

Chapter 61B-29 Mobile Home Rules Definitions

61B-29.001 Definitions.

For purposes of Rule Chapters 61B-30, 61B-31, 61B-32, 61B-33, and 61B-34, Florida Administrative Code, the definitions in this rule shall apply. The obligation of good faith set forth in Section 723.021, Florida Statutes, applies to the duties and responsibilities of the parties under these rules.

(1) “Homeowner” means a mobile homeowner or homeowner as defined by Section 723.003(5), Florida Statutes, or the owner of a lot in a mobile home subdivision as defined by Section 723.003(8), Florida Statutes.

(2) “Homeowners’ association” means a corporation for profit, or not for profit, which is formed in accordance with Section 723.075, Florida Statutes; or in a subdivision, the homeowners’ association authorized in the subdivision documents in which all homeowners must be members as a condition of ownership.

(3) “Homeowners’ committee” means a committee, not to exceed five persons in number, designated by a majority of the affected homeowners in a mobile home park or a subdivision; or, if a homeowners’ association has been formed, designated by the board of directors of the association, for the purpose of meeting with the park owner or park developer to discuss lot rental increases, decreases in services or utilities, or changes in rules and regulations.

(4)(a) “Mediation” means a process whereby a mediator appointed by the Division of Florida Land Sales, Condominiums and Mobile Homes or mutually selected by the parties, acts to encourage and facilitate the resolution of a dispute. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.

(b) For purposes of mediation, under Section 723.037, Florida Statutes, and Section 723.038, Florida Statutes, the term “parties” means a park owner as defined by Section 723.003(7), Florida Statutes and a homeowners’ committee selected pursuant to Section 723.037, Florida Statutes.

(5) “Mobile Home Lot” means a lot described by a park owner pursuant to the requirements of Section 723.012, Florida Statutes, or in a disclosure statement, pursuant to Section 723.013, Florida Statutes, as one intended for the placement of a mobile home. Any lot so described, and upon which a park trailer, as defined in Section 320.01(1)(b)7., is placed, shall be considered a mobile home lot for purposes of Chapter 723 and this definition.

(6) “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.

(7) “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.

Specific Authority 723.006(7) FS. Law Implemented 723.002(2),(3), 723.003(5),(8), 723.016, 723.037, 723.038 FS. History—New 3-20-95, Amended 1-26-97.

61B-30 Mobile Home Advertising Prospectus Rule

61B-30.001 Fees.

(1) Payment of fees shall be by check or money order made payable to Division of Florida Land Sales, Condominiums and Mobile Homes.

(2) Annual filing fee – Each owner of a mobile home park which contains 10 or more mobile home lots shall pay an annual fee of \$4 for each mobile home lot owned by the park owner which is required to be permitted by the Department of Health and Rehabilitative Services (HRS) pursuant to Section 513.02, Florida Statutes. The Cashier’s check or money order for the fee shall be accompanied by BPR form 327, ANNUAL FEE STATEMENT, incorporated herein by reference and effective 8-31-94. This form may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031. Failure of the park owner to obtain a permit from HRS shall not relieve the park owner of the obligation to pay the annual fee of \$4 for each owned mobile home lot. If the number of lots permitted by HRS changes during the year, the fee shall be paid for the maximum number of permitted lots owned 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 permitted by HRS 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 permitted by HRS at the time of the prospectus filing unless the park owner files a prospectus for a greater number of mobile home lots than those for which a permit has been obtained. 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 permitted lot 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 those permitted, 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 are permitted by the Department of Health and Rehabilitative Services, which were not previously included in the prospectus filing, the fee shall be \$10 for each additional mobile home lot permitted.

(5) The provisions of Chapter 212, Florida Statutes, shall apply to any person responsible for any fees, penalties or fines pursuant to Chapter 723, Florida Statutes. Successors or assigns of a mobile home park may be responsible for payment of any delinquent or due fees, penalties or fines. However, the provisions of Section 212.12(1), Florida Statutes, do not apply to this rule.

