

Homeowners' association, mandatory membership

Number: INFORMAL

Date: January 29, 1997

The Honorable Earl Ziebarth
Representative, District 26
505 East New York Avenue
Suite One
DeLand, Florida 32724

Dear Representative Ziebarth:

This is in response to your recent request on behalf of Mr. and Mrs. William Crandall for an opinion regarding whether membership in a mobile homeowners' association is mandatory. While this office is statutorily limited in its ability to render legal opinions to private individuals and may not formally comment upon this matter at this time, I offer the following comments in order to be of some assistance.

Section 723.075(1), Florida Statutes, recognizes the authority of mobile home owners in a park to form an association "which shall be a corporation for profit or not for profit and of which not less than two-thirds of all of the mobile home owners within the park shall have *consented, in writing*, to become members or shareholders." (e.s.) The statute further provides:

"Upon such consent by two-thirds of the mobile home owners, all *consenting* mobile home owners in the park and their successors shall become members of the association and shall be bound by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant thereto. . . ." (e.s.)

Thus, section 723.075, Florida Statutes, contemplates that at least two-thirds of the mobile home owners will consent in writing before an association will be formed. It would appear, therefore, that a mobile home owner's consent, a voluntary act, is an essential element to becoming a member of the association. Absent such consent, there is no apparent mechanism to force others to become members.

The statute does not appear to require all mobile home owners to become members of the association, but rather prescribes a two-thirds majority of the owners to consent to the formation of an association before it may be formed. Clearly, therefore, a situation may arise where less than all mobile home owners are members of an association when a homeowner has not executed the necessary written consent. While the statute contains no apparent provisions as to how a member of the association may withdraw from membership in a homeowners' association, it would appear that the continuing consent of a homeowner is a necessary element for continued membership in the association. Absent a legally enforceable contractual agreement that requires a home-owner to be a member of the association, there is nothing in the statute that mandates such membership.

You may wish to contact the Bureau of Mobile Homes in the Department of Business and Professional Regulation for further information regarding mobile homeowners' associations. That office may be reached at the following address:

Mr. Jim Norred, Bureau Chief
Bureau of Mobile Homes
Department of Business and Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
Telephone: (904) 488-0970

I trust these informal observations and information will provide some assistance in assessing any actions you may contemplate in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk