

5-17-2017

Do Code Violations and Liens Run with the Land? Carving out a Changing Landscape to Section 162.09(3), Florida Statutes, with Enactment of Section 723.024, Florida Statutes, Mobile Home Park Lot Tenancies

Harry M. Hipler

Follow this and additional works at: <http://lawpublications.barry.edu/barryrev>

 Part of the [Jurisprudence Commons](#), and the [Other Law Commons](#)

Recommended Citation

Harry M. Hipler (2017) "Do Code Violations and Liens Run with the Land? Carving out a Changing Landscape to Section 162.09(3), Florida Statutes, with Enactment of Section 723.024, Florida Statutes, Mobile Home Park Lot Tenancies," *Barry Law Review*: Vol. 22 : Iss. 2 , Article 2.

Available at: <http://lawpublications.barry.edu/barryrev/vol22/iss2/2>

This Article is brought to you for free and open access by Digital Commons @ Barry Law. It has been accepted for inclusion in Barry Law Review by an authorized editor of Digital Commons @ Barry Law.

**DO CODE VIOLATIONS AND LIENS RUN WITH THE LAND? CARVING
OUT A CHANGING LANDSCAPE TO SECTION 162.09(3), FLORIDA
STATUTES, WITH ENACTMENT OF SECTION 723.024, FLORIDA
STATUTES, MOBILE HOME PARK LOT TENANCIES**

*Harry M. Hipler**

This article raises questions about the possible interpretations of section 723.024 of the Florida Statutes as they pertain to code enforcement violations and procedures against mobile home park owners and mobile home owners in mobile home park lot tenancies. Ever since the enactment of section 162.09(3) in the 1980s, the fundamental principle has been that code enforcement violations and liens run with the land. After section 723.024 of the Florida Statutes became effective on June 2, 2011, the question became whether the legislature has carved out an exception for mobile home park lot tenancies to bifurcate responsibility between mobile home owners and mobile home park owners. Literally, section 723.024 of the Florida Statutes says that each of these parties has their own responsibility in mobile home park lot tenancies, which is a reversal of approximately thirty years of law and procedure. Section 723.024 of the Florida Statutes is deceptively simple, as there are inconsistencies and contradictions contained within this statute. The wording of section 723.024 of the Florida Statutes undermines long-standing agency and strict liability principles as to code enforcement law and procedure. Section 723.024 of the Florida Statutes arguably removes agency and strict liability from section 162.09(3) of the Florida Statutes as it pertains to mobile home park lot tenancies according to some legal sources. By enacting what some have suggested is a major exception to a fundamental paradigm in code enforcement proceedings as applied to mobile home park lot tenancies, the legislature appears to have involved itself in reshaping code enforcement procedure and placed itself into the dynamics of mobile home park owners and mobile home owners' responsibilities in code enforcement procedure.

There are questions that remain after enactment of section 723.024 of the Florida Statutes. Is the statute's wording clear and unambiguous? Does this statute conflict with the separation of powers doctrine in article I, section 3 of the Florida Constitution? What effect does the preemption doctrine in article VIII, section 2(b) of the Florida Constitution have on section 723.024 of the Florida Statutes and local government code provisions? Does section 723.024 of the Florida Statutes provide procedural pitfalls and barriers in light of the access to courts provision of article I, section 21 of the Florida Constitution? Is enforcement of the statute mandatory or discretionary? Can section 723.024 of the Florida Statutes be construed together and reconciled with section 162.09(3) of the Florida Statutes? Is there a legal duty by mobile home park owners to report mobile home owners to local governments if there appears to be a code violation? Can a local government charge both parties under civil conspiracy and/or as an accomplice if mobile home park owners knew or

should have known that code violations existed, and neither did anything to report and correct code violations? In light of the different interpretations that can be given to section 723.024 of the Florida Statutes and the constitutional questions that have been raised in this article, can local governments decide for themselves how to construe and enforce the statute from one local government to another, thereby causing confusion and a lack of uniformity in local governments' code enforcement prosecutions depending on what one local government may believe as distinguished from another local government?

Until there is a better understanding of the impact and ultimate construction of section 723.024 of the Florida Statutes, and whether section 162.09(3) of the Florida Statutes still controls, we will have to wait and see.

I. INTRODUCTION

Florida law has held that code violations and liens “run with the land.”¹ This paradigm has existed since the enactment of Chapter 166 of the Florida Statutes in 1980,² and has continued to remain intact pursuant to Chapter 162 of the Florida Statutes.³ Current real property owners have been held responsible for bringing their real property into compliance with local governments' (counties and municipalities) code regulations⁴ and have been subject to the payment of liens, interest, attorney fees, and costs if land owners fail to comply with code violations.⁵ Chapter 162 of the Florida Statutes grants local governments the power to enforce code provisions against owners of real property where violations exist.⁶ Imposing administrative fines on a per diem basis is permitted until the real property owner remedies the violations on his or her land and complies with all code enforcement orders.⁷ Chapter 162 of the Florida Statutes also recognizes that both real property owners and someone other than real property owners may be responsible for violations of local

* Harry M Hipler. Attorney, Dania Beach, Florida. M.A., Political Science, Florida International University, 2013; M.U.R.P., Florida Atlantic University, 2007; LL.M, Tax, University of Miami, 1981; J.D., University of Florida, 1975. “AV” Rated – Martindale Hubbell Law Directory. The author practices primarily in the areas of commercial litigation, local government law, and domestic relations. He has authored articles in the areas of local government law, urban and regional planning, and domestic relations.

1. *Henley v. MacDonald*, 971 So. 2d 998, 1000 (Fla. Dist. Ct. App. 2008); *Monroe Cty. v. Whispering Pines Assocs.*, 697 So. 2d 873, 875 (Fla. Dist. Ct. App. 1997); *see City of Gainesville Code Enf't Bd. v. Lewis*, 536 So. 2d 1148, 1150 (Fla. Dist. Ct. App. 1988).

2. FLA. STAT. § 166.059 (1980); *see id.* §§ 166.051–166.062. “Violator” may include real property owner or non-real property owner depending on the underlying ordinance. *See Op. Att’y Gen. Fla., infra* note 107.

3. *See* FLA. STAT. §§ 162.01–162.13, 162.21–162.30 (2016). More particularly, *see* FLA. STAT. § 162.09(3).

4. *See id.* § 162.06(5) (requiring the owner of property subject to an enforcement proceeding to disclose the existence and the nature of the proceeding to any prospective transferee and to disclose in writing to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding).

5. *Id.* §§ 162.06(5), 162.10.

6. *See id.* §§ 162.02, 162.03(2) (local governments are authorized to hold hearings and assess fines); *Verdi v. Metro. Dade Cty.*, 684 So. 2d 870, 873 (Fla. Dist. Ct. App. 1996); *Op. Att’y Gen. Fla. No. 2001–77* (2001), 2001 WL 1347157, <http://www.myfloridalegal.com/ago.nsf/Opinions/48D41C6174E2007385256AF500729DE2>.

7. FLA. STAT. § 162.09(3) (A certified copy of order imposing a fine once recorded constitutes a lien against the land on which violation exists and upon any other real and personal property owned by the violator); *id.* § 162.10 (the duration of lien is no more than twenty years after certified copy of order imposing fine and lien is recorded).

government code provisions, for the act states that both the “violator” and “the owner of property that is subject to an enforcement proceeding” are responsible for code violations under the provisions of Part I, Chapter 162 of the Florida Statutes.⁸

Mobile homes are an important aspect of the housing market in Florida, and most mobile homes are located in mobile home parks.⁹ This has occurred predominantly on account of the high cost of owning land,¹⁰ the impact of zoning ordinances that frequently restrict placement of mobile homes in mobile home parks,¹¹ and reliance on a belief that mobile homes are an inexpensive and durable form of housing.¹² When section 723.024 of the Florida Statutes became effective on June 2, 2011, the legislature involved itself in attempting to reshape code enforcement procedure by placing itself into the dynamics between mobile home park owners and mobile home owners’ responsibilities in code enforcement violations and liens.¹³ Section 723.024 of the Florida Statutes has attempted to separate responsibility between mobile home park owners and mobile home owners. In so doing, the legislature has attempted to lessen the impact of the fundamental paradigm existing in code enforcement proceedings since the 1980s that code violations and liens run with the land.¹⁴

This article focuses on section 723.024 of the Florida Statutes and its interplay with Chapter 162 of the Florida Statutes, more particularly section 162.09(3) of the Florida Statutes concerning enforcement and compliance of code violations. Section 723.024 of the Florida Statutes provides local governments with authority to enforce its code provisions against non-owners of real property (mobile home owners) whose acts have resulted in violations in mobile home park lot tenancies, rather than following the fundamental principle in Florida code enforcement law that code

8. *Id.* §§ 162.06(2), (5).

9. See Stephen Schreiber, *Mobile Homes and Hurricanes: The Crisis in Florida*, ACSA INT’L CONF. 39, 41 (2005); Esther Sullivan, *Halfway Homeowners: Eviction and Forced Relocation in a Florida Manufactured Home Park*, 39 LAW SOC. INQUIRY 474, 475 (2014). In Florida, there are approximately 7,302,947 total housing units, and of that number there are 849,304 mobile homes that make up 11.6 percent of the total housing units. *Historical Census of Housing Tables*, U.S. CENSUS BUREAU, (October 31, 2011), <https://www.census.gov/hhes/www/housing/census/historic/units.html>.

10. Morris A. Davis & Michael G. Palumbo, *The Price of Residential Land in Large U.S. Cities*, 63 J. URB. ECON. 352, 353, 361, 367 (2008); Richard Williams et al., *The Changing Face of Inequality in Home Mortgage Lending*, 52 SOC. PROBS. 181, 189–90 (2005); see also Rachel E. Dwyer, *Expanding Homes and Increasing Inequalities: U.S. Housing Development and the Residential Segregation of the Affluent*, 54 SOC. PROBS. 23, 43 (2007) (discussing how manufactured homes are sought out by lower income families, as opposed to the more affluent).

11. Daniel R. Mandelker, *Zoning Barriers to Manufactured Housing*, 48 URB. L. 233, 236–37, 244–45 (2016); Julia O. Beamish et al., *Not a Trailer Anymore: Perceptions of Manufactured Housing*, 12 HOUS. POL’Y DEBATE 373, 377–78 (2001); Casey J. Dawkins & C. Theodore Koebel, *Overcoming Barriers to Placing Manufactured Housing in Metropolitan Communities*, 76 J. AM. PLAN. ASS’N 73, 76 (2009); David Ray Papke, *Keeping the Underclass in Its Place: Zoning, the Poor, and Residential Segregation*, 41 URB. L. 787, 797 (2009); see G. Shen, *Location of Manufactured Housing and Its Accessibility to Community Services: A GIS-Assisted Spatial Analysis*, 39 SOC. ECON. PLAN. SCI. 25, 26 (2005).

12. Thomas P. Boehm & Alan Schlottman, *Is Manufactured Housing a Good Alternative for Low Income Households? Evidence from the American Housing Survey*, 10 CITYSCAPE 159, 169 (2008); Beamish, *supra* note 11, at 377; Dawkins, *supra* note 11, at 74; see Richard Genz, *Why Advocates Need to Rethink Manufactured Housing*, 12 HOUS. POL’Y DEBATE 393, 396–97 (2001).

13. See FLA. STAT. § 723.024 (2011); S. 650, 2011 Leg. (Fla. 2011).

14. *Henley v. MacDonald*, 971 So. 2d 998, 1000 (Fla. Dist. Ct. App. 2008); *Monroe Cty. v. Whispering Pines Assoc.*, 697 So. 2d 873, 875 (Fla. Dist. Ct. App. 1997); see *City of Gainesville Code Enf’t Bd. v. Lewis*, 536 So. 2d 1148, 1150 (Fla. Dist. Ct. App. 1988); see FLA. STAT. § 723.024 (2016).

violations and liens run with the land applicable since the inception of Chapter 166 of the Florida Statutes and its successor Chapter 162 of the Florida Statutes.¹⁵ This article also discusses conflicting provisions within section 723.024 of the Florida Statutes that may subject the statute to varying interpretations in light of its wording and relevant case law, which calls into question whether section 723.024 of the Florida Statutes is constitutionally deficient under the separation of powers doctrine of article II, section 3 of the Florida Constitution and the preemption doctrine of article VIII, section 2(b) of the Florida Constitution. Finally, in light of the tensions existing between section 723.024 of the Florida Statutes and section 162.09(3) of the Florida Statutes, options about construction of these statutes and their interplay are discussed for future consideration that will allow the reader to determine which options fit best in light of the relevant case law and long term implications for code enforcement law and procedure.

II. MOBILE HOME OWNERS OR MOBILE HOME PARK OWNERS: WHO IS THE “RESPONSIBLE PARTY” ACCORDING TO SECTION 723.024 OF THE FLORIDA STATUTES?

On June 2, 2011, section 723.024 of the Florida Statutes¹⁶ became effective, and it was intended to help mobile home owners and mobile home park owners determine which party has responsibility to maintain compliance with local government code provisions.¹⁷ Section 723.024 of the Florida Statutes¹⁸ appears to have been created to allow local governments to enforce code violations against mobile home owners or mobile home park owners, subject to the criteria listed in sections 723.022¹⁹ and 723.023 of the Florida Statutes.²⁰

15. FLA. STAT. § 723.024 (2016); see FLA. STAT. §§ 166.051–.062 (1980); FLA. STAT. §§ 162.01–.13 (1985).

16. FLA. STAT. § 723.024 (2011) (s. 1, ch. 201–105); S. 650, 2011 Leg. (Fla. 2011).

17. FLA. STAT. § 723.024 (2011) (“Compliance by mobile home park owners and mobile home owners. Notwithstanding any other provision of this chapter or of any local law, ordinance, or code: (1) If a unit of local government finds that a violation of a local code or ordinance has occurred, the unit of local government shall cite the responsible party for the violation and enforce the citation under its local code and ordinance enforcement authority. (2) A lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or mobile home for any duty or responsibility of the mobile home park owner under [§] 723.022 or against a mobile home park owner or mobile home park property for any duty or responsibility of the mobile home owner under [§] 723.023.”).

18. *Id.*

19. *Id.*; FLA. STAT. § 723.022 (2016). (“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.”).

20. FLA. STAT. § 723.023 (2016) (“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, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes. (2) Keep the mobile home lot which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes. (3) Comply with properly promulgated park

The legislature has specifically defined “Mobile Home Park Lot Tenancies” in section 723.002(1) of the Florida Statutes as follows: “The provisions of [Chapter 723 Mobile Home Park Lot Tenancies] apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease.”²¹ If a mobile home park falls within the ambit of section 723.024(1) of the Florida Statutes it appears that either the mobile home owner or the mobile home park owner may be charged and ultimately held responsible for code violations, as provided in sections 723.022 and 723.023 of the Florida Statutes.²² These statutes attempt to enumerate the circumstances where a party may be responsible,²³ and along with section 723.024 of the Florida Statutes,²⁴ make it statutorily prohibited for a local government to charge and adjudicate one party when the other may be responsible.²⁵

If a mobile home owner does not comply with local government codes on real property leased from the mobile home park owner, the local government may no longer be able to charge and adjudicate a fine and a lien against the mobile home park owner.²⁶ Sections 723.022, 723.023, and 723.024 of the Florida Statutes²⁷ have sought to describe the circumstances under which a local government may charge the responsible party, whether it is the mobile home owner or a mobile home park owner.²⁸ One common situation that is set forth in section 723.023(1) of the Florida Statutes concerns the undertaking by a mobile home owner who violates a local government building code by adding an attachment built onto the existing unit without a building permit.²⁹ Under those circumstances, section 723.023(1) of the Florida Statutes provides that it is the mobile home owner that is responsible for all fines and liens imposed by the local government, as the act makes it the mobile home owner’s responsibility as lessee of the land to obtain “compliance with all building permits and construction requirements for construction on the mobile home and lot.”³⁰ After enactment of section 723.024 of the Florida Statutes, the long-standing

rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.”)

21. *Id.* § 723.002(1); *Aspen-Tarpon Springs Ltd. P’ship v. Stuart*, 635 So. 2d 61, 62–63 (Fla. Dist. Ct. App. 1994); *Rowles v. Dep’t of Bus. Reg.*, 585 So. 2d 319, 321 (Fla. Dist. Ct. App. 1991).

22. Section 723.024 uses the word “may,” and therefore an argument is that “may” is discretionary with a local government as to whether a party can be charged, leaving open the possibility that a local government retains discretionary authority to decide which party is responsible that will still provide a local government to decide which party, or both, should be charged. On account of the statute’s use of “may” and “shall,” a local government may retain the discretion to file a single charge against one party, or a joint charge against both. *See* discussions *infra* Parts VI and X.

