



The Florida Senate

Interim Project Report 2002-127

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Committee on Comprehensive Planning, Local and Military Affairs

Senator Lee Constantine, Chairman

IMPROVEMENTS TO MOBILE HOMES AND PARKS

SUMMARY

This report:

- reviews whether current law provides mobile home park owners *sufficient* authority to require mobile home owners to maintain and make improvements to their mobile homes and property on which they are situated;
- offers options for limiting or expanding park owner's authority to require mobile home owners to maintain and make improvements to their mobile homes and property on which they are situated; and
- identifies potential constitutional problems with expanding such authority.

BACKGROUND

According to the Florida Manufactured Housing Association (FMHA), one of every five new homes sold in Florida is a manufactured home (hereafter referred to as mobile homes). These mobile homes are either set up on the owner's property to be used by the owner or to be rented out. The owner may also set up on leased property, which may be in a mobile home park. Such parks may be owned by an individual or by private investors or, increasingly, by mobile home park associations (cooperatives).

The Department of Health reports that as of September 2001, there are 369,709 mobile home lots in Florida's 4,609 mobile home parks. The Department of Business and Professional Regulation (DBPR) regulates approximately 2,700 of these parks, which contain an estimated 330,000 lots.

Regulation of Mobile Home Parks

Many mobile home owners in Florida chose to lease property for their mobile homes in mobile home parks owned by an individual or by private investors. To regulate the contractual relationship between these mobile home parks and mobile home owners, the Florida Legislature enacted chapter 723, F.S., which is known as the "Florida Mobile Home Act." Section 723.002, F.S., provides that this act applies:

to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease.

The Mobile Home 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 ...

In devising this regulatory system, the Legislature recognized there exist "factors unique to the relationship" between a mobile home owner and a mobile home park owner. Subsection (1) of s. 723.004, F.S., provides that:

Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship, which distinguishes it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other

rights which must be protected. This chapter is created for the purpose of regulating the factors unique to the relationship between mobile home owners and mobile home park owners in the circumstances described herein. It recognizes that when such inequalities exist between mobile home owners and mobile home park owners as a result of such unique factors, regulation to protect those parties to the extent that they are affected by the inequalities, while preserving and protecting the rights of both parties, is required.

To ensure these regulations are consistent statewide, subsection (2) of 723.004, F.S., preempts to the state:

all regulation and control of mobile home lot rents in mobile home parks and all those other matters and things relating to the landlord-tenant relationship treated by or falling within the purview of this chapter.

Section 723.005, F.S., grants the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of DBPR the authority and responsibility to enforce the provisions of chapter 723, F.S., and related rules relating to the rental, development, and sale of mobile home parks. However, the division does not have the authority and responsibility to enforce mobile home park rules or to enforce the provisions of ss. 723.022, 723.023, and 723.033, F.S., which relate to the mobile home park owner's general obligations, the mobile home owner's general obligations, and unreasonable lot rental agreements, respectively. Funding for the division's statutory responsibilities is provided through annual fees paid by mobile home parks. (s. 723.007, F.S.).

Prospectus or Offering Circular

A key element of this regulatory system is the "prospectus." Section 723.011, F.S., requires that prior to entering into an enforceable rental agreement for a mobile home lot, the park owner or a mobile home park containing 26 or more lots must provide to the homeowner a prospectus, approved by the division. This prospectus, together with its exhibits, is:

a disclosure document intended to afford protection to homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park. (s. 723.011(3), F.S.)

The prospectus is part of the contract between the mobile home park owner and the mobile home owner, establishing binding obligations on both with respect to the disclosures contained therein. See *Herrick v. Fla. Dept. of Business Regulation*, 595 So.2d 148 (Fla. 1st DCA 1992) and *Hobe Associates v. Department of Business Regulation*, 504 So.2d 1301 (Fla. 1st DCA 1987).

Section 723.012, F.S., requires the prospectus to contain, in part, the following:

- A description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park; and
- The park rules and regulations and an explanation of the manner in which such rules or regulations will be set, changed, or promulgated.

While the requirements of the prospectus are binding for the length of the tenancy, the prospectus may be amended. Section 732.006(8), F.S., grants the division authority to adopt rules to authorize amendments permitted by chapter 723, F.S., to an approved prospectus. Subsection (4) of 61B-31.001, F.A.C., lists the circumstances, under which the prospectus may be changed, to include, in part, the following:

- Amendments consented to by each affected home owner and the park owner;
- Amendments to reflect new rules or rules that have been changed in accordance with procedures described in s. 723.037, F.S., and the prospectus; and
- Amendments required as a result of revisions of chapter 723, F.S.

