CAMIL/THERESE GUINTA
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Know your rights when selling your home

When the Florida Mobile Home Act, Chapter 723, was enacted in 1984, the Legislature addressed the problems that were brought to its attention during the public hearings held in 1983 regarding difficulties manufactured/mobile home owners experienced when they attempted to sell their homes. F.S. 723.058, as enacted in 1984, prohibited a manufactured/mobile home park owner from making or enforcing any rule, regulation, or rental agreement provision which:

- Denied or abridged the right of any manufactured/mobile home owner to sell his or her home within the park;

- Prohibited the manufactured/mobile homeowner from placing a "For Sale" sign on or in his home (except that the size, placement and character of the signs are subject to properly promulgated and reasonable rules and regulations of the park owner); or

- Required the manufactured/mobile home owner to move the manufactured/mobile home from the park solely on the basis of the sale of the home.

The law also prohibited the park owner from charging a commission or fee with respect to the price paid to the seller of the home unless the park owner actually acted as an agent for the manufactured/mobile home owner in the sale pursuant to a written contract. Initially, F.S. 723.058 was applicable only to rental parks; however, in 1990, the Legislature extended these protections to manufactured/mobile home owners in manufactured/mobile home subdivisions as well.

Abuses continued in the area of resales of manufactured/mobile homes, and, in 1991, the Legislature added three new sections to F.S. 723.058. These new sections were enacted to protect homeowners and prospective purchasers from new types of improper practices that manufactured/mobile home park owners and subdivision developers had devised to collect sales commissions or other fees from homeowners and prospective purchasers. These new provisions provided that:

- A park owner could not require a manufactured/mobile home owner or lot owner in a subdivision or a purchaser of a manufactured/mobile home to enter into, extend, or renew a resale agreement as a condition of being permitted to remain in tenancy in the park, to qualify for tenancy, or to obtain approval of tenancy in the case of prospective purchasers. F.S. 723.058(3)

- Resale agreements could no longer be construed to be a perpetual or indefinite duration. The new law provided that a resale agreement which had an indefinite or perpetual duration would expire six months after the homeowner gives a written notice to the park owner or subdivision developer informing them that:

  (a) The homeowner wished to sell his manufactured/mobile home, and

  (b) requesting that the park owner or subdivision developer who held a resale listing agreement utilize his best efforts to sell the home on the homeowner's behalf during the six-month period.

The new law also provided that any extension or renewal of a resale agreement after it had expired was required to be in writing and to be of a specified duration. F.S. 723.058(4)

- The new law also prohibited the park owner or subdivision developer from imposing a discriminatory lot rental increase upon a manufactured/mobile homeowner if the homeowner or prospective homeowner refused to enter into, extend, or renew a resale agreement in order to remain as a tenant in the park or to qualify for approval to become a tenant in the park. F.S. 723.058(5)

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Does F.S. 723.058(4) apply to every resale agreement?

The FMO is often asked whether F.S. 723.058(4) is applicable to resale agreements that were executed by the manufactured/mobile home owner prior to the date that the amended law became effective on May 29, 1991. The answer is – maybe, and the reason for that answer, as opposed to a definite yes or no, is that every resale agreement has its own specific terms and conditions. The resale agreement must be construed together with any other documentation that was given to the manufactured/mobile home purchasers at the time that they purchased a home in the park or at the time that they executed the resale agreement, including the prospectus and lease agreement. Because the terms of various agreements between manufactured/mobile home owners and park owners around the state are completely different, it is impossible to give one answer that would be the correct answer in every situation.

There has been very little litigation regarding any portion of F.S. 723.058, and there are no reported appellate court cases construing F. S. 723.058(4). There is one case of which the FMO is aware wherein F. S. 723.058(4) was at issue. Because the case was at the local level and did not go to an appellate court, it is not a precedent that must be adhered to by judges in other circuits throughout the state; however, the case is informative. The case in question was Del Homes, Inc. by and through Century Realty Funds, Inc. v. Henry Wilcox, Case No. 92-SP12-1051, County Court, Polk County, Florida. In this case, Mr. Wilcox purchased a manufactured/mobile home in Plantation Landings Mobile Home Community, Haines City, Florida, which was subsequently purchased by Century Realty Funds, Inc. When Mr. Wilcox purchased his home in 1990, he entered into a lease agreement with the park owner and received a "guaranteed lifetime rent agreement" in exchange for executing an exclusive right of resale agreement in favor of the park owner, which had no termination date.

In May, 1991, Mr. Wilcox decided to sell his home and notified the park owner to whom the exclusive sales agreement was given that he was exercising his rights under F. S. 723.058 and that he would consider the exclusive right of sale agreement canceled in January, 1992, and asked the park owner to sell his home before January, 1992. The park owner, of course, did not agree that the resale agreement could be canceled and informed Mr. Wilcox that it was his opinion that F. S. 723.058(4) could not be retroactively applied to his situation because he had executed the resale agreement prior to the date the law became effective.
Mr. Wilcox sold his home on his own without assistance from the park owner in January 1992. The park owner thereafter filed suit against Mr. Wilcox for a sales commission in the amount of $2,000. After a hearing, the Polk County Court entered a judgment in favor of Mr. Wilcox and against the park owner on the park owner's demand for a commission on the sale. Mr. Wilcox was also successful on other counts of his complaint wherein he asked for a money judgment against the park owner and for attorney's fees and costs.

The court held that F.S. 723.058(4) could be retroactively applied to Mr. Wilcox's resale agreement that was executed prior to the effective date of the new statute for several reasons. First, the park owner argued that he had given valuable consideration to Mr. Wilcox in the form of a "guaranteed lifetime rent agreement" in exchange for the exclusive sales agreement. The court found that this was not so because the "guaranteed lifetime rent agreement" contained the exact same wording as the provisions of the lease agreement that was given to Mr. Wilcox. Thus, the court was able to find in this particular case that there was no independent consideration which would support the park owner's right to collect a commission under its exclusive resale agreement.

Second, the court also ruled that the amendment to F. S. 723.058 was remedial in nature and was made for the specific public purpose of eliminating perpetual resale agreements or resale agreements of indefinite duration. The court found that the goal of eliminating perpetual resale agreements was a valid exercise of legislative authority and that F.S. 723.058(4), therefore, could under the facts of this case be applied retroactively to a resale agreement that was executed prior to the effective date of that law. The park owner argued unsuccessfully that a retroactive application would result in an unconstitutional impairment of the park owner's contract rights. The court weighed the state's objective of eliminating

perpetual resale agreements against the alleged infringement on the park owner's contract and held that the legislative objective of eliminating these types of resale agreements out-balanced any impairment of the park owner's contract.

Once again, it must be cautioned that this case was determined on the facts in this particular case and on the documents that Mr. Wilcox and the park owner had entered into at the time that Mr. Wilcox purchased his home in the park. Each individual set of documents that homeowners have executed must be reviewed and considered by their own independent attorneys to determine if they might be able to apply the findings in this case to their individual cases.

Note: After this judgment was entered, Century Realty Funds, Inc. came to an amicable resolution of the case with Mr. Wilcox and the Final Summary Judgment in the case was set aside by stipulation.

The exclusive resale agreement that residents often sign upon moving into the park is but one type of resale contract that should be carefully reviewed to determine if a resident is obligated to pay a sales commission. If the home is listed with an outside manufactured/mobile home dealer or with a realtor, in the case of resident-owned communities, read the listing agreement carefully. Most agreements give the exclusive right to sell the home to the listing agency. This could result in the seller being obligated to pay a commission when the home is sold regardless of who sells the home, even the owner. The cancellation rights in F.S. 723.058(4) apply solely to resale agreements with park owners and subdivision developers. Cancellation of any other type of listing agreements are governed by the terms of the agreements, although general law will not permit any resale agreement to be perpetual.

As in the case of any major transaction that you enter into, you may wish to consult with several dealers/ brokers before entering into a resale agreement. One dealer's listing agreement that the FMO has obtained provides that the manufactured/mobile home owner will receive only a set amount for the sale of the home, and it authorizes the dealer to retain all amounts over and above the set amount as the dealer's selling commission. The manufactured/mobile home owner is required to convey title to the home to the dealer, and the dealer consummates the transaction with the homeowner having absolutely no right to obtain any information regarding the terms of any contract that the dealer enters into to sell the home. The lesson here is that any listing agreement that is entered into should be done so cautiously and only after careful review and consideration, perhaps even a consultation with legal counsel.

What are the seller's obligations and the purchaser's rights at the time of sale?

