

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Proposed Adoption of Rule 25-30.0115,
F.A.C., Definition of Landlord and Tenant

DOCKET NO. 20190041-EI

FILED: March 18, 2019

CITIZENS' POST WORKSHOP COMMENTS

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), hereby file their comments to the proposed Rule 25-30.0115, F.A.C., relating to defining the terms Landlord and Tenant as used in Section 367.022(5), Florida Statutes. OPC generally supports the Commission's proposed Rule language with the addition of clarifying language for the reasons discussed below.

On February 18, 2019, the Commission Staff held a workshop on the proposed Rule. The proposed Rule 25-30.0115, F.A.C., defines the terms "landlord" and "tenant" as follows:

As used in Section 367.022(5), F.S.:

- (1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of agreement between the two parties and who provides water and/or wastewater service to the tenant at that property; and
- (2) "tenant" is the party to whom the possessory interest in real property is conveyed by the landlord and who receives water and/or wastewater service from the landlord at that property.

The terms "landlord" and "tenant" are used in Section 367.022(5), F.S., which establishes an exemption from Commission regulation of water and wastewater service. Specifically, Section 367.022(5), F.S., states:

Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

- (5) Landlords providing service to their tenants without specific compensation for the service.

The Commission has applied this exemption to the Commission’s jurisdiction in many instances. Before the 1996 legislative amendment making the exemptions from the Commission’s jurisdiction self-executing, utilities were required to seek a decision from the Commission to determine if they met one of these exemptions.¹

For example, the Commission referenced the relationship of “landlord” and “tenant” as understood in Chapter 83, F.S., in its analysis of whether a metering company could be exempt under the landlord/tenant exemption.² The Commission in denying the exemption, relied in part, on the Section 83.67(1), F.S., requirement that “no landlord of any dwelling unit. . . shall cause directly or indirectly the termination or interruption of any utility service furnished to the tenant. . .” *Id.* at p. 5. Subsections 83.43(3) and (4), F.S., define “landlord” as “the owner or lessor of a dwelling unit” and “tenant” as “any person entitled to occupy a dwelling unit under a rental agreement.” Section 83.43(2), F.S., further defines a “dwelling unit” to mean a structure or part of a structure that is rented for use as a home, residence, or sleeping place for one or more persons including mobile homes. Further, the landlord/tenant relationship is governed by the “rental agreement” either oral or written, for less than a year’s duration, that provides for use and occupancy of the premises. See Section 83.43(7), Florida Statutes.

Chapter 723, F.S., governs mobile home parks. While Chapter 723, F.S., does not define “landlord” and “tenant,” Section 723.003(10), F.S., defines a mobile home lot rental agreement as:

(10) “Mobile home lot rental agreement” or “rental agreement” means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.

¹ See, Staff Recommendation filed December 27, 2018, in Docket No. 20180142-WS, *In re: 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 25-30.33, F.A.C.*, at p. 10, footnote 15.

² Order No. 24936, issued August 20, 1991, in Docket No. 910655-WU, *In re: Request for exemption from Florida Public Service Commission regulation for provision of water service in Broward County by H2Oulton Metering Systems, Inc.*

This definition of a mobile home lot rental agreement appears to contain the same principles underlying the landlord-tenant relationship in Chapter 83, F.S., which is the conveyance of the landlord/owner's right to a tenant to enter and occupy a dwelling or lot.

As another example, the Commission relied on this principle in determining if a landlord-tenant relationship had been established in Gem Estates Water System (Gem Estate or Utility)³. In the *Gem Estates* case, the Commission requested the landlord's (i.e. the mobile park owner's) current leases or rental agreements from the utility to verify whether a separate charge for water service was being charged. However, it was determined that the lots were owned by mobile home owners; therefore, the utility's owner (which was Gem Estates, the mobile home park owner) was not a landlord and the landlord-tenant exemption could not apply. *Id.* at p. 3.