Mobile Home Owner Improvements

Only those improvements disclosed in the prospectus may be required of mobile home owners by park owners. Section 723.042, F.S., provides that no person may be required by a mobile home park owner or developer, as a condition of residence in the mobile home park, to provide any improvement unless the requirement is disclosed in the prospectus prior to occupancy in the mobile home park. Prospectuses offered to mobile home owners with a tenancy in existence on 6/04/84, the effective date of chapter 723, F.S., may not require the installation of any permanent

improvements not required under previous disclosures. *Herrick v. Fla. Dept. of Business Regulation*, 595 So.2d 148 (Fla. 1st DCA, 1992).

Section 723.043, F.S., prohibits a mobile home park owner or developer from requiring mobile home owners to purchase from the mobile home park owner under-skirting, equipment for tying down a mobile home, or any other equipment required by law, local ordinance, or regulation of the mobile home park. However, park owners may:

determine by rule or regulation the style or quality of such equipment to be purchased by the mobile home owner from the vendor of the mobile home owner's choosing, provided the style or quality has been disclosed in the prospectus given by the park developer or park owner to the mobile home owner.

General Statutory Obligations of Mobile Home Park Owners and Mobile Home Owners

Section 723.022, F.S., contains a list specifying mobile home park owner's general obligations. Park owners are required to:

- Comply with the requirements of applicable building, housing, and health codes;
- Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness;
- Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests;
- Maintain utility connections and systems for which the park owner is responsible in proper operating condition; and
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

Section 723.023, F.S., contains a list specifying mobile home owner's general obligations. Mobile home owners are required to:

- Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes;
- Keep the mobile home lot which he or she occupies clean and sanitary; and
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Park Rules and Regulations

Section 723.012(11), F.S., requires the prospectus to contain park rules and regulations (park rules) for the operation of the park and “an explanation of the manner in which park rules or regulations will be set, changed, or promulgated.” Section 723.031(10), F.S., provides that such rules are deemed incorporated into the tenant’s rental agreement.

Park rules may address a variety of issues, to include exterior maintenance and construction requirements affecting improvements to mobile homes, including landscaping. (*Mobile Home Park Tenancies Under the Mobile Home Act*, The Florida Bar, 1999.)

Section 723.035(2), F.S., prohibits park rules that:

provide for payment of any fee, fine, assessment, or charge, except as otherwise provided in the prospectus or offering circular filed under s. 723.012, if one is required to be provided, and until after the park owner has complied with the procedure set forth in s. 723.037.

Section 723.037, F.S., establishes the procedure for amending park rules. Written notice must be provided to each affected mobile home owner at least 90 days prior to any change in park rules.

Thirty days after receipt of the notice, a majority of the affected mobile home owners or the board of directors of the homeowners' association, may appoint a committee of no more than five to meet with the park owner to discuss the reasons for the change in park rules. At the meeting, the park owner must explain all material factors resulting in the decision to change rules and regulations, including how those factors justify the specific change proposed.

Within 30 days after the date of the last scheduled meeting between the committee and the park owner, the homeowners may petition the division to initiate mediation of the dispute if a majority of the affected homeowners have designated, in writing, that the change in the park rules is unreasonable. A park owner, within the same time period, may also petition the division to initiate mediation of the dispute.

The division will then appoint a qualified mediator to conduct mediation proceedings unless the parties notify the division in writing that they have selected a mediator. The mediator must comply with the rules adopted by the division, and must notify the division in writing within 10 days after the conclusion of the mediation, that the mediation has been concluded.

Section 723.0381, F.S., states that if mediation has failed to provide a resolution of the dispute, either party may file an action in the circuit court.

Enforcement of Park Rules

Other than eviction procedures pursuant to s. 723.061, F.S., the statutes do not address the means for enforcing park rules. However, such enforcement mechanisms may be provided in respective prospectuses. When fees, fines, assessments, or charges are levied, such must also be authorized in the prospectus. (s. 723.035, F.S.)

Section 723.005, F.S., specifically denies DBPR the power or duty to enforce mobile home park rules.