23. *See Pappert v. Mobilinium Assoc.*, 512 So. 2d 1096, 1097 (Fla. Dist. Ct. App. 1987).

24. FLA. STAT. § 723.024 (2016).

25. *Id.* §§ 723.022–723.024.

26. *Id.*

27. *Id.*

28. *Id.* § 723.024.

29. *Id.* § 723.023(1); *see Gem Estates Mobile Home Vill. Ass’n, Inc. v. Bluhm*, 885 So. 2d 435, 436, 439–40 (Fla. Dist. Ct. App. 2004) (finding where the mobile home owner attached an enclosed screen porch in violation of a recorded restriction applicable to each mobile home while the decision concerned the enforceability of a restriction, the setback requirement falls within the ambit of section 723.023 subsection 1 of the Florida Statutes and potential violations imposed by local government code provisions).

30. FLA. STAT. § 723.023(1).

rule that the real property owner, not the tenant, was ultimately responsible for code violations³¹ may not apply to mobile home park owners as defined in section 723.002(1) of the Florida Statutes³² on account of what may be a bifurcation of responsibility pursuant to sections 723.022, 723.023, and 723.024 of the Florida Statutes.³³

III. HISTORY OF CHAPTER 162 OF THE FLORIDA STATUTES

In 1980, the Florida legislature enacted Chapter 166 of the Florida Statutes³⁴ that later became Chapter 162 of the Florida Statutes,³⁵ which currently outlines code enforcement procedures.³⁶ “The idea was to take the enforcement of local ordinances out of the overloaded courts [by having] violations handled in [administrative proceedings] by local citizen boards.”³⁷ That idea was later amended to include special magistrates after considering evidence of code compliance officers and respondents.³⁸ Before 1980, a local government could find a tenant responsible for local government code violations if the real property owner was not engaged in or operating a business on the real property.³⁹ After the enactment of Chapter 166 of the Florida Statutes in 1980,⁴⁰ it was the owner’s real property, where the code violations existed, that was ultimately responsible for local government code violations after a certified copy of an order was recorded.⁴¹ By 1985, former Chapter 166 had become Chapter 162 of the Florida Statutes,⁴² and section 162.09 of the Florida Statutes read that a certified copy of an order would constitute a lien against the land on which the violation exists, “or if the violator does not own the land, upon any other real or personal property owned by the violator.”⁴³ The next material change occurred by 1987 with an amendment of section 162.09(3) of the Florida Statutes, where a recorded certified copy of the order would “constitute a lien against

31. See *id.* §§ 723.023(1), 162.09(3).

32. *Id.* § 723.002(1).

33. See *id.* §§ 723.022–723.024.

34. FLA. STAT. §§ 166.051–166.062 (1980).

35. FLA. STAT. §§ 162.01–162.13 (1985).

36. *Id.*; FLA. STAT. §§ 162.06–162.07, 162.09–162.10 (2016).

37. *Guide to Code Enforcement in St. Johns County Government*, ST. JOHNS COUNTY GOV’T, <http://www.co.st-johns.fl.us/CodeEnforcement/guide.aspx> (last visited Nov. 20, 2016). “The idea was to take the enforcement of local ordinances out of the state court system and have violations handled by local Code Compliance Inspectors. This law also allowed municipalities to establish an administrative process.” *Code Compliance Homeowner’s Guide*, CITY OF PUNTA GORDA, <http://www.ci.punta-gorda.fl.us/home/showdocument?id=1068> (last visited Nov. 20, 2016) (“[E]ducation of the public can be [an] effective tool that Code Enforcement officials have at their disposal.”)

38. See FLA. STAT. § 162.03(2) (2016).

39. See *Dep’t of Revenue v. Gen. Am. Transp. Corp.*, 382 So. 2d 316, 316 (Fla. Dist. Ct. App. 1979); *City of Miami v. Schonfeld*, 197 So. 2d 559, 560–61 (Fla. Dist. Ct. App. 1967). The same parties were before the appellate court on a previous occasion in *City of Miami v. Schonfeld*, 132 So.2d 767, 768–69 (Fla. Dist. Ct. App. 1961), involving the interpretation of the city ordinance then in effect.

40. FLA. STAT. §§ 166.051–166.062 (1980).

41. *Id.* § 166.059 (“A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists.”).

42. FLA. STAT. §§ 162.01–162.13 (1985).

43. *Id.* § 162.09(3).

the land on which the violation exists and upon any other real or personal property owned by the violator.”⁴⁴

As local government code compliance departments grew, it was common for mobile home park owners and mobile home owners to violate local code provisions; both would stay silent out of fear that a mobile home park owner would be per se responsible, making it difficult for code enforcement officials to find code violations on real property of all types in local governments.⁴⁵ Many code violations have been and are continually being corrected from day to day, but there remain countless numbers of violations in mobile home park lot tenancies and elsewhere in local communities.⁴⁶

IV. THE IMPORTANCE OF AGENCY AND STRICT LIABILITY TO CHAPTER 162 OF THE FLORIDA STATUTES

Why did the legislature make the owner of real property ultimately responsible for code violations pursuant to Chapter 166 and Chapter 162 of the Florida Statutes? By delegating code enforcement to local government quasi-judicial proceedings, these statutes brought forward a legislative purpose, which was to provide an expeditious and economically efficient method to obtain code compliance that would also deter future code violations by current and future owners and violators.⁴⁷ Otherwise, if fault and cause had to be shown by local governments, protracted and drawn out proceedings would occur that would result in highly divisive and costly disputes between a local government, the owner of real property, and the tenant on the question of who was the responsible party.⁴⁸

44. FLA. STAT. § 162.09(3) (1987).

45. See *Key Largo Ocean Resort Co-Op, Inc. v. Monroe Cty.*, 5 So. 3d 31, 32 (Fla. Dist. Ct. App. 2009); *Monroe Cty. v. Whispering Pines Assocs.*, 697 So. 2d 873, 874 (Fla. Dist. Ct. App. 1997); Omari Ben-Shahar et al., *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 650–63 (2011).

46. See Kermit J. Lind, *Collateral Matters: Housing Code Compliance in the Mortgage Crisis*, 32 N. ILL. U. L. REV. 445, 455–56 (2012); Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101, 114–16 (2009); Ezra Rosser, *Rural Housing and Code Enforcement: Navigating Between Values and Housing Types*, 13 GEO. J. ON POL'Y 33, 37–39 (2006); Keith H. Hirokawa & Ira Gonzalez, *Regulating Vacant Property*, 42 URBAN LAWYER 627, 632 (2010); but see Lea Deutsch, *Collateral Damage: Mitigating the Effects of Foreclosure in Communities*, 22 TEMP. POL. & CIV. RTS. L. REV. 203, 212 (2012).

47. FLA. STAT. § 162.02 (2016); see Raymond J. Burby et al., *Improving Compliance with Regulations: Choices and Outcomes for Local Government*, 64 J. ON AMERICAN PLAN. ASS'N, 1, 8 (1998); Margaret L. Smith, *No Property Left Behind: An Exploration of Abandoned Property Policies*, 31–33 (2014) (unpublished Masters thesis, University of Pennsylvania) (on file with Scholarly Commons); Jane Schukoske, *The Evolving Paradigm of Laws on Lead-Based Paint: From Code Violation to Environmental Hazard*, 45 S. C. L. REV. 511, 545 (1994) (discussing purposes of a specific federal law, which include cost-effective means of fulfilling the law); Arun S. Malik, *Self-Reporting and the Design of Policies for Regulating Stochastic Pollution*, 24 J. ENVTL. ECON. MGMT., 241, 254 (1993).

48. See FLA. CONST. art. V, § 1 (permitting the legislature to grant to “administrative officers or bodies” “quasi-judicial power in matters connected with the functions of their offices.”); *Verdi v. Metro. Dade Cty.*, 684 So. 2d 870, 874–75 (Fla. Dist. Ct. App. 1996) (stating that, pursuant to Article V, § 1, of the state constitution, Dade County, “as a legislative body[,] would have clear authority to utilize hearing officers to enforce its codes as long as such enforcement proceedings are only quasi-judicial in nature.”); Anne-Marie C. Carstens, *Lurking in the Shadows of Judicial Process: Special Masters in the Supreme Court’s Original Jurisdiction Cases*, 86 MINN. L. REV. 625, 702 (2002).

One may look to agency theory⁴⁹ and the strict liability doctrine⁵⁰ in determining that the owner of real property is ultimately responsible for code violations, and that is what section 162.09(3) of the Florida Statutes did by making the owner responsible upon adjudication, regardless of who caused the code violations or who was at fault.⁵¹ The legislative authority for imposing agency or strict liability on real property owners flows from section 162.09(3) of the Florida Statutes,⁵² and it provides: “an order imposing a fine . . . may be recorded in the public records, and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.”⁵³ A literal reading of section 162.09(3) of the Florida Statutes⁵⁴ supports the conclusion that the recording of a certified copy of a code enforcement order constitutes a lien against the land on which the violation exists and upon all real and personal property of the owner regardless of fault and who caused the code violations.⁵⁵

V. SECTION 723.024 AS APPLIED TO SECTION 162.09(3) OF THE FLORIDA STATUTES: CONCEPTS OF REPORTING, SELF-REPORTING, AND THIRD PARTY REPORTING OF CODE VIOLATIONS

What is the legislative goal of section 723.024 of the Florida Statutes? According to a literal reading of section 723.024 of the Florida Statutes, a mobile home park owner may now be able to contact a local government without fear of reprisal by the local government that it will charge a mobile home park owner with code violations caused by the mobile home owner.⁵⁶ If a code violation of a mobile home is reported, section 723.024 of the Florida Statutes may alleviate fears of a mobile home park owner that he or she will not be responsible for code violations resulting from action

49. The purpose of agency law is to restore the status quo after a person chooses to use an agent. In an agency relationship, one party acts on behalf of another. The foundational principle of agency law is that the principal, who has chosen to carry out his or her business through an agent, must bear the foreseeable consequences created by that choice. As the bearer of rewards and risks, the principal is entitled to receive the benefits created by the agency relationship (rent from a tenant), as well as the burdens created by the agency relationship (wrongdoing by the tenant that is imputed and attributed onto the principal). This set of principles can be called cost benefit internalization theory, and generally explains agency law doctrine. See Paula J. Dalley, *A Theory of Agency Law*, 72 U. PITT. L. REV. 495, 498 (2011); Susan P. Shapiro, *Agency Theory*, 31 ANN. REV. OF SOC. 263, 263 (2005); H. Ross, *Housing Code Enforcement and Urban Decline*, J. AFFORDABLE HOUS. & CMTY. DEV. L. 6, 29 (1996).

50. See Richard A. Posner, *Strict Liability: A Comment*, 2 J. OF LEGAL STUD., 205, 205–06 (1973); Jed Handelsman Shugerman, *The Floodgates of Strict Liability: Bursting Reservoirs and the Adoption of Fletcher v. Rylands in the Gilded Age*, 110 YALE L.J. 333, 333–35 (2000); Saul Levmore, *Stipulated Damages, Super-Strict Liability, and Mitigation in Contract Law*, 107 MICH. L. REV. 1365, 1366 (2009).

51. See FLA. STAT. § 162.09(3) (1987).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* § 162.09(3) (2016) (“A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes.”); see *City of Boynton Beach v. Janots*, 101 So. 3d 864, 865 (Fla. Dist. Ct. App. 2012); *Jones v. City of Winter Haven*, 870 So. 2d 52, 53 (Fla. Dist. Ct. App. 2003).

56. See FLA. STAT. § 723.024 (2016).

or inaction of a mobile home owner.⁵⁷ If a local government decides to charge a non-compliant mobile home owner based upon the evidence and sections 723.022, 723.023, and 732.024 of the Florida Statutes, it may be the mobile home owner, rather than the mobile home park owner, that will be responsible for any fines and liens that may be assessed upon non-compliance, according to one interpretation that is discussed in this article and elsewhere by legal practitioners.⁵⁸

Before the enactment of section 723.024 of the Florida Statutes,⁵⁹ a mobile home park owner was strictly responsible for code violations resulting from a mobile home owner's violations of local government provisions, and that process was consistent with section 162.09(3) of the Florida Statutes that made the owner of real property ultimately responsible whether it was the owner, a tenant, or an unknown third party that may have caused code violations.⁶⁰ From the inception of the code enforcement legislation in the 1980s, it was not always in the best interest of a mobile home park owner to contact a local government code enforcement department about tenants' violations, because the mobile home park owner was ultimately responsible for code violations resulting from the mobile home owner.⁶¹

As the party who was ultimately responsible for correcting any violations, before June 2, 2011, the mobile home park owner had to comply with final orders or be subject to an assessment of fines and liens levied by the local government according to Section 162.09(3) of the Florida Statutes.⁶² The strict responsibility that resulted from Chapter 162 of the Florida Statutes was further exacerbated by the fact that mobile home park owners were subject to the discretion of local governments' boards and special magistrates, even if the code violation was due to the acts of a mobile home owner.⁶³ Once code enforcement claims were adjudicated, the mobile home park owner was ultimately responsible and subject to fines and liens, and depending on how much time it took to obtain compliance by the mobile home owner or rid the violator from residing in the mobile home park, the fines and liens could escalate if compliance with the final order did not occur by a certain date.⁶⁴ It was possible that the uncapped fines imposed on a mobile home park owner could be allowed to accrue until there was compliance with the final order that was entered

57. *Id.* § 723.024(2).

58. See Scott Gordon, *New Law May Help Manufactured Housing ROCs Deal with Code Violations*, FLA. ROC (June 23, 2011), <http://www.floridaroc.com/2011/06/articles/news-of-note-for-rocs/new-law-may-help-manufactured-housing-rocs-deal-with-code-violations/>; *Florida Statute 723.024*, THE RICHARDSON LAW GROUP (June 23, 2011), <http://www.richardslawgroup.com/rlg/florida-statute-723-024/>. These commentaries were written shortly after enactment of the statute by private lawyers, but they do not discuss or raise the questions made in this article. Only time will tell how section 723.024 of the Florida Statutes will be construed.

59. FLA. STAT. § 162.09(3) (2016).

60. See FLA. STAT. § 162.09(3) (1987); *Monroe Cty. v. Whispering Pines Assocs.*, 697 So. 2d 873, 874 (Fla. Dist. Ct. App. 1997) (holding that "code violations 'run with the land' and subsequent purchasers can be held responsible for bringing their property up to code").

61. See *Wilson v. Cty. of Orange*, 881 So. 2d 625, 627–28 (Fla. Dist. Ct. App. 2004) for an example of how things can go from bad to worse for a mobile home park owner and a mobile home owner.

62. See FLA. STAT. § 162.09(3) (1987).

63. *Id.*; see also *Monroe Cty.*, 697 So. 2d at 874; *Henley v. MacDonald*, 971 So. 2d 998, 1000 (Fla. Dist. Ct. App. 2008); *City of Gainesville Code Enf't Bd. v. Lewis*, 536 So. 2d 1148, 1151 (Fla. Dist. Ct. App. 1988).

64. See *Broward Cty v. Recupero*, 949 So. 2d 274, 275 (Fla. Dist. Ct. App. 2007); *Jones v. City of Winter Haven*, 870 So. 2d 52, 53 (Fla. Dist. Ct. App. 2003); *Moustakis v. City of Ft. Lauderdale*, No. 08–60124, 2008 WL 2222101, at *1 (S.D.Fla. 2008), *aff'd*, 388 F. App'x 820 (11th Cir. 2009).

against the mobile home park.⁶⁵ Even after compliance occurred on the subject real property, liens entered against a mobile home park owner might be difficult to reduce through local government administrative procedures, and even if they were mitigated or abated, the mobile home park owner was still responsible to pay whatever amount the lien was reduced, pursuant to an abatement or mitigation proceeding.⁶⁶

An option open to mobile home park owners before enactment of section 723.024 of the Florida Statutes was for a mobile home park owner to file an eviction action pursuant to section 723.061 of the Florida Statutes⁶⁷ and/or for removal of mobile home owner/tenant, pursuant to section 723.062 of the Florida Statutes,⁶⁸ if the mobile home owner failed to comply with local government code provisions.⁶⁹ By attempting to remove the violator from the mobile home park, the owner of the mobile home park showed a good faith effort to rid the violator from the land, and after doing so, the mobile home park owner could move toward obtaining compliance with existing code violations after the mobile home owner was removed.⁷⁰ There was no guarantee that the local government would extend a compliance date based upon a mobile home park owner's good faith efforts to correct violations to obtain compliance, but this was a method to show a good faith attempt to obtain compliance by attempting to remove the tenant.⁷¹

Can it be argued that sections 723.022, 723.023, and 723.024 of the Florida Statutes⁷² favor the mobile home park owner or the mobile home owner?⁷³ These statutes attempt to set forth responsibility between mobile home owners and mobile home park owners.⁷⁴ Still, it is hard to imagine a situation where a mobile home park owner and mobile home owner are on an equal footing and bargaining position—whether it be for the payment of rent, removal of a mobile home, or maintenance of their respective property—because the mobile home park owner owns and runs the park and has a great deal of control over the rules and regulations in its park, subject to compliance with Chapter 723 of the Florida Statutes.⁷⁵ It takes time for a mobile

65. See FLA. STAT. 162.09(3) (2016); *Jones*, 870 So. 2d at 54; *Fong v. Town of Bay Harbor Islands*, 864 So. 2d 76, 78 (Fla. Dist. Ct. App. 2003); *Cty. Collection Services, Inc. v. Allen*, 650 So. 2d 650, 650 (Fla. Dist. Ct. App. 1995).

