or rental agreement. Such ad



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69 valorem taxes, non-ad valorem assessments, and utility charges
70 shall be a part of the lot rental amount as defined by this
71 chapter. The term "non-ad valorem assessments" has the same
72 meaning as provided in s. 197.3632(1)(d). Other provisions of
73 this chapter notwithstanding, pass-on charges may be passed on
74 only within 1 year of the date a mobile home park owner remits
75 payment of the charge. A mobile home park owner is prohibited
76 from passing on any fine, interest, fee, or increase in a charge
77 resulting from a park owner's payment of the charge after the
78 date such charges become delinquent. Nothing herein shall
79 prohibit a park owner and a homeowner from mutually agreeing to
80 an alternative manner of payment to the park owner of the
81 charges.

82 (d) If a notice of increase in lot rental amount is not
83 given 90 days before the renewal date of the rental agreement,
84 the rental agreement must remain under the same terms until a
85 90-day notice of increase in lot rental amount is given. The
86 notice may provide for a rental term shorter than 1 year in
87 order to maintain the same renewal date.

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

90 723.059 Rights of purchaser.—

91 (1) The purchaser of a mobile home within a mobile home
92 park may become a tenant of the park if such purchaser would
93 otherwise qualify with the requirements of entry into the park
94 under the park rules and regulations, subject to the approval of
95 the park owner, but such approval may not be unreasonably
96 withheld. The purchaser of the mobile home may cancel or rescind
97 the contract for purchase of the mobile home if the purchaser's



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98 tenancy has not been approved by the park owner 5 days before
99 the closing of the purchase.

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

102 723.075 Homeowners' associations.—

103 (1) In order to exercise the rights provided in this
104 chapter s. 723.071, the mobile home owners shall form an
105 association in compliance with this section and ss. 723.077,
106 723.078, and 723.079, which shall be a corporation for profit or
107 not for profit and of which not less than two-thirds of all of
108 the mobile home owners within the park shall have consented, in
109 writing, to become members or shareholders. Upon incorporation
110 of the association such consent by two-thirds of the mobile home
111 owners, all consenting mobile home owners in the park may become
112 members or shareholders. The term "member" or "shareholder"
113 means a mobile home owner who consents to be bound by the
114 articles of incorporation, bylaws, and policies of the
115 incorporated homeowners' association and their successors shall
116 become members of the association and shall be bound by the
117 provisions of the articles of incorporation, the bylaws of the
118 association, and such restrictions as may be properly
119 promulgated pursuant thereto. The association may not shall have
120 a ne member or shareholder who is not a bona fide owner of a
121 mobile home located in the park. Upon incorporation and service
122 of the notice described in s. 723.076, the association shall
123 become the representative of all the mobile home owners in all
124 matters relating to this chapter, regardless of whether the
125 homeowner is a member of the association.

126 Section 5. Paragraphs (b) and (c) of subsection (2) of



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127 section 723.078, Florida Statutes, are amended to read:

128 723.078 Bylaws of homeowners' associations.—

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

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

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

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

136 2. A member may not vote by general proxy but may vote by
137 limited proxies substantially conforming to a limited proxy form
138 adopted by the division. Limited proxies and general proxies may
139 be used to establish a quorum. Limited proxies may be used for
140 votes taken to amend the articles of incorporation or bylaws
141 pursuant to this section, and any other matters for which this
142 chapter requires or permits a vote of members, except that no
143 proxy, limited or general, may be used in the election of board
144 members. If a mobile home or subdivision lot is owned jointly,
145 the owners of the mobile home or subdivision lot must be counted
146 as one for the purpose of determining the number of votes
147 required for a majority. Only one vote per mobile home or
148 subdivision lot shall be counted. Any number greater than 50
149 percent of the total number of votes constitutes a majority.

150 Notwithstanding ~~the provisions of~~ this section, members may vote
151 in person at member meetings or by secret ballot, including
152 absentee ballots, as defined by the division.

153 3. A proxy is effective only for the specific meeting for
154 which originally given and any lawfully adjourned meetings
155 thereof. In no event shall any proxy be valid for a period



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156 longer than 90 days after the date of the first meeting for
157 which it was given. Every proxy shall be revocable at any time
158 at the pleasure of the member executing it.

159 4. A member of the board of directors or a committee may
160 submit in writing his or her agreement or disagreement with any
161 action taken at a meeting that the member did not attend. This
162 agreement or disagreement may not be used as a vote for or
163 against the action taken and may not be used for the purposes of
164 creating a quorum.

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

166 1. Meetings of the board of directors and meetings of its
167 committees at which a quorum is present shall be open to all
168 members. Notwithstanding any other provision of law, the
169 requirement that board meetings and committee meetings be open
170 to the members does not apply to board or committee meetings
171 held for the purpose of discussing personnel matters or meetings
172 between the board or a committee and the association's attorney,
173 with respect to potential or pending litigation, where the
174 meeting is held for the purpose of seeking or rendering legal
175 advice, and where the contents of the discussion would otherwise
176 be governed by the attorney-client privilege. Notice of meetings
177 shall be posted in a conspicuous place upon the park property at
178 least 48 hours in advance, except in an emergency. Notice of any
179 meeting in which assessments against members are to be
180 considered for any reason shall specifically contain a statement
181 that assessments will be considered and the nature of such
182 assessments.

183 2. A board or committee member's participation in a meeting
184 via telephone, real-time videoconferencing, or similar real-time



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185 telephonic, electronic, or video communication counts toward a
186 quorum, and such member may vote as if physically present. A
187 speaker shall be used so that the conversation of those board or
188 committee members attending by telephone may be heard by the
189 board or committee members attending in person, as well as by
190 members present at a meeting.

