

## LEASE ASSUMPTION

Confusion sometimes arises as to the difference between "assumption" and "assignment" of rental agreements. The right to assume a mobile home lot rental agreement is an interest of the *purchaser* of the mobile home. "*Assignment*" is defined as "a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein." Thus, a right of assignment is a right which the seller of a mobile home might have (if authorized by park rule or lease provision) to transfer his entire interest in his lease to the purchaser of his home. "*Assumption*" of a lease on the other hand arises when one "takes to himself the obligations, contracts, agreements, and benefits to which the other contracting party was entitled under the terms of the lease." Accordingly, the right of assumption allows the *purchaser* to step into the shoes of the seller if the *purchaser* so desires.

Sections 723.059(3) and (4), Florida Statutes, authorize the purchaser of a mobile home located in a mobile home park to *assume* the remainder of the term of the lot rental agreement currently in effect between the seller and the park owner. Those sections provide:

(3) The purchaser of a mobile home who becomes a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.

(4) However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and this act.

This virtually unqualified right of assumption was modified in 1986 by the adoption of Section 723.059(5), Florida Statutes, which states:

(5) Lifetime leases, both those existing and those entered into after July 1, 1986, shall be nonassumable unless otherwise provided in the lot rental agreement or unless the transferee is the home owner's spouse. The renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable unless otherwise provided in the lease agreement.

That section became effective on July 1, 1986.

Persons who purchase existing homes in a park generally assume the lot rental agreements of their sellers and, for the balance of the lease term in effect at the time of sale, are entitled to rely on the terms and conditions of the seller's lot rental agreement including the then current base rent. However, leases in perpetuity are not favored and will not be construed as being perpetual unless an intention to do so is expressed in unequivocal terms. Through Section 723.059(5), Florida Statutes, the Florida legislature has recognized this limitation on perpetual leases in the mobile home context, negating the right of new tenants to assume the automatic renewal provisions of lot rental agreements and of lifetime leases.