66. FLA. STAT. § 162.09(2)(c) (2016) (providing that a code enforcement board or special magistrate may reduce a code enforcement fine before the order imposing such fine has been recorded); *City of Miami v. Cortex*, 995 So. 2d 604, 605 (Fla. Dist. Ct. App. 2008); Op. Att'y Gen. Fla. No. 2002-62 (2002), <http://www.myfloridalegal.com/ago.nsf/Opinions/80125F88720EF64485256C3100570ABC>; Op. Att'y Gen. Fla., No. 99-03 (1999), <http://www.myfloridalegal.com/ago.nsf/Opinions/4988FF55164E531D852566FF00564FE1>.

67. FLA. STAT. § 723.061(1)(b) (2016).

68. *Id.* §§ 723.061(1)(b), 723.062.

69. See *Wilson v. Cty. of Orange*, 881 So. 2d 625, 627 (Fla. Dist. Ct. App. 2004).

70. See *id.* at 627; see FLA. STAT. §§ 723.061–723.062 (2016). In its aftermath, we can only hope that the local government, in its actions, considered its actions as improper if the allegations made by the mobile home park owner proved to be true and correct.

71. See FLA. STAT. § 162.09 (2)(b) (2016) (“In determining the amount of the fine, if any, the enforcement board shall consider . . . [a]ny actions taken by the violator to correct the violation.”).

72. *Id.* §§ 723.022–723.024.

73. *Id.*

74. *Id.*

75. See FLA. STAT. § 723.037 for rules and procedure changes. See also *Sun Valley Homeowners, Inc. v. American Land Lease, Inc.*, 927 So. 2d 259, 263–64 (Fla. Dist. Ct. App. 2006); *Homeowners Corp. of River Trails v. Saba*, 626 So. 2d 274, 275 (Fla. Dist. Ct. App. 1993); *Connelly v. Old Bridge Village Co-Op, Inc.*, 915 So. 2d 652, 654 (Fla. Dist. Ct. App. 2005). The relationship between mobile home parks and mobile home owners is replete

home owner to remove himself or herself from a mobile home park, and if removal occurs, where does the mobile home owner go? When a mobile home owner transfers and sells his or her home to a third party, the successor owner will take the mobile home “as is,” which could include code violations existing on the mobile home that may make the successor responsible for code violations the owner had no way of knowing existed, but that the mobile home park knew existed.⁷⁶ By removing agency and strict liability from the responsibility of mobile home park owners, long-standing code violations existing on a mobile home could become the responsibility of a successor mobile home owner.⁷⁷ Section 723.024 of the Florida Statutes may also constitute a method of reallocation in private funding regarding financial responsibility between mobile home owners, who are less able to correct code violations, and mobile home park owners, who may now be in a better position to escape responsibility for acts they knew or should have known existed on their land but did nothing to escape responsibility in the past.⁷⁸

In a tug-of-war as to financial responsibility, which party will have greater power and be in a superior position to face and accept or escape responsibility?⁷⁹ The legislature has attempted to bifurcate responsibility in sections 723.022, 723.023, and 723.024 of the Florida Statutes in what was deemed to be an equitable manner, and the mobile home owner is left with the responsibility of complying with any code violations on the purchased mobile home whether he or she had anything to do with the code violations, while the mobile home park owner escapes responsibility and may be free to report code violations without fear of reprisal by the local government.⁸⁰

On a positive note, there is a common thread and interest that mobile home park owners and mobile home owners may share by enactment of section 723.024 of the Florida Statutes. By making both responsible for designated code violations, this statute may ensure that their respective surroundings in a mobile home park can be

with complexities in property interests and responsibilities. Mobile home owners as tenants in mobile home parks own their homes, but they usually lease the land from the park. Some can be situated on unplatted lots as existed in *Connelly*. The land each home owner leased in a ninety-nine-year lease involved uncertainty between two mobile home owners and the park where the district court discussed the uncertainty that can arise concerning the boundaries and rights that various lot holders may exercise over their property during tenancies. See generally Chapter 723 of the Florida Statutes, which addressed mobile home lot tenancies.

76. See *Key Largo Ocean Resort Co-Op, Inc. v. Monroe Cty.*, 5 So. 3d 31, 32 (Fla. Dist. Ct. App. 2009) for a demonstration of the power and the patience of one local government involving the character of a campground that had changed for residents who built permanent structures and what became mobile homes, which did not comply with the local government’s zoning restrictions making code enforcement proceedings a viable alternative. The real property was originally zoned as a Recreational Vehicle District where permanent structures were not allowed. *Key Largo Ocean Resort Co-Op, Inc.* was litigated before enactment of section 723.024 of the Florida Statutes, but sets forth an example where mobile home owners and a mobile home park were both responsible for the change in use resulting in code violations that were at odds with the existing zoning regulations.

77. *Id.*

78. Candace Myers et al., *Social Vulnerability and Migration in the Wake of Disaster: The Case of Hurricanes Katrina and Rita*, 29 *POPULATION AND ENV’T* 27, 274 (2008); see Richard Williams et al., *The Changing Face of Inequality in Home Mortgage Lending*, 52 *SOC. PROBLEMS*, 181, 190 (2005); Katherine MacTavish et al., *Housing Vulnerability Among Rural Trailer-Park Households*, 13 *GEO. J. ON POVERTY L. & POL’Y* 95, 96 (2006).

79. See *FLA. STAT. § 723.24* (2016); *Pilgrim v. Crescent Lake Mobile Colony, Inc.*, 582 So. 2d 649, 651–52 (Fla. Dist. Ct. App. 1991).

80. No argument is made that section 723.024 of the Florida Statutes is unconscionable because that would be nearly impossible to demonstrate. See *Belcher v. Kier*, 558 So.2d 1039, 1042 (Fla. Dist. Ct. App. 1990).

jointly maintained in accordance with local governments' code provisions.⁸¹ Whatever the consequences of section 723.024 of the Florida Statutes, whether code violations are the responsibility of a mobile home owner or a mobile home park owner, both should be respectful of the policy of Chapter 162 that emphasizes its intention to "promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state."⁸² While local governments have jurisdiction to enforce code violations pursuant to Chapter 162 of the Florida Statutes, we can return to the chapter's fundamental goal: to make the public recognize that by maintaining high quality business and residential neighborhoods that are compliant with local governments' code provisions, the health, safety, and welfare of the community will be kept intact.⁸³ That objective should also enhance the quality of life of a neighborhood's residents and business owners, which will ensure an increase in local governments' taxes as the real property gradually increases in value, and that should help support local governments' services.⁸⁴

By making each party responsible for designated violations that are listed in sections 723.022, 723.023, and 723.024 of the Florida Statutes,⁸⁵ each party is required to keep its own surroundings free and clear of code violations without imposing agency or strict liability onto the mobile home park owner by acts of a mobile home owner that occur after June 2, 2011.⁸⁶ Thus, a mobile home owner is responsible for some designated matters, whereas mobile home park owners are responsible for other designated matters.⁸⁷ That is at least one interpretation of section 723.024 of the Florida Statutes before any judicial construction of the statute. Yet this interpretation cannot rule out the possibility that both might be responsible based on the facts and circumstances of a case.⁸⁸

81. FLA. STAT. §§ 723.022–723.023 (2016). In a decision before the enactment of Chapter 162, the appellate court stated: "The owner and the tenants of a mobile home park have a common interest in a guarantee that their surroundings will be pleasant and maintained according to a certain standard." *Blair v. Mobile Home Cmty., Inc.*, 345 So. 2d 1101, 1103 (Fla. Dist. Ct. App. 1977).

82. FLA. STAT. § 162.02 (2016).

83. *Id.*

84. *Id.*; Harry M. Hipler, *Developments in the Law on Local Government Code Enforcement Proceedings: Quasi-Judicial Proceedings Pursuant to Chapter 162, Florida Statutes*, 42 STETSON L. REV. 681, 682–83 (2013); Ezra Rosser, *Rural Housing and Code Enforcement: Navigating Between Values and Housing Types*, 13 GEO. J. ON POVERTY L. & POL'Y 33, 80 (2006); Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101, 149 (2009); see also Raymond J. Burby, et al., *Building Code Enforcement Burdens and Central City Decline*, 66 J. OF AMERICAN PLANN. ASS'N 143, 144 (2000); see generally Kyle McCollum, *Top Ten Building Code Violations in Florida*, 3, 36 (2004) (unpublished thesis, University of Florida) (on file with the George A. Smathers Libraries, University of Florida).

85. FLA. STAT. §§ 723.022–723.024 (2016).

86. *Id.* §§ 162.09(3), 723.024.

87. See *id.* §§ 723.022–723.024; Pappert v. Mobilinium Assocs. V, 512 So. 2d 1096, 1097–98 (Fla. Dist. Ct. App. 1987) (outlining duties of mobile park owners); see *Pilgrim v. Crescent Lake Mobile Colony*, 582 So. 2d 649, 651–52 (Fla. Dist. Ct. App. 1991).

88. See discussion *infra* Parts IX–XI; see also David T. Kraut, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U.L. REV. 1139 (1999).

VI. ALTERNATIVE INTERPRETATIONS AND QUESTIONS ABOUT SECTION 723.024 OF THE FLORIDA STATUTES

The enactment of section 723.024 of the Florida Statutes raises questions about its enforceability. First, does the local government retain discretion to decide which party is responsible, or is the local government required to follow sections 723.022, 723.023, and 723.024 of the Florida Statutes? Second, assuming that a mobile home is personal property (as long as it is not permanently attached to the land), how is a local government to obtain *in rem* jurisdiction and service so that a mobile home owner can be charged with code violations? Third, is there a duty upon a mobile home park owner to report a violator to the local government after enactment of section 723.024 of the Florida Statutes if it becomes aware of code violations resulting from the action or inaction of a mobile home owner? Finally, what if a mobile home park owner fails to report a code violation by ignoring a mobile home owner's violations—can there be any civil or code enforcement repercussions against the mobile home park owner?

Before enactment of section 723.024 of the Florida Statutes, agency and strict liability applied in making a mobile home park owner ultimately responsible for any code violations resulting from acts of a mobile home owner.⁸⁹ However, in what may be a newly created relationship after enactment of section 723.024 of the Florida Statutes,⁹⁰ there is the possibility that sections 723.022, 723.023, and 723.024 of the Florida Statutes can be construed to create a new partnership and agency relationship that bifurcates responsibility between mobile home park owners and mobile home owners.⁹¹ This means that the legislature may have removed agency and strict liability from section 162.09(3) of the Florida Statutes as applied to mobile home park lot tenancies.⁹² It is premature to conclude that agency and strict liability have been completely removed on account of section 723.024 of the Florida Statutes, as it is necessary to look at the wording of this statute that suggests that there are problematic inconsistencies and contradictions within this statute that need to be resolved.

A. Section 723.024(1) of the Florida Statutes Uses “Shall” and Section 723.024(2) Uses “May”—So Which Is It?

Section 723.024(1) of the Florida Statutes provides that the local government “shall” charge the responsible party for the violation and enforce the citation under its local code enforcement authority.⁹³ Yet section 723.024(2) of the Florida Statutes⁹⁴ provides that an administrative or civil proceeding “may” not be brought against anyone other than the responsible party for the reasons outlined in section

89. See discussion *supra* Part IV.

90. See FLA. STAT. § 723.024 (2016); see Malik, *supra* note 47.

91. FLA. STAT. §§ 723.022–723.024 (2016).

92. See *id.* § 162.09(3); discussion *supra* Part IV.

93. FLA. STAT. § 723.024(1) (2016).

94. *Id.* § 723.024(2).

723.022 of the Florida Statutes (mobile home park owner)⁹⁵ and section 723.023 of the Florida Statutes (mobile home owner).⁹⁶ There is an apparent inconsistency within these statutes as one portion of section 723.024(1) of the Florida Statutes uses “shall” which is mandatory,⁹⁷ whereas section 723.024(2) of the Florida Statutes uses “may” which is discretionary.⁹⁸ These inconsistencies raise a fundamental question: Does section 723.024(1) of the Florida Statutes make this provision mandatory, and does section 723.024(2) of the Florida Statutes grant local governments’ discretion to decide who should be charged and what charges can be made?⁹⁹

While one can argue that the intent of the statute was to help mobile home park owners and mobile home owners determine which party is the responsible party,¹⁰⁰ the inconsistency within section 723.024 of the Florida Statutes might allow local governments to decide who to charge and what violations to charge a mobile home owner and mobile home park owner.¹⁰¹ It is too early to tell how section 723.024 of the Florida Statutes may be interpreted, so until there is a judicial interpretation of this statute,¹⁰² or an Attorney General’s opinion,¹⁰³ the tension existing within section 723.024 of the Florida Statutes, and between sections 723.024 and 162.09(3) of the Florida Statutes, may be left to the discretionary authority of local governments.¹⁰⁴ This is so because judicial decisions have shown great deference to agency and local government rulings when faced with a problem of statutory construction, as they are best suited to know how local codes ought to be interpreted within their local bodies.¹⁰⁵ If tension continues to exist, then section 723.024 of the Florida Statutes may be interpreted different ways by various local governments depending upon their local officials’ judgments.¹⁰⁶

95. *Id.* §§ 723.022, 724.024(2).

96. *Id.* § 723.023.

97. *Id.* § 723.024(1); *Kaweblum v. Thornhill Est. Homeowner Ass’n Inc.*, 755 So. 2d 85, 87 (Fla. 2000) (citing *Chaky v. State*, 651 So. 2d 1169, 1172 (Fla. 1995)).

98. FLA. STAT. § 723.024(2) (2016); *Kaweblum*, 755 So. 2d at 87 (citing *Chaky*, 651 So. 2d at 1172).

99. *See Henderson v. Bowden*, 737 So. 2d 532, 533 (Fla. 1999); *City of Pinellas Park v. Brown*, 604 So. 2d 1222, 1227 (Fla. 1992); *see also Milanese v. City of Boca Raton*, 84 So. 3d 339, 343 (Fla. Dist. Ct. App. 2011) (While these cases discuss sovereign immunity, they also suggest that where a zone of risk is created by a third party, liability may extend to the parties which create a zone of risk.).

100. *See discussion supra* Part V.

101. *See FLA. STAT.* § 723.024 (2016); *Kaweblum*, 755 So. 2d at 87 (citing *Chaky*, 651 So.2d at 1172).

102. *See generally* *Walton Cty. v. Stop Beach Renourishment*, 998 So. 2d 1102, 1109 (Fla. 2008) (discussing the *de novo* review of a lower court’s decision on the constitutionality of a statute).

103. *Frequently Asked Questions About Atty. Gen. Opinions*, ATT’Y GEN. FLA., <http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad> (last visited April 17, 2017) (explaining that on questions of statutory interpretation, the Attorney General can render a non-binding opinion that is only persuasive).

104. FLA. STAT. § 723.024(1) (2016). A compelling argument can be made that section 723.024(1) specifically says that the local government, “shall cite the responsible party for the violation and enforce the citation under its local code and ordinance enforcement authority.” *Id.* § 723.024(1). Since each local government has its own building, housing, and health codes and regulations, is it not the local government that is best suited to decide which party is responsible? *See discussion infra* Part VII; *see also Panama City Beach Cmty. Redevelopment Agency v. State*, 831 So. 2d 662, 665–69 (Fla. 2002); *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1037–38 (Fla. 2001).

105. *See Samara Dev. Corp. v. Marlow*, 556 So. 2d 1097, 1098 (Fla. 1990); *Graham v. Estuary Prop. Inc.*, 399 So. 2d 1374, 1379 (Fla. 1981).

106. *See Samara Dev. Corp.*, 556 So. 2d at 1098; *Graham*, 399 So. 2d at 1379.

