

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: CS/CS/HB 307

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Regulatory Affairs Committee;
Civil Justice Subcommittee;
Latvala

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**COMPANION
BILLS:** SB 662

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

CS/CS/HB 307 passed the House on April 16, 2015, and subsequently passed the Senate on April 23, 2015. The bill amends the Florida Mobile Home Act.

The Florida Mobile Home Act (Act) regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (division) enforces the act. The bill incorporates some provisions of the Condominium Act and the Cooperative Act into the Act and makes changes to the Act to address the unique tenancy aspects of mobile home ownership.

Specifically, the bill makes the following changes to the Act:

- The division is required to approve training and educational programs for board members of mobile homeowners' associations and mobile home owners;
- A mobile homeowner must comply with all building permit and construction requirements and is responsible for fines imposed for violating any local codes;
- A mobile homeowner's right to notice of a lot rental increase or reduction in services or utilities may not be waived;
- A homeowners' committee must make a written request for a meeting with the park owner to discuss a proposed lot rental increase, a proposed decrease in services or utilities, or rule changes;
- A homeowner's spouse may assume an automatically renewable lease; however, this right of assumption may only be exercised once during the term of the lease;
- A member of the board of directors of the Florida Mobile Home Relocation Corporation must be removed immediately upon written request for removal from the association that originally nominated that member;
- Bylaws of a homeowners' association must include specific provisions related to meetings, voting requirements, proxies, amending the articles of incorporation and bylaws, duties of officers and directors, vacancies on the board, and recall of members on the board of directors;
- A board member must either certify that they have read the homeowners' association's organizing documents, rules, and regulations and that he or she will faithfully discharge his or her fiduciary responsibility, or complete the division's educational program within one year of taking office; and
- A homeowners' association is required to retain and make available certain specified official records.

The Department of Business and Professional Regulation estimates a fiscal impact of \$176,071 in FY 2015-16 to implement the bill. However, the department can absorb these costs within existing resources. See *Fiscal Impact on State Government* section.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The statutes define a “mobile home” as “a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.”¹ Although mobile home ownership is similar in some ways to condominium or cooperative ownership, mobile home ownership differs significantly in that the mobile homeowner does not own the underlying lot on which the home is located. Instead, the homeowner rents or leases the lot from the park owner.

Chapter 723, F.S., the Florida Mobile Home Act, regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots.² The Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (division) has the authority to promulgate rules under the Mobile Home Act, the Condominium Act, and the Cooperative Act, and to investigate, enforce, and ensure compliance with those rules and the provisions of those acts.³

Training and Educational Programs for Mobile Home Owners' Association Board Members and Mobile Home Owners

Present Situation

The division is required under the Condominium Act and the Cooperative Act to provide training and educational programs for association board members and owners.⁴ The division may also approve education and training programs and maintain a list of approved programs and providers. No similar provisions exist in the Mobile Home Act.

Effect of Proposed Changes

The bill amends s. 723.006, F.S., to require the division to approve training and educational provider programs for board members of mobile homeowners' associations and mobile home owners. The cost of the training and educational programs must be borne by the providers of the programs and the division must establish a fee structure for the training programs sufficient to recover any costs it incurs.

The bill also provides that the required information provided to board members and home owners must include the provider of the training programs, price, location, dates, and curriculum for the programs. The programs must provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities. The educational programs may not contain editorial comments.

¹ s. 723.003(3), F.S.

² Section 723.002(1), F.S., provides that the Act does not apply "to any other tenancy, including a tenancy in which both a mobile home and a mobile home lot are rented or leased by the mobile home resident or a tenancy in which a rental space is offered for occupancy by recreational-vehicle-type units which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle."

³ ss. 723.005, 723.006, 718.501(1), and 719.501(1), F.S.

⁴ ss. 718.501(1)(j), and 719.501(1)(k), F.S.

Mobile Home Owner's General Obligations

Present Situation

Currently, s. 723.023, F.S., requires a mobile home owner to comply with all building, housing, and health codes; to keep the mobile home lot clean and sanitary; to comply with park rules and regulations and require others on the premises to comply with such regulations; and to conduct themselves in a manner that does not unreasonably disturb other residents of the park.

Effect of Proposed Changes

The bill provides additional requirements for mobile home owners. They must comply with all building permit and construction requirements and keep the mobile home lot neat and maintained in compliance with all local codes. The owner is responsible for all fines imposed for noncompliance with any local codes.

Lot Rental Increases and Homeowners' Committee Negotiations

Present Situation

Section 723.037, F.S., requires mobile home park owners to give written notice to mobile home owners and the board of directors of the homeowners' association at least 90 days prior to any increase in lot rental or reduction in services or utilities provided by the park owner or change in rules and regulations.

