

Florida Legislative Session Chapter 2020-27
HB1339 Community Affairs

An act relating to community affairs

- amending s. 723.011, F.S.; providing that a mobile home owner may be required to install permanent improvements as disclosed in the mobile home park prospectus;
- amending s. 723.012, F.S.; requiring a mobile home park owner to amend its prospectus under certain circumstances; requiring a mobile home park owner to increase shared facilities under certain circumstances; providing a requirement for the prospectus amendment; prohibiting certain costs and expenses from being passed on or passed through to existing mobile home owners;
- amending s. 723.023, F.S.; revising general obligations for mobile home owners;
- amending s. 723.031, F.S.; revising construction relating to a mobile home park owner's disclosure of certain taxes and assessments; prohibiting a mobile home park owner from charging or collecting certain taxes or charges in excess of a certain amount;
- amending s. 723.037, F.S.; authorizing mobile home park owners to give notice of lot rental increases for multiple anniversary dates in one notice; providing construction; revising a requirement for a lot rental negotiation committee;
- amending s. 723.041, F.S.; providing that a mobile home park damaged or destroyed due to natural force may be rebuilt with the same density as previously approved, permitted, and built; providing construction;

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- amending s. 723.042, F.S.; revising conditions under which a person is required by a mobile home park owner or developer to provide improvements as a condition of residence in a mobile home park;
- amending s. 723.059, F.S.; authorizing certain mobile home purchasers to assume the seller's prospectus; authorizing a mobile home park owner to offer a purchaser any approved prospectus;
- amending s. 723.061, F.S.; revising requirements related to the provision of eviction notices by mobile home park owners to specified entities; specifying the waiver and nonwaiver of certain rights of mobile home park owners under certain circumstances; requiring the accounting at final hearing of rents received;
- amending s. 723.076, F.S.; providing a notice requirement for homeowners' associations to mobile home park owners after the election or appointment of new officers or board members;
- amending s. 723.078, F.S.; revising requirements for homeowners' association board elections and ballots; requiring an impartial committee to be responsible for overseeing the election process and complying with ballot requirements; defining the term "impartial committee"; requiring that association bylaws provide a method for determining the winner of an election under certain circumstances; requiring the division to adopt procedural rules; revising the types of meetings that are not required to be open to members; providing an exception to a requirement for an officer of an association to provide an affidavit affirming certain information; authorizing meeting

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notices to be provided by electronic means; providing that the minutes of certain board and committee meetings are privileged and confidential; conforming provisions to changes made by the act;

- amending s. 723.079, F.S.; revising homeowners' association recordkeeping requirements; revising the timeframes during which certain records are required to be retained and be made available for inspection or photocopying; limiting the amount of damages for which an association is liable when a member is denied access to official records; requiring that certain disputes be submitted to mandatory binding arbitration with the division; providing requirements for such arbitration;
- amending s. 723.1255, F.S.; requiring that certain disputes be submitted to mandatory binding arbitration with the division; providing requirements for such arbitration and responsibility for fees and costs; requiring the division to adopt procedural rules.

Specific Section changes

Subsection (4) of section 723.011, Florida 1115 Statutes, is amended to read:

723.011 Disclosure prior to rental of a mobile home lot; prospectus, filing, approval.

- (4) With regard to a tenancy in existence on the effective date of this chapter, the prospectus or offering circular offered by the mobile home park owner must ~~shall~~ contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and may ~~shall~~ not require any mobile home owner to install any permanent improvements, except that the mobile home owner may be required to install permanent improvements to the mobile home as disclosed in the prospectus.

Subsection (5) of section 723.012, Florida Statutes, is amended to read:

723.012 Prospectus or offering circular. The prospectus or offering circular, which is required to be provided by s. 723.011, must contain the following information:

- (5) A description of the recreational and other common facilities, if any, that will be used by the mobile home owners, including, but not limited to:
- (a) The number of buildings and each room thereof and its intended purposes, location, approximate floor area, and capacity in numbers of people.

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- (b) Each swimming pool, as to its general location, approximate size and depths, and approximate deck size and capacity and whether heated.
- (c) All other facilities and permanent improvements that ~~which~~ will serve the mobile home owners.
- (d) A general description of the items of personal property available for use by the mobile home owners.
- (e) A general description of the days and hours that facilities will be available for use.
- (f) A statement as to whether all improvements are complete and, if not, their estimated completion dates. If a mobile home park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the mobile home park owner must amend the prospectus to disclose such additions. If the number of mobile home lots in the park increases by more than 15 percent of the total number of lots in the original prospectus, the mobile home park owner must reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities. The costs and expenses necessary to increase the shared facilities may not be passed on or passed through to the existing mobile home owners.

