

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility

Mobile home park owners would now be required to offer mobile home owner associations an opportunity to purchase the mobile home park when the park owner receives a bona fide unsolicited offer to purchase the park.

B. EFFECT OF PROPOSED CHANGES:

Florida Mobile Home Park Regulation – In General

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. Chapter 723, F.S, governs the relationship between mobile home park owners and mobile home owners. Section 723.004(1), F.S, provides:

The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. 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 distinguish 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.

The Florida Supreme Court, in addressing mobile home park issues, has stated

a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.

Stewart v. Green, 300 So.2d 889, 892 (Fla. 1974)

A mobile home park of 9 or fewer lots is not regulated by Chapter 723, F.S. At the date of this writing, there are 321,549 mobile home lots and 2,601 mobile home parks filed with the division.

Present situation

Section 723.037, F.S., requires a mobile home park owner, who has given notice of a lot rental increase, a reduction in services or utilities provided by the park owner, or a change in park rules and regulations, to comply with various statutory requirements in an attempt to resolve differences between the owner of the park and owners of the mobile homes located in the park.

The mobile home park owner is required to furnish information justifying the changes. The information is required to be available in order for the parties to discuss the proposed changes. Section 723.037(5),

F.S., provides for a process of mediation of disputes initiated through the division by either the park owner or the home owners. Statutory intent language specifically states that the purpose of these provisions is to encourage discussion and evaluation of comparable parks in the market area of a park that is proposing a rent increase. The language further states that the provisions are not intended to be enforced by civil or administrative action and that the meetings are intended to be conducted as settlement discussions prior to litigation.

Section 723.0381, F.S., addresses arbitration in civil actions. Subsection (2) authorizes the circuit court to refer disputes between tenants and a park owner to nonbinding arbitration. If arbitration does not result in an agreement, the parties may pursue the case in circuit court.

Effect of proposed changes

The bill allows ["may refer"] the court to send the dispute to binding arbitration if both parties consent to this option as an alternative to the current nonbinding option for resolution.

Present situation

The mobile home owners in a mobile home park have a statutory right of first refusal to purchase the mobile home park under certain circumstances. In a mobile home park where the mobile home owners have created a homeowners' association that complies with the provisions of ss. 723.075-.079, F.S., if the mobile home park owner "offers [the] mobile home park for sale", the mobile home park owner must notify the homeowners' association of the offer.

The homeowners' association has the right to purchase the mobile home park provided the homeowners' association executes an agreement to purchase the mobile home park at the price and terms of the offer within 45 days from the date that the mobile home park owner mailed notice of the offer to the homeowners' association. If the homeowners' association does not agree to purchase the mobile home park at the price and terms offered within the 45 days, the mobile home park owner is free to sell the mobile home park to any purchaser, except that if the mobile home park owner later reduces the offer price, the homeowners' association will have an additional 10 days to meet the lowered price by executing a contract.

If the mobile home park owner receives an offer after the expiration of the 45 day period, the mobile home park owner must notify the homeowners' association of the offer but is not required to sell the mobile home park to the homeowners' association even if the association agrees to match the price and terms. The term "offer" means "any solicitation by the park owner to the general public." The statutory right of first refusal only applies when the mobile home park is offered for sale to the general public; accordingly, a mobile home park owner who receives an unsolicited offer to purchase the mobile home park is under no duty to offer the mobile home park to the homeowners' association.¹

A transfer by a partnership to any of its partners is one of the exemptions to s. 723.071, F.S. Certain other exclusions to the statutory right of first refusal are also applicable, such as a government entity exercising its eminent domain powers.²

¹ *Brate v. Chulavista Mobile Home Park Owners Association, Inc.*, 559 So.2d 1190 (Fla. 2nd DCA 1990), *review denied*, 574 So.2d 140 (Fla. 1990).

² Other exceptions to the statutory right of first refusal are: sale or transfer to a descendant as if the park owner had died intestate; any transfer by gift, devise, or operation of law; any transfer by a corporation to an affiliate -- "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation; any transfer by a partner to one of its partners; any conveyance of interest in the park incidental to financing the park; any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property; any sale or transfer between or among joint tenants or tenants in common owning the park; and any purchase of the park by a government entity exercising its eminent domain powers.

