

CHAPTER 61B-29
MOBILE HOME RULES DEFINITIONS

61B-29.001 Definitions

61B-29.001 Definitions.

For purposes of Rule Chapters 61B-30, 61B-31, 61B-32, 61B-33, and 61B-35, F.A.C., the definitions in this rule shall apply.

(1) "Promoting" means the use of advertising material which describes any aspect of the mobile park or the terms of the lease used in connection with the sale of a new mobile home or a lease of a mobile home lot. Descriptions which are limited to the name and address of a park shall not be deemed promoting.

(2) "Offer" means any advertisement, inducement, solicitation or attempt to encourage any person to enter into a rental agreement or extend or renew an existing rental agreement for a mobile home lot, whether existing or proposed.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.016 FS. History--New 3-20-95, Amended 1-26-97, 7-10-16.

CHAPTER 61B-30
FEES, FILINGS, AND ADVERTISING

61B-30.006	Procedure for Filing and Use of Advertising
61B-30.001	Fees
61B-30.002	Filing and Examination of a Prospectus
61B-30.008	Provider Filing and Curriculum for Educational and Training Programs

61B-30.001 Fees.

(1) Fees shall be paid online at www.MyFloridaLicense.com or by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

(2) Annual fee – If the number of mobile home lots in the park changes during the year, the fee shall be paid for the maximum number of mobile home lots owned by the park owner during the year.

(3) Prospectus filing fee – Upon filing the prospectus required by Section 723.011, F.S., the park owner shall pay a prospectus filing fee for each prospectus filed as follows:

(a) If any of the mobile home lots were covered under a Department of Health (DOH) mobile home park permit prior to June 4, 1984, the fee described in Section 723.011(1)(c)2., F.S., shall be based upon the number of mobile home lots required to be covered under a DOH permit at the time of the prospectus filing, unless the park owner files a prospectus for a greater number of mobile home lots than were covered under the permit. In that event, the fee shall be based upon the number of lots for which the prospectus is filed.

(b) For parks which obtain a permit on or after June 4, 1984, the filing shall be accompanied by a fee of \$10 for each mobile home lot covered under the permit offered for lease with the prospectus; provided that the fee shall not be less than \$100. If the park owner wishes to file a prospectus for a greater number of mobile home lots than are covered under the permit, the fee shall be based upon the number of mobile home lots for which the prospectus is filed; provided that the fee shall not be less than \$100.

(4) If subsequent to the initial filing described in subsection (3) of this rule, additional mobile home lots become covered by the DOH permit which were not previously included in the prospectus filing, the fee shall be \$10 for each additional mobile home lot.

(5) Successors or assigns of a mobile home park may be responsible for payment of any delinquent or due fees, penalties or fines.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.007, 723.011(1)(a), (c) FS. History—New 1-10-85, Formerly 7D-30.01, Amended 8-2-87, 3-28-89, Formerly 7D-30.001, Amended 8-31-94, 11-15-95, 1-19-97, 9-1-15, 3-10-16.

61B-30.002 Filing and Examination of a Prospectus.

(1) “Filing” occurs when all of the following have been received by the division:

(a) All forms and documents, completed, tabbed, labeled and assembled in accordance with these rules;

(b) The completed Park Owner Prospectus Filing Statement, BPR Form 402, incorporated herein by reference and effective 8-31-94, and which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and, <https://www.flrules.org/Gateway/reference.asp?No=Ref-06507>.

(c) The correct filing fees as required by Section 723.011, F.S.

(2) In determining whether a prospectus must be filed pursuant to Section 723.011, F.S., all existing and planned lots, irrespective of whether all lots are currently covered under a Department of Health permit, shall be counted. As used herein, planned lots means all lots platted or otherwise approved by local authorities.

(3) The park owner may enter into rental agreements only for those lots for which fees have been paid and a prospectus has been filed.

(4) A filing may be amended to include additional lots by submitting to the division the following items:

(a) A completed Supplemental Filing Statement, BPR Form 406, incorporated herein by reference and effective 8-31-94, which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(b) The additional filing fees.

(5) If more than one prospectus is filed and approved for use in the park, the park owner shall inform the division which prospectus applies to each of the lots. The information shall be submitted in the following manner:

(a) If known at the time of filing, the information shall be stated in the appropriate blanks in BPR Form 402.

(b) If the park owner does not know at the time of filing which prospectus will be delivered to each lot; or if the information provided in BPR Form 402 changes after filing, the park owner shall, no later than the first day of March and September of each year, submit to the division a listing of each lot number with the corresponding form prospectus identification number assigned by the division. If there have been no changes from the previous reporting, no additional notification is required.

(6) Documents submitted to the division for filing shall be securely bound and fastened between firm covers. The filing shall be accompanied by the Park Owner Prospectus Filing Statement and the correct filing fees. Exhibits to the prospectus shall be tabbed and labeled on the side. Each label shall identify the exhibit by appropriate word, phrase or abbreviation.

(7) Amendment means any change to the prospectus filing as permitted by Rule 61B-31.001, F.A.C..

