

1 A bill to be entitled
2 An act relating to mobile homes; amending s. 723.006,
3 F.S.; revising certain notice requirements for written
4 complaints; requiring the Division of Florida
5 Condominiums, Timeshares, and Mobile Homes to adopt
6 rules relating to board member training for mobile
7 home park homeowners' associations; requiring the
8 department to publish a notice of the proposed rules;
9 providing rule requirements; amending s. 723.031,
10 F.S.; authorizing a mobile home park owner to pass on
11 non-ad valorem assessments to a tenant under certain
12 circumstances; providing that a mobile home park owner
13 is deemed to have disclosed the passing on of certain
14 taxes and assessments under certain circumstances;
15 providing a definition; requiring the non-ad valorem
16 assessments to be a part of the lot rental amount;
17 requiring that a renewed rental agreement remain under
18 the same terms unless certain notice is provided;
19 amending s. 723.059, F.S.; authorizing a mobile home
20 purchaser to cancel or rescind the contract to
21 purchase under certain circumstances; amending s.
22 723.075, F.S.; revising the rights that mobile home
23 owners exercise if they form an association;
24 authorizing mobile home owners to become members upon
25 incorporation of the association; defining the terms
26 "member" and "shareholder"; deleting provisions

27 relating to memberships of successors to home owners;
 28 revising when the association becomes the
 29 representative of all the mobile home owners; amending
 30 s. 723.078, F.S.; specifying voting requirements for
 31 homeowners' associations; specifying the requirements
 32 for a majority of votes; authorizing members to vote
 33 by secret ballot and absentee ballot; prohibiting the
 34 tape recording or videotaping of meetings between the
 35 board or committee and the park owner; amending s.
 36 723.0781, F.S.; delaying applicability of certain
 37 board member training requirements; specifying a
 38 future date after which directors who fail to comply
 39 with the training requirements are deemed to commit a
 40 violation; providing an effective date.

41

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

43

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

47 723.006 Powers and duties of division.—In performing its
 48 duties, the division has the following powers and duties:

49 (6) With regard to any written complaint alleging a
 50 violation of any provision of this chapter or any rule adopted
 51 ~~promulgated~~ pursuant thereto, the division shall, within 30 days
 52 after receipt of a written complaint, ~~periodically~~ notify, in

53 writing, the person who filed the complaint of the status of the
54 complaint. Thereafter, the division shall notify the complainant
55 of the status of the investigation within 90 days after receipt
56 of the written complaint. Upon completion of the investigation,
57 the division investigation, whether probable cause has been
58 found, and the status of any administrative action, civil
59 action, or appellate action, and if the division has found that
60 probable cause exists, it shall notify, in writing, the
61 complainant and the party complained against of the results of
62 the investigation and disposition of the complaint.

63 (15) The division shall adopt rules to implement the board
64 member training requirements for educational programs as
65 provided in this chapter. The division shall publish a notice of
66 the proposed rules pursuant to s. 120.54(3)(a), by October 1,
67 2016. The rules must include content and notice requirements for
68 the board member training program to ensure that providers meet
69 minimum training requirements.

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

72 723.031 Mobile home lot rental agreements.—

73 (5) The rental agreement shall contain the lot rental
74 amount and services included. An increase in lot rental amount
75 upon expiration of the term of the lot rental agreement shall be
76 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),
77 whichever is applicable, provided that, pursuant to s.
78 723.059(4), the amount of the lot rental increase is disclosed

79 and agreed to by the purchaser, in writing. An increase in lot
 80 rental amount shall not be arbitrary or discriminatory between
 81 similarly situated tenants in the park. A ~~No~~ lot rental amount
 82 may not be increased during the term of the lot rental
 83 agreement, except:

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

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

88 (c) That a ~~no~~ charge may not be collected which ~~that~~
 89 results in payment of money for sums previously collected as
 90 part of the lot rental amount. The provisions hereof
 91 notwithstanding, the mobile home park owner may pass on, at any
 92 time during the term of the lot rental agreement, ad valorem
 93 property taxes, non-ad valorem assessments, and utility charges,
 94 or increases of either, provided that the ad valorem property
 95 taxes, non-ad valorem assessments, and ~~the~~ utility charges are
 96 not otherwise being collected in the remainder of the lot rental
 97 amount and provided further that the passing on of such ad
 98 valorem taxes, non-ad valorem assessments, or utility charges,
 99 or increases of either, was disclosed prior to tenancy, was
 100 being passed on as a matter of custom between the mobile home
 101 park owner and the mobile home owner, or such passing on was
 102 authorized by law. A park owner shall be deemed to have
 103 disclosed the passing on of ad valorem property taxes and non-ad
 104 valorem assessments if ad valorem property taxes or non-ad

105 valorem assessments were disclosed as a factor for increasing
106 the lot rental amount in the prospectus or rental agreement.
107 Such ad valorem taxes, non-ad valorem assessments, and utility
108 charges shall be a part of the lot rental amount as defined by
109 this chapter. For purposes of this paragraph, the term "non-ad
110 valorem assessments" has the same meaning as provided in s.
111 197.3632(1)(d). Other provisions of this chapter
112 notwithstanding, pass-on charges may be passed on only within 1
113 year of the date a mobile home park owner remits payment of the
114 charge. A mobile home park owner is prohibited from passing on
115 any fine, interest, fee, or increase in a charge resulting from
116 a park owner's payment of the charge after the date such charges
117 become delinquent. Nothing herein shall prohibit a park owner
118 and a homeowner from mutually agreeing to an alternative manner
119 of payment to the park owner of the charges.