Some of the participants at the workshop have suggested the Commission create a definition of landlord-tenant that is vastly different than the one the Commission is proposing or has applied in its past decisions. These participants have proposed that mobile home parks, where the mobile home park owners do not own all of the lots within the park, nevertheless be treated as a landlord for purposes of the exemption contained in Section 367.022(5), F.S. This request to redefine the ordinary and usual mean of landlord and tenant is inconsistent with the Commission's past practice and policy. In addition, there does not appear to be a specific statutory definition of landlord and tenant in Chapter 723, F.S., that would justify applying anything other than the ordinary and usual meanings of landlord and tenant. In fact, such a carve out for mobile home parks to treat mobile home lot owners as "tenants" for purposes of the exemption in Chapter 367, F.S., would create inconsistent treatment for similarly situated customers. In other words, some

³ Order No. PSC-92-0746-FOF-WS, issued August 4, 1992, in Docket No. 920281-WU, *In Re: Request for exemption from Florida Public Service Commission regulation for provision of water service by Gem Estates Water System in Pasco County.*

property owners would have their utility services subject to the Commission's jurisdiction and others would not, solely dependent on the location of the property.

Moreover, even if a landlord-tenant relationship was to be presumed for mobile home lot owners, there would be no "mobile home lot rental agreements" which the Commission could examine to determine whether the mobile home park owners were meeting the criteria of providing service to their "tenants" without specific compensation for that service. As the Commission found in the *Century Realty* case,⁴ even though a landlord-tenant relationship existed between the mobile home park and the mobile home owners, the mobile home park did not meet the exemption because they were charging a specific rate or charge for water or service based on the park's prospectus⁵. *Id.* at pp. 7, 8, and 15. Since the Century Realty mobile home parks were charging for water and sewer service, the Commission found that Century Realty was a utility subject to the Commission's regulation. *Id.* at 14.

The proposed Rule language defining "Landlord" and "Tenant" appears to be consistent with the ordinary and usual usage of these terms as defined in Florida Statutes. However, for purposes of consistency with Chapters 83 and 723, F.S., the Commission should considering adding the following language:

- (1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of agreement, either oral or written, between the two parties and who provides water and/or wastewater service to the tenant at that property; and

⁴ Order No. 18727, issued January 25, 1988, in Docket No. 870865-WS, *In Re: Request by Century Realty Funds, Inc. for Determination of Exempt Status of Water and Sewer Systems Located in Lake, Monroe, Sumter, Highlands, Lee and Pasco Counties* (Century Realty).

⁵ As the Commission noted in *Century Realty* case, Chapter 723 provides that if a mobile home park leasing lots to individual mobile home owners provides water and sewer service, it must disclose in a prospectus or offering circular the manner in which water and sewer service will be provided, the person or entity furnishing such service and an explanation of the manner in which rates and charges for such service may be increase. See, Section 723.012(8) and (9), F.S. *Id.* at 8.

Chapters 83 and 723, F.S., specially include both oral and written agreements as the basis for the creation of a landlord-tenant relationship. In the absence of this additional language, an inadvertent different application of landlord-tenant relationship might be created based on the type of agreement, either oral or written.

With OPC's proposed additional language above, the proposed Rule is consistent with past Commission Orders that articulate the Commission's policy and practice. In addition, there appears to be no specific conflict in Chapter 723, F.S., that would merit any deviation from the ordinary and usual meaning and application of the terms "Landlord" and "Tenant" as defined in the proposed Rule. Therefore, OPC supports the Commission's proposed definitions of "landlord" and "tenant" in the proposed Rule 25-30.0115, F.A.C., for purposes of Chapter 367, F.S., with the one clarification offered herein.



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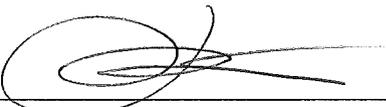
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CERTIFICATE OF SERVICE
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I **HEREBY CERTIFY** that a true and correct copy of the foregoing Citizens' Post Workshop Comments has been furnished by electronic mail to the following parties on this 18th day of March, 2019.

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