(8) Each park owner shall file amendments with the Division for approval no later than 10 days after a change has occurred. The filing shall contain a version of the proposed amendment, that shows the deletions stricken, and the additions underlined or otherwise highlighted. The park owner shall also submit with the amendments the following information on a separate cover sheet:

(a) Name and address of the park to which the amendments apply;

(b) Division file number;

(c) Park owner's name and address;

(d) Attorney's name and address, if applicable.

(9) The examination process for a filing, described herein, shall apply to the examination of amendments, except for paragraph 61B-30.002(1)(c), F.A.C.

(10) Amendments shall not be delivered to existing home owners prior to approval by the Division, except that proposed rule changes shall be delivered to home owners as required by Section 723.037, F.S., and shall be filed with the Division no later than 10 days after the effective date of the changes. All other approved amendments shall be provided to existing home owners no later than 30 days after approval by the Division.

(11) The park owner shall have 45 days from the date of the Division's notification of deficiencies to correct any deficiencies noted by the Division. The Division shall notify the park owner of the pending rejection and shall provide an opportunity for the park owner to request formal or informal proceedings pursuant to Section 120.57, F.S., prior to final agency action rejecting the prospectus. If a filing is rejected, a complete refiling of the documents pursuant to the requirements of Chapter 723, F.S., and these rules, including the payment of filing fees, shall be required prior to entering into additional rental agreements.

(12) Upon resolution of all deficiencies, the park owner shall file with the division a corrected and revised version of the pending prospectus prior to the division's notification to the park owner that the prospectus is adequate to meet the requirements of Chapter 723, F.S. The division's notification of approval shall be accompanied by the approved version of the prospectus. Upon receipt of the approved prospectus, the mobile home park owner shall submit a statement in writing for each prospectus that the approved version of that prospectus is the only version which is being distributed.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.011(1), 723.012, 723.006(8) FS. History—New 1-10-85, Formerly 7D-30.02, Amended 8-2-87, Formerly 7D-30.002, Amended 8-31-94, 11-15-95, 1-19-97, 4-30-00, 3-10-16.

61B-30.006 Procedure for Filing and Use of Advertising.

(1) All advertising, including scripts for radio, telephone and television, used in promoting a mobile home park under the jurisdiction of the division must be filed pursuant to the requirements of Section 723.016, F.S.

(2) "Filed with the division" means that advertising materials and a completed BPR form 403, Advertising Filing Statement, incorporated herein by reference and effective 8-31-94, which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030, have been received by the division in the Tallahassee, Florida office. The date of receipt shall constitute the date of filing.

(3) The developer, park owner or mobile home dealer is not required to refile an advertising piece once it has been filed provided there are no changes made to that advertising piece. Changes only in the size of the advertising piece shall not be considered a change.

(4) Advertising filed with the Division may provide blank spaces for dollar amounts and the number of available lots if it clearly

indicates the type of information to be included. For example, a blank space for rent may be preceded by a dollar sign.

(5) In determining whether advertising materials violate Section 723.016, F.S., or these rules, the Division shall consider both explicit representations and reasonable inferences created by such material. To determine whether misrepresentations or misleading impressions are made, the Division shall review the advertising materials in their totality.

(6) Advertising shall be consistent with the disclosures in the prospectus required by Section 723.012, F.S.

(7) Advertising shall not use such terms as “minutes away”, “short distance”, “only miles”, “near” or similar terms to indicate distances unless the actual distance in road miles is used in conjunction with such terms.

(8) Advertising shall not contain statements, photographs, or sketches relating to facilities for recreation, sports or other conveniences which are not presently in existence or located in the park unless it is clearly stated that such facilities are merely proposed if they do not exist; or, if they are not located in the park, a statement to that effect and the actual distance thereto in road miles is stated.

(9) Forecasts of future events or population trends contained in advertising shall be based upon verifiable facts and shall be pertinent to the offering.

(10) Any reference to a guarantee must specifically state what is guaranteed.

(11) The advertising shall not represent that the lot rental amount or any part of the lot rental amount of the lessee will not increase unless all financial obligations of the lessee are guaranteed not to increase or a conspicuous statement is made disclosing that the lessee will be required to pay other charges which are not guaranteed.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.012, 723.016, 723.017 FS. History—New 1-10-85, Formerly 7D-30.06, 7D-30.006, Amended 8-31-94, 1-19-97.

61B-30.008 Provider Filing and Curriculum for Educational and Training Programs.

(1) Anyone seeking to be a division approved mobile home education provider shall file with the division the educational materials required by Section 723.006(14)(a), F.S.

(2) All materials must be submitted to the division via e-mail to CTMH.BdMbrCertProviders@myfloridalicense.com, by providing access to web-based training programs, or in either printed form or CD ROM format to the following address:

Department of Business and Professional Regulation
Division of Florida Condominiums, Timeshares, and Mobile Homes
2601 Blair Stone Road
Tallahassee, FL 32399-1030

(3) Programs shall cover at least four of the following topics in order to meet the requirements of an educational curriculum for a mobile home education program as provided in Section 723.006(14), F.S.:

- (a) Homeowners’ Association statutory rights and regulatory responsibilities to the association and the mobile home owners.
- (b) Elections.
- (c) Financial reporting.
- (d) Association operations.
- (e) Records maintenance, including mobile home owner access to records.
- (f) Dispute resolution.
- (g) Homeowners’ Association Formation.