B. Establishing *In Rem* Jurisdiction Over Mobile Home Owners in Light of Section 723.024 of the Florida Statutes

Another issue with section 723.024 of the Florida Statutes is the question of notice and service upon a mobile home owner and whether *in rem* jurisdiction can be obtained in code enforcement proceedings. Since 1980, local governments have prosecuted code violations against the owners of real property in accordance with Chapter 166 of the Florida Statutes.¹⁰⁷ Section 166.062 of the Florida Statutes¹⁰⁸ formerly provided that: “[a]ll notices . . . shall be by certified mail, return receipt requested, or, when mail would not be effective, by hand delivery by the code inspector.”¹⁰⁹ Its successor, section 162.12(1)(a) of the Florida Statutes,¹¹⁰ has provided for years that the violator will be provided with notice by hand delivery, or mailed by certified mail, return receipt requested, to the address listed in the tax collector’s office for tax notices, or to the address listed in the county property appraiser’s database, or publication, or posting on the subject real property as provided in section 162.12(1)(a) of the Florida Statutes.¹¹¹ To make certain that adequate notice has been afforded to mobile home owners, local governments may also provide additional notice to any other address of a violator that is found for the property owner in addition to service by publication or posting on the subject of real property.¹¹²

Assuming that mobile homes with code violations may be charged in lieu of mobile home park owners, with the enactment of section 723.024,¹¹³ the reader needs to be reminded that mobile homes constitute personal property, not land, and therefore mobile homes are subject to a license tax, unless the mobile home is permanently situated and affixed to the land, in which case they are part of the land.¹¹⁴ The question raised from this possible change in responsibility is that because mobile homes are personal property, how should mobile homes be noticed in order to comply with section 162.12 of the Florida Statutes¹¹⁵ and federal and state constitutional due process?¹¹⁶ While the method of service on mobile homes is not specifically provided by statute, it appears that federal and state constitutional law may require hand delivery, mailing, posting, and/or publication.¹¹⁷ If that is the case, then the legislature needs to amend the existing statute so there is no question about

107. FLA. STAT. § 166.056 (1980); Op. Att’y Gen. Fla., No. 81-62 (1981), <http://www.myfloridalegal.com/ago.nsf/Opinions/5BDF3D7B5932364D8525658700551D4A>.

108. FLA. STAT. § 166.062 (1980).

109. *Id.*

110. FLA. STAT. § 162.12(1)(a) (2016).

111. *See id.* § 162.12(1)(2). This section sets forth with specificity how notice may be provided to the owner that may include notice to an additional address at the option of the local government. *Id.* However, without legislative direction the question is, does this apply to mobile home owners? And if so, how?

112. *Id.* § 162.12(1)(a).

113. *Id.* § 723.024, *see* discussion *supra* Part II.

114. FLA. STAT. § 320.015 (2016); *see* Gen. Elec. Cap. Corp. v. Gerald Sohn, 566 So. 2d 841, 842 (Fla. Dist. Ct. App. 1990).

115. FLA. STAT. § 162.12 (2016).

116. Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 801 (1983); *see* Gen. Elec. Cap. Corp., 566 So. 2d at 843.

117. *See Mennonite Bd. of Missions*, 462 U.S. at 793, 799–801.

what constitutes valid notice and service in accordance with federal and state constitutional due process requirements.¹¹⁸

C. Reporting Code Violations: Is It Mandatory or Discretionary for the Mobile Home Park Owner in Light of Section 723.024 of the Florida Statutes?

Is there a legal duty by mobile home park owners to report code violations? While there should be no reluctance by a mobile home park owner to report a mobile home owner's code violations to the local government, according to a literal reading of section 723.024 of the Florida Statutes, this form of reporting (whether it is called self-reporting, third-party reporting, or simply reporting) by a non-offending party is supposedly designed to control and correct code violations by the use of policing partnerships between a local government and a mobile home park owner.¹¹⁹ However, theory and practice are qualitatively different, and they both need to be reconciled so that the purpose of legislation and governance converge.¹²⁰ If reporting by a non-offending party is a goal of section 723.024 of the Florida Statutes, reporting may not have been in the best interest of a mobile home park owner in its routine activities before enactment of section 723.024 of the Florida Statutes, thereby suggesting a disconnect between a mobile home park owners' goal of showing a profit and local governments' goal of obtaining compliance with code violations on account of the strict liability resulting from section 162.09(3) of the Florida Statutes.¹²¹ The reason is that reporting of a code violation by a mobile home park owner would subject itself to potential fines and liens that could be assessed against the mobile home park owner, regardless of fault, if the local government learned of the code violations.¹²²

118. See generally *id.* (describing different means of providing notice). Until the legislature clarifies the situation, local governments should consider posting the code violation at the mobile home and citing the record title owner of the mobile home after obtaining the vehicle identification number (VIN) and license tag number of the mobile home for service. The mobile home park owner should have information about the mobile home, including title certificate, VIN, and license tag number, and that information should be shared with local government code enforcement officers. If the mobile home park owner fails to have this information, it might be obtained by looking outside on the frame of the mobile home and/or inside the mobile home, which would require the occupant's consent to gain entry. The VIN may be called a manufacturer's serial number on the data plate depending on the age of the mobile home, and the VIN may be found inside and on the wall of the master bedroom closet, near the back door, under the kitchen sink, on the inside of a cabinet door, in the furnace compartment, on the utility room wall, on cabinet doors, near electric panel, or elsewhere inside. See OLD REPUBLIC TITLE INSURANCE GROUP, TRAILERS, MOBILE HOMES, AND MANUFACTURED HOUSING UNITS 6.70 (Nov. 2007), <http://www.oldrepublictitle.com/ganational/Guides/Mobile%20Homes%20Revised%2011-07.pdf>. It is also incumbent on the local government to make certain that the final order imposed by the special magistrate comply with sections 162.09(3), 55.081, 55.10, 55.202–55.205 of the Florida Statutes, subject to corrections at a later date, so that the final order subjects the personal property to a fine and lien.

119. See Malik, *supra* note 47.

120. See Mariana Valverde, *Jurisdiction and Scale: Legal "Technicalities" as Resources for Theory*, 18 SOC. & LEGAL STUD. 139, 140 (2009); Darren Sinclair, *Self-Regulation Versus Command and Control? Beyond False Dichotomies*, 19 L. & POL'Y 529, 532 (1997).

121. See FLA. STAT. §162.09(3) (2016). Disclosure of violations by a violator has been the subject of many research studies due to the fear of fines and penalties. Robert Innes, *Violator Avoidance Activities and Self-Reporting in Optimal Law Enforcement*, J. OF L., ECON., AND ORG. 239–256 (2001).

122. See FLA. STAT. §162.09(3) (2016).

D. By Failing to Report a Code Violation, Does a Mobile Home Park Owner Place Itself into a Foreseeable Zone of Risk?

In light of the enactment of section 723.024 of the Florida Statutes, what if a mobile home park owner ignores code violations resulting from a mobile home owner's action or inaction over a period of time? Are there any legal ramifications if there is silence and a failure to report code violations by a mobile home park owner? A Florida appellate court has specifically stated that if a mobile home park owner "created a foreseeable zone of risk" then there could be liability in a personal injury action.¹²³ In *Hanrahan v. Hometown America, LLC*,¹²⁴ a mobile home park owner/landlord was sued by a mobile home owner/tenant on account of fire ants that bit the tenant on the face and the neck as he walked his dog after he inadvertently brushed up against community bushes that were to be cared for by the mobile home park owner/landlord.¹²⁵ The mobile home park owner did not have specific knowledge of the hazard presented by the fire ants to the premises where the tenants resided, although the landlord's duty included spraying insecticide alternative months in order to kill ants, in addition to treatment of any visible ant mounds with granules.¹²⁶ The appellate court affirmed a summary judgment in favor of the mobile home park owner, and ruled that there was no duty owed to the tenant to guard against the red ants under these circumstances as the red ants were wild animals pursuant to the doctrine of *ferae naturae*.¹²⁷ However, the appellate court indicated that the proper inquiry was whether the landlord's conduct "created a foreseeable zone of risk,"¹²⁸ rather than whether the landlord could foresee the specific injury that actually occurred.¹²⁹ Thus, if a mobile home park owner knew or should have known about a mobile home owner's code violations, the mobile home park owner might be held responsible for not correcting code violations as a participant.¹³⁰ By failing to report code violations to the local government, this could worsen existing code violations making the mobile home park owner part and parcel to the mobile homeowner's misconduct, resulting in a foreseeable zone of risk on account of known circumstances that worsened over a period of time,¹³¹ thereby exposing

123. *Hanrahan v. Hometown Am. LLC*, 90 So. 3d 915, 917 (Fla. Dist. Ct. App. 2012).

124. *See generally id.*

125. *Id.* at 916–17.

126. "Pinelake maintenance and office staff testified that in addition to the exterminator's insecticide treatments, the maintenance staff would treat any visible mounds with granules." *Id.* at 917.

127. *Id.* at 916.

128. *Id.* at 917.

129. *Id.*

130. *See Key Largo Ocean Resort Co-Op Inc. v. Monroe Cty.*, 5 So. 3d 31, 34–35 (Fla. Dist. Ct. App. 2009). This case is a demonstration of the power and the patience of one local government involving the character of a campground that had changed for residents who built permanent structures and what became mobile homes, which did not comply with the local government's zoning restrictions making code enforcement proceedings a viable alternative. The real property was originally zoned as a Recreational Vehicle District where permanent structures were not allowed. *Key Largo Ocean Resort Co-Op, Inc.* was litigated before enactment of section 723.024 of the Florida Statutes, but sets forth an example how mobile home owners and a mobile home park had to have been responsible for the change in use resulting in code violations that were at odds with the existing zoning regulations.

131. *Kolosky v. Winn Dixie Stores, Inc.*, 472 So. 2d 891, 895 (Fla. Dist. Ct. App. 1985) (explaining a foreseeable risk of harm); *see generally Johns-Manville Sales Corp. v. Janssens*, 463 So. 2d 242, 248–49 (Fla. Dist. Ct. App. 1984) (addressing foreseeable zone of risk liability that could fall partly on the mobile home park owners).

mobile home park owners to potential responsibility.¹³² While there does not appear to be any state statute requiring the public to report code violations,¹³³ there is an implicit obligation on the public to do so by acts of public service so that serious violations that may endanger the public safety are reported and investigated.¹³⁴

Whether section 723.024 of the Florida Statutes creates a legal duty on a mobile home park owner to report code violations to its local government is an issue that may need to be resolved by the judiciary.¹³⁵ Although section 723.024 of the Florida Statutes does not specifically say that a mobile home park owner is under a legal duty to report code violations resulting from the acts of a mobile home owner/tenant, a goal of section 723.024 of the Florida Statutes may have been to encourage mobile home park owners to report code violations to local governments without necessarily

132. See *Hanrahan v. Hometown Am. LLC*, 90 So. 3d 915, 917 (Fla. Dist. Ct. App. 2012) (relying upon *McCain v. Florida Power Corp.*, 593 So. 2d 500, 504 (Fla. 1992), which explained that: “[t]he duty element of negligence focuses on whether the defendant’s conduct foreseeably created a broader ‘zone of risk’ that poses a general threat of harm to others.”). While section 723.024 of the Florida Statutes and the decisions in *Hanrahan* may have different purposes, there should be no question that if a mobile home park owner sees a mobile home owner violating a local building code with an attachment built onto their unit among any other code violations, it should not just sit back, but rather it should report the code violation with due diligence and promptly report the violations caused by the mobile home owner to the local government, or else it is entirely possible that by sitting back the mobile home park owner could be part of a larger scheme involving the creation of a zone of risk and foreseeability in a spider web of conduct that created a broader “zone of risk” that poses a threat of harm to others. Accordingly, in addition to notifying the local government, the mobile home park owner ought to work with the local government and provide notice to the mobile home owner of the code violation in a civil action involving a breach of lease agreement by claiming that there is a failure to comply with local government code provisions, requiring a removal of tenant/eviction action against the mobile home owner should he or she fail or refuse to comply with the local government code provision. See FLA. STAT § 723.062 (2016).

133. See FLA. STAT § 162.06 (2016). As to reporting of code violations, the only mention in Chapter 162 states: “(1) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.” *Id.* A board member should be free to report code violations as a member of the general public. Further, there is nothing specifically stated in subsections 723.022–723.024 about any *requirement* to report code violations, yet it would almost seem implausible if a code violation is not reported by neighbors in such close knit premises where a code violation could impact nearby neighbors. See *Zuccarelli v. Barfield*, 199 So. 3d 399, 406 (Fla. Dist. Ct. App. 2016).

134. See generally A. Mitchell Polinsky & Steven Shavell, *The Econ. Theory of Public Enforcement of Law*, 38 J. OF ECON. LITERATURE 45, 66 (2000) (discussing the importance of self-reporting); see Donald J. Black, *The Mobilization of Law*, 2 J. OF LEGAL STUD. 125, 129–35 (1973). There is no question that failure to report and investigate code violations can lead to tragic circumstances. See Kristin J. Bender & Brian Melley, *Death Toll Grows to 36 at Oakland Warehouse Fire*, OBSERVER REP. (Dec. 5, 2016), <http://www.observerreporter.com/20161205/deathollgrowsto36atoaklandwarehousefire>; Katrina Lamansky, *Deadly Warehouse Fire in Oakland, CA Prompts Criminal Investigation*, WQAD NEWS 8 (Dec. 6, 2016), <http://wqad.com/2016/12/06/deadly-warehouse-fire-in-oakland-ca-prompts-criminal-investigation/>. At least one large city posted information so that its residents may report code violations after the Oakland, California fire tragedy. See Press Release, Office of the Mayor of Philadelphia, Joint Statement on Deadly Oakland Warehouse Fire (Dec. 7, 2016). Even if code violations are reported, complaints are only the first step in obtaining compliance as code officers may need to gain entrance into the property to determine if violations exist for citation purposes. The Oakland, California warehouse fire involved structures that had been built inside the warehouse without permits where the property was being used as a residence. See Phil Willon & Matt Hamilton, *Building Inspectors Had Not Been Inside Oakland Warehouse in 30 years, Officials Say*, LA TIMES (Dec. 7, 2016), <http://www.latimes.com/local/california/la-me-ln-oakland-fire-inspections-20161207-story.html>. An inspector who visited the warehouse fifteen days before the fire to investigate a possible illegal interior building structure was unable to get inside, even after complaints were made. *Id.*

135. Further, local governments have limited financial resources and personnel to enforce code violations. Without the public’s help, code compliance departments would be seriously deterred in finding code violations. See *Bennett v. Walton Cty.*, 174 So. 3d 386, 392–93 (Fla. Dist. Ct. App. 2015); *City of Delray Beach v. St. Juste*, 989 So. 2d 655, 656–57 (Fla. Dist. Ct. App. 2008).

making mobile home park owners responsible. The rationale for this view is that there are unique factors in the relationship between mobile home owners and mobile home park owners.¹³⁶ However, it should be noted that if a mobile home park owner knowingly ignores violations on its real property resulting from acts of a mobile home owner as described in Sections 723.022, 723.023, and 723.024 of the Florida Statutes, there could still be responsibility implicated onto a mobile home park owner by a local government.¹³⁷

E. To Report or Not to Report, That Is the Question: Risk and Reward of Reporting Violations

Section 723.024 of the Florida Statutes can be seen as a vehicle that promotes a number of different grounds of responsibility between a mobile home park owner and mobile home owner. While the statute may exempt mobile home park owners from being strictly responsible for code violations resulting from the acts of mobile home owners, does the statute suggest that if there is an exemption from responsibility, there is an obligation to report code violations? Section 723.024 of the Florida Statutes does not direct a mobile home park owner to report code violations, but if a mobile home park owner will not be responsible for code violations resulting from mobile home owners acts if they are reported, then a mobile home park owner needs to take responsibility and report code violations as part of its new agency relationship with local governments.¹³⁸ If a mobile home park owner fails to report code violations resulting from mobile home owners conduct, then that could place the mobile home park owner a step closer to being named a responsible party if it sits back and remains silent. While the zone of risk case law cited earlier in this article¹³⁹ should apply regardless of the possible exemption contained in section 723.024 of the Florida Statutes, if the mobile home park owner could be seen as having foreseen a zone of risk, especially in light of the encouragement this statute appears to provide to a mobile home park owner to report code violations, then by sitting back the mobile home park owner could be considered as an active member in a scheme or design that both the mobile home park owner and the mobile home owner have developed.¹⁴⁰ Besides potential civil liability that might be imposed, if the mobile home park owner ignores code violations, there could be a breach of a legal duty by ignoring code violations; as the time horizon grows from the date of

136. See *Munao, Munao, Munao & Munao v. Homeowners Ass'n of La Buona Vita Mobile Home Park, Inc.*, 740 So. 2d 73, 76 (Fla. Dist. Ct. App. 1999).