A committee of up to five people, designated by a majority of the owners or by the board of directors, and the park owner must meet within 30 days of the notice of change to discuss the reasons for the changes. If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, either party may petition the division to initiate mediation. If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court.⁵

Effect of Proposed Changes

The bill amends s. 723.037, F.S., to provide that a mobile home owner's right to the 90-day notice may not be waived or precluded by an agreement with the park owner. Additionally, the bill provides that the homeowners' committee and the park owner must meet no later than 60 days before the effective date of the change rather than within 30 days after receipt of the notice of change as currently required. The homeowners' committee must make a written request for a meeting with the park owner to discuss the matters in the 90-day notice and may include in the request a list of any other issue the committee intends to discuss at the meeting.

The bill defines the term "mediation" as a process whereby a mediator appointed by the division, or mutually selected by the parties, acts to encourage and facilitate the resolution of a dispute in an informal, nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement. The term "parties" for the purposes of mediation pursuant to ss. 723.037 and 723.038, F.S., is defined to mean a park owner and a homeowners' committee. The bill also defines the term "homeowners' committee" in s. 723.003, F.S., in a manner that is consistent with how the term is currently used and applied in s. 723.037, F.S.

Rights of Purchasers - Assumption of the Lease

Present Situation

⁵ s. 723.0381, F.S.

Section 723.059(5), F.S., provides that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse. Additionally, automatically renewable leases are not assumable unless provided for in the lease agreement.

Effect of Proposed Changes

The bill amends s. 723.059(5), F.S., to provide that automatically renewable leases are assumable if the transferee is the homeowner's spouse; however, the right to assume the lease by a spouse may only be exercised once during the term of the lease.

Florida Mobile Home Relocation Corporation - Removal of Members

Present Situation

Section 723.0611, F.S., creates the Florida Mobile Home Relocation Corporation (corporation) to provide assistance to residents of mobile home parks who receive eviction notices due to a change in land use of the mobile home park to either relocate their mobile home or abandon it.⁶ The corporation is administered by a board of directors made up of six members, three of whom are appointed by the Secretary of the Department of Business and Professional Regulation (DBPR) from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state and three of whom are appointed by the Secretary of DBPR from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state.⁷

Effect of Proposed Changes

The bill amends s. 723.0611, F.S., to provide that a member of the board of directors must be removed by the Secretary of DBPR, with or without cause, immediately after a written request for removal from the association that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the Secretary of DBPR must immediately fill the vacancy created by the removal. The removal process may not occur more than once in a calendar year.

Homeowners' Association Bylaws

Required Bylaw Provisions

Present Situation

Section 723.071(1)(a), F.S., provides that If a mobile home park owner offers a mobile home park for sale, she or he must notify the officers of the homeowners' association of the offer, stating the price and the terms and conditions of sale.

Section 723.078, F.S., provides that in order for a mobile homeowners' association to exercise its right to purchase a mobile home park pursuant to s. 723.071, F.S., the association's bylaws must contain a number of statutory provisions.

Effect of Proposed Changes

The bill amends s. 723.078, F.S., to remove the requirement that the bylaws contain the enumerated provisions for the association to exercise its right to purchase a mobile home park.

⁶ See s. 723.0612, F.S.; Florida Mobile Home Relocation Corporation Website, <http://www.fmhrc.org/> (last visited Mar. 2, 2015).

⁷ s. 723.0611(1), F.S.

Administration

Present Situation

Section 723.078(2)(a), F.S., provides that the board of directors of a homeowners' association must have a president, secretary, and treasurer; however, it does not indicate how those positions are to be filled. This provision also provides that the board of directors may appoint and designate other officers. The Condominium Act and the Cooperative Act contain similarly worded provisions.⁸

Effect of Proposed Changes

The bill amends s. 723.078(2)(a), F.S., to provide that the board of directors must *elect* a president secretary, and treasurer, and that the board of directors may *elect* and designate other officers.

Quorum; Voting Requirements; and Proxies

Present Situation

Section 723.078(2)(b)1., F.S., currently provides that a majority of the association's members constitutes a quorum.

This section also provides that the association's bylaws must provide for the use of a proxy. Any proxy given must be effective only for the specific meeting for which originally given. A proxy may be valid for up to 120 days after the date of the first meeting for which it was given. Every proxy must also be revocable at any time.

Effect of Proposed Changes

The bill amends s. 723.078(2)(b)1., F.S., to provide that unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum.

The bill reduces the number of days a proxy may be valid from 120 days to 90 days. The bill also incorporates a number of proxy provisions found in the Condominium Act and the Cooperative Act.⁹ Specifically, that:

- A member of the association may only vote by limited proxies that conform to a limited proxy form adopted by the division;
- Limited proxies and general proxies may be used to establish a quorum; and
- Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws, and any other matters that ch. 723, F.S., requires or permits a vote of members, except that no proxy may be used in the election of board members.