(4) Programs and materials shall not contain editorial comments.

(5) Within 45 days from receipt of the materials, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 45 days from receipt of the materials, the materials are deemed approved.

(6) The provider shall have 45 days from the date of the division’s notification of deficiencies to correct such deficiencies. If the deficiencies are not corrected within the 45-day period, the division shall reject the filing.

(7) Within 20 days from receipt of the corrections to the noted deficiencies, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 20 days from receipt of the corrections, the materials are deemed approved.

(8) Approved materials may be provided to participants via web-based training programs, seminars, or printed media.

(9) The division will maintain a list of approved programs and providers on the Department of Business and Professional Regulation’s website at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html>.

(10) The division reserves the right to require changes to approved education and training programs.

(11) The provider will issue a certificate of completion to a board member who has successfully completed the approved educational curriculum.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.006(12), (13), (14) FS. History—New 3-14-16.

CHAPTER 61B-31
MOBILE HOME PROSPECTUS AND RENTAL AGREEMENT RULE

61B-31.001 Prospectus and Rental Agreement

61B-31.001 Prospectus and Rental Agreement.

(1) The prospectus shall clearly describe all matters required by chapter 723, Florida Statutes, and shall not contain other information except as permitted by the Division to fully and fairly disclose all aspects of the park and the offer.

(2) Subject to the provisions of section 723.011(3), F.S., if the park is to be developed in defined sections, the information required in the prospectus may be described by section.

(3) With regard to a tenancy in existence on June 4, 1984, the prospectus shall contain the same terms and conditions as rental agreements which were required to be offered pursuant to section 83.760, F.S. (1983), and any provisions required by chapter 723, F.S., not inconsistent therewith. A copy of each form of the existing rental agreements identified by the lots to which it applies shall be included in the prospectus filing filed with the Division. The Division will not as part of the examination of the prospectus investigate to determine if the content of the prospectus contains the same terms and conditions as the rental agreements which were required to be offered. If it is later determined that the prospectus varies from the offered rental agreements, an amendment to the prospectus will be required.

(4) The prospectus distributed to a home owner or prospective home owner shall be binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the following circumstances:

(a) Amendments consented to by each affected home owner and the park owner.

(b) Amendments to reflect new rules or rules that have been changed in accordance with procedures described in section 723.037, F.S., and the prospectus.

(c) Amendments to reflect changes in the name or address of the owner of the park, name or address of the mobile home park or the name or address of the park manager or management company.

(d) Amendments to reflect changes in zoning.

(e) Amendments to reflect a change in the person authorized to receive notices and demands on the park owner's behalf.

(f) Amendments to reflect changes in the entity furnishing utility or other services.

(g) Amendments required by the Division.

(h) Amendments required as a result of revisions of chapter 723, F.S.

(i) Amendments to add, delete or modify user fees for homeowners, so long as the park owner does not violate section 723.031, F.S. by charging a user fee for a service previously included in lot rental amount unless a corresponding reduction in lot rental amount is provided.

(j) Amendments to correct scrivener's errors.

(k) Amendments to reflect changes to the mobile home park property description due to a change in land use, condemnation or other legal action which changes the mobile home park property or a portion thereof.

(l) Amendments made to conform the prospectus to requirements of federal, state and local government ordinances, statutes, and regulations, including, but not limited to, the Fair Housing Act, the Americans with Disabilities Act, or the Telecommunications Act of 1996, where there is no charge to the home owner, except as provided in section 723.031, F.S.

(m) Amendments to reflect changes in facilities or structural amenities after a natural disaster, as long as the requirements of section 723.037, F.S. are met.

(n) Amendments to revise, renew, or extend an underlying ground lease.

(o) Amendments to reflect reduction in services or utilities in accordance with the procedures described in section 723.037, F.S.

(p) Amendments to describe new facilities, services or utilities in the park.

(5) The park owner shall describe in the prospectus the manner in which lot rental amount or user fees may be raised as follows:

(a) In the case of lot rental amount, a statement that the mobile home owner shall be notified of the increase at least 90 days prior to the increase. In the case of user fees, a description of the notice will be provided.

(b) Disclosure of all components of lot rental amounts and disclosure of all user fees to be paid by the home owner. Each type of charge shall be separately listed. The disclosure of all charges except user fees, shall appear in one section of the prospectus. User fees shall be disclosed in a separate section immediately following the section relating to lot rental amount.

(c) A description of all factors, including cost where applicable, for each type of charge which may result in an increase of those

charges to the home owner. The factors shall be preceded or followed by a statement that an increase in one or more of the factors may result in an increase in the lot rental amount or user fees.

(d) If the home owner is responsible for pass-through charges, a statement of that fact and a description of the manner in which the pass-through charges will be assessed. The manner shall include the method of allocating the charges.

(6) The current dollar amount of each type of charge shall also be stated in the prospectus and rental agreement. The park owner may provide blank spaces for the required amounts and write in the amount prior to delivery to the home owner.