137. See discussions *supra* Part VI and *infra* Part IX.

138. FLA. STAT. § 723.024 (2016). All local governments welcome neighborhoods and residents to report code violations as part of their duty to maintain the health, safety and welfare of the community and maintain high property values. See, e.g., *Code Enforcement*, CITY OF ORLANDO, (last visited Apr. 21, 2017) <http://www.cityoforlando.net/code-enforcement/>.

139. See discussion *supra* Part VI.D.

140. See discussion *supra* Part VI. D and *infra* Part IX.

any code violations attributable to acts of a mobile home owner, the risk of liability grows as well.¹⁴¹

While there is a risk in failing to report existing code violations caused by a mobile home owner, there is also a return risk to a mobile home park owner due to what might be a statutory exemption from responsibility.¹⁴² By reporting code violations, local government code enforcement should be able to conduct its due diligence and move toward obtaining compliance in a partnership and agency relationship between the local government and the mobile home park owner sooner rather than later.¹⁴³ By ignoring code violations, the mobile home park owner may be subjecting itself not only to potential liability in creation of a foreseeable zone of risk,¹⁴⁴ but this inaction may influence a decision by the local government to join the mobile home park owner as a joint participant in a code enforcement proceeding against the mobile home owner and the mobile home park owner.¹⁴⁵

It makes sense for a mobile home park owner to report code violations resulting from action or inaction of a mobile home owner on account of the statutory language contained in section 723.024 of the Florida Statutes and the foreseeable zone of risk that could be applied to a mobile home park owner if it sits back and ignores code violations. Under the ambit of section 723.024 of the Florida Statutes, the mobile home park owner is encouraged to report a code violation resulting from a mobile home owner.¹⁴⁶ The quid pro quo between a local government and a mobile home park owner is that by reporting code violations, the mobile home park owner may be exempt from being held responsible for code violations of a mobile home owner when there is a police partnership and agency relationship between a local government and a mobile home park owner.¹⁴⁷ In essence, agency theory is applied differently after enactment of section 723.024 of the Florida Statutes, because the mobile home park owner has become an agent of the local government.¹⁴⁸ In reporting mobile home owners' code violations, the mobile home park owner helps the local government maintain the health, safety, and welfare of the community; through this form of an agency, it is hoped that there will be a better quality of life for its residents, and the valuation of the mobile home park and local governments'

141. See *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 503 (Fla. 1992); *Key Largo Ocean Resort Co-Op, Inc. v. Monroe Cty.*, 5 So. 3d 31, 32–33 (Fla. Dist. Ct. App. 2009); see *City of Pompano Beach v. Yardarm Rest., Inc.*, 834 So. 2d 861 (Fla. Dist. Ct. App. 2003).

142. See FLA. STAT. § 723.024 (2016); see Malik, *supra* note 47, at 251 (1993); Louis Kaplow & Steven Shavell, *Optimal Law Enforcement with Self-Reporting of Behavior*, 102 J. POL. ECON. 582, 601 (1994).

143. See *Zuccarelli v. Barfield*, 199 So. 3d 399, 406 (Fla. Dist. Ct. App. 2016).

144. See *McCain*, 593 So. 2d at 503; *Kaisner v. Kolb*, 543 So. 2d 732, 735 (Fla. 1989) (“Where a defendant’s conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses.”); *Trianon Park Condo. Ass’n v. City of Hialeah*, 468 So. 2d 912, 925 (Fla. 1985) (Ehrlich, J., dissenting); FLA. STAT. § 162.09(2)(b) (2016) (providing that the gravity of the violation, any actions taken by the violator to correct, and prior violations may be considered when imposing a fine).

145. See discussion *infra* Part X.

146. FLA. STAT. § 723.024 (2016); see also *Bennett v. Walton Cty.*, 174 So. 3d 386, 393 (Fla. Dist. Ct. App. 2015) (Makar, J., dissenting) (discussing a property rented for weddings and other festivities which were the subject of a code violation that the owners of the property were ultimately held responsible).

147. See Malik, *supra* note 47, at 255–56.

148. See *id.*

tax base will be enhanced over the long term.¹⁴⁹ The fact that reporting by a mobile home park owner to a local government is self-serving should be considered immaterial.

Whether the responsible party is the mobile home owner or the mobile home park owner, or both, it is a quasi-judicial code compliance proceeding brought by the local government that will ultimately decide who is responsible after considering the facts and circumstances of the case.¹⁵⁰ However, there is a caveat to these provisions on responsibility as provided in section 723.024 of the Florida Statutes. There will be ongoing disputes about which party is ultimately the responsible party for code violations depending upon the facts and circumstances of the case, whether the local government charges and prosecutes a code enforcement violation against the mobile home owner, mobile home park owner, or both.¹⁵¹ Depending on the time and costs associated with any prosecution or defense, it will not be surprising if one party attempts to blame-shift and argue that the other party is responsible.¹⁵²

VII. DO SECTIONS 723.022, 723.023, AND 723.024 OF THE FLORIDA STATUTES INFRINGE UPON THE SEPARATION OF POWERS DOCTRINE OF ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION?

The separation of powers doctrine at article II, section 3 of the Florida Constitution provides as follows: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”¹⁵³ These three sovereign powers divide into three coordinate branches—legislative, executive, and judicial—that strictly prohibit a person belonging to one branch from exercising any power relating to either of the other branches unless expressly provided.¹⁵⁴

While sections 723.022, 723.023, and 723.024 of the Florida Statutes¹⁵⁵ attempt to bifurcate responsibility between a mobile home owner and mobile home park owner, does section 723.024(1) of the Florida Statutes¹⁵⁶ remove discretion from a local government code enforcement officer’s decision to file a quasi-judicial action against a responsible party? Decisions whether to prosecute a violator who is a real property owner or non-real property owner administratively or civilly rests within the control of the executive, whether it be the state attorney, who has the authority

149. See Schilling, *supra* note 84, at 149–51; Hipler, *supra* note 84, at 682–83; Raymond J. Burby, Peter J. May, Emil E. Malizia & Joyce Levine, *Building Code Enforcement Burdens and Central City Decline*, 66 J. OF THE AM. PLAN. ASS’N 143, 144, 147 (2000); Rosser, *supra* note 46, at 35–36.

150. See FLA. STAT. §§ 162.06(2), 723.022–723.024 (2016).

151. See FLA. STAT. § 27.02(1) (2016); Barnett v. Antonacci, 122 So. 3d 400, 405 (Fla. Dist. Ct. App. 2013).

152. See Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982); Chamberlain v. Eisinger, 159 So. 3d 185, 188 (Fla. Dist. Ct. App. 2015); Matthews v. St. Petersburg Auto Auction, Inc., 190 So. 2d 215, 215–16 (Fla. Dist. Ct. App. 1966).

153. FLA. CONST. art. II, § 3.

154. *Id.*; see State v. Cotton, 769 So. 2d 345, 353–54 (Fla. 2000); Pepper v. Pepper, 66 So. 2d 280, 284 (Fla. 1953); Walker v. Bentley, 660 So. 2d 313, 320 (Fla. Dist. Ct. App. 1995).

155. FLA. STAT. §§ 723.022–723.024 (2016).

156. *Id.* § 723.024(1).

to prosecute or refuse to prosecute a criminal charge,¹⁵⁷ or a local government attorney, who has the authority to prosecute code enforcement violations administratively or by civil complaint.¹⁵⁸ It is fundamental that a local government attorney has the authority to file, prosecute, abate, settle, or voluntarily dismiss a building and zoning enforcement action in order to obtain compliance with code violations.¹⁵⁹ The State Attorney has the authority to file, prosecute, abate, settle, or dismiss criminal cases.¹⁶⁰ In all instances, the decision on who to charge and what charges to bring resides exclusively with the executive branch, not the judicial or legislative branches.¹⁶¹ The authority to file, prosecute, abate, settle, or voluntarily dismiss claims are exclusively executive functions and cannot be supervised or controlled by the judiciary, which has no role in advising, directing, or supervising a local government on whether to file and prosecute a civil, administrative, or criminal action.¹⁶² Instead, the role of the judiciary is limited to adjudicating any disputes in an action when it is properly at issue.¹⁶³ Similarly, the legislature does not have the right to direct or supervise executive functions of a local government attorney on whether to file and prosecute a civil, administrative, or criminal action and against whom charges can be filed.¹⁶⁴ The legislature also does not have the right to hinder or remove the executive branch's discretion on who to charge and what charges should be brought.¹⁶⁵ The legislature does have the power to enact laws and declare what the law is, and accordingly after doing so, it rests with the executive and judicial branch to follow the law, subject to each branch's exclusive role and function.¹⁶⁶

157. See *Barnett v. Antonacci*, 122 So. 3d 400, 405 (Fla. Dist. Ct. App. 2013); see *Freeman v. State*, 969 So. 2d 473, 479 (Fla. Dist. Ct. App. 2007).

158. See *Rudge v. City of Stuart*, 65 So. 3d 645, 646–47 (Fla. Dist. Ct. App. 2011); *City of Jacksonville v. Blue Stone Constr., Inc.*, 48 So. 3d 941, 942 (Fla. Dist. Ct. App. 2010).

159. See *Rudge*, 65 So. 3d at 646–47; *City of Jacksonville*, 48 So. 3d at 942; *Trianon Park Condo. Ass'n, Inc. v. City of Hiialeah*, 468 So. 2d 912, 922 (Fla. 1985); *Detournay v. City of Coral Gables*, 127 So. 3d 869, 870 (Fla. Dist. Ct. App. 2013); *City of Freeport v. Beach Cmty. Bank*, 108 So. 3d 684, 689, 690 (Fla. Dist. Ct. App. 2013).

160. See, e.g., *Young v. State*, 699 So. 2d 624, 626–27 (Fla. 1997); *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986).

161. See *Bloom*, 497 So. 2d at 3; *Cleveland v. State*, 417 So. 2d 653, 654 (Fla. 1982).

162. See *Valdes v. State*, 728 So. 2d 736, 738–39 (Fla. 1999) (The prosecuting officer, the state attorney, has complete discretion in deciding whether to charge and prosecute a defendant, and the judiciary cannot interfere with this discretionary executive function); *Bloom*, 497 So. 2d at 3 (“Under Florida’s [C]onstitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.”); *Johnson v. State*, 314 So. 2d 573, 577 (Fla. 1975) (“[T]he discretion of the Attorney General in choosing whether to prosecute or not to prosecute, or to abandon a prosecution already started, is absolute.”); *Bess v. Reno*, 563 So. 2d 95, 96 (Fla. Dist. Ct. App. 1990) (holding that the trial court did not err in refusing, in effect, to mandamus the state attorney to institute extradition proceedings); *Thompson v. Reno*, 546 So. 2d 83, 84 (Fla. Dist. Ct. App. 1989) (holding that the state attorney’s discretion extends to civil actions as well as criminal actions); *State v. Jogan*, 388 So. 2d 322, 323 (Fla. Dist. Ct. App. 1980) (holding that the decision to *nolle prosequi* is vested solely with the state attorney’s discretion and cannot be made or supervised by the courts); *State v. C.C.B.*, 465 So. 2d 1379, 1381 (Fla. Dist. Ct. App. 1985) (“In the criminal justice system the discretion to prosecute or not is a pre-trial posture vested solely in the state attorney’s discretion.”).

163. FLA. CONST. art. V, §1; but see *Trianon Park Condo. Ass'n, Inc.*, 468 So. 2d at 922; *Detournay*, 127 So. 3d at 873.

164. See *Wayte v. United States*, 470 U.S. 598, 607 (1985); *Chiles v. Children*, 589 So. 2d 260, 264 (Fla. 1991); *Cleveland*, 417 So. 2d at 654.

165. *Wayte*, 470 U.S. at 607; *Chiles*, 589 So. 2d at 263–64; *Walker*, 660 So. 2d at 320; *Bloom*, 497 So. 2d at 3; *Cleveland*, 417 So. 2d at 654.

166. *Wayte*, 470 U.S. at 607–08; *Chiles*, 589 So. 2d at 264; *Bloom*, 497 So. 2d at 3; *Cleveland*, 417 So. 2d at 654.

Whether any statutory prohibition on who may be charged for specially designated code violations as provided in section 723.024(1) of the Florida Statutes constitutes a violation of article II, section 3 of the Florida Constitution and the principle that “no branch may encroach upon the powers of another”¹⁶⁷ will have to await judicial determination. Neither the judiciary nor the legislature have the right to direct or supervise executive functions of a local government attorney or the State Attorney on whether to file and prosecute a civil, administrative, or criminal action and against whom charges may be filed.¹⁶⁸ Thus, an argument can be made that if section 723.024 of the Florida Statutes says that a local government code enforcement prosecutor can only cite a mobile home park owner or mobile home owner in specially set circumstances, such enactment might run afoul of the separation of powers doctrine of article II, section 3 of the Florida Constitution.¹⁶⁹ Although there is an inherent distinction between judicial power and quasi-judicial power according to their respective proceedings,¹⁷⁰ the authority to file, prosecute, abate, settle, or dismiss actions in judicial and quasi-judicial proceedings falls exclusively within the province of the prosecuting authority, not the legislature or the judiciary.¹⁷¹

VIII. WHAT EFFECT DOES THE PREEMPTION DOCTRINE IN ARTICLE VIII, SECTION 2(B) OF THE FLORIDA CONSTITUTION HAVE ON SECTION 723.024 OF THE FLORIDA STATUTES AND LOCAL GOVERNMENTS’ CODE PROVISIONS?

Section 723.024(1) of the Florida Statutes says that a local government shall only cite and sanction the responsible party, whereas section 723.024(2) says that a local government may not obtain a lien or fine for any breach of duty other than what is declared in sections 723.022 and 723.023 of the Florida Statutes.¹⁷² There is a risk if a local government charges a mobile home park owner with a code violation if there is evidence that a mobile home owner’s acts are the cause of the code violation.¹⁷³ The preemption doctrine, which is found in article VIII, section 2(b) of the Florida Constitution,¹⁷⁴ provides that local governments lack authority to craft their own exceptions to general state laws, “except as otherwise provided by law,”¹⁷⁵ and it establishes the constitutional superiority of the legislature’s power over the power of local governments.¹⁷⁶ Although local governments generally have “the power to enact legislation concerning any subject matter upon which the state Legislature may

167. See *Chiles*, 589 So. 2d at 264; *Walker*, 660 So. 2d at 320.

168. See *supra* notes 154, 157, 159–64 and accompanying text.

169. See *id.*

170. See *Laborers’ Int’l Union, Local 478 v. Burroughs*, 541 So. 2d 1160, 1161–62 (Fla. 1989).

171. See *supra* notes 154, 157, 159–64 and accompanying text.

172. FLA. STAT. §§ 723.024(1)–(2) (2016).

173. *Id.*

174. FLA. CONST. art. VIII, § 2(b).

175. *Id.*

176. *Id.*

act,”¹⁷⁷ local governments are precluded from taking any action that conflicts with a state statute in exercising their power.¹⁷⁸

In considering the impact of article VIII, section 2(b) of the Florida Constitution and section 723.004(3) of the Florida Statutes¹⁷⁹ to Mobile Home Park Lot Tenancies, the \$64,000 question¹⁸⁰ is what may happen if a local government charges a mobile home park owner and/or a mobile home owner in a code enforcement proceeding that runs afoul to the literal wording of section 723.024 of the Florida Statutes? Assuming for the sake of argument that a mobile home park owner fails to report code violations caused by a mobile home owner where a mobile home park owner knew or should have known about the violations of local government code provisions, what impact could this have on a non-compliant mobile home park owner? If a mobile home park owner knew or should have known about the mobile home owners code violations and did nothing, the mobile home park owner could be responsible for taking no measures to correct the code violations as a participant or accomplice.¹⁸¹ A state preemption argument can be made against joining a mobile home park owner as a co-respondent in a code enforcement proceeding on account of sections 723.004(3)¹⁸² and 723.024(2) of the Florida Statutes.¹⁸³ For one, if a local government ordinance is enacted that allows joinder of a mobile home park owner in a code enforcement proceeding that is the fault of a mobile home owner according to the applicable provisions of sections 723.022 and 723.023 of the Florida Statutes, then that ordinance would be a violation of sections 723.004(3) and 723.024 of the Florida Statutes.¹⁸⁴ Similarly, if a local government ordinance is enacted that allows joinder of a mobile home owner in a code enforcement proceeding that is the responsibility of a mobile home park owner according to the applicable provisions of Sections 723.022 and 723.023 of the Florida Statutes, then that ordinance would be a violation of Sections 723.004(3) and 723.024 of the Florida Statutes.¹⁸⁵ Chapter 723 takes priority over any local government ordinance relating to Mobile Home Park Lot Tenancies, in the absence of legislative authority permitting deference to a local government or joint and dual authority over a subject matter that does not specifically exist at this time.¹⁸⁶ Therefore, the preemption doctrine of the article

177. FLA. STAT. § 166.021(3) (2016).

178. *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928 (Fla. 2013).