120 (d) If a notice of increase in lot rental amount is not
121 given 90 days before the renewal date of the rental agreement,
122 the rental agreement shall remain under the same terms until a
123 90-day notice of increase in lot rental amount is given. The
124 notice may provide for a rental term shorter than 1 year in
125 order to maintain the same renewal date.

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

128 723.059 Rights of purchaser.—

129 (1) The purchaser of a mobile home within a mobile home
130 park may become a tenant of the park if such purchaser would

131 otherwise qualify with the requirements of entry into the park
132 under the park rules and regulations, subject to the approval of
133 the park owner, but such approval may not be unreasonably
134 withheld. The purchaser of the mobile home may cancel or rescind
135 the contract for purchase of the mobile home if the purchaser's
136 tenancy has not been approved by the park owner 5 days before
137 the closing of the purchase.

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

140 723.075 Homeowners' associations.—

141 (1) In order to exercise the rights provided in this
142 chapter s. 723.071, the mobile home owners shall form an
143 association in compliance with this section and ss. 723.077,
144 723.078, and 723.079, which shall be a corporation for profit or
145 not for profit and of which not less than two-thirds of all of
146 the mobile home owners within the park shall have consented, in
147 writing, to become members or shareholders. Upon incorporation
148 of the association ~~such consent by two-thirds of the mobile home~~
149 ~~owners~~, all consenting mobile home owners in the park may become
150 members or shareholders. The term "member" or "shareholder"
151 means a mobile home owner who consents to be bound by the
152 articles of incorporation, bylaws, and policies of the
153 incorporated homeowners' association ~~and their successors shall~~
154 ~~become members of the association and shall be bound by the~~
155 ~~provisions of the articles of incorporation, the bylaws of the~~
156 ~~association, and such restrictions as may be properly~~

157 ~~promulgated pursuant thereto.~~ The association may not shall have
158 a ne member or shareholder who is not a bona fide owner of a
159 mobile home located in the park. Upon incorporation and service
160 of the notice described in s. 723.076, the association shall
161 become the representative of all the mobile home owners in all
162 matters relating to this chapter, regardless of whether the
163 homeowner is a member of the association.

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

166 723.078 Bylaws of homeowners' associations.—

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

169 (b) Quorum; voting requirements; proxies.—

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

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

174 2. A member may not vote by general proxy but may vote by
175 limited proxies substantially conforming to a limited proxy form
176 adopted by the division. Limited proxies and general proxies may
177 be used to establish a quorum. Limited proxies may be used for
178 votes taken to amend the articles of incorporation or bylaws
179 pursuant to this section, and any other matters for which this
180 chapter requires or permits a vote of members, except that no
181 proxy, limited or general, may be used in the election of board
182 members. If a mobile home or subdivision lot is owned jointly,

183 the owners of the mobile home, or subdivision lot, shall be
184 counted as one for the purpose of determining the number of
185 votes required for a majority. Only one vote per mobile home or
186 subdivision lot shall be counted. Any number greater than 50
187 percent of the total number of votes constitutes a majority.
188 Notwithstanding ~~the provisions of~~ this section, members may vote
189 in person at member meetings or by secret ballot, including
190 absentee ballots, as defined by the division.

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

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

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

204 1. Meetings of the board of directors and meetings of its
205 committees at which a quorum is present shall be open to all
206 members. Notwithstanding any other provision of law, the
207 requirement that board meetings and committee meetings be open
208 to the members does not apply to board or committee meetings

209 held for the purpose of discussing personnel matters or meetings
210 between the board or a committee and the association's attorney,
211 with respect to potential or pending litigation, where the
212 meeting is held for the purpose of seeking or rendering legal
213 advice, and where the contents of the discussion would otherwise
214 be governed by the attorney-client privilege. Notice of meetings
215 shall be posted in a conspicuous place upon the park property at
216 least 48 hours in advance, except in an emergency. Notice of any
217 meeting in which assessments against members are to be
218 considered for any reason shall specifically contain a statement
219 that assessments will be considered and the nature of such
220 assessments.

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

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

232 4. The right to attend meetings of the board of directors
233 and its committees includes the right to speak at such meetings
234 with reference to all designated agenda items. The association

235 may adopt reasonable written rules governing the frequency,
236 duration, and manner of members' statements. Any item not
237 included on the notice may be taken up on an emergency basis by
238 at least a majority plus one of the members of the board. Such
239 emergency action shall be noticed and ratified at the next
240 regular meeting of the board. Any member may tape record or
241 videotape meetings of the board of directors and its committees,
242 except meetings between the board of directors or its appointed
243 homeowners' committee and the park owner. The division shall
244 adopt reasonable rules governing the tape recording and
245 videotaping of the meeting.

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

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

260 7. A vacancy that will occur at a specific later date, by

261 reason of a resignation effective at a later date, may be filled
262 before the vacancy occurs. However, the new director may not
263 take office until the vacancy occurs.

264 8.a. The officers and directors of the association have a
265 fiduciary relationship to the members.

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

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

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

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

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

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

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

291 Section 6. Section 723.0781, Florida Statutes, is amended
292 to read:

293 723.0781 Board member training programs.—

294 (1) Effective October 1, 2016:

295 (a) Within 90 days after being elected or appointed to the
296 board, a newly elected or appointed director shall certify by an
297 affidavit in writing to the secretary of the association that he
298 or she has read the association's current articles of
299 incorporation, bylaws, and the mobile home park's prospectus,
300 rental agreement, rules, regulations, and written policies; that
301 he or she will work to uphold such documents and policies to the
302 best of his or her ability; and that he or she will faithfully
303 discharge his or her fiduciary responsibility to the
304 association's members.

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

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

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

325 (2) A director who fails to comply with the requirements
326 of subsection (1) before October 1, 2017, is not deemed to have
327 committed a violation of this section.

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