(7) If there are user fees, a copy of the user fee agreement shall be included as an exhibit to the prospectus.

(8) For those rental agreements in effect on June 4, 1984, the annual period shall commence with the effective date of any change initiated by the park owner on or after June 4, 1984; or, if a written agreement was then in effect, the duration period stated in the rental agreement. Initial tenancies commencing on or after June 4, 1984, may be for a period of less than one year where the park owner elects to have the term of all rental agreements within the park expire on the same date. Initial tenancy, as used herein, shall mean neither a rental agreement nor occupancy occurred prior to June 4, 1984.

(9) The park owner may use more than one form of the prospectus in the park. Each form prospectus shall be filed with the Division as a separate filing.

(10) The last page of the prospectus shall contain the date the prospectus is determined by the Division to be adequate to meet the requirements of chapter 723, F.S., and an identification number assigned by the Division and the lot number to which the prospectus applies. If the prospectus has been revised to include amendments as described in this rule, the date shall be the original approval date and the latest revision date.

(11) Only a prospectus which has been determined by the Division to meet the requirements of the Statutes and these rules may be delivered to a mobile home owner.

(12) The park owner shall deliver the prospectus to existing home owners prior to the renewal of their rental agreements, or prior to entering into a new rental agreement, or prior to increasing the lot rental amount. Once a home owner has been given a prospectus, the park owner shall not be required to provide another prospectus but shall provide amendments, as described in rule 61B-30.002, F.A.C., and this rule.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.003(6),(17), (21), 723.031, 723.006(8),(10), 723.011, 723.012, 723.031(7) FS. History—New 1-10-85, Amended 10-20-85, Formerly 7D-31.01, Amended 8-2-87, 10-13-87, Formerly 7D-31.001, Amended 11-15-95, 4-30-00.

CHAPTER 61B-32
MOBILE HOME MEDIATION RULES

61B-32.002	Notice of Lot Rental Increase; Reduction in Services or Utilities; or Change in Rules and Regulations
61B-32.003	Designation of Homeowners' Committee
61B-32.004	Meeting Between Park Owner and Homeowners' Committee
61B-32.0056	Appointment of a Mediator and Mediation Fees

61B-32.002 Notice of Lot Rental Increase; Reduction in Services or Utilities; or Change in Rules and Regulations.

(1) The provisions of section 723.037, F.S., apply to mobile home subdivisions, except for increases in maintenance fees.

(2) A copy of the notice shall be retained by the park owner or subdivision developer with a dated written statement signed by the park owner or subdivision developer certifying the date the notice was given to all affected homeowners in the park or subdivision and the board of directors of the homeowners' association if one has been established. If all notices are mailed, the park owner or developer may retain a post office certificate of mailing in lieu of the written statement.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.037 FS. History—New 2-6-85, Formerly 7D-32.02, Amended 8-2-87, 10-13-87, Formerly 7D-32.002, Amended 8-31-94, 11-15-95, 1-19-97.

61B-32.003 Designation of Homeowners' Committee.

(1) Any homeowner or group of homeowners may obtain the approval of the required homeowners to the designation of a homeowners' committee either at a meeting, by agreement in writing, or a combination thereof.

(2) If a mobile home or subdivision lot is owned jointly, the owners of that mobile home or subdivision lot shall 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. A majority shall constitute any number greater than 50 percent of the total.

(3) The homeowners' association or committee shall retain records to verify the selection of the committee by a majority of the affected homeowners or the board of directors of the association. The records shall be retained until the dispute is resolved or the mediation process described in section 723.037, F.S., has been completed, or, in the case of a homeowners' association, for not less than 7 years.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.037 FS. History—New 2-6-85, Formerly 7D-32.03, Amended 8-2-87, 10-2-90, Formerly 7D-32.003, Amended 11-15-95.

61B-32.004 Meeting Between Park Owner and Homeowners' Committee.

(1) The park owner or subdivision developer shall make and maintain a written record of the reasons for the increase in lot rental amount or reduction in services or utilities or changes to rules and regulations as applicable, which shall be as specific as the explanation required by subsection 61B-32.004(2), F.A.C., and which shall be retained for a period of 3 years.

(2) At the meeting required by section 723.037(4), F.S., the park owner or subdivision developer shall in good faith disclose and explain all material factors resulting in the decision to increase lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed. The park owner or subdivision developer may not limit the discussion of the reasons for the change to generalities only, such as, but not limited to, increases in operational costs, changes in economic conditions, or rents charged by comparable mobile home parks. For example, if the reason for an increase in lot rental amount is an increase in operational costs, the park owner must disclose the item or items which have increased, the amount of the increase, any similar item or items which have decreased and the amount of the decrease. If an increase is based upon the lot rental amount charged by comparable mobile home parks, the park owner shall disclose the name, address, lot rental amount and any other relevant factors concerning the mobile home parks relied upon by the park owner.

(3) If an agreement is reached between the committee and the park owner or subdivision developer, the terms of the agreement shall be stated in writing and signed by the committee and the park owner or subdivision developer.