179. FLA. STAT. § 723.004(3) (2016) (“It is expressly declared by the Legislature that the relationship between landlord and tenant as treated by or falling within the purview of this chapter is a matter reserved to the state and that units of local government are lacking in jurisdiction and authority in regard thereto. All local statutes and ordinances in conflict herewith are expressly repealed.”).

180. *The \$64,000 Question*, PBS, <http://www.pbs.org/wgbh/amex/quizshow/peopleevents/pande06.html> (last visited Nov. 22, 2016) (“The \$64,000 Question” was an American game show broadcast from 1955 to 1958, which became embroiled in the 1950s quiz show scandals.).

181. See discussion *infra* Part X; *supra* Part VI.C–E.

182. FLA. STAT. § 723.004(3) (2016) (“It is expressly declared by the Legislature that the relationship between landlord and tenant as treated by or falling within the purview of this chapter is a matter reserved to the state and that units of local government are lacking in jurisdiction and authority in regard thereto. All local statutes and ordinances in conflict herewith are expressly repealed.”).

183. See *id.* § 723.024.

184. See *id.* §§ 723.004(3), 723.022–723.024.

185. See *id.*

186. See *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928–29 (Fla. 2013); *City of Aventura v. Masone*, 89 So. 3d 233, 235–36 (Fla. Dist. Ct. App. 2011), *rev’d sub nom.* 147 So. 3d 492, 494–

VIII, section 2(b) Florida Constitution should prohibit any duly enacted ordinance that conflicts with Chapter 723, and more particularly section 723.024 of the Florida Statutes.¹⁸⁷

Article VIII, section 2(b) Florida Constitution needs to be considered before a local government charges a mobile home owner and mobile home park owner with a code violation. The only way a local government can act concurrently and jointly file charges against a mobile home owner and a mobile home park owner is if an ordinance is permitted to co-exist under state law.¹⁸⁸ But that may not be likely on account of section 723.004 (3) of the Florida Statutes.¹⁸⁹ However, if there was a bona fide dispute as to who is responsible for certain code violations listed in sections 723.022, 723.023, and 723.024 of the Florida Statutes, common sense should prevail and allow a local government to join a mobile home owner and the mobile home park owner in the same or separate administrative proceedings for a determination of who is the responsible party. If both are joined in the same proceeding, the special magistrate should be able to air out which of the parties is responsible after considering the circumstances of the case, depending on whether there is substantial, competent evidence to support a conviction against one or both parties.¹⁹⁰ If only one party is charged independently of the other in a code enforcement proceeding and cleared, then the other party could be charged in a successive proceeding in determining whether there is substantial, competent evidence to support a conviction, as long as he or she was not charged and adjudicated in an initial proceeding.¹⁹¹ There is no constitutional or statutory prohibition against separate administrative proceedings against different parties, as long as there is substantial, competent evidence to support which party is responsible for a code violation in an initial or successive administrative hearing.¹⁹² However, the doctrine of res judicata is applicable to rulings and decisions of administrative bodies, thus barring a successive prosecution against the same party under identical facts and circumstances.¹⁹³

96 (Fla. 2014); *see also* City of Orlando v. Udowychenko, 98 So. 3d 589, 595–96 (Fla. Dist. Ct. App. 2012), *aff'd*, 147 So. 3d 492 (Fla. 2014).

187. *See* City of Palm Bay, 114 So. 3d at 928–29; *Masone*, 89 So. 3d at 235–36, *rev'd sub nom.* 147 So. 3d at 494–96; *see also* Udowychenko, 98 So. 3d at 595–96.

188. *See* *Masone*, 147 So. 3d at 501 (Pariente, J., dissenting).

189. *See id.*; FLA. STAT. §§ 723.004(3), 723.022–723.024 (2016).

190. *See* Bd. of Cty. Com'rs. v. Snyder, 627 So. 2d 469, 474–75 (Fla. 1993); *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957); *Town of Mangonia Park v. Palm Beach Oil, Inc.*, 436 So. 2d 1138, 1139 (Fla. Dist. Ct. App. 1983).

191. *See* *White v. School Bd.*, 466 So. 2d 1141, 1141 (Fla. Dist. Ct. App. 1985); *Rubin v. Sanford*, 168 So. 2d 774, 774–75 (Fla. Dist. Ct. App. 1964), *cert. denied* 180 So. 2d 331, 331 (Fla. 1965).

192. *See* *Rubin*, 168 So. 2d at 774–75; *Snyder*, 627 So. 2d at 474–75; *De Groot*, 95 So. 2d at 916.

193. *Hollingsworth v. Dep't. of Env'tl. Regulation*, 466 So. 2d 383, 384, 386 (Fla. Dist. Ct. App. 1985); *Doheny v. Grove Isle, Ltd.*, 442 So. 2d 966, 970 (Fla. Dist. Ct. App. 1983); *Metro. Dade Cty. Bd. of Cty. Comm'rs v. Rockmatt Corp.*, 231 So. 2d 41, 44 (Fla. Dist. Ct. App. 1970). As mentioned, res judicata would apply between the local government and the party involved in the proceeding if either tried to re-litigate the case with the same facts and circumstances thereby precluding a second bite of the apple in the absence of a different set of facts and circumstances. If a code enforcement order was entered by a special magistrate, and no appeal or a late appeal was taken by the losing party, under such circumstances there would be no jurisdiction by a circuit court to consider an appeal. *See* *Kirby v. City of Archer*, 790 So. 2d 1214, 1215 (Fla. Dist. Ct. App. 2001); *City of Ft. Lauderdale v. Baman*, 519 So. 2d 37, 38 (Fla. Dist. Ct. App. 1987).

By deciding to join a mobile home park owner and a mobile home owner in a code violation proceeding, sections 723.022, 723.023, and 723.024 of the Florida Statutes need to be considered, but until there is a definitive ruling about the statutes' impact, a local government should be able to proceed with charging one or both parties if the evidence warrants.¹⁹⁴ If there is evidence showing that a mobile home park owner or a mobile home owner, or both, caused the code violations, the sole issue is whether there is substantial, competent evidence to support a conviction.¹⁹⁵ If that is shown, then as long as fundamental due process is provided to the parties, such a procedure should allow a special magistrate to decide which of the parties is responsible so that a fine and lien can be imposed against one or both of the violating parties.¹⁹⁶ It is also important to keep in mind that section 723.024(1) of the Florida Statutes emphasizes that only the responsible party shall be charged, and as always, as long as the local government does its due diligence in making that determination, even in considering section 723.024(2) of the Florida Statutes, it should be the quasi-judicial proceeding that ought to decide responsibility.¹⁹⁷

IX. DOES SECTION 723.024 OF THE FLORIDA STATUTES VIOLATE THE ACCESS TO COURTS PROVISION LOCATED IN ARTICLE I, SECTION 21 OF THE FLORIDA CONSTITUTION?

A. Does Section 723.024 of the Florida Statutes Provide Procedural Pitfalls and Barriers that Result in a Violation of Article I, Section 21 of the Florida Constitution?

Section 723.024 of the Florida Statutes bifurcates responsibility between mobile home owners and mobile home park owners.¹⁹⁸ Is the legislature's attempt to negotiate distinctions in responsibility between mobile home owners and mobile home park owners workable? Is there too much emphasis by local governments in providing an "an expeditious, effective, and inexpensive method"¹⁹⁹ to enforce code violations of a local government without regard to the entirety of the evidence? In light of the statute's attempt to define which party is responsible for a code violation, does this statute violate the access to courts provision that is found in article I, section 21 of the Florida Constitution?²⁰⁰ Section 723.024 of the Florida Statutes places

194. See *Snyder*, 627 So. 2d at 475; *De Groot*, 95 So. 2d at 916; *Town of Mangonia Park*, 436 So. 2d at 1139.

195. See *Snyder*, 627 So. 2d at 475; *De Groot*, 95 So. 2d at 916; *Town of Mangonia Park*, 436 So. 2d at 1139.

196. FLA. STAT. §§ 162.07(1), (4); 162.09(1)–(3) (2016).

197. See discussion *supra* Part VI; *infra* Part XII.

198. FLA. STAT. § 723.024 (2016).

199. *Id.* § 162.02.

200. See *Maronda Homes v. Lakeview Res. Home Ass'n*, 127 So. 3d 1258, 1272-73 (Fla. 2013). Section 723.004(5) may preserve the right to sue in a civil action by providing an aggrieved party with the right to enforce a duty in a civil action after a party exhausts its administrative remedies. Section 723.0381(1) may also appear to preserve the right to sue in a civil action by providing an aggrieved party with the right to enforce a duty; however, if a local government prosecutes a code enforcement violation against either the mobile home park owner or the mobile home owner, a decision by the special magistrate could be *res judicata* against the losing party and preclude an aggrieved party from filing a civil action in circuit court. Florida district courts have ruled that failure to appeal a special magistrate's order within thirty days bars an aggrieved party from later contesting identical code violations that were raised or that could have been raised before the special magistrate on the grounds of *res judicata*. See FLA.

responsibility on either the mobile home park owner or the mobile home owner on specifically described violations,²⁰¹ and by doing so the statute may fail to provide a reasonable alternative for the aggrieved party to challenge a code charge in light of Article I, Section 21 of the Florida Constitution.²⁰² Section 723.038 of the Florida Statutes provides that a party may demand mediation to settle a dispute before an action is filed in circuit court,²⁰³ and if mediation is unsuccessful either party may file an action in circuit court pursuant to section 723.0381(1) of the Florida Statutes.²⁰⁴ While these two statutes appear to preserve the right to enforce a duty in circuit court for an aggrieved party,²⁰⁵ in light of section 723.024 of the Florida Statutes's strict codification of what is and is not a violation by a mobile home owner and mobile home park owner before any evidence is presented, this statute may effectively eliminate access to the courts by limiting responsibility only to those identified in the statutes regardless of the evidence.²⁰⁶

Article I, section 21 of the Florida Constitution does not necessarily require a complete inability to gain access to the courts for there to be a violation of this constitutional provision.²⁰⁷ If a statute produces procedural pitfalls and difficulties so problematical and time-consuming that such procedures impede meaningful litigation of the merits of a cause, then such impediments to filing suit may make it improbable to proceed, which results in a violation of article I, section 21 of the

STAT. § 162.11 (2016) (governing appeals from final orders of code enforcement boards, which states: "An appeal shall be filed within 30 days of the execution of the order to be appealed"); Kirby v. City of Archer, 790 So. 2d 1214, 1215 (Fla. Dist. Ct. App. 1996) (owner must appeal an adverse code enforcement ruling to the circuit court, not wait to challenge the facts after commencement of a foreclosure action on an adverse lien filed against the property owner); City of Miami v. Cortes, 995 So. 2d 604, 606 (Fla. Dist. Ct. App. 2008) (circuit court was without jurisdiction on a certiorari review of a code enforcement board's mitigation order that reduced an earlier imposed fine when the property owner had plead guilty to the code violation and failed to appeal the enforcement order); Verdi v. Metro. Dade Co., 684 So. 2d 870, 871 (Fla. Dist. Ct. App. 1996) (when a special magistrate renders a ruling, the case is res judicata and cannot be retried later in a foreclosure action); Hardin v. Monroe Cty., 64 So. 3d 707, 711 (Fla. Dist. Ct. App. 2011) (while an earlier unappealed violation order is res judicata, an aggrieved party may timely appeal from a later entered enforcement order); City of Ft. Lauderdale v. Bamman, 519 So. 2d 37, 38 (Fla. Dist. Ct. App. 1987) (notice of appeal to the circuit court was timely filed as to a supplemental order of the board, but that failed to bring up for review the final order entered earlier, which had in all respects become final after thirty days of its entry).

201. FLA. STAT. § 723.024 (2016).

202. *Id.* § 723.024; *see also* N. Fla. Women's Health Servs. v. State, 866 So. 2d 612 (Fla. 2003); Mitchell v. Moore, 786 So. 2d 521 (Fla. 2001); Kluger v. White, 281 So. 2d 1 (Fla. 1973).

203. FLA. STAT. § 723.038 (2016).

204. *Id.* § 723.0381(1).

205. *Id.* §§ 723.038, 723.0381(1).

206. *Id.* § 723.024; *see also* Mitchell, 786 So. 2d at 524-28 (Fla. 2001) (copy requirement of the Prisoner Indigency statute is unconstitutional and violates article I, section 21 of the Florida Constitution because it results in an insurmountable obstacle to a prisoner's right to access the courts); Kluger, 281 So. 2d 1 (aggrieved party denied opportunity to litigate against defendant in tort for property damage arising from an automobile accident by abolishing tort claim against defendant and by making aggrieved party look to property damage with one's own insurer violates article I, section 21 of the Florida Constitution). Assuming *arguendo* that the statute is not unconstitutional on its face, one must question whether requiring an aggrieved party to comply with these conditions and barriers that have been mentioned might be unconstitutional as applied to an aggrieved mobile home owner who is effectively shut out of legitimately contesting code violations in civil court. *See* Volusia Cty. v. Aberdeen at Ormond Beach, 760 So. 2d 126 (Fla. 2000) (Volusia County's public school impact fees were held to be unconstitutional as applied to mobile home park that provides housing for persons at least fifty-five years of age or older); Dep't of Law Enf't v. Real Prop., 588 So. 2d 957 (Fla. 1991) (forfeiture act was held not to be unconstitutional on its face, but was not constitutional as applied to property owner).

207. *See supra* note 206.

Florida Constitution.²⁰⁸ A code enforcement proceeding brought pursuant to Chapter 162 of the Florida Statutes begins and ends the dispute and results in *res judicata* barring a future civil action.²⁰⁹ Only fundamental due process applies in quasi-judicial proceedings.²¹⁰ Before a civil suit is filed, there is an available option for a mediation according to section 723.038 of the Florida Statutes if the parties believe that a resolution is possible, but that procedure may be nothing more than an attempt to extend the litigation by a party that is costly and time consuming.²¹¹ If pre-filing procedures do not work, after a civil suit is filed the assigned judge may order non-binding arbitration according to section 723.0381(2) of the Florida Statutes with its attendant costs.²¹² Once a civil suit is filed, a judge could still order mediation before trial.²¹³ By imposing such barriers before a civil court reaches the merits (if it ever does reach the merits), when these procedures are used separately or together they can result in insurmountable burdens and a chilling effect that are problematical to an aggrieved mobile home owner, who usually has less funds to spend on litigation than a mobile home park owner.²¹⁴ Therefore, article I, section 21 of the Florida Constitution may come into play on account of the procedural and substantive pitfalls and difficulties that limits civil litigation of the merits by a mobile home owner in light of the specifically described violations that is provided in sections 723.022, 723.023, and 723.024 of the Florida Statutes.²¹⁵

The attempt to determine responsibility by section 723.024 of the Florida Statutes is not black and white.²¹⁶ There is no reason to believe that this statute should conclusively determine which party is or is not responsible for a violation making disputes about responsibility in mobile home parks likely to occur.²¹⁷ Whether

208. *Id.*

209. *See* Kirby v. City of Archer, 790 So. 2d 1214, 1215 (Fla. Dist. Ct. App. 1996); City of Miami v. Cortes, 995 So. 2d 604, 606 (Fla. Dist. Ct. App. 2008); Verdi v. Metro. Dade Co., 684 So. 2d 870, 871 (Fla. Dist. Ct. App. 1996); Hardin v. Monroe Cty., 64 So. 3d 707, 711 (Fla. Dist. Ct. App. 2011).

210. *See* FLA. STAT. §162.07(3) (2016).

211. *Id.* § 723.038. While pre-filing mediation is discretionary with the parties, if used each party must pay a filing fee toward the ultimate fee to be charged by the appointed mediator.

212. *See* Fla. R. Civ. Pr. 1.820; FLA. STAT. § 723.0381(2) (2016) (granting the trial court the option to order non-binding arbitration). The purpose of Florida Rule of Civil Procedure 1.820 motion for trial is to accelerate the litigation, make the parties evaluate the arbitration award, and either accept it or bring it to an end through trial. *See* Nicholson-Kenny Capital Mgmt. v. Steinberg, 932 So. 2d 321, 325 (Fla. Dist. Ct. App. 2006); Stowe v. Universal Prop. & Cas. Ins. Co., 937 So. 2d 156, 158 (Fla. Dist. Ct. App. 2006).

213. *See* Fla. R. Civ. Pr. 1.700.