The bill also provides that 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.

Board of Directors and Committee Meetings

Present Situation

Section 723.078(2)(c), F.S., currently requires that meetings of the board of directors must be open to members and notice of meetings must be posted in a conspicuous place on park property at least 48

⁸ ss. 718.112(2)(a)1. and 719.106(1)(a)1., F.S.

⁹ *Id.*

hours in advance, except in an emergency. Notice of any meeting in which assessments are to be considered must contain a statement that assessments will be considered and the nature of such assessments.

Effect of Proposed Changes

The bill provides that the requirement that board and committee meetings be open to the members does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney where the contents of the discussion would be governed by the attorney-client privilege.

The bill also provides that a board or committee member's participation in a meeting via telephone, videoconference, or similar communication counts toward a quorum, and he or she may vote as if physically present.

The bill provides that members of the board of directors may use e-mail as a means of communication but may not cast a vote via e-mail. The bill also incorporates a number of board of directors and committee meeting provisions found in the Condominium Act and the Cooperative Act.¹⁰

Additionally, the bill provides that the right to attend meetings of the board and its committees includes the right to speak at such meetings; however, the association may adopt reasonable written rules governing 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 must be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings, and the division must adopt rules governing the tape recording and videotaping of meetings.

Vacancies on the Board of Directors

Present Situation

Currently, ch. 723, F.S., does not provide a procedure to fill vacancies on an association's board of directors.

Effect of Proposed Changes

The bill amends s. 723.078(2)(c), F.S., to provide a procedure to fill vacancies on the association's board of directors. It provides that except in cases of a recall vote,¹¹ a vacancy occurring on the board of directors may be filled by:

- The affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum;
- The sole remaining director;
- The members, if no director remains; or
- The circuit court of the county in which the registered office of the corporation is located.

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. 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.

¹⁰ ss. 718.112(2)(b) and (c) and 719.106(1)(c), F.S.

¹¹ See Recall of Board Members discussion below.

Officer and Director Duties

Present Situation

Section 723.078(2)(i), F.S., currently provides that the officers and directors of a mobile homeowners' association only have a fiduciary relationship to the members.

Effect of Proposed Changes

The bill amends s. 723.078(2), F.S., to expand the duties of officers and directors. The bill requires a director and committee member to 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.¹²

In discharging his or her duties, a director may rely on information, opinions, reports, or statements, if prepared by officers, employees, or any other professionals, such as legal counsel or accountants, who the director reasonably believes to be reliable and competent in the matters presented. However, a director is not acting in good faith if he or she has knowledge concerning the matter in question that makes such reliance unwarranted.

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

Member Meetings

Present Situation

Section 723.078(2)(d), F.S., requires annual member meetings during which members of the board of the directors are elected. The association's bylaws may not restrict any member desiring to be a candidate for board membership from being nominated. Written notice of all meetings must be provided at least 14 days in advance of the meeting. Unless waived, the notice of the annual meeting must be sent by mail to each member.

Effect of Proposed Changes

The bill amends s. 723.078(2)(d), F.S., to provide that all nominations must be made at a meeting of the members held at least 30 days before the annual meeting. It also allows for notice of the annual meeting to be hand delivered or electronically transmitted, which is similarly allowed in the in the Condominium Act and the Cooperative Act.¹³ The bill defines "electronic transmission" to mean:

A form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process, such as a printer or copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via e-mail between computers. The term does not include oral communication by telephone.¹⁴

Minutes of Meetings

¹² The Condominium Act contains nearly identical language. See s. 718.111(1)(d), F.S.

¹³ ss. 718.112(2)(c) and 719.106(1)(c), F.S.

¹⁴ This definition is nearly identical to the definition provided in s. 617.01401(8), F.S. (Florida Not for Profit Corporation Act).

Present Situation

Section 723.078(2)(e), F.S., requires the minutes of all meetings of members and of the board of directors to be maintained, available for inspection, and retained for at least 7 years.

Effect of Proposed Changes

The bill requires that the minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. It also requires that a vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. A similar vote recording requirement is provided in the Condominium Act and the Cooperative Act.¹⁵

Amendment of Articles of Incorporation and Bylaws

Present Situation

Section 723.078(2)(h), F.S., currently requires an association's bylaws to provide a method to amend the bylaws. If the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of the membership.

Effect of Proposed Changes

The bill requires that the articles of incorporation as well as the bylaws must provide a method for their amendment. The bill also provides that if the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present rather than a majority of the membership as is currently required.

Additionally, notwithstanding any other provision of s. 723.078, F.S., if an amendment to the articles of incorporation or the bylaws is required by any federal, state, or local governmental authority or agency, or any law, ordinance, or rule, the board of directors may, by a majority vote, amend the articles of incorporation or bylaws without a vote of the membership.