Interim Project Issue

Current law may not provide mobile home park owners *sufficient* authority to require mobile home owners to maintain and make improvements to their mobile homes and property on which they are situated. Failure to maintain and improve the park may result in diminishing the quality, character or value of the property, affecting both the value of the park and individually owned mobile homes, and the quality of life for park residents. However, such requirements may have unanticipated cost implications on mobile home owners.

Generally, such requirements may include:

- Maintenance or repair of existing components of mobile homes or improvements;
- Replacement of worn components of mobile homes or improvements;

- Replacement of components or improvements with non-identical components or improvements for aesthetic reasons;
- Installation of additional improvements not addressed in the prospectus, contract or park rules; and
- Maintenance or removal of trees and other vegetation on the property.

Specifically, such requirements may include the maintenance, repair, replacement, or installation of:

- siding and skirting;
- air conditioning systems (window units vs. central air conditioning);
- porches, awnings, and carports;
- driveways, sidewalks, and steps; and
- trees and ornamental shrubbery.

METHODOLOGY

In preparing this report, staff reviewed chapter 723, F.S., the Florida Mobile Home Act, and related case law, DBPR Rules, prospectuses, leases, and park rules and regulations.

Staff supplemented the review by surveying stakeholder groups affected by this issue. These stakeholders include the Federation of Manufactured Home Owners of Florida Inc. (FMO) and the Florida Manufactured Housing Association (FMHA). Also surveyed was staff of the Department of Business and Professional Regulation (DBPR) responsible for administering and enforcing the Florida Mobile Home Act. In addition, staff sent surveys to three attorneys that represent either mobile home parks owners or owners of mobile homes in mobile home parks.

Staff also reviewed reports issued by various legislative mobile home study commissions over the past decade.

FINDINGS

The survey revealed that there are diverse opinions as to what authority park owners have to require mobile home owners to maintain and make improvements to their mobile homes and the property on which such are situated. Representatives from FMO, FMHA, DBPR responded to the survey. In addition, one of the four surveyed attorneys practicing in this area responded (PA).

When asked whether there was sufficient statewide problem with declining physical conditions in mobile

home parks to warrant a review by the Legislature, both FMO and FMHA responded “YES.” However, FMO noted that the problem is not uniform or widespread, and that such problems result from:

specific problems in parks where insufficient attention was given to the original prospectus or where the provisions of the prospectus are not being followed.

Both DBPR and PA responded “NO” to the question.

When asked whether these declining physical conditions were primarily due to the declining conditions of the mobile homes and related improvements, or to declining conditions of park owned facilities and improvements, both the FMO and the PA selected the first option, while the FMHA selected the second option, and DBPR selected both.

FMO suggested this decline could be reversed by “appropriate enforcement” of the park owner’s contractual obligations. FMHA suggested that sections 723.023 and 723.025, F.S., be amended to allow the park owner to enter lots to correct declining conditions, subsequent to notice and an opportunity to correct. DBPR suggested that there be “greater specificity regarding the maintenance responsibilities of both the park owner and mobile home owner” in lease agreements.

As to specific authority that park owners have to require action by home owners, FMO responded that park owners may require mobile home owners to maintain, repair, replace, or install improvements to and components of their mobile homes only when permitted by the prospectus. Furthermore, any requirements imposed that are not authorized in the prospectus may violate the vested rights of homeowners. As to the maintenance of trees and other vegetation, they responded that mobile home owners have “no authority to maintain the trees or vegetation and the responsibility is not assumed by the park owners in many cases.” FMO notes that this responsibility needs to be clarified in statute.

DBPR responded that park owners may require mobile home owners to maintain, repair or replace, when repair is inadequate, components of or improvements to their mobile homes pursuant to stipulations in lease agreements and prospectuses with the respective mobile home owner. In addition, such requirements may be imposed through park rules, in force and included as part of the initial lease agreement, or as

properly amended subsequent to the initial lease agreement. However, such park rules may not require mobile home owners to install improvements if such requirements are not specifically stipulated in the prospectus or lease agreement. FMHA agrees with this position.

DBPR states that removal of trees and other vegetation is likely to be construed as an improvement, while maintenance of such trees and other vegetation could be addressed in park rules. However, FMHA responded that the homeowner is obligated to maintain the trees and other vegetation on the property they lease, unless the park owner has assumed responsibility in the prospectus or rental agreement.

While FMHA responded that chapter 723, F.S., allows park owners to require that mobile homes be maintained and repaired, they note that the only enforcement option is eviction pursuant to s. 723.061, F.S, and “this is not an effective remedy.” They suggest that sections 723.023 and 723.025, F.S., be amended to allow the park owner to enter lots to correct declining conditions, subsequent to notice and an opportunity to correct.