214. *See* Aspen-Tarpon Springs Ltd. P'ship v. Stuart, 635 So. 2d 61, 63 (Fla. Dist. Ct. App. 1994).

215. *Aspen-Tarpon Springs*, 635 So. 2d at 63; *see also* FLA. STAT. §§ 723.022, 723.023, 723.024, 723.038, 723.0381(2) (2016); City of Miami v. Cortes, 995 So. 2d 604, 606 (Fla. Dist. Ct. App. 2008); Verdi v. Metro. Dade Co., 684 So. 2d 870, 871 (Fla. Dist. Ct. App. 1996); City of Ft. Lauderdale v. Bammann, 519 So. 2d 37, 38 (Fla. Dist. Ct. App. 1987).

216. *See* Holly v. Auld, 450 So. 2d 217 (Fla. 1984); Media Whiteco Outdoor v. Dep't of Trans., 795 So. 2d 991 (Fla. Dist. Ct. App. 2001);

217. *See* Flo-Sun, Inc. v. Kirk, 783 So.2d 1029, 1037-38 (Fla. 2001); Panama City Beach Cmty. Redevelopment Agency v. State, 831 So. 2d 662, 665-69 (Fla. 2002); Las Olas Tower v. City of Ft. Lauderdale, 742 So. 2d 308, 312 (Fla. Dist. Ct. App. 1999); Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982); Chamberlain v. Eisinger, 159 So. 3d 185, 188-89 (Fla. Dist. Ct. App. 2015); Matthews v. St. Petersburg Auto Auction, Inc., 190 So. 2d 215, 216 (Fla. Dist. Ct. App. 1966). By analogy, rezoning matters can be considered quasi-judicial proceedings thereby granting local governments great deference when making a ruling. *See* Samara Dev'p Corp. v. Marlow, 556 So. 2d 1097 (Fla. 1990); Graham v. Estuary Props., Inc., 399 So. 2d 1374 (Fla. 1981); Public Employees Relations Comm'n v. Dade Cty. Police Benevolent Ass'n, 467 So. 2d 987 (Fla. 1985); Daniel v. Fla. State Turnpike Auth., 213

section 723.024 of the Florida Statutes violates the access to courts provision located in article I, section 21 of the Florida Constitution has not been decided. However, nothing should be assumed because the Florida Supreme Court has ruled that placing undue burdens and barriers onto an aggrieved party as a condition precedent to filing and pursuing a civil suit may result in a constitutional challenge based on article I, section 21 of the Florida Constitution.²¹⁸

B. Are Consideration of Equitable Claims and Defenses by Special Magistrates Ample to Placate the Access to Courts Provision of Article I, Section 21 of the Florida Constitution?

If a special magistrate may consider equitable claims in code enforcement proceedings, will that process alleviate concerns about an aggrieved party's access to fairness and justice? While local governments have maintained that special magistrates do not have the authority to consider equitable defenses in code enforcement proceedings,²¹⁹ there are a handful of legal decisions suggesting that special magistrates have authority to consider equitable defenses to code enforcement prosecutions upon proper proof.²²⁰ In *Siegle v. Lee County*,²²¹ a Florida appellate court ruled that laches may be applied upon proper proof in a code enforcement proceeding to a long-standing code violation if a local government knew or should have known of the violations and did nothing for years.²²² Equitable defenses such as estoppel, laches, and due process might bar enforcement, especially when a local government has taken some affirmative action to permit the code violation or to allow it to continue for years without objection.²²³ Thus, laches, estoppel, and due process are not inapplicable to code enforcement proceedings and may be raised subject to proper proof in accordance with the judicial doctrine of equity and fair play.²²⁴

So. 2d 585 (Fla. 1968); Bd. of Cty. Comm'rs of Brevard Cty., Fla. v. Snyder, 627 So. 2d 469 (Fla. 1993); Sw. Ranches Homeowners Ass'n, Inc. v. Broward Cty., 502 So.2d 931 (Fla. Dist. Ct. App. 1987).

218. See *Mitchell*, 786 So. 2d at 524-28; *Kluger*, 281 So.2d 1.

219. Florida case law has suggested that equitable defenses are only available in local government code enforcement proceedings under rare and exceptional circumstances because code enforcement is a governmental function for the benefit of the general public. See *Siegle v. Lee Cty.*, 198 So. 3d 773, 774-75 (Fla. Dist. Ct. App. 2016); *Castro v. Miami-Dade Cty. Code*, 967 So. 2d 230, 233-34 (Fla. Dist. Ct. App. 2007); *Nat'l City Bank of Cleveland*, 902 So. 2d 233, 235 (Fla. Dist. Ct. App. 2005). While that doctrine remains alive today, there are more recent district court decisions suggesting that code enforcement proceedings that are quasi-judicial proceedings can consider issues concerning equity, fair play, and due process. See *Siegle*, 198 So. 3d 773; *Monroe Cty. v. Carter*, 41 So. 3d 954 (Fla. Dist. Ct. App. 2010); *Castro*, 967 So. 2d 230; *National City Bank of Cleveland*, 902 So. 2d 233.

220. See *supra* note 219.

221. *Siegle*, 198 So. 3d 773.

222. *Id.* at 778.

223. See *Siegle*, 198 So. 3d 773; *Monroe Cty.*, 41 So. 3d 954; *Castro*, 967 So. 2d 230; *Nat'l City Bank of Cleveland*, 902 So. 2d 233.

224. See *supra* note 223. The list may virtually be endless, and perhaps in future cases any other matter besides estoppel, laches, and due process might constitute an avoidance or defense. See *Powell v. City of Sarasota*, 953 So. 2d 5, 6 (Fla. Dist. Ct. App. 2006) (city's nuisance abatement efforts were aimed at African-American neighborhoods and amounted to selective enforcement); *Westgate Tabernacle, Inc. v. Palm Beach Cty.*, 14 So. 3d 1027 (Fla. Dist. Ct. App. 2009) (city's special exception code provision did not violate religious activities of church property that was used as a shelter for the homeless).

One must question whether the state legislature has ruled out the possibility that a local government may charge either a mobile home owner or mobile home park owner, or both, with code violations in light of the wording of section 723.024 of the Florida Statutes.²²⁵ In light of the statute's use of "may" and "shall," did the legislature intend to say that a violation of one provision of the statute was conclusive rather than prima facie evidence of a code violation that would effectively preclude local governments from retaining discretion to prosecute either a mobile home owner or mobile home park owner, or both, with code violations based upon whether there is substantial, competent evidence to support a code violation?²²⁶ It is more likely that the legislature left open for local governments a flexible framework to achieve an equitable result based upon proper proof,²²⁷ as distinguished from a literal and dead letter reading of the statute.²²⁸ However, even if the latter approach is applied, there are still a growing number of Florida appellate court decisions that permit special magistrates in code enforcement proceedings to consider equitable factors before deciding if there is a code violation.²²⁹ Section 723.024 of the Florida Statutes should be read in light of article II, section 3 of the Florida Constitution,²³⁰ case law permitting use of equitable defenses of property owners based on the evidence presented at special magistrates' hearings that is now precedent in code enforcement proceedings,²³¹ and existing precedent that grants deference to local governments in interpretation and enforcement of code provisions.²³²

X. ARE CONSPIRACY, COLLUSION, AND AIDING AND ABETTING SUBJECT TO QUASI-JUDICIAL CODE ENFORCEMENT PROCEEDINGS?

Besides the statutory guidelines in sections 723.022, 723.023, and 723.024 of the Florida Statutes specifying which party is responsible, there may be other methods for local governments to show by substantial, competent evidence that a mobile home owner and mobile home park owner are jointly responsible for code violations.²³³ Florida jurisprudence allows conspiracy and collusion claims in a civil

225. FLA. STAT. § 723.024 (2016).

226. See *DeJesus v. Seaboard Coast Line R.R.*, 281 So. 2d 198 (Fla. 1973); *Grand Union Co. v. Rocker*, 454 So. 2d 14, 16 (Fla. Dist. Ct. App. 1984); *Liberty Mut. Ins. Co. v. Kimmel*, 465 So. 2d 606 (Fla. Dist. Ct. App. 1985).

227. See *Trytek v. Gale Indus., Inc.*, 3 So. 3d 1194, 1202 (Fla. 2009); *Palm Beach Cty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000); *State v. DC*, 114 So. 3d 440 (Fla. Dist. Ct. App. 2013).

228. See David A. Strauss, *The Living Constitution*, UNIV. OF CHICAGO LAW SCHOOL, THE RECORD (ALUMNI MAGAZINE), <http://www.law.uchicago.edu/alumni/magazine/fall10/strauss> (last visited Mar. 8, 2017).

229. *Siegle*, 198 So. 3d 773; *Monroe Cty.*, 41 So. 3d 954; *Castro*, 967 So. 2d 230; *Nat'l City Bank of Cleveland*, 902 So. 2d 233.

230. See *supra* Part VII.

231. See *Siegle*, 198 So. 3d at 776-78; *Monroe Cty.*, 41 So. 3d 954; *Castro*, 967 So. 2d 230; *Nat'l City Bank of Cleveland*, 902 So. 2d 233.

232. See *Verizon Fla., Inc. v. Jacobs*, 810 So. 2d 906, 208 (Fla. 2002) (An "agency's interpretation of the statute it is charged with enforcing is entitled to great deference."); see also *BellSouth Telecomms., Inc. v. Johnson*, 708 So. 2d 594, 596 (Fla. 1998); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283 (Fla. 1988); *Orange Park Kennel Club, Inc. v. State, Dep't of Bus. & Prof'l Reg.*, 644 So. 2d 574, 576 (Fla. Dist. Ct. App. 1994) ("An agency's construction of a statute which it administers is entitled to great weight and will not be overturned unless the agency's interpretation is clearly erroneous; the agency's interpretation need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations.")

233. See discussion *infra* Part IX; *supra* Parts V.D-E.

action.²³⁴ In *Town of Surfside v. Higgenbotham*,²³⁵ an appellate court ruled that a victim could state a cause of action by adequately pleading and proving conspiracy to conceal the discharge of a firearm.²³⁶ In *Southern Alliance Corporation v. City of Winter Haven*,²³⁷ the court ruled that employees' egregious actions in enforcing a city's code by service of a cease and desist order emanating from the city's Standard Fire Prevention Code and Life Safety Code could state a cause of action.²³⁸ There, a local law enforcement and fire department concluded that a business allowed "overcrowding" after an inspection of the business premises by the police and fire department and the execution of the order was handled egregiously according to the lounge's second amended complaint.²³⁹ While *Higgenbotham* and *Southern Alliance Corporation* involved cases against a local government for civil liability, the courts stated that these sorts of claims against complicit and collusive parties could state a cause of action for civil conspiracy that would make the tenant and owner of the real property jointly responsible.²⁴⁰

Besides conspiracy and collusion charges that could be filed against a mobile home park owner and mobile home owner in civil liability proceedings,²⁴¹ there remains the possibility of aiding and abetting charges allowing a conviction of the principal and his or her accomplice. Under Florida law, those who actually commit the offense and those who aid, abet, or procure the commission of an offense are treated the same, regardless of their role in the commission of the offense or whether they are present during the final acts of the offense.²⁴² While there are few, if any, civil conspiracy or aiding and abetting cases that have been prosecuted in code enforcement quasi-judicial proceedings, by knowingly remaining silent and failing to report a mobile home owner's actions, such conduct could suggest a cover-up of code violations against the mobile home park owner's accomplice, as well as the mobile home owner's principal.²⁴³ Regardless of section 723.024 of the Florida Statutes, it is still possible for a local government to charge and argue that a mobile home park owner's failure to report a code violation, attributable to the mobile home owner's action, is tantamount to participation in civil collusion, conspiracy, and aiding and abetting, as long as it can be determined by direct evidence or inferred from circumstantial evidence that there was a definitive act in support of any code

234. See *Charles v. Fla. Foreclosure Placement Ctr., LLC*, 998 So. 2d 1157, 1159–60 (Fla. Dist. Ct. App. 2008); *Jacksonville Ferry Co. v. Stockton*, 23 So. 557, 559 (Fla. 1898).

235. *Town of Surfside v. Higgenbotham*, 733 So. 2d 1040 (Fla. Dist. Ct. App. 1999).

236. *Id.* at 1042–43.

237. *S. All. Corp. v. Winter Haven*, 505 So. 2d 489 (Fla. Dist. Ct. App. 1987).

238. *Id.* at 491–92, 494.

239. *Id.* at 492.

240. See *Town of Surfside*, 733 So. 2d at 1041–43; *S. All. Corp.*, 505 So. 2d at 494, 496.

241. See *supra* note 240.

242. *State v. Dene*, 533 So. 2d 265, 267 (Fla. 1988); *Potts v. State*, 430 So. 2d 900, 902 (Fla 1982); *Connolly v. State*, 172 So. 3d 893, 913 (Fla. Dist. Ct. App. 2015).

243. Administrative agencies can construe a cover-up or aiding and abetting as a violation of an administrative rule. See *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1039 (Fla. 2001); *Mack v. Dep't of Fin. Serv.*, 914 So. 2d 986, 989 (Fla. Dist. Ct. App. 2005); *Sch. Bd. v. Hargis*, 400 So. 2d 103, 107 (Fla. Dist. Ct. App. 1981). While these decisions involve a number of different administrative agencies, they also suggest that these sorts of decisions could apply to code violations in a code enforcement action against a real property owner and tenant, as well as a mobile home park owner and mobile home owner.

violations.²⁴⁴ Whether or not there was a quid pro quo between a mobile home owner and mobile home park owner in a mobile home park owner's failure to report code violations is immaterial as long as both parties agreed directly or indirectly not to correct code violations and they both sat back and ignored them; such action could be considered as a cover-up of what was unlawfully done and not corrected, making them both subject to prosecution in a quasi-judicial code enforcement proceeding.²⁴⁵

XI. WHO IS THE RESPONSIBLE PARTY IN MOBILE HOME PARK LOT TENANCIES?

A. Statutory Construction Doctrines: Can Sections 162.09(3) and 723.024 of the Florida Statutes Be Construed Together?

In considering the language in sections 162.09(3) and 723.024 of the Florida Statutes, can these statutes be construed together? A fundamental rule of statutory construction is that statutes that relate to the same or a closely related subject are regarded as *in pari materia* and must be compared with each other and construed together.²⁴⁶ This legal doctrine requires courts to construe related statutes together so that they explain each other and are harmonized if possible.²⁴⁷ Section 162.09(3) of the Florida Statutes specifically provides: "A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator."²⁴⁸ On the other hand, section 723.024(1) provides that "the unit of local government shall cite the responsible party for the violation . . .,"²⁴⁹ and section 723.024(2) provides:

A lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or mobile home for any duty or responsibility of the mobile home park owner under s. 723.022 or against a mobile home park owner or mobile home park property for any duty or responsibility of the mobile home owner under s. 723.023.²⁵⁰

244. Charles v. Fla. Foreclosure Placement Ctr., LLC, 988 So. 2d 1157, 1159–60 (Fla. Dist. Ct. App. 2008) (explaining that civil conspiracy requires: (1) an arrangement between two or more parties; (2) for an unlawful act or to do a lawful act by an unlawful means; (3) performing of an overt act in pursuance of the conspiracy; and (4) damage as result of the acts done under the conspiracy).

245. See discussion *supra* Parts VII.A, C–E.

246. See Fla. Dep't of Env'tl. Prot. v. Contractpoint Fla, Parks, L.L.C., 986 So. 2d 1260, 1265–66 (Fla. 2008); Holly v. Auld, 450 So. 2d 217, 222 (Fla. 1984) (Shaw, J., dissenting) ("The majority interpretation also violates the cardinal rules of statutory interpretation which say that statutes should be read in *in pari materia* and all provisions should be given effect where possible."); Ferguson v. State, 377 So. 2d 709, 710–11 (Fla. 1979); Alachua Cty. v. Powers, 351 So. 2d 32, 40 (Fla. 1977); Singleton v. Larson, 46 So. 2d 186, 190 (Fla. 1950).

247. See Fla. Dep't of Env'tl. Prot., 986 So. 2d at 1265–66; Holly, 450 So. 2d at 222; Ferguson, 377 So. 2d at 710–11; Powers, 351 So. 2d at 40; Singleton, 46 So. 2d at 190.

248. FLA. STAT. § 162.09(3) (2016).

249. *Id.* § 723.024(1).

250. *Id.* § 723.024(2).

