

"PASS ON" CHARGES

As a practical matter, a "pass on charge" is a governmental or utility charge or assessment on the park which charge may be made the responsibility of park home owners ["passed on"] as a line item charge payable in lump sum (or in such other manner as the park owner describes).

Regarding a home owner's financial obligations to the park (his "lot rental amount"), two general rules are that: (1) except for pass through charges, the home owner is responsible for payment of only those fees and charges which were disclosed to him prior to the initiation of his tenancy, established by custom in the park, or authorized by law [Section 723.031(6)]; and (2) that the lot rental amount may not be increased during the term of the lot rental agreement except under limited circumstances. Two of those exceptions to the second general rule concern pass through charges (essentially, governmentally mandated capital improvements) and ad valorem taxes or utility charges or increases of either. Regarding the latter exception, Section 723.031(5)(c) states:

The provisions hereof notwithstanding, the mobile home park owner may *pass on*, at any time during the term of the lot rental agreement, ad valorem property taxes and utility charges, or increases of either. . . .

Based on the referenced provision, it has been argued that the passing on of other types of governmental fees and charges (including non ad valorem assessments) is prohibited. Nonetheless, what the above-quoted provision does not say but which is clearly implied and which has been acknowledged by DBPR, is that other types of governmental fees and charges may be passed on if adequate disclosure of the charge has been given and if the pass on occurs in conjunction with the annual notice of increase in lot rental amount rather than during the term of the rental agreement.

In recognition of the propriety of such a pass on of the state's annual filing fee, DBPR has long taken the position that the filing fee may lawfully be passed on to all mobile home owners whose prospectuses or lot rental agreements provide that the mobile home owner is responsible for payment of governmental fees and assessments. Similarly, DBPR has acknowledged the propriety of the passing on of a fire tax where prior disclosure of an obligation to pay governmental fees and charges had been given to park home owners and where the pass on was effected simultaneously with the annual increase in lot rental amount.

Likewise, a governmental charge may still be legally passed on, even if disclosure of an obligation to pay governmental fees and charges has *not* been made, if the park has an established custom of requiring home owners to be responsible for payment of governmental fees or charges assessed against the park. Such custom may be shown by proof establishing that prior to June 4, 1984, (the effective date of Chapter 723) home owners were required to pay governmental fees or charges assessed against the park.

In the final analysis then, the issue is one of timing rather than of legal right. Whether non-ad valorem assessments and other types of governmental fees or charges are "pass on" charges or merely "governmental fees and charges" which may be "passed on" to the home owners is

immaterial. If prior disclosure of home owner obligation to pay these charges exists, or if the practice of making home owners responsible for payment of such charges has been established as a custom in the park, or authorized by law, the home owners may lawfully be required to pay a pro rata share of these assessments other than as part of the base rent.

In sum "pass on charges" include any non-governmentally-mandated-capital-improvement type of governmental or utility fee charge or assessment imposed on the park. If prior disclosure has been given as to a home owner's responsibility for payment of such charges, or if a history of requiring home owners to pay such charges has been established by custom in the park, or if such charges are authorized by law, any type of fee, charge or assessment imposed by government may be passed on to the home owner during the term of the lot rental agreement if they are ad valorem property taxes or utility costs or increases of either; or at the beginning of the new rental term as part of the annual increase in lot rental amount if they are non-ad valorem taxes, fees, charges or assessments.