(4) If an agreement is not reached in the meeting, the homeowners' committee may petition the division to initiate mediation by mailing or delivering the following items to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030 within 30 days after the meeting required by section 723.037(4), F.S.:

(a) A completed BPR form 34-001, PETITION FOR MEDIATION BY HOMEOWNERS, incorporated herein by reference and effective 1-19-97, which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(b) A copy of the written designation required by section 723.037(5), F.S., which shall include lot identification for each signature; and

(c) A copy of the notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations which is being challenged as unreasonable; and,

(d) A copy of the records which verify the selection of the homeowner's committee in accordance with rule 61B-32.003, F.A.C., and section 723.037(4), F.S.

(5)(a) Mediation will not be initiated pursuant to section 723.037(5)(a), F.S., if the following items are not mailed or delivered to the division within 30 days after the date of the meeting required by section 723.037(4), F.S.:

1. Completed BPR form 34-001; and,

2. A copy of the written designation required by paragraph (4)(b) of this rule and section 723.037(5), F.S.

(b) A petition that does not include the items identified in paragraphs (4)(c) and (d) of this rule, or the lot identification required by paragraph (4)(b) of this rule, shall be considered deficient. The division will notify the committee in writing of the deficiency. The committee shall have 14 days after the date of the notice to mail or deliver to the Division corrections of the deficiencies. If the deficiency corrections are not mailed or delivered within 14 days after the date of the notice, mediation will not be initiated pursuant to section 723.037(5)(a), F.S. A petition will be considered received pursuant to section 723.038(4), F.S., when all items required by this rule have been received and all deficiencies have been corrected.

(6) If the homeowners' committee petitions for mediation, a copy of the four items required by subsection (4) of this rule, shall be furnished to the park owner by Certified U.S. Mail, Return Receipt Requested, at the time the petition is filed with the Division. Notwithstanding this requirement, a mediator will be appointed within the time required by section 723.038(4), F.S.

(7) A decision by the Division regarding the sufficiency of a petition to initiate mediation does not constitute an adjudication of any issue arising under section 723.037, F.S. Any dispute concerning the applicability of section 723.037(6), F.S., must be submitted to a court of competent jurisdiction in the event that judicial proceedings are initiated.

(8) The park owner may petition the division to initiate mediation by mailing or delivering the following items to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030, within 30 days after the date of the meeting required by section 723.037(4), F.S.:

(a) A completed BPR form 34-002, PETITION FOR MEDIATION BY PARK OWNER, incorporated herein by reference and effective 1-19-97, and which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(b) A copy of the notice or notices of the lot rental increase, reduction in services or utilities, or change in the rules and regulations identifying the issue for mediation.

(9) Mediation will not be initiated pursuant to section 723.037(5)(a), F.S., if a completed BPR Form 34-002, PETITION FOR MEDIATION BY PARK OWNER, is not mailed or delivered to the division within 30 days after the date of the meeting required by section 723.037(4), F.S.

(10) A petition that does not include the items identified in paragraph (8)(b) of this rule, shall be considered deficient. The division will notify the park owner in writing of the deficiency. The park owner shall have 14 days after the date of the notice to mail or deliver to the division corrections of any deficiency. If the deficiency corrections are not mailed or delivered to the division within 14 days after the date of the notice, mediation will not be initiated pursuant to section 723.037(5)(a), F.S. A petition will be considered received pursuant to section 723.038(4), F.S., when all items required by this rule have been received and all deficiencies have been corrected.

(11) If the park owner petitions for mediation, a copy of the two items required by subsection (8) of this rule, shall be furnished by the park owner to the homeowners' committee by Certified U.S. Mail, Return Receipt Requested, at the time the petition is filed with the division. Notwithstanding this requirement, a mediator will be appointed within the time required by section 723.038(4), F.S.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.037, 723.038 FS. History—New 2-6-85, Formerly 7D-32.04, Amended 8-2-87, 10-13-87, 10-2-90, Formerly 7D-32.004, Amended 8-31-94, 11-15-95, 1-19-97.

61B-32.0056 Appointment of a Mediator and Mediation Fees.

(1) In order to be appointed by the division, a mediator meeting the requirements of section 723.038(2), F.S., must file an application with the division. The application must be submitted on BPR form 34-003, APPLICATION FOR MEDIATORS, incorporated herein by reference and effective 1-19-97. The form may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

(2) If a mediator in the circuit in which the mobile home park is located is unavailable from both a list of circuit court mediators in the judicial circuit and from the Florida Growth Management Conflict Resolution Consortium list, the division will appoint a mediator from outside the circuit, beginning with circuits which are located in the same geographic region.

(3) The division will select a mediator from the following lists using an alphabetical rotation:

(a) An alphabetical list of circuit court mediators by judicial circuit consisting of mediators willing to mediate in that judicial circuit.

(b) An alphabetical list of mediators maintained by the Florida Growth Management Conflict Resolution Consortium.

(4) Unless otherwise agreed to by the parties, the first mediation conference shall be held within 60 days of the appointment of the mediator by the division.

(5) Notice. Within 10 days after the appointment of the mediator, the mediator shall schedule and notify the parties in writing of the time, date and place of the mediation conference.