The PA responded that park owners may require mobile home owners to maintain, repair, replace or install improvements to and components of their mobile homes only to the extent authorized by the prospectus and the lot rental agreement.

When asked whether park owners should have expanded statutory authority to impose requirements on mobile home owners to maintain, repair, replace, or install improvements to and components of their mobile homes, both the FMO and the PA responded NO. FMHA responded YES. DBPR did not respond to the question.

When asked whether such an expansion of authority would impair the existing contract or prospectus between the mobile home park owner and individual mobile home owner, both the FMO and the PA responded YES, and FMHA responded NO. DBPR responded that the answer depends on the specific provisions of this expanded authority, the specific contracts, and the specific prospectuses.

When asked what specific improvements to or components of mobile homes need maintaining, repairing, or replacing, FMO responded “ground and vegetation,” and the FMHA responded “lot

maintenance and exterior of homes.” DBPR and the PA did not respond to the question.

Conclusion

Ideally, the prospectus and lease agreement, which includes park rules, should clearly establish both the initial and subsequent obligations of the park owners and mobile home owners when establishing tenancy in a mobile home park. These obligations include maintenance, repair, and replacement requirements for components of mobile homes and improvements. In addition, these obligations include improvements to be provided by the mobile home owner.

If issues arise subsequent to initial acceptance of the prospectus, the statutes provide for amending both the prospectus and park rules. Amending the prospectus to require improvements beyond what is specified in the initial prospectus requires the agreement of the affected mobile home owner. Section 723.043, F.S., implicitly prohibits amending park rules and regulations to require improvements beyond those specified in the initial prospectus.

Both FMHA and DBPR state that park rules and regulations may be amended to require mobile home owners maintain, repair, and replace components of and improvements to mobile homes and the lots on which they are situated. While FMHA states that the homeowner is obligated to maintain the trees and other vegetation on the property they lease, unless the park owner has assumed responsibility in the prospectus or rental agreement, DBPR reports that removal of trees and other vegetation is likely to be construed as an improvement, while maintenance of such trees and other vegetation could be addressed in park rules.

FMO states that all requirements to maintain, repair, and replace, and requirements to add new improvements, are subject to the stipulations of respective prospectuses and lease agreements.

The Legislature can resolve these competing perspectives on park owner’s authority by amending chapter 723, F.S. There are a variety of options available to clarify this authority. (See Recommendations) However, statutory changes that authorize park owners to require actions of mobile home owners beyond the specifications of existing prospectuses or rental agreements may be challenged as an unconstitutional impairment of contract; such documents may vest certain rights to the mobile home

owner (and subsequent purchasers -- see s. 723.059(3), F.S.).

Impairment of Contract

The Florida and United States Constitutions prohibit the Legislature from enacting laws impairing the obligation of contracts. [Fla. Const. Art. I, s. 10; U.S. Const. art. I, s. 10] While the courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers. *Park Benziger & Co. v Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980) This exception extends to laws that are reasonable and necessary to serve an important public purpose *Yellow Cab C. V. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982), to include protecting the public’s health, safety or welfare. [*Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981) Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts. *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979)

RECOMMENDATIONS

The following is a list of options the committee may want to consider in response to this report:

- Encourage park owners to develop incentives to mobile home owners to make maintain, repair, or replace improvements to or components of mobile homes, or to install new improvements to mobile homes or the property on which they are situated.
- Amend chapter 723, F.S., to clarify that park rules either can or cannot be amended to authorize park owners to require maintenance, repair, or replacement of components of or improvements to mobile homes or the property on which they are situated. However, such clarification should not be contrary to applicable prospectuses or rental agreements addressing such actions.
- Amend chapter 723, F.S., to provide park owners with additional options to enforce prospectus and rule requirements.
- Amend chapter 723, F.S., to authorize park owners to enter the exterior areas of leased mobile home

lots to correct declining conditions of mobile homes or improvements to mobile homes, subsequent to notice and an opportunity to correct. Such provision should also allow mobile home owners to challenge this action.

- Amend chapter 723, F.S., to allow the park owners to require installation of new improvements to mobile homes or the property on which they are situated. Such provision should also allow mobile home owners to challenge this action.
- Amend chapter 723, F.S., to clarify the park owner and mobile home owners' responsibilities to maintain and remove trees and other vegetation in the parks.