Specific Authority 723.006(7) FS. Law Implemented 723.007, 723.008, 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.

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 1-19-97, and which may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North

Monroe Street, Tallahassee, Florida 32399-1031; and,

(c) The correct filing fees as required by Section 723.011, Florida Statutes.

(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 permitted by HRS, 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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031; 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 the 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 Division of Florida Land Sales, Condominiums and Mobile Homes, at the address stated in subsection (3) of this rule.

(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 61B-30.002(1)(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, Florida Statutes, 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, Florida Statutes, 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, Florida Statutes, 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, Florida Statutes. 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.

Specific 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.

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, Florida Statutes.

(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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031, 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.

Specific 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-31 Mobile Home Prospectus and Rental Agreement Rule

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), Florida Statutes, 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, Florida Statutes (1983), and any provisions required by Chapter 723, Florida Statutes, 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-30.004 and this rule.

Specific Authority 723.006(6) FS. Law Implemented 723.003(2),(10),(12), 723.031, 723.006(7),(8),(10), 723.011, 723.011(3), 723.012, 723.012(9),(10), 723.031(7), 723.032(1), 723.037, 723.059 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.

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.

(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.

Specific Authority 723.006(7) FS. Law Implemented 723.003(8), 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.

Specific Authority 723.006(7) FS. Law Implemented 723.037, 723.038, 723.078(2)(e) 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), Florida Administrative Code, 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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031 within 30 days after the meeting required by Section 723.037(4), Florida Statutes:

(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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031; and

(b) A copy of the written designation required by Section 723.037(5), Florida Statutes, 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, Florida Administrative Code, and Section 723.037(4), Florida Statutes.

(5)(a) Mediation will not be initiated pursuant to Section 723.037(5)(a), Florida Statutes, 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), Florida Statutes:

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), Florida Statutes.

(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), Florida Statutes. A petition will be considered received pursuant to Section 723.038(4), Florida Statutes, 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), Florida Statutes.

(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, Florida Statutes. Any dispute concerning the applicability of Section 723.037(6), Florida Statutes, 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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031, within 30 days after the date of the meeting required by Section 723.037(4), Florida Statutes:

(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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031; 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), Florida Statutes, 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), Florida Statutes.

(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), Florida Statutes. A petition will be considered received pursuant to Section 723.038(4), Florida Statutes, 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), Florida Statutes.

Specific 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), Florida Statutes, 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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031.

(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 Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031. 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, Florida Statutes.

(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.

Specific 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.

61B-35 Mobile Home Minor Violations

61B-35.001 Purpose and Effect.

(1) This rule implements Section 723.006, Florida Statutes, by establishing the categories of minor violations called for in the statute while providing predictability, flexibility, and reasonableness in enforcement.

(2) The effect of this rule, consistent with Section 723.006, Florida Statutes, is to educate owners and operators of mobile home parks and communities and to enhance and improve their understanding of and compliance with the department's regulations.

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

61B-35.002 Minor Violations Categories.

(1) Pursuant to Section 723.006, Florida Statutes, the following items are designated as minor violations of Chapter 723, Florida Statutes:

(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, Florida Statutes.

(b) Failure to file copies of advertising required by Section 723.016(1), Florida Statutes.

(c) Failure to post park rules and regulations required by Section 723.035(1), Florida Statutes.

(d) Failure to file copies of lot rental increases with the agency required by Section 723.037(3), Florida Statutes.

(e) Failure to meet to discuss a notice of change as required by Section 723.037(4), Florida Statutes, 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, Florida Statutes, or of the rules adopted thereunder is a minor violation as provided by Section 723.006, Florida Statutes. The listing of a violation as a minor violation in this section does not create any presumption that any other violation of Chapter 723, Florida Statutes, or of the rules adopted thereunder, is or is not a minor violation.

Specific 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.

Specific 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 Bureau of Mobile Homes, Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation, 1940 North Monroe Street, 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, Florida Statutes.

(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, Florida Statutes, is included in the notice actually given.

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