(a) Conclusion of Mediation. Mediation shall be completed within 45 days of the first mediation conference unless agreed to by both parties. The mediator shall notify the division in writing that mediation is concluded by submitting a completed BPR form 34-005, MEDIATION REPORT, incorporated herein by reference and effective 1-19-97, and which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. The report shall be mailed or delivered to the division within 10 days after the conclusion of the mediation. Conclusion means the mediation process has ended by either full or partial impasse or agreement on the issues or failure of either party to appear at the mediation conference.

(b) Waiver or Deferral of Mediation. Prior to the mediation conference, any party may withdraw its petition for mediation. The party withdrawing its petition shall notify all interested parties, the mediator and the division.

(c) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference, notwithstanding Rule 1.710(a), Florida Rules of Civil Procedure. No further notification is required for parties present at the adjourned conference.

(d) Counsel. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel shall be permitted to communicate privately with their clients. In the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel.

(e) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel.

(6) Any party may request the division to replace a mediator. Upon request from either party for replacement of an appointed mediator, the division will appoint a qualified replacement in accordance with this rule. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a mediation request for replacement is pending.

(7) In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. As used in these rules, "legal holiday" means those days designated in section 110.117, F.S.

(8)(a) Fees. For mobile home parks located in Dade County, the mediator shall collect an all inclusive fee of \$175 for up to 2 hours, and above 2 hours an additional fee of \$85 per hour, or any fraction of an hour.

(b) For mobile home parks located in all counties other than Dade County and the Sixth Judicial Circuit, the mediator shall collect an all inclusive fee of \$125 per hour, or any fraction of an hour.

(c) For mobile home parks located in the 6th Judicial Circuit, the mediator shall collect an all inclusive fee of \$125 per hour, prorated by one quarter hour increments.

(d) Any mediation fees incurred by a mediator subsequent to appointment by the division shall be the responsibility of the parties. The parties shall be responsible for paying the mediator fee in accordance with this rule.

(e) Mediation fees shall be based on time utilized for scheduling and mediation conference or conferences.

Rulemaking Authority 723.006(7) FS. Law Implemented 723.037, 723.038 FS. History—New 10-2-90, Formerly 7D-32.0056, Amended 8-31-94, 11-15-95, 1-19-97.

CHAPTER 61B-33
MOBILE HOME RULES FOR RECALLS IN HOMEOWNERS' ASSOCIATIONS

61B-33.001	Class Voting
61B-33.0015	Absentee Ballot
61B-33.002	Recall of One or More Directors of a Board of Administration at a Member Meeting; Board Certification; Filling Vacancies
61B-33.003	Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies
61B-33.004	Operation of the Homeowners' Association

61B-33.001 Class Voting.

When the governing documents provide that a specific class of members of a homeowners' association created pursuant to Section 723.075, F.S., is entitled to elect a director or directors to the board, the class of homeowners electing such director or directors to the board shall constitute all the voting interests that may recall or remove such director or directors.

Rulemaking Authority 723.1255 FS. Law Implemented 723.078(2)(i) FS. History—New 2-24-16.

61B-33.0015 Absentee Ballot.

"Absentee ballot," as provided by Section 723.078(2)(b)2., F.S., means a ballot completed and delivered in advance of a member meeting, in accordance with the homeowners' association's bylaws, by a member who is not present at the time the vote is taken.

Rulemaking Authority 723.078(2)(b)2. FS. Law Implemented 723.078(2)(b)2. FS. History—New 4-24-17.

61B-33.002 Recall of One or More Directors of a Board of Administration at a Member Meeting; Board Certification; Filling Vacancies.

(1) Calling a Recall Meeting. Ten percent of the voting interests of a homeowners' association created pursuant to Section 723.075, F.S., may call a meeting of the members to recall one or more directors of the association's board by giving notice as specified in subsection (2) below.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a members' meeting to recall one or more directors of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a meeting of the members to recall one or more directors of the board;
2. State that replacement directors shall be elected at the meeting, if a majority or more of the existing directors are successfully recalled at the meeting; and,
3. Contain lines for the voting interest to fill in his or her mobile home lot number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the members' meeting is to recall one or more directors of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled directors will be conducted at the meeting;
2. List by name each director sought to be recalled at the meeting, even if all directors are sought to be recalled;
3. Specify a person, other than a director subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;
4. List at least as many eligible persons who are willing to be candidates for replacement directors as there are directors sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining directors may appoint replacements. In addition, the notice must state that nominations for replacement directors may be taken from the floor at the meeting;
5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;
6. Be mailed or delivered to all members as required in the governing documents for a meeting of the members; and,
7. Be delivered to the board at least 10 days prior to the recall meeting. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. A recall meeting shall be held not less than 10 days nor more than 20 days from the date when the notice of the recall meeting is mailed or delivered.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration, motions), notices, or other papers on behalf of the recalling members shall be elected or designated by the presiding officer in the event the board disputes the recall.

2. A person to record the minutes of the recall meeting, who shall not be a board director subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes, and the member representative's name and address;

3. Record the vote count taken on each director of the board sought to be recalled;

4. State whether the recall was effective as to each director sought to be recalled;

5. Record the vote count taken on each candidate to replace the directors subject to recall and, if applicable, the specific seat each replacement director was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board, and upon such delivery to the board become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each director separately.

