

Legal Issues Involved in the Maintenance of Trees

The maintenance of trees continues to be a disputed matter in manufactured home communities. It seems many home owners believe that the community owner should maintain the trees on their individual lots. This question can only be resolved by looking at the prospectus and rental agreement, to determine whether an obligation to maintain the trees and other landscaping on the lots of the individual home owners is the community owner's or the home owner's. In the absence of an express statement in the prospectus or rental agreement the home owner has the obligation to maintain trees and shrubbery on the rented lot.

A very different situation arises, however, if the landlord knows there is a dangerous condition on the premises. For example, if the community owner finds that there is a dangerous tree overhanging a home, which may be dangerous to the tenant or other persons in the community, the landlord should take action to correct the problem. This obligation arises from a duty that the landlord has to other persons who reside in the community, as well as to the tenant and any guests of the tenant. However, the landlord may then charge the home owner for the costs of taking the corrective action.

As in any landlord tenant issue, the initial question of whether there is a legal obligation for a tenant to maintain the trees and shrubbery or other landscaping on the lot arises from common law rights, duties and obligations of landlord and tenant. Under common law, the tenant has the obligation to maintain the premises, including the obligation to maintain the trees on the lot. Chapter 723, Florida Statutes, which is the definitive statute governing the obligations of both the community owner and the home owner leasing a lot in a rental mobile home park, does not redefine that relationship or those obligations. In fact, it appears that the obligation to maintain the lot, under Chapter 723, is clearly with the home owner. The prospectus and rental agreement may change those obligations. However, without an express obligation to maintain the trees on the home owner's lot arising out of the prospectus or rental agreement, there is no obligation on the part of the community owner to maintain the trees on the individual lots. The following is a more detailed analysis of this issue.

I. Common Law Obligation of the Tenant to Maintain the Lot (Including Trees).

Under the common law, a landlord does not have an obligation to maintain or repair the leasehold of the tenant. In Taylor, *A Treatise on the American Law of Landlord and Tenant*, (William S. Hein & Co. 1981), the covenants of both the landlord and the tenant are exhaustively reviewed. The obligation to maintain the premises, including the trees and timber on the lot, are clearly the obligation of the tenant. Taylor deals with this subject quite succinctly:

The landlord may covenant to *repair the premises*; but unless he binds

himself by an express agreement to that effect, the tenant cannot compel him to repair. In the language of Chief Justice Savage, "it is not in the power of a tenant to make repairs at the expense of his landlord, unless there be a special agreement between them authorizing him to do this. The tenant takes the premises for better or for worse, and cannot involve the landlord in expense for repairs without his consent."

Taylor, *A Treatise on the American Law of Landlord and Tenant*, Chapter VI. Covenants on the Part of the Landlord, Section IV *The covenant to repair.*, 155 (William S. Hein & Co. 1981).

Similarly, in Tiffany, *The Law of Landlord and Tenant*, Chapter X "Physical Conditions—Repairs and Improvements" §86 Landlord's Obligations Towards Tenants, 574-75 (Keefe-Davidson Co. 1910), provides as follows:

§87 Conditions arising after demise.

A. Ordinarily no obligation. As the landlord is under no obligation to the lessee, as regards the condition of the premises, or its fitness for the lessee's purpose, at the time of the demise, so he is under no obligation to the lessee, or the latter's assignee, to keep the premises during the tenancy in a conditions satisfactory to the latter. Accordingly, a landlord is not bound, as a general rule, in the absence of special stipulation, to make repairs or improvements on the premises in order to render them safe or fit them for the tenant's use. And as a result of this principle, the tenant cannot assert any claim against the landlord on account of injury to himself or his property owing to defects in the premises arising since the demise.

That the obligation of repair of the premises is not ordinarily the landlord's obligation seems clear. However, it is also clear that the tenant does have a duty to maintain the premises, in the absence of an express agreement by the landlord to do so.

Taylor sets out the tenant's covenant to maintain and repair the premises, including the maintenance of trees and timber, as follows:

Independent of any express agreement, **the law imposes upon every tenant an obligation to treat the premises leased to him, in such a manner that no substantial injury be done to them; but that the estate may revert back to the lessor at the end of the term unimpaired by any wilful or negligent conduct of the lessee.**

A tenant from year to year, in the absence of an express agreement so to do, is not bound to make substantial and lasting, or general repairs, such as putting a new roof on an old house; he is only impliedly liable to make fair tenable repairs, such as putting in doors and windows that are broken by him, or while in his occupancy, and is so far bound to support and repair the

buildings generally, as to prevent waste and decay of the premises, and surrender them at the end of term in as good condition as the ordinary and natural decay of the premises will admit. **He is also bound to keep the soil in a proper state of cultivation, and to preserve the timber and ornamental trees in good order if there be any growing on it.**

Taylor, *A Treatise on the American Law of Landlord and Tenant*, Chapter VII. Covenants on the Part of the Tenant, Section I, *Of the covenant to repair.*, 163 (William S. Hein & Co. 1981).

II. Chapter 723 Requires the Home Owner to Maintain the Lot (Including Trees).

Chapter 723, Florida Statutes, The Florida Mobile Home Act, is a comprehensive revision to the landlord tenant law of the state of Florida dealing exclusively with “mobile home park” tenancies. To the extent that Chapter 723 deals with a subject, it certainly would be in derogation of common law, and would control that subject. Chapter 723 is clear with respect to the park owner’s obligations to maintain the common areas of the park, and the home owner’s obligations to maintain their individual lot. Nowhere in Chapter 723 is the park owner obligated to maintain the lot of the home owner. Furthermore, the park owner is prohibited from even entering the lot of the mobile home owner, except to repair utility connections provided by the park owner and for the protection of the mobile home park.

Section 723.022, Florida Statutes, provides the mobile home park owner’s general obligations with respect to the maintenance and repair of the mobile home park. The statute requires the park owner to maintain the common areas, and to maintain utility connections and systems (presumably both in the common areas and on the individual lots) for which the park owner is responsible. That complete section is set forth below:

723.022 Mobile home park owner's general obligations.

A mobile home park owner shall at all times:

- (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.
- (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.

Furthermore, the park owner is not even authorized to enter the home owner's lot, except in very limited and circumscribed situations. The statute provides as follows:

723.025 Park owner's access to mobile home and mobile home lot.

A mobile home park owner has no right of access to a mobile home unless the mobile home owner's prior written consent has been obtained or unless to prevent imminent danger to an occupant of the mobile home or to the mobile home. Such consent may be revoked in writing by the mobile home owner at any time. The park owner has, however, the right of entry onto the lot for purposes of repair and replacement of utilities and protection of the mobile home park at all reasonable times, but not in such manner or at such time as to interfere unreasonably with the mobile home owner's quiet enjoyment of the lot.

In conclusion, the statute simply does not provide that the park owner has an obligation to maintain the trees or any other part of the lot of the home owner, except for utility connections that the park owner is responsible for. However, section 723.023, Florida Statutes, does impose an obligation on the part of the home owner to maintain the lot, as follows:

723.023 Mobile home owner's general obligations.

A mobile home owner shall at all times:

- (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. (Emphasis added.)

In addition to the statutory provisions set forth above, the park owner is also obligated to provide a written prospectus or offering circular, which must detail a substantial number of matters as set forth in section 723.012, Florida Statutes. However, nowhere does the statute require that the park owner state who is obligated to maintain the lot leased by the home owner. It is assumed under the statute that the home owner will maintain the lot.

The statute does require the park owner to set forth in the prospectus how utilities and other services will be provided in the park. Again, lot maintenance is not one of the required disclosures. Although the park owner is not required to set forth in the prospectus who is responsible for maintenance of the lot, the prospectus or rental agreement may do so. If the prospectus or rental agreement does provide for who is to maintain the lot and premises, that would control over the common law rule that the tenant is obligated to maintain the lot upon which he resides.

Finally, I have included an article from the FMO News, a publication of the statewide Federation of Manufactured Home Owners, whose General Counsel at that time, Ms. Luci

Warren, set out the obligation of the home owner to maintain the trees on the lot, in the absence of an express statement in the prospectus or rules and regulations by the park owner that the park owner was assuming that duty.

IV. Conclusion

In conclusion, the common law provides that the landlord is not responsible for maintaining trees on a lot leased to a tenant – the tenant is responsible. Chapter 723, the Florida Mobile Home Act, does not impose any obligation on the park owner to maintain the trees, shrubbery or other landscaping on the lot.