Effect of proposed changes

In addition to a mobile home park owner who “offers [the] mobile home park for sale”, the bill also includes a park owner who receives a “bona fide offer to purchase” to the requirement that the mobile home park owner must notify the homeowners' association of the offer.

The bill specifies that the homeowners' association's right to purchase applies only to the mobile home park that it represents. The bill requires the park owner to notify the homeowners' association if the terms and conditions of an offer are changed, which allows the homeowners' association an additional 10 days to meet the price, terms, and conditions of the offer.

This bill expands the right of first refusal for mobile home owner associations by providing that if the mobile home park owner “receives a bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to” (this applies to an unsolicited offer), the mobile home park owner must notify the homeowners' association. The owner then is required to allow the homeowners' association the opportunity to purchase the park under the same terms and conditions as the offer.

This bill also removes the provisions which provides that, if the mobile home park owner receives an unsolicited offer, the mobile home park owner must notify the homeowners' association of the offer but is not required to sell the mobile home park to the homeowners' association even if the association agrees to match the price and terms. The bill requires the park owner to allow up to 45 days for the association to have the right of first refusal to equal the offer being made.

The bill specifies that the exemption from the requirements of offer and notice would not apply to the transfer by a partnership to any of the partners if the transfer is for the purpose of avoiding a sale to a homeowners association.

The bill also contains a statement of encouragement by stating “the Legislature encourages mobile home owners to organize as homeowners' associations...for the purpose of negotiating a right of first refusal with the park owner.”

Present situation

Section 723.0612, F.S., relates to change in use of the land comprising a mobile home park, or a change in the portion upon which the tenant resides. It also addresses relocation expenses and payments by a mobile home park owner. This section provides that, if a mobile home owner is required to move due to a change in use of the mobile home park property, and the mobile home owner meets certain conditions, the mobile home owner is entitled to financial assistance to help offset certain moving expenses.

Section 723.06115, F.S., establishes the Florida Mobile Home Relocation Trust Fund (trust fund) within the Department of Business and Professional Regulation (DBPR). The trust fund was created to provide revenues for payments to mobile home owners under the relocation program and for the administrative costs associated with managing the trust fund.

Section 723.083, F.S., prohibits any local or state government agency from rezoning (or taking “any other official action”) which would result in the removal or relocation of mobile home owners residing in mobile home parks, unless the agency first determines that there are adequate mobile home parks or other suitable facilities in existence for relocating the mobile home owners.

In an informal opinion issued to Pinellas County, the Attorney General advised that the phrase “adequate mobile home parks or other suitable facilities” means the local government must consider all facilities suitable for the relocation of the mobile home owners, not their mobile homes. See Informal Opinion of Atty.Gen. Jim Smith (January 3, 1986). The opinion includes apartments, trailer parks, and boarding houses as examples of “other suitable facilities” which a government may consider for the relocation of owners.

Effect of proposed changes

The bill amends s. 723.061, F.S., to exclude government agency personnel from being required to prepare an alternative housing analysis for individual home owners who have been approved for relocation payments by the Florida Mobile Home Relocation Corporation.

The bill amends s. 723.083, F.S., to require the state or local government to also consider whether the relocation facilities are affordable based on income classifications defined in chapter 420, F.S., the "State Housing Strategy Act."

C. SECTION DIRECTORY:

Section 1. Amends s. 723.0381, F.S., to cite binding arbitration as an alternative to dispute resolution.

Section 2. Amends s. 723.061, F.S., to exclude government agency personnel from being required to prepare an alternative housing analysis for individual home owners who have been approved for relocation payments by the Florida Mobile Home Relocation Corporation.

Section 3. Amends s. 723.071, F.S., relating to the sale of a mobile home park and the right of first refusal by an affected homeowners association.

Section 4. Amends s. 723.083, F.S., to require state or local government to also consider whether the relocation facilities are affordable based on income classifications.

Section 5. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR reports that the bill is not anticipated to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES