

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: November 21, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, Senior Attorney, Office of the General Counsel *MAD*

RE: Docket No. 20180142-WS - Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.

Please place the attached letter, dated November 12, 2018, in the Correspondence section of the docket file for Docket No. 20180142-WS. Please let me know if you have any questions.

RICHARD A. HARRISON, P.A.

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November 12, 2018

VIA EMAIL ONLY

Keith Hetrick, Esq., General Counsel, khetrick@psc.state.fl.us
Florida Public Service Commission
2540 Shumard Oak Blvd.
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RE: Docket No. 20180142-WS
Palm Tree Acres Mobile Home Park (Pasco County, FL)
Document No. 06967-2018

Dear Mr. Hetrick:

I wanted to respond briefly to the correspondence dated May 4, 2018 from the Florida Manufactured Housing Association, Inc., and dated May 21, 2018 from the Federation of Manufactured Home Owners of Florida, Inc., both of which have been made a part of the record in these proceedings under the Document Number referenced above.

As I understand it, these organizations are concerned that the PSC may limit the application of the landlord-tenant exemption of §367.022(5) by requiring that the definitions of "landlord" and "dwelling unit" contained in Ch. 83, Fla. Stat., be applied to define the scope of the exemption. Were that to be the case, these organizations say, then the landlord-tenant exemption would not apply to traditional mobile home parks that rent only lots for the placement of mobile homes because a lot is not a "dwelling unit" as defined in Ch. 83.

There is no cause for such concern. We have never argued that the landlord-tenant exemption in §367.022(5) must be limited to the type of tenancy covered by Ch. 83, nor does the PSC have to make any such ruling in these proceedings.

What we have argued and continue to maintain is that the exemption cannot apply here because the lot owners own their own lots. They do not rent any real property (lots) or other property (mobile homes) from the Park.

On these facts, as the PSC has previously determined, the landlord-tenant exemption of Fla. Stat. §367.022(5) cannot apply. There is no landlord, and there is no

tenant. The agency has previously rejected the same contention under identical circumstances. *In re: Request for Exemption from Florida Public Service Commission Regulation for Provision of Water Service by GEM Estates Water System in Pasco County*, PSC Docket No. 920281-EU, Order No. PSC-92-0746-FOF-WU, 1992 WL 12597081 (Fla. Pub. Serv. Comm'n August 4, 1992) ("Because the mobile home owners own their own land, the utility's owners are not landlords. If the utility's owners are not landlords for the customers served by Gem Estates, the landlord-tenant exemption cannot apply.")

As to the second point raised by this correspondence, being the claim that mobile home subdivision developers "rent lot owners access to common areas, recreational facilities, roads, and other amenities," there is simply no such "tenancy" recognized in Florida law. The non-exclusive right merely to use such facilities (as opposed to the right to possess them and exclude others from possession) is the textbook definition of a license under Florida law. A license is a contractual right; it is not an interest in real property. It is certainly not a tenancy, nor does it create a "landlord-tenant" relationship.

Although Ch. 723 (the Mobile Home Act) contemplates such relationships and provides that certain provisions of the Act apply to them, it does not make such relationships a tenancy in any respect.

We request that this letter and the order be made a part of the official record in these proceedings. We have copied counsel for the Park on this correspondence.

Thank you.

Very truly yours,

RICHARD A. HARRISON, P.A.



Richard A. Harrison

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