CONSENSUS AGREEMENT AND CONSENSUS RULE LANGUAGE

This Negotiated Rulemaking Committee was established by the Department of Business and Professional Regulation (DBPR) pursuant to section 120.54(2)(d) and Uniform Rules Section 28-103.04 to develop a rule for minor violations under section 723.006 of the Florida Mobile Home Act. The stated goal of the Committee is to seek consensus among the members of the committee on what violations of chapter 723, Florida Statutes, or the rules promulgated thereto are categorized as "minor", as intended by recently enacted legislation, Chapter 97-291, Laws of Florida. In response to the DBPR's notice inviting participation in this process, the following Committee members were designated as representing interests substantially affected by a new rule on minor violations:

- Robert Cohen, representing Federation of Mobile Home Owners of Florida, Inc.
- Lee Jay Colling, representing interests of concerned mobile home owners and mobile home owner associations regulated by Chapter 723, Florida Statutes.
- Robert Ellzey, representing DBPR, Division of Land Sales, Condominiums and Mobile Homes.
- Richard Lee, representing interests of concerned mobile home park owners regulated by Chapter 723, Florida Statutes
- Jack Skelding, representing Florida Manufactured Housing Association

The Negotiated Rulemaking Committee deliberated in good faith over the course of six committee meetings in order to achieve consensus on an approach and a rule addressing minor violations. The consensus rule language set forth below reflects the unanimous agreement of members of the Committee.

The Committee members also agree that additional rulemaking is necessary to further guide agency discretion in enforcement of other violations of §723 F.S. that may be treated as minor violations, depending on the factual situation presented to and determined by the agency. While the proposed consensus rule language does not establish explicit guidance for when such matters may be treated as minor, the Committee members agree to participate in additional rule development to include all party interests, as well as any consensus that may be developed on including defining terms used in 723.006 (9), multiple violations and on as well as any consensus on related non-controversial statutory changes.

Notwithstanding the agreement above we, the members of the Committee, by signing below, attest that we have reached a consensus and unanimously adopt this as the product of the negotiated rulemaking and agree to support the attached proposed rule through the Department's adoption process.

Robert Cohen
Federation of Mobile Home Owners of Florida, Inc.

Lee Jay Colling
Representing Concerned Mobile Home Owners and Mobile Home Owner Associations

Robert Ellzey,
Division of Land Sales, Condominiums and Mobile Homes,
Florida Department of Business and Professional Regulation.

Richard Lee
Ad Hoc Group of Mobile Home Park Owners

Jack Skelding
Florida Manufactured Housing Association, Inc.

Signed, March 6 9, 1998
Department of Business and Professional Regulation

"Minor Violations" Consensus Rule Language
Negotiated Rulemaking Committee, February 11, 1998

I. Purpose and Effect.

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

B. The effect of this rule, consistent with Sections 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.

II. Minor Violations Categories

A. Pursuant to section 723.006 Florida Statutes, the following items are designated as minor violations of Chapter 723, Florida Statutes.

(1) 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.

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

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

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

(5) Failure to meet to discuss a notice of change as required by section 723.037(4), 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.

(6) 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.

B. The listing of a violation as a minor violation in this section does not preclude the Division from finding that any other violation of Chapter 723 or of the rules adopted thereunder is a minor violation as provided by 723.006. The listing of a violation as a minor violation in this section does not create any presumption that any other violation of Chapter 723 or of the rules adopted thereunder, is or is not a minor violation.
III. Enforcement of Minor Violations.

For statutory or rule violations determined to be minor in rule _________, the division will take the following approach:

A. 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 thirty (30) days from date of mailing 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 receipt 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 complaining party of the resolution of the complaint.

B. If, as a result of the Warning Letter, the alleged violator corrects the statutory or rule violation within the 30 day time period referenced in (1) above, no civil penalty shall be assessed for the violation.

C. If the alleged violator fails to correct the minor or statutory rule violation within the time period specified in (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 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.

IV. Suggested Notice Forms

A. The Division adopts the forms below as suggested forms for use by park owners and operators.

(1) "90-Day Notice of Lot Rental Amount Increase";

(2) "90-Day Notice of Reduction in Services or Utilities";

(3) "90-Day Notice of Proposed Rules Change"; and

(4) "Notice of Increase in Lot Rental Amount Due to Pass-Through Charge."
B. 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.

C. It shall not be a violation for a park owner to fail to use the suggested forms noted in Section A. 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.