F.S. 723.059 provides that the purchaser of a manufactured/mobile home in a park may become a tenant of the park if the purchaser would otherwise qualify with the entry requirements in the park rules and regulations. The purchaser is subject to the approval of the park owner, but that approval may not be unreasonably withheld. The rules and regulations in the park may provide for the screening of prospective purchasers to determine whether or not they are qualified to become a tenant in the park. The park owner can charge the seller fees in connection with the application and screening process only if those fees and charges were disclosed in the seller's prospectus.

The purchaser of a manufactured/mobile home who otherwise qualifies as a resident in the park has the right under F. S. 723.059(3) to assume the remainder of the term of any rental agreement that the seller of the home has in effect with the park owner at the time of the sale. F. S. 723.059(3) also provides that the purchaser of the home shall be entitled to rely on the terms and conditions of the prospectus that was delivered to the initial recipient. The new purchaser's right to assume the seller's lease and prospectus are balanced with the park owner's rights in F. S. 723.059(4). This section gives the park owner the right to increase the rent that will be paid by the purchaser upon the expiration of the assumed rental agreement. Any increase that the park owner will expect from the purchaser must be disclosed to the purchaser prior to occupancy, and the increase must be imposed in a manner consistent with the initial

offering circular or prospectus and Chapter 723.

These sections of the law seem clear to most of us, and many park owners interpret the law the same as the FMO. There is obvious confusion in this area, however, because park owners only allow a new rental agreement and new prospectus upon the purchaser when the assumed rental agreement expires. A few park owners ignore the law and prohibit an assumption of the lease and impose an immediate increase, which is clearly improper and illegal. Unfortunately, most prospective purchasers are not aware of the rights provided to manufactured/mobile home owners under Chapter 723. Park owners have been advised that if the purchaser doesn't ask to assume the seller's lease, don't tell them that they have that right. That way the park owner can immediately impose a new lease agreement and new prospectus on the new purchasers.

The seller should deliver the prospectus to the prospective purchaser and advise him of his rights to rely on that prospectus and to assume the balance of the seller's lease term. The seller's initial prospectus could be a very valuable document to the seller and to the prospective purchaser because subsequent prospectuses usually provide for more fees and charges than earlier prospectuses. Under Chapter 723, the park owner is not required to provide the purchaser of a resale manufactured/mobile home with the seller's prospectus.

What other documents are required at the time of the sale?

In addition to the prospectus and the assumed lease agreement, in a rental manufactured/mobile home park, the seller will need to produce the title or titles to the home. There is a separate title for each section of the manufactured/mobile home. For example, a double-wide unit will have two titles. The title must list the seller of the home as the owner of the unit, and the seller should produce the current registration for the home. If the registration is not up-to-date, it may mean that there are title and registration fees due for many years when the manufactured/mobile home tags or decals were not purchased. The tag agency will require these fees be paid before the new owner will be permitted to change the title and registration into his name. If the seller or a purchaser has any questions regarding these documents, contact the local auto tag office.

If the home being sold is in a resident-owned community, then the condominium and cooperative statutes require that the seller must provide a copy of the condominium documents set forth in F.S. 718.503(2), and the contract for sale must contain an acknowledgment by the buyer that those documents have been received within the timeframe set forth in the statute. There is a similar statute for cooperative homeowners in F. S. 719.503(2). The contract for sale must have this specific disclosure language in it. Otherwise the prospective purchaser may void the contract at any time prior to closing. In a subdivision, disclosures set forth in F. S. 689.26 are required to be provided to and signed by the purchaser prior to executing the contract for sale.

The closing of a sale in a resident-owned community is far more complicated than in a rental community because, in addition to transferring title to the manufactured/mobile home, the seller will also have to transfer his interest in the real property. This would be by a deed in a subdivision or a condominium. In a cooperative, the seller will transfer his share or other evidence of ownership in the cooperative association and assign his interest in any lease or other right of possession in the cooperative property. Naturally with the additional documentation that is required to be filed in the official records, there will be additional closing costs such as documentary stamps on the deed, recording costs and an update on the title insurance policy. Manufactured/mobile homes in resident-owned communities receive individual tax bills, and a purchaser will want to verify that all taxes, liens, and assessments have been paid or will be prorated during the year of sale. Because of the complexities in a real estate transaction, resident-owned community sales are generally handled by a title company or attorney.

The information discussed in this article is not a legal opinion regarding any specific transaction. Manufactured/mobile home owners' rights and obligations in their specific situation should be discussed with their own attorneys who can advise them regarding the law as applied to their individual situation.