(e) Filling Vacancies. When the voting interests have recalled one or more directors at a members' meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement directors shall be conducted at the members' meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 723.078(2)(i), F.S., by the affirmative vote of the remaining directors. In the alternative, if less than a majority of the existing board is recalled at the members meeting, the board may call and conduct an election to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote to elect replacement directors in an amount equal to the number of recalled directors.

(f) Taking Office. When a majority or more of the board is recalled at a members' meeting, replacement directors shall take office:

1. Upon the expiration of five full business days after adjournment of the members' recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the members' recall meeting; or

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

3. Upon certification of the recall by the board; or

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual member's vote or any additional votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of one or more directors of the board.

(5) Board Meeting Concerning a Recall at a Meeting of the Members; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify (i.e., to validate or accept) the recall of one or more directors at a members' meeting. It shall be presumed that recall of one or more directors at a members' meeting shall not, in and of itself,

constitute grounds for an emergency meeting of the board, if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more directors by vote at a members' meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 723.078(2)(i), F.S., regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director, if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 723.078(2)(d), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes for any reason not to certify the recall of one or more directors at a meeting of the members, the following provisions apply:

1. The board shall, subject to the provisions of these rules, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more directors.

2. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement directors elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement directors elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the members' recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the members' recall meeting.

(b) If a majority of the board is recalled, replacement directors elected at the members' meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the members' recall meeting, in the manner specified in this rule.

Rulemaking Authority 723.1255., 723.006(7), 723.078(2)(i) FS. Law Implemented 723.078(2)(i) FS. History--New 2-24-16.

61B-33.003 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more directors of a homeowners' association created pursuant to Section 723.075, F.S., shall:

(a) List by name each director sought to be recalled;

(b) Provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement directors as there are directors subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are directors sought to be recalled. A space shall be provided and designated for write-in

votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a director or directors;

(d) Provide a space for the person signing the written agreement to state his or her name, identify his mobile home lot number, and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he or she is authorized in the manner required by the governing documents to cast the vote for that mobile home lot; and,

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration, motions), notices, or other papers on behalf of the persons executing the written agreement.

(2) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, F.S., shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, director, or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a director, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in the manner authorized in Chapter 48, F.S., and the Florida Rules of Civil Procedure.

(3) Substantial compliance with the provisions of subsections (1) through (2) of this rule shall be required for an effective recall of a director or directors.

(4) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. A written recall ballot expires 120 days after it is signed by a member. Written recall ballots become void with respect to the director sought to be recalled where that director is elected during a regularly scheduled election.

(5) Written recall ballots may be executed by an individual holding a power of attorney or limited or general proxy given by the member(s) of record.

(6) Any rescission or revocation of a member's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(7) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (i.e., to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more directors shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining directors, subject to the provisions of Section 723.078(2)(i), F.S., regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director, if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 723.078(2)(d), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, consistent with the provisions of Chapter 61B-50, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement directors elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and member votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(8) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

(a) A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents;

(b) The failure of the association to enforce a voting certificate requirement in past association elections and member votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement;

(c) The date and time the board meeting is called to order and adjourned;

(d) Whether the recall is certified by the board;

(e) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(f) If the recall was not certified, the specific reasons it was not certified.

(9) After service of a written agreement on the board:

(a) Any written rescission of an individual member vote or any additional votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(10) Taking Office. When a majority or more of the board is recalled by written agreement, replacement directors shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement;

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration;

(c) Upon certification of the recall by the board; or

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(11) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement directors elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled director shall immediately return to the replacement board all association records in his or her possession. If less than the entire board is recalled, each recalled director shall immediately return to the board all association records in his or her possession.

(12) The written agreement shall become an official record of the association upon service upon the board.

Rulemaking Authority 723.1255., 723.006(7), 723.078(2)(i) FS. Law Implemented 723.078(2)(i) FS. History—New 2-24-16.

61B-33.004 Operation of the Homeowners' Association.

Excluding meetings between the board of directors or its appointed homeowners' committee and the park owner, any member of the homeowners' association may tape record or videotape meetings of the board of directors of the homeowners' association and its committees, subject to the following:

(1) Mobile home owners are authorized to utilize at any such meeting audio and video equipment and devices which do not produce distracting sound or light emissions.

(2) If adopted in advance by the board or mobile home owners as a written rule, advance notice must be given to the board by any mobile home owner desiring to utilize any audio or video recording equipment at a meeting.

(3) If adopted in advance by the board or mobile home owners as a written rule, audio and video equipment must be assembled and placed in position in advance of the commencement of the meeting.

(4) If adopted in advance by the board or mobile home owners as a written rule, anyone using audio or video recording equipment at a meeting is not permitted to move about the meeting room in order to facilitate the recording.

Rulemaking Authority 723.078(2)(c)4. FS. Law Implemented 723.078(2)(c)4. FS. History—New 7-10-16.

