

## THE BASICS OF “BASE RENT”

Pursuant to Chapter 723, Florida Statutes, all financial obligations of a home owner to a park owner fall within one of two broad categories: lot rental amount or user fees. The term “lot rental amount” (added to Chapter 723 in 1986) is defined in Section 723.003(2), Florida Statutes, as “all financial obligations, except user fees, which are required as a condition of the tenancy.” “User fees” as defined in Section 723.003(12), Florida Statutes, include “those amounts charged in addition to the lot rental amount for nonessential optional services. . . .”

As clearly implied by the phrase “*all* financial obligations,” the lot rental amount is made up of several different components which as a whole equal the entirety of the home owner’s financial obligations to a park owner. Some of these components are designated by statute and others are not. For example, the statute defines the term “pass through charge” in Section 723.003(10) and makes references to (but does not define) “pass on” charges in Section 723.031(5)(c). Other components of lot rental amount frequently referenced in lot rental agreements and prospectuses reviewed and approved by the Florida Department of Business and Professional Regulation, but not defined or specifically referenced in Chapter 723, Florida Statutes, include “governmental and utility charges” and “special use fees.”

The term “base rent” is likewise a term commonly used in mobile home park jargon but which is not defined or specifically referenced in Chapter 723. Base rent is generally considered to be the lump sum amount paid by a home owner for the use and occupancy of the lot and use of related park facilities, if any. Base rent thus defined does not include special use fees or governmental and utility charges, or pass through or pass on charges.

The concept of base rent being part of lot rental amount has been reviewed without comment by several Florida courts. In *Herrick v. Florida Dept. of Business Regulation, Div. of Florida Land Sales, Condominiums and Mobile Homes*, the court reviewed a prospectus in which “base rent” was defined as “the regular monthly rent established by the Park Owner from time to time.” The court noted that other charges were imposed in addition to the base rent pursuant to the disclosures contained in the park’s prospectus. Likewise, the court in *Hobe Associates, Ltd. v. State, Dept. of Business Regulation, Div. of Florida Land Sales, Condominiums, and Mobile Homes* reviewed a prospectus in which base rent was charged independent of other fees and charges.

The base rent may be increased annually on the anniversary date of a home owner’s lot rental agreement after 90 days notice pursuant to Section 723.037(1). The amount which the base rent may be increased at any time is limited by Section 723.033 which section provides that both the total base rent as well as any individual increase in base rent must be “reasonable.” The method for increasing the base rent in a given park is set forth in the park’s prospectus. The method may vary between different home owners if the affected home owners have different lot rental agreements and prospectuses which specify different methods for increasing the lot rental amount.

The base rent charged park residents may also legally vary based upon lot size and/or location, or upon other factors which could logically be utilized in differentiating values of lots within the Park. Also, residents whose homes are located on similarly situated lots may be charged different base

rents based on the date of their initial occupancy in the park and on whether various lease options offered by the park owner have been accepted or rejected by the home owners.

Many park owners prefer to include charges for almost all services and utilities in the base rent (or simply not to charge for such services and utilities altogether). The idea is that home owners will react better to a single lump sum base rent rather than being responsible for payment of numerous separate fees and charges. We generally maintain that it is best to not include utilities or services as part of the base rent even if no separate charge is made for those services or utilities. The better practice is to disclose each service or utility offered by the park as a separate line item in the prospectus and lot rental agreement. The park owner thus eliminates charges of "double dipping" (when a service or utility is included in base rent and also separately subject to a separate charge) and maintains maximum flexibility in handling charges for various services and utilities. This flexibility is particularly important as to matters such as charges for water, sewer and garbage and for the assessment of property taxes. As to such matters, by disclosing a line item for each such service or utility, the park owner may initiate a charge in the future for services or utilities currently provided without charge.