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

194 4. The right to attend meetings of the board of directors
195 and its committees includes the right to speak at such meetings
196 with reference to all designated agenda items. The association
197 may adopt reasonable written rules governing the frequency,
198 duration, and manner of members' statements. Any item not
199 included on the notice may be taken up on an emergency basis by
200 at least a majority plus one of the members of the board. Such
201 emergency action shall be noticed and ratified at the next
202 regular meeting of the board. Any member may tape record or
203 videotape meetings of the board of directors and its committees,
204 except meetings between the board of directors or its appointed
205 homeowners' committee and the park owner. The division shall
206 adopt reasonable rules governing the tape recording and
207 videotaping of the meeting.

208 5. Except as provided in paragraph (i), a vacancy occurring
209 on the board of directors may be filled by the affirmative vote
210 of the majority of the remaining directors, even though the
211 remaining directors constitute less than a quorum; by the sole
212 remaining director; if the vacancy is not so filled or if no
213 director remains, by the members; or, on the application of any



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214 person, by the circuit court of the county in which the
215 registered office of the corporation is located.

216 6. The term of a director elected or appointed to fill a
217 vacancy expires at the next annual meeting at which directors
218 are elected. A directorship to be filled by reason of an
219 increase in the number of directors may be filled by the board
220 of directors, but only for the term of office continuing until
221 the next election of directors by the members.

222 7. A vacancy that will occur at a specific later date, by
223 reason of a resignation effective at a later date, may be filled
224 before the vacancy occurs. However, the new director may not
225 take office until the vacancy occurs.

226 8.a. The officers and directors of the association have a
227 fiduciary relationship to the members.

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

233 9. In discharging his or her duties, a director may rely on
234 information, opinions, reports, or statements, including
235 financial statements and other financial data, if prepared or
236 presented by:

237 a. One or more officers or employees of the corporation who
238 the director reasonably believes to be reliable and competent in
239 the matters presented;

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



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243 c. A committee of the board of directors of which he or she
244 is not a member if the director reasonably believes the
245 committee merits confidence.

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

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

253 Section 6. Section 723.0781, Florida Statutes, is amended
254 to read:

255 723.0781 Board member training programs.—

256 (1) Within 90 days after being elected or appointed to the
257 board, a newly elected or appointed director shall certify by an
258 affidavit in writing to the secretary of the association that he
259 or she has read the association's current articles of
260 incorporation, bylaws, and the mobile home park's prospectus,
261 rental agreement, rules, regulations, and written policies; that
262 he or she will work to uphold such documents and policies to the
263 best of his or her ability; and that he or she will faithfully
264 discharge his or her fiduciary responsibility to the
265 association's members.

266 (2) In lieu of this written certification, within 90 days
267 after being elected or appointed to the board, the newly elected
268 or appointed director may submit a certificate of having
269 satisfactorily completed the educational curriculum approved by
270 the division within 1 year before or 90 days after the date of
271 election or appointment. The educational certificate is valid



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272 and does not have to be resubmitted as long as the director
273 serves on the board without interruption.

274 (3) A director who fails to timely file the written
275 certification or educational certificate is suspended from
276 service on the board until he or she complies with this section.
277 The board may temporarily fill the vacancy during the period of
278 suspension.

279 (4) The secretary of the association shall retain a
280 director's written certification or educational certificate for
281 inspection by the members for 5 years after the director's
282 election or the duration of the director's uninterrupted tenure,
283 whichever is longer. Failure to have such written certification
284 or educational certificate on file does not affect the validity
285 of any board action.

286 (5) This section becomes effective on October 1, 2016. Any
287 member of the board of directors of a homeowners' association
288 not in compliance with the requirements of this section may not
289 be considered in violation of this section until after October
290 1, 2017.

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

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete everything before the enacting clause
296 and insert:

297 A bill to be entitled
298 An act relating to mobile homes; amending s. 723.006,
299 F.S.; revising certain notice requirements for written
300 complaints; requiring the Division of Florida



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301 Condominiums, Timeshares, and Mobile Homes to adopt
302 rules to implement board member training requirements;
303 providing notice and requirements of such rules;
304 amending s. 723.031, F.S.; authorizing a mobile home
305 park owner to pass on non-ad valorem assessments to a
306 tenant under certain circumstances; providing that a
307 mobile home park owner is deemed to have disclosed the
308 passing on of certain taxes and assessments under
309 certain circumstances; requiring the non-ad valorem
310 assessments to be a part of the lot rental amount;
311 requiring that a renewed rental agreement remain under
312 the same terms unless certain notice is provided;
313 amending s. 723.059, F.S.; authorizing a mobile home
314 purchaser to cancel or rescind the contract to
315 purchase under certain circumstances; amending s.
316 723.075, F.S.; revising the rights that mobile home
317 owners exercise if they form an association;
318 authorizing mobile home owners to become members upon
319 incorporation of the association; defining the terms
320 "member" and "shareholder"; deleting provisions
321 relating to memberships of successors to home owners;
322 amending s. 723.078, F.S.; specifying voting
323 requirements for homeowners' associations; specifying
324 the requirements for a majority of votes; authorizing
325 members to vote by secret ballot and absentee ballot;
326 prohibiting the tape recording or videotaping of
327 meetings between the board of directors or its
328 committees and the park owner; amending s. 723.0781,
329 F.S.; providing a date by which certain provisions are



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330 effective; providing that board members may not be
331 considered in violation of such provisions until after
332 a specified date; providing an effective date.