In as much as sections 162.09(3) and 723.024 of the Florida Statutes are interconnecting statutes, they should be read together before reaching a conclusion about the legislative intent of section 723.024 of the Florida Statutes.²⁵¹ However, in light of their differences, a question remaining is: Can this be done? Section 162.09(3) of the Florida Statutes and section 723.024 of the Florida Statutes seem to remain inconsistent and even incompatible, and if that is the case, then they may or may not be able to be read together.²⁵²

Another principle of statutory construction is that a specific statute covering a particular subject area controls over a statute covering the same subjects in more general terms.²⁵³ The rationale of this tenet is that a more specific statute is considered to be an exception to the general terms of the more general statute.²⁵⁴ This tenet may or may not apply here because both sections 162.09(3) and 723.024 of the Florida Statutes are specific, except that it can be argued that section 723.024 of the Florida Statutes may be more specific than section 162.09(3), as section 723.024 of the Florida Statutes applies only to mobile home park owners and mobile home owners, whereas section 162.09(3) of the Florida Statutes applies to all violators who own land and provide that a code violation and lien run with the land.²⁵⁵

Within Chapter 162, the legislature created a comprehensive statutory scheme that sets forth the role of quasi-judicial proceedings in code enforcement actions.²⁵⁶ Part and parcel to this chapter is the paradigm that code violations and liens run with the land in quasi-judicial and civil proceedings involving code enforcement violations.²⁵⁷ Upon enactment of section 723.024 of the Florida Statutes, if the legislature attempted to carve out an exception that only applies to mobile home park tenancies, then the next step is to look at the literal interpretation of each statute and if it leads to an unreasonable result, a cardinal rule of statutory interpretation is that there must be a clear statement by the legislature to partially annul section 162.09(3) of the Florida Statutes, which does not exist.²⁵⁸ Section 723.024 of the Florida Statutes has a number of ambiguities and inconsistencies, and therefore if it is determined that an unreasonable result rule of statutory construction results in a

251. *Heart of Adoptions, Inc. v. J.A.*, 668 So. 2d 189, 198–99 (Fla. 2007), *superseded by statute*, FLA. STAT. § 63 (2016) *as recognized in* *Children’s Home Soc’y of Fla. v. V.D.*, 188 So. 3d 920, 922 (Fla. Dist. Ct. App. 2016); *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000).

252. *See Knowles v. Beverly Enter.-Fla, Inc.*, 898 So. 2d 1, 9 (Fla. 2004); *Holly*, 450 So. 2d at 222; *Killearn Homes Ass’n v. Visconti Family, Ltd. P’ship*, 21 So. 3d 51, 53–54 (Fla. Dist. Ct. App. 2009).

253. *See Sch. Bd. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009); *McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994).

254. *See Survivors Charter Sch., Inc.*, 3 So. 3d at 1233 (explaining that in construing statutes, a specific statute governing a particular subject takes precedence over a conflicting more general statute); *People Against Tax Rev. Mismanagement, Inc. v. Cty. of Leon*, 583 So. 2d 1373, 1377 (Fla. 1991); *see also State v. Raydo*, 713 So. 2d 996, 1001 (Fla. 1998); *McKendry*, 641 So. 2d at 46 (“[A] specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.”). Where a specific and general statute are inconsistent, “[t]he more specific statute is considered to be an exception to the general terms of the more comprehensive statute.” *McKendry*, 641 So. 2d at 46.

255. FLA. STAT. § 723.024 (2016); *see id.* § 162.09.

256. *See id.* § 162.09.

257. *See Henley v. MacDonald*, 971 So. 2d 998, 1000 (Fla. Dist. Ct. App. 2008); *Monroe Cty. v. Whispering Pines Assocs.*, 697 So. 2d 873, 875 (Fla. Dist. Ct. App. 1997).

258. *See Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984); *Blankfeld v. Richmond Health Care, Inc.*, 902 So. 2d 296, 300–01 (Fla. Dist. Ct. App. 2005).

partial annulment at section 162.09(3) of the Florida Statutes, then section 162.09(3) could still prevail, or there would be great deference to local governments in determining whether both parties could be charged.²⁵⁹

It is fair to examine any necessary and appropriate alternative legal theories so that the statutes can be interpreted together in order to give effect to the legislative intent.²⁶⁰ Although one might argue that the legislative intent was to carve out an exception to section 162.09(3) of the Florida Statutes as it relates to mobile home park lot tenancies, based upon the literal wording of section 723.024 of the Florida Statutes²⁶¹ in evaluating section 723.024 of the Florida Statutes, paragraph (1) provides that “the unit of local government shall cite the responsible party for the violation,” whereas paragraph (2) provides that an “administrative or civil proceeding may not be brought against a mobile home owner or mobile home park owner for any duty or responsibility” resulting from the other and as provided for in sections 723.022 and 723.023 of the Florida Statutes.²⁶² Section 723.024 of the Florida Statutes is not clear and is conflicting and results in an ambiguity that undermines its clarity by its use of “may” and “shall” in different parts of the statute that appear to permit a local government to charge either a mobile home owner or mobile home park owner, or both, with identical code violations.²⁶³

Another issue with this statute is that its introduction fails to exclude any other Florida statute. Section 723.024 of the Florida Statutes provides: “Notwithstanding any other provision of this chapter or of any local law, ordinance, or code” This statute attempts to define who can be charged and under which circumstances code violations can be applied against responsible parties.²⁶⁴ The qualifying language in the first sentence of Section 723.024 of the Florida Statutes provides that there should be no other provision of Chapter 723 or of any local law, ordinance, or provision that is inconsistent with section 723.024 of the Florida Statutes, but leaves out important words, such as *any other provision of law or statute* in section 723.024 of the Florida Statutes.²⁶⁵ The legislature failed to specify that any other Florida statute that is inconsistent with section 723.024 of the Florida Statutes has been

259. See *Flo-Sun Inc. v. Kirk*, 783 So. 2d 1029, 1037 (Fla. 2001); *Panama City Beach Comm. Redevelopment Agency v. State*, 831 So. 2d 662, 665–69 (Fla. 2002); *Las Olas Tower v. City of Fort Lauderdale*, 742 So. 2d 308, 311–14 (Fla. Dist. Ct. App. 1999).

260. See *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1230 (Fla. 2004); *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000).

261. See Scott Gordon, *New Law May Help Manufactured Housing ROCs Deal With Code Violations*, FLORIDA ROC (June 23, 2011), <http://www.floridaroc.com/2011/06/articles/news-of-note-for-rocs/new-law-may-help-manufactured-housing-rocs-deal-with-code-violations/>; *Florida Statute 723.024*, THE RICHARDS LAW GROUP (June 23, 2011), <http://www.richardslawgroup.com/rlg/florida-statute-723-024/>. These commentaries were written shortly after enactment of the statute, but they do not discuss or raise the questions made in this article. Only time will tell how section 723.024 of the Florida Statutes is construed.

262. See discussion *supra* Parts VI.A and XI.A–B; FLA. STAT. §§ 723.022–723.023 (2016).

263. See *supra* note 262.

264. See generally FLA. STAT. § 723.024 (2016).

265. See *City of Miami v. McGrath*, 824 So. 2d 143, 154 (Fla. 2002) (explaining that the statute in question specifically repealed inconsistent laws); *Flo-Sun, Inc.*, 783 So. 2d at 1034 (providing that the air and water pollution section 403.191 of the Florida Statutes constitutes an additional and cumulative remedy to abate pollution).

overruled or repealed if it is inconsistent with section 723.024 of the Florida Statutes.²⁶⁶

Another issue is that if section 723.024 is read literally, this statute may have the effect of partially repealing approximately thirty years of code enforcement law and procedure that is contrary to long term precedent and policy.²⁶⁷ Ever since Chapter 166 of the Florida Statutes was enacted, local governments' code enforcement purpose and strategy has been to make a real property owner ultimately responsible for code violations and liens that run with the land.²⁶⁸ Long-standing agency and strict liability principles have existed since the inception of Chapter 166 of the Florida Statutes.²⁶⁹ There is a long-term historical recognition by the legislature and the judiciary that code violations and liens run with the land.²⁷⁰

B. Is There a Way to Reconcile Section 723.024 of the Florida Statutes and Section 162.09(3) of the Florida Statutes?

Although courts are required to interpret statutory language together to give effect to the legislature's intent,²⁷¹ the inconsistent use of the words "may" and "shall" in section 723.024 of the Florida Statutes, and the failure of the legislature to expressly override prior Florida statutes that are not contained in section 723.024 of the Florida Statutes, conveys a confusing and inconsistent meaning of legislative intent.²⁷² However, if a local government can decide who is the responsible party after code violations are investigated, then such a construction might permit a local government to charge one or both parties with identical code violations in order for the special magistrate to air out code violation charges by determining whether one or both of the parties are responsible for the code violations in mobile home park lot tenancies. Thus, a reasonable construction of section 723.024 of the Florida Statutes in light of section 162.09(3) of the Florida Statutes is to allow local governments to prosecute mobile home owners and mobile home park owners for code violations as long as there is substantial, competent evidence to support a conviction.²⁷³ Of course, this could occur after the special magistrate considers the criteria provided in sections 723.022 and 723.023 as guidance to a local government rather than a legal obstacle or barrier to prosecuting code violations and whether there is substantial

266. See FLA. STAT. § 723.024 (2016); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454–56 (Fla. 1992); *Wilson v. Palm Beach Cty.*, 62 So. 3d 1247, 1250 (Fla. Dist. Ct. App. 2011); *City of Coconut Creek v. Broward Cty. Bd. of Cty. Comm'rs*, 430 So. 2d 959, 963 (Fla. Dist. Ct. App. 1983).

267. See *Henley v. MacDonald*, 971 So. 2d 998, 1000 (Fla. Dist. Ct. App. 2008); *Monroe Cty. v. Whispering Pines Assocs.*, 697 So. 2d 873, 875 (Fla. Dist. Ct. App. 1997); *City of Gainesville Code Enf't Bd. v. Lewis*, 536 So. 2d 1148, 1150 (Fla. Dist. Ct. App. 1988).

268. See *Henley*, 971 So. 2d at 1000; *Whispering Pines Assocs.*, 697 So. 2d at 875; *City of Gainesville Code Enf't Bd.*, 536 So. 2d at 1150; FLA. STAT. §§ 162.06(05), 162.09(3) (2016).

269. See discussion *supra* Section IV.

270. See *supra* notes 1–3, 39–41 and accompanying text.

271. See discussion *supra* Part XI.

272. See *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198–99 (Fla. 2007); *Willis Shaw Express, Inc. v. Hilyer Sod Inc.*, 849 So. 2d 276, 278–79 (Fla. 2003); *Palm Beach Cty. Canvassing Bd. v. Harris*, 772 So. 2d 1220, 1229–30 (Fla. 2000).

273. See *Panama City Beach Comm. Redevelopment Agency v. State*, So. 2d 662, 665–69 (Fla. 2002); *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1037 (Fla. 2001).

competent evidence to sustain the charges.²⁷⁴ This is an approach that is necessary and reasonable because it may be difficult—if not impossible—to determine who is the responsible party by merely looking at section 723.024 of the Florida Statute without granting local governments the prerogative to decide which of the parties ought to be charged in determining if there is substantial, competent evidence to do so.²⁷⁵

There is still uniformity of enforcement of code violations if a local government retains deference to decide responsibility in accordance with the evidence, but is not mandated to follow section 723.024 of the Florida Statutes.²⁷⁶ If a local government retains deference to decide whether to charge a mobile home owner or mobile home park owner or both, it can determine whether there is a violation based upon the facts and circumstances of the case.²⁷⁷ In determining which party is responsible, a local government special magistrate ought to be open to questions concerning common areas in mobile home parks, which can become embroiled in disputes involving boundary and use restrictions imposed by a mobile home park owner's declarations documents.²⁷⁸ Habitability, including lot cleanliness of a mobile home owner, can be impacted by excessive flooding and stagnant standing water, which could be the result of properly or improperly designed and constructed water drainage systems coming from common areas that are the responsibility of a mobile home park owner.²⁷⁹ Erosion of the land where the mobile home rests may occur, resulting in a residential lot's demise that grounds a residential shelter.²⁸⁰ Mosquito infestation and other dangerous conditions may arise on account of leaking and runoff from a defective drainage system that does not fulfill its intended purpose resulting in an uninhabitable shelter and lot.²⁸¹ Restrictions on the use of, ingress to, or egress from a mobile home owner's residence can impact habitability.²⁸²

Section 723.024 of the Florida Statutes incorporates each party's general obligations and seems to make it simple to determine which party is responsible, but underlying facts and circumstances can make it complex to determine which party is responsible in maintaining compliance with local government code provisions and

274. See *Sarasota Cty. v. Bow Point on the Gulf Condo. Developers, LLC*, 974 So. 2d 431, 432–33 (Fla. Dist. Ct. App. 2007); *Orange Cty. v. Lewis*, 859 So. 2d 526, 528 (Fla. Dist. Ct. App. 2003); *Richbon, Inc. v. Miami-Dade Cty.*, 791 So. 2d 505, 508 (Fla. Dist. Ct. App. 2001).

275. See *Killearn Homes Ass'n, Inc. v. Family Ltd. P'ship*, 21 So. 3d 51, 52–53 (Fla. Dist. Ct. App. 2009); *Pilgrim v. Crescent Lake Mobile Colony*, 582 So. 2d 649, 651–52 (Fla. Dist. Ct. App. 1991); *Pappert v. Mobilinium Assocs. V.*, 512 So. 2d 1096, 1097–99 (Fla. Dist. Ct. App. 1987).

276. Florida law suggests that great deference must be given to a local government's interpretation of a statute, except when construction is "clearly erroneous," because local government officials have an expertise that lay persons do not. See *Verizon Fla., Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002); *BellSouth Telecomms., Inc. v. Johnson*, 708 So. 2d 594, 596 (Fla. 1998).

277. See *supra* note 276. The legislature has delegated to local governments the authority to prosecute code enforcement violations and the power to enforce section 723.024 of the Florida Statutes. See Ch. 162, Fla. Stat. (2016).

278. See *Walton Cty. v. Stop Beach Renourishment*, 998 So. 2d 1102 (Fla. 2008); *Carlandia Corp. v. Obermaier*, 695 So. 2d 408 (Fla. Dist. Ct. App. 1997); *Tower House Condo., Inc. v. Millman*, 410 So. 2d (Fla. Dist. Ct. App. 1981); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637 (Fla. Dist. Ct. App. 1981).

279. See FLA. STAT. §§ 723.022, 723.023, 723.024 (2016).

280. *Id.*

281. *Id.*

282. *Id.*

utilities, infrastructure, and common areas.²⁸³ Yet if section 723.024 of the Florida Statutes is literally read, the onus for repair and maintenance could be wrongly placed onto the mobile home owner.²⁸⁴ Expert engineers would have to determine responsibility, and defects in common areas or infrastructure are more readily discoverable by mobile home park owners, who are better suited financially than are mobile home owners, who live on restricted budgets.²⁸⁵ What can result is that responsibility for keeping a lot habitable might unfortunately fall on a mobile home owner rather than a mobile home park owner regardless of the underlying facts and circumstances of the case.²⁸⁶

An unknown number of code violations remain unnoticed or, worse, they may have been ignored by real property owners for years, and this includes violations existing in mobile home parks, which may have ignored long standing code violations on their real property out of fear of being prosecuted by local governments.²⁸⁷ In light of the potential for varying interpretations of section 723.024 of the Florida Statutes that have been discussed in this article, the questions to be determined by local governments are: Which party is the responsible party; is the mobile home park owner or the mobile home owner solely responsible for their own violations, or can they both be responsible based on the facts and circumstances of the case; and if one or both are responsible, can an order be certified and recorded in the public records for lien purposes regardless of section 723.024 of the Florida Statutes?

XII. IS ONE OR SEVERAL QUASI-JUDICIAL PROCEEDINGS PERMISSIBLE IN DETERMINING WHO IS A RESPONSIBLE PARTY?

Would it not be in the best interest of the local government to charge a mobile home owner and a mobile home park owner if there is a question of who is the

²⁸³. See *id.* §§ 723.022, 723.024. This would, in all likelihood, include responsibility for repairs and replacement of roads, surface water management systems, and drainage pipes, among other things that are part of the common property. See *Maronda Homes v. Lakeview Res. Home Ass'n*, 127 So. 3d 1258, 1269–70 (Fla. 2013).

²⁸⁴. FLA. STAT. § 723.024 (2016).

²⁸⁵. See *Maronda Homes*, 127 So. 3d at 1269–70; *Aspen-Tarpon Springs Ltd. P'ship v. Stuart*, 635 So. 2d 61, 63 (Fla. Dist. Ct. App. 1994) (district court of appeal acknowledged that mobile home park owners and mobile home owners have an “economically unbalanced bargaining position” that favors mobile home park owners).

²⁸⁶. *Aspen-Tarpon Springs*, 635 So. at 63.

²⁸⁷. See discussion *supra* Part V. Some violations include overgrown vegetation, landscaping, and failure to clean away trash and debris