Section 723.023, Florida Statutes, is amended to read:

723.023 Mobile home owner's general obligations. A mobile home owner shall ~~at all times~~:

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- (1) At all times comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.
- (2) ~~At all times~~ keep the mobile home lot that ~~which~~ he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.
- (3) At all times comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.
- (4) Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- (5) When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

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

723.031 Mobile home lot rental agreements.

- (5) The rental agreement must ~~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 must ~~shall~~ be in accordance with ss. 723.033 and 723.037 or s.

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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 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 charge may not be collected which 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 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 separate charge or 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. A mobile home park owner is prohibited from charging or collecting from the mobile home owners any sum for ad valorem taxes or non-ad valorem tax charges in an amount in excess of the sums remitted by the park owner to the tax collector. 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.

Subsection (1) and paragraph (a) of subsection 1249 (4) of section 723.037, Florida Statutes, are amended to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The park owner may give notice of all increases in lot rental amount for multiple anniversary dates in the same 90-day notice. The notice must ~~shall~~ identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. However, this requirement does not authorize the release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose. The home owner's right to the 90-day notice may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90-day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through

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charge being levied. Notices of increase in the lot rental amount due to a pass-through charge must ~~shall~~ state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

- (4) (a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place no later than 60 days before the effective date of the change to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations. The negotiating committee shall make a written request for a meeting with the park owner or subdivision developer to discuss those matters addressed in the 90-day notice, and may include in the request a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting. The committee shall address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

This subsection is not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to mediation of any dispute.

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Subsections (5) and (6) are added to section 723.041, Florida Statutes, to read:

723.041 Entrance fees; refunds; exit fees prohibited; replacement homes.

- (5) A mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, and built before the park was damaged or destroyed.
- (6) This section does not limit the regulation of the uniform fire safety standards established under s. 633.206, but supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Section 723.042, Florida Statutes, is amended to read:

723.042 Provision of improvements. A ~~No~~ person may not ~~shall~~ 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 pursuant to s. 723.012(7) ~~s. 723.011~~ prior to occupancy in the mobile home park.

Section 723.059, Florida Statutes, is amended to read:

723.059 ~~Rights of~~ Purchaser of a mobile home within a mobile home park.

- (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

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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.

- (2) Properly promulgated rules may provide for the screening of any prospective purchaser to determine whether or not such purchaser is qualified to become a tenant of the park.
- (3) The purchaser of a mobile home who intends to become ~~becomes~~ a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and may assume the seller's prospectus. However, nothing herein shall prohibit a mobile home park owner from offering the purchaser of a mobile home any approved prospectus ~~shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.~~
- (4) However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the purchaser's initial ~~offering circular or~~ prospectus and this act.
- (5) Lifetime leases and the renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable unless otherwise provided in the mobile home lot rental agreement or unless

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the transferee is the home owner's spouse. The right to an assumption of the lease by a spouse may be exercised only one time during the term of that lease.

Paragraph (d) of subsection (1) of section 723.061, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

723.061 Eviction; grounds, proceedings.

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds:

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners' association formed and operating under ss. 723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the price and under the terms and conditions set forth in the written notice.
 - a. The notice shall be delivered to the officers of the homeowners' association by United States mail. Within 45 days after the date of mailing of the notice, the homeowners' association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner

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and the homeowners' association is not executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the homeowners' association except as provided in sub-subparagraph b.

- b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners' association, the homeowners' association has an additional 10 days to meet the revised price, terms, and conditions of the park owner by executing and delivering a revised contract to the park owner.
- c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners' association for the sale of the mobile home park to the homeowners' association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

- 2. The park owner gives the affected mobile home owners and tenants at least 6 months' notice of the eviction due to the projected change in use and of their need to secure other accommodations. Within 20 days after giving an eviction notice to a mobile home owner, the park owner must provide the division with a copy of the notice. The division must provide the executive director of the Florida Mobile

Home Relocation Corporation with a copy of the notice.

- a. The notice of eviction due to a change in use of the land must include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

- b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.
- (5) A park owner who accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing noncompliance. Any rent so received must be accounted for at the final hearing.