Recall of Board Members

Present Situation

Currently, s. 723.078(2)(j), F.S., provides a limited procedure for the recall of members of a mobile homeowners' association board of directors. Any member of the board of directors may be recalled and removed from office by the vote or written agreement of a majority of all members.

Effect of Proposed Changes

The bill amends s. 723.078(2), F.S., by incorporating extensive recall provisions similar to those in the Condominium Act and the Cooperative Act.¹⁶ Pursuant to these provisions, a recall may be approved by a majority vote of all members at a meeting or by a written agreement by a majority of all members. If a recall is approved by the members, the board must hold a board meeting to determine whether to certify the recall. If the board does not certify a recall, the members may file a petition for binding arbitration with the division.

¹⁵ ss. 718.111(1)(b) and 719.104(8)(b), F.S.

¹⁶ ss. 718.112(2)(j) and 719.106(1)(f), F.S.

A board member who has been recalled must return all records and property of the association in his or her possession within 5 business days. A board member who has been recalled may file a petition for binding arbitration with the division¹⁷ challenging the validity of the recall. The petition must be filed within 60 days after the recall.

A vacancy on a board due to a recall may be filled by a vote of a majority of the remaining directors. If a vacancy occurs on a board due to a recall and a majority of the board members are removed, the vacancies will be filled in accordance with rules to be adopted by the division.

The bill also creates s. 723.1255, F.S., which requires the division to adopt rules of procedure that will govern binding recall arbitration proceedings.

Board Member Training Programs

Present Situation

Currently, ch. 723, F.S., does not require board members to attend training related to the association's organizing documents, rules, and statutes.

Effect of Proposed Changes

The bill creates s. 723.0781, F.S., to require board members to sign an affidavit certifying that they have read the association's organizing documents, rules, and regulations; that they will uphold such documents and policies to the best of their ability; and that they will faithfully discharge their fiduciary duty. In lieu of this, board members may complete the division's educational program within one year of taking office. Failure to comply with either requirement would result in a suspension from the board until either requirement is met.

Maintenance of Records

Present Situation

Section 723.079(4), F.S., currently only requires mobile homeowners' associations to maintain and make available for inspection basic accounting records, such as records of all receipts and expenditures and records of assessments and payments by each member.

Effect of Proposed Changes

The bill amends s. 723.079(4), F.S., to require an association to retain and make available an extensive list of official records similar to those currently required in the Condominium Act and the Cooperative Act.¹⁸ The records that must be retained include articles of incorporation, bylaws, meeting minutes, insurance policies, contracts, tax documents, and financial statements. The records must be retained for at least seven years and available for inspection. Failure to provide a member the opportunity to inspect the records may result in damages starting at \$10 per day. The association may develop reasonable rules related to the inspection of documents, including charging fees for copies, and may not allow inspection of documents that are protected by lawyer-client privilege or that would reveal personal identifying information other than a person's name and address.

Other Effects of Proposed Changes

¹⁷ *Id.*

¹⁸ ss. 718.111(12) and 719.104(2), F.S.

The bill defines "mobile home lot" to mean "a lot described by a park owner pursuant to the requirements of s. 723.012 or in a disclosure statement pursuant to s. 723.013 as a lot intended for the placement of a mobile home."

The bill defines "homeowners' association" for the purposes of ch. 723, F.S., as "a corporation for profit or not for profit, which is formed and operates in compliance with ss. 723.075-723.079; or, in a subdivision the homeowners' association authorized in the subdivision documents in which all home owners must be members as a condition of ownership."

The bill defines "offering circular" to have the same meaning as the term "prospectus."

The bill defines "mobile home owner" to include "mobile homeowner" and "homeowner."

The bill updates cross-references to the changes in ch. 723, F.S., made by the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Department of Business and Professional Regulation estimates a fiscal impact of \$176,071 in FY 2015-16; \$165,301 in FY 2016-17; and \$165,301 in FY 2017-18 to implement the bill. However, the department can absorb these costs within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Members of a board of directors of a mobile home owners' association who choose to complete the required educational training in lieu of certifying that they have read the association's organizing documents, rules, and regulations may incur costs for such training. The cost for similar educational requirements in the Condominium Act and Cooperative Act range in price from no fee to \$200.¹⁹

D. FISCAL COMMENTS:

None.

¹⁹ List of division approved educational curriculums, Division of Florida Condominiums, Timeshares, and Mobile Homes, Florida Department of Business and Professional Regulation (April 25, 2014) (available at http://www.myfloridalicense.com/dbpr/lsc/documents/CondoListofProviders_000.pdf) (last visited Feb. 25, 2015).