

# MEMORANDUM

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Office of the City Attorney

TO: Mayor and City Commissioners  
City Manager

DATE: May 23, 2006

FROM: Marion Radson, City Attorney 

SUBJECT: Buck Bay Mobile Home Community (Legistar # 050911)

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## Question:

At the May 8, 2006 City Commission meeting, this office was requested to render an opinion on whether the tenants of the Buck Bay Mobile Home Community are the "owners" of the mobile home in which they reside or are they lessees. The Mayor followed up by raising an issue of whether the proposed Planned Development Amendment could be phased in such a way as to ease the impact of the change on park tenants.

## Brief Answer:

The status of the individual mobile home owners will vary depending on the purchase and sale agreement under which they purchased the home; however, according to Tom Spain, Managing Partner, Buck Bay Mobile Home Community, no one may rent their home in Buck Bay. (See attached May 9, 2006 letter from Tom Spain to the Mayor and City Commissioners.)

Phasing construction of conventional "site built" housing is permissible under the City's Land Development Code (see section 30-218); however, the City has no authority over the relationship between landlords and tenants in mobile home parks because this area is preempted to the State.

## Discussion:

### Status of Individual Tenants:

Absent a review of each individual purchase and sale agreement, we have no way of knowing the status of each individual tenant. However, it is our understanding that each individual tenant is an owner of his/her mobile home when it is located in Buck Bay. Therefore, the duties of both park owner and tenant are stated in law. For example, pursuant to section 723.022, F.S., the Owner of the park must:

- (1) Comply with the requirements of applicable building, housing, and health codes.
- (2) Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.

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- (3) Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.
- (4) Maintain utility connections and systems for which the park owner is responsible in proper operating condition.
- (5) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

Each home owner has responsibility as well. Per 723.023, F.S., it is the mobile home owner's responsibility to:

- (1) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.
- (2) Keep the mobile home lot which he or she occupies clean and sanitary.
- (3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

The Department of Business and Professional Regulation (Division of Florida Land Sales, Condominiums, and Mobile Home Parks) has jurisdiction to enforce the provisions of chapter 723, F.S.; however, please note that this Division is not delegated the authority to enforce breaches of the above-referenced home owner and park owner duties (see s. 723.005, F.S.).

#### **Mobile Home Tenancies:**

While phasing of development is permitted under the City's Code (see section 30-218), the State has preempted mobile home lot tenancies. Section 723.004, FS, provides in part:

- (2) There is hereby expressly preempted to the state all regulation and control of mobile home lot rents in mobile home parks and all those other matters and things relating to the landlord-tenant relationship treated by or falling within the purview of this chapter. Every unit of local government is prohibited from taking any action, including the enacting of any law, rule, regulation, or ordinance, with respect to the matters and things hereby preempted to the state.
- (3) It is expressly declared by the Legislature that the relationship between landlord and tenant as treated by or falling within the purview of this chapter is a matter reserved to the state and that units of local government are lacking in jurisdiction and authority in regard thereto. All local statutes and ordinances in conflict herewith are expressly repealed.

Therefore, while the construction of conventional "site built" housing may be phased for legitimate planning considerations, the City has no authority to regulate the landlord tenant relationship in Buck Bay.

**Other:**

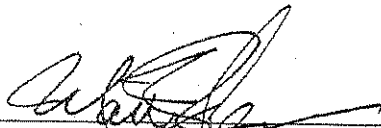
Because of State preemption of law in this area, our office has repeatedly advised that complaints be directed to the State. That said, it is our understanding that the Office of Financial Regulation (State Department of Financial Services) is investigating a consumer complaint regarding a mobile home unit sale by the company, Burgreen, relevant to a home placed in Buck Bay. However, we have not been involved in and have no further information on the status of this investigation.

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