Subsection (1) of section 723.076, Florida Statutes, is amended to read:

723.076 Incorporation; notification of park owner.

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- (1) Upon receipt of its certificate of incorporation, the homeowners' association shall notify the park owner in writing of such incorporation and shall advise the park owner of the names and addresses of the officers of the homeowners' association by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested. Thereafter, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of any change of names and addresses of its president or registered agent. Upon election or appointment of new officers or board members, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of the new officers or board members.

Section 31. Paragraphs (b) through (e) of subsection (2) of section 723.078, Florida Statutes, are amended, and paragraph (i) of that subsection is reenacted, 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. A member may not vote by general proxy but may vote by limited proxies substantially

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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. ~~A,~~ ~~except that no~~ proxy, limited or general, may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person. 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 this section, members may vote in person at member meetings or by secret ballot, including absentee ballots, as defined by the division.

- b. Elections shall be decided by a plurality of the ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A member may not allow any other person to cast his or her ballot, and any ballots

- improperly cast are invalid. An election is not required unless there are more candidates nominated than vacancies that exist on the board.
- c. Each member or other eligible person who desires to be a candidate for the board of directors shall appear on the ballot in alphabetical order by surname. A ballot may not indicate if any of the candidates are incumbent on the board. All ballots must be uniform in appearance. Write-in candidates and more than one vote per candidate per ballot are not allowed. A ballot may not provide a space for the signature of, or any other means of identifying, a voter. If a ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws.
- d. An impartial committee shall be responsible for overseeing the election process and complying with all ballot requirements. For purposes of this section, the term "impartial committee" means a committee whose members do not include any of the following people or their spouses:
- (I) Current board members.
 - (II) Current association officers.
 - (III) Candidates for the association or board.
- e. The association bylaws shall provide a method for determining the winner of an election in which two or more candidates for the same position receive the same number of votes.

f. The division shall adopt procedural rules to govern elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining the secrecy of ballots.

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 meetings between the park owner and the board of directors or any of the board's committees, 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, when ~~where~~ the meeting is held for the purpose of seeking or rendering legal advice, and when ~~where~~ the contents of the discussion would otherwise be governed by the attorney-client privilege. Notice of all meetings open to members 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 dues ~~assessments against members~~ are to be considered for any reason shall specifically contain a statement that dues ~~assessments~~ will be considered and the nature of such dues ~~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.

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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.
- (d) *Member meetings.* Members shall meet at least once each calendar year, and the meeting shall be the annual meeting. All members of the board of directors shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any member desiring to be a candidate for board membership from being nominated from the floor. All nominations from the floor must be made at a duly noticed meeting of the members held at least 27 ~~30~~ days before the annual meeting. The bylaws shall provide the method for calling the meetings of the members, including annual meetings. The method shall provide at least 14 days' written notice to each member in advance of the meeting and require the posting in a conspicuous place on the park property of a notice of the meeting at least 14 days prior to the meeting. The right to receive written notice of membership meetings may be waived in writing by a member. Unless waived, the notice of the annual meeting shall be mailed, hand delivered, or electronically transmitted to each member, and shall constitute notice. Unless otherwise stated in the bylaws, an officer of the

association shall provide an affidavit affirming that the notices were mailed, or hand delivered, or provided by electronic transmission in accordance with the provisions of this section to each member at the address last furnished to the corporation. These meeting requirements do not prevent members from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws.

(e) *Minutes of meetings.*

1. Notwithstanding any other provision of law, the minutes of board or committee meetings that are closed to members are privileged and confidential and are not available for inspection or photocopying.
2. Minutes of all meetings of members of an association and meetings open to members of, the board of directors, and a committee of the board must be maintained in written form and approved by the members, board, or committee, as applicable. 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.
3. ~~2.~~ All approved minutes of open meetings of members, committees, and the board of directors shall be kept in a businesslike manner and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes within this state for ~~a period of~~ at least 5 ~~7~~ years.

(i) *Recall of board members.* Any member of the board of directors may be recalled and removed from office with or without cause by the vote of or agreement in writing by a majority of all members. A special meeting of the members to recall a member or members of the board of directors may be called by 10 percent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all members by a vote at a meeting, the recall is effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the 1684 association in their possession, or shall proceed under subparagraph 3.
2. If the proposed recall is by an agreement in writing by a majority of all members, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of directors shall duly notice and hold a meeting of the board within 5

full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or shall proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 723.1255. For purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall of a member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action under s. 723.006. A member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.
4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of

an agreement in writing or within 5 full business days after the adjournment of the members' recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the member's representative may file a petition pursuant to s. 723.1255 challenging the board's failure to act. The petition must be filed within 60 days after expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.
6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any other provision of this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide 1740 procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 723.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the member's representative shall be named as the respondents.
8. The division may not accept for filing a recall petition, whether or not filed pursuant to this subsection, and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Paragraphs (d) and (f) through (i) of subsection (4) and subsection (5) of section 723.079, Florida Statutes, are amended to read:

723.079 Powers and duties of homeowners' association.

(4) The association shall maintain the following items, when applicable, which constitute the official records of the association:

(d) The approved minutes of all meetings of the members of an association and meetings open for members of, the board of directors, and committees of the board, which minutes must be retained within this the state for at least 5 7 years.

(f) All of the association's insurance policies or copies thereof, which must be retained within this state for at least 5 7 years after the expiration date of the policy.

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- (g) A copy of all contracts or agreements to which the association is a party, including, without limitation, any written agreements with the park owner, lease, or other agreements or contracts under which the association or its members has any obligation or responsibility, which must be retained within this state for at least ~~5-7~~ years after the expiration date of the contract or agreement.
- (h) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained within this state for ~~a period of~~ at least 5 7 years. The financial and accounting records must include:
1. Accurate, itemized, and detailed records of all receipts and expenditures.
 2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay dues or assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 3. All tax returns, financial statements, and financial reports of the association.
 4. Any other records that identify, measure, record, or communicate financial information.
- (i) All other written records of the association not specifically included in the foregoing which are related to the operation of the association must be retained within this state for at least 5 years or at

least 5 years after the expiration date, as applicable.

- (5) The official records shall be ~~maintained within the state for at least 7 years and shall be~~ made available to a member for inspection or photocopying within 20 ~~10~~ business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested. The requirements of this subsection are satisfied by having a copy of the official records available for inspection or copying in the park or, at the option of the association, by making the records available to a member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide a member with copies on request during the inspection if the entire request is no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.
- (a) The failure of an association to provide access to the records within 20 ~~10~~ business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the

association willfully failed to comply with this subsection.

- (b) A member who is denied access to official records is entitled to ~~the actual damages or minimum~~ damages for the association's willful failure to comply with this subsection in the amount of. ~~The minimum damages are to be~~ \$10 per calendar day up to 10 days, not to exceed \$100. The calculation for damages begins to begin on the 21st 11th business day after receipt of the written request, submitted by certified mail, return receipt requested.
- (c) A dispute between a member and an association regarding inspecting or photocopying official records must be submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255 and procedural rules adopted by the division.
- (d) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a member to demonstrate a proper purpose for the inspection, state a reason for the inspection, or limit a member's right to inspect records to less than 1 business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds 30 minutes and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result

in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or home owners:

1. A record protected by the lawyer-client privilege as described in s. 90.502 and a record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.
2. E-mail addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a home owner other than as provided for association notice requirements, and other personal identifying information of any person,

excluding the person's name, lot designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to home owners a directory containing the name, park address, and telephone number of each home owner. However, a home owner may exclude his or her telephone number from the directory by so requesting in writing to the association. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by a home owner and not requested by the association.

3. An electronic security measure that is used by the association to safeguard data, including passwords.
4. The software and operating system used by the association which allows the manipulation of data, even if the home owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Section 723.1255, Florida Statutes, is amended to read:

723.1255 Alternative resolution of recall, election, and inspection and photocopying of official records disputes.

(1) A dispute between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors under s. 723.078(2)(b) or regarding the inspection and photocopying of official records under s. 723.079(5) must be submitted to mandatory binding arbitration with the

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division. The arbitration shall be conducted in accordance with this section and the procedural rules adopted by the division.

- (2) Each party shall be responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrators shall be divided equally between the parties regardless of the outcome.
- (3) The division shall adopt procedural rules to govern mandatory binding arbitration proceedings ~~The Division of Florida Condominiums, Timeshares, and Mobile Homes of the 1915 Department of Business and Professional Regulation shall adopt 1916 rules of procedure to govern binding recall arbitration 1917 proceedings.~~

This act shall take effect July 1, 2020.