CHAPTER 61B-35
MOBILE HOME MINOR VIOLATIONS

61B-35.001	Purpose and Effect (Repealed)
61B-35.002	Minor Violations Categories
61B-35.003	Enforcement of Minor Violations
61B-35.004	Suggested Notice Forms

61B-35.001 Purpose and Effect.

Rulemaking Authority 723.006(9) FS. Law Implemented 723.006 FS. History--New 12-3-98, Repealed 7-14-19.

61B-35.002 Minor Violations Categories.

(1) Pursuant to section 723.006, F.S., the following items are designated as minor violations of chapter 723, F.S.:

(a) Failure to provide a prospectus to a mobile home owner that incorporates the 1988 legislative amendments to the prospectus pursuant to section 723.011, F.S.

(b) Failure to file copies of advertising required by section 723.016(1), F.S.

(c) Failure to post park rules and regulations required by section 723.035(1), F.S.

(d) Failure to file copies of lot rental increases with the agency required by section 723.037(3), F.S.

(e) Failure to meet to discuss a notice of change as required by section 723.037(4), F.S., if there is mutual written agreement between the homeowners' committee and the park owner to meet at a time beyond the 30-day requirement, if a meeting is requested by either party.

(f) Failure to file rule changes with the division no later than 10 days after the effective date of the changes as provided in the notice of rules change.

(2) The listing of a violation as minor violation in this section does not preclude the division from finding that any other violation of chapter 723, F.S., or of the rules adopted thereunder is a minor violation as provided by section 723.006, F.S. The listing of a violation as a minor violation in this section does not create any presumption that any other violation of chapter 723, F.S., or of the rules adopted thereunder, is or is not a minor violation.

Rulemaking Authority 723.006(9) FS. Law Implemented 723.006 FS. History--New 12-3-98.

61B-35.003 Enforcement of Minor Violations.

For statutory or rule violations determined to be minor in rule 61B-35.002, F.A.C., the division will take the following approach:

(1) If the division has reasonable cause to believe that a violation may have occurred, a Warning Letter will be sent to the alleged violator. The Warning Letter will give the alleged violator forty-five (45) days from the postmark date of the letter in which to address, correct, or dispute the violation. In its Warning Letter, the division shall recommend that the alleged violator review other mobile home parks owned by the alleged violator, if any, to determine whether a similar violation exists. To avoid any civil penalties in these other mobile home parks, the alleged violator must initiate corrective or mitigative action in response to the initial Warning Letter in those other mobile home parks. The corrective or mitigative action must be completed within 90 days of the postmark of the Warning Letter. The Warning Letter will identify the alleged violation stating the relevant facts supporting the alleged violation, and provide a contact telephone number and an investigator's name so that the alleged violator may contact the division for information in obtaining compliance. However, it is solely the responsibility of the alleged violator to take action to achieve statutory or rule compliance and to provide proof of such compliance to the division. The division shall only issue a Warning Letter if the alleged violator has no prior Warning Letter, Notice to Show Cause, Final Order or Consent Order for the same violation. The Warning Letter shall not be considered final agency action. The agency will advise the complainant of the resolution of the complaint.

(2) If, as a result of the Warning Letter, the alleged violator corrects the statutory or rule violation within the 45-day time period referenced in subsection (1) above, no civil penalty shall be assessed for the violation.

(3) If the alleged violator fails to correct the minor statutory or rule violation within the time period specified in subsection (1) above, or if an alleged violator commits repeated violations of the same statutory or rule provisions, a civil penalty may be assessed of up to \$250.00 per violation. For purposes of this rule, the prior issuance of a Warning Letter shall not be considered evidence of a

prior rule or statutory violation.

Rulemaking Authority 723.006(9) FS. Law Implemented 723.006 FS. History--New 12-3-98.

61B-35.004 Suggested Notice Forms.

(1) The division adopts the forms below as suggested forms for use by park owners and operators.

(a) "90-Day Notice of Lot Rental Amount Increase," DBPR Form MH 6000-8, incorporated herein by reference and effective 12-3-98;

(b) "90-Day Notice of Reduction in Services or Utilities," DBPR Form MH 6000-9, incorporated herein by reference and effective 12-3-98;

(c) "90-Day Notice of Proposed Rules Change," DBPR Form MH 6000-10, incorporated herein by reference and effective 12-3-98; and

(d) "Notice of Increase in Lot Rental Amount Due to Pass-Through Charge," DBPR Form MH 6000-11, incorporated herein by reference and effective 12-3-98.

(2) All forms referenced in these rules may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

(3) A timely notice to the affected homeowners and the board of directors, if one has been formed, of a lot rental amount increase, reduction in services or utilities, proposed change in rules and regulations or increase in lot rental amount due to a pass-through charge using the forms as set forth above shall be considered to be in compliance with the requirements addressing the form of notice in sections 723.037(1), (2) and 723.046, F.S.

(4) It shall not be a violation for a park owner to fail to use the suggested forms noted in subsection (1), above, and set forth in this rule as long as the information required by section 723.037, F.S., is included in the notice actually given.

Rulemaking Authority 723.006(9) FS. Law Implemented 723.006 FS. History--New 12-3-98.