

CHAPTER 2016-169

Committee Substitute for Committee Substitute for Senate Bill No. 826

An act relating to mobile homes; amending s. 723.006, F.S.; revising certain notice requirements for written complaints; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules to implement board member training requirements; providing notice and requirements of such rules; amending s. 723.031, F.S.; authorizing a mobile home park owner to pass on non-ad valorem assessments to a tenant under certain circumstances; providing that a mobile home park owner is deemed to have disclosed the passing on of certain taxes and assessments under certain circumstances; requiring the non-ad valorem assessments to be a part of the lot rental amount; requiring that a renewed rental agreement remain under the same terms unless certain notice is provided; amending s. 723.059, F.S.; authorizing a mobile home purchaser to cancel or rescind the contract to purchase under certain circumstances; amending s. 723.075, F.S.; revising the rights that mobile home owners exercise if they form an association; authorizing mobile home owners to become members upon incorporation of the association; defining the terms “member” and “shareholder”; deleting provisions relating to memberships of successors to home owners; amending s. 723.078, F.S.; specifying voting requirements for homeowners’ associations; specifying the requirements for a majority of votes; authorizing members to vote by secret ballot and absentee ballot; prohibiting the tape recording or videotaping of meetings between the board of directors or its committees and the park owner; amending s. 723.0781, F.S.; providing a date on which certain provisions are effective; providing that board members may not be considered in violation of such provisions until after a specified date; providing an effective date.

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

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 violation of any provision of this chapter or any rule ~~adopted promulgated~~ pursuant thereto, the division shall, within 30 days after receipt of a written complaint, ~~periodically~~ notify, in writing, the person who filed the complaint of the status of the complaint. Thereafter, the division shall notify the complainant of the status of the investigation within 90 days after receipt of the written complaint. Upon completion of the investigation, the division investigation, ~~whether probable cause has been found, and the status of any administrative action, civil action, or appellate action,~~ and if the division has found

~~that probable cause exists~~, it shall notify, in writing, the complainant and the party complained against of the results of the investigation and disposition of the complaint.

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

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

723.031 Mobile home lot rental agreements.—

(5) The rental agreement shall contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement shall be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable, provided that, pursuant to s. 723.059(4), the amount of the lot rental increase is disclosed and agreed to by the purchaser, in writing. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. ~~A~~ No lot rental amount may not be increased during the term of the lot rental agreement, except:

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

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

(c) That ~~a~~ no charge may not be collected which ~~that~~ results in payment of money for sums previously collected as part of the lot rental amount. The provisions hereof notwithstanding, the mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, provided that the ad valorem property taxes, non-ad valorem assessments, and the utility charges are not otherwise being collected in the remainder of the lot rental amount and provided further that the passing on of such ad valorem taxes, non-ad valorem assessments, or utility charges, or increases of either, was disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or such passing on was authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement. Such ad valorem taxes, non-ad valorem assessments, and utility charges shall be a part of the

lot rental amount as defined by this chapter. The term “non-ad valorem assessments” has the same meaning as provided in s. 197.3632(1)(d). Other provisions of this chapter notwithstanding, pass-on charges may be passed on only within 1 year of the date a mobile home park owner remits payment of the charge. A mobile home park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner’s payment of the charge after the date such charges become delinquent. Nothing herein shall prohibit a park owner and a homeowner from mutually agreeing to an alternative manner of payment to the park owner of the charges.

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

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

723.059 Rights of purchaser.—

(1) The purchaser of a mobile home within a mobile home park may become a tenant of the park if such purchaser would otherwise qualify with the requirements of entry into the park under the park rules and regulations, subject to the approval of the park owner, but such approval may not be unreasonably withheld. The purchaser of the mobile home may cancel or rescind the contract for purchase of the mobile home if the purchaser’s tenancy has not been approved by the park owner 5 days before the closing of the purchase.

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

723.075 Homeowners’ associations.—

(1) In order to exercise the rights of a homeowners’ association as provided in this chapter s. 723.071, the mobile home owners shall form an association in compliance with this section and ss. 723.077, 723.078, and 723.079, which shall be a corporation for profit or not for profit and of which not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members or shareholders. Upon incorporation of the association ~~such consent by two-thirds of the mobile home owners~~, all consenting mobile home owners in the park may become members or shareholders. ~~The term “member” or “shareholder” means a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and policies of the incorporated homeowners’ association and their successors shall become members of the association and shall be bound by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant~~

~~thereto.~~ The association may not ~~shall~~ have a ~~no~~ member or shareholder who is not a bona fide owner of a mobile home located in the park. Upon incorporation and service of the notice described in s. 723.076, the association shall become the representative of all the mobile home owners in all matters relating to this chapter, regardless of whether the homeowner is a member of the association.

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

723.078 Bylaws of homeowners' associations.—

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

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

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

2. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this chapter requires or permits a vote of members, except that no proxy, limited or general, may be used in the election of board members. If a mobile home or subdivision lot is owned jointly, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot shall be counted. Any number greater than 50 percent of the total number of votes constitutes a majority. Notwithstanding ~~the provisions of~~ this section, members may vote in person at member meetings or by secret ballot, including absentee ballots, as defined by the division.

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

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

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

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

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

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

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

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

6. The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the

board of directors, but only for the term of office continuing until the next election of directors by the members.

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

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

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

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

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

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

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

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

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

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

723.0781 Board member training programs.—

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

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

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

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

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

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

Approved by the Governor April 1, 2016.

Filed in Office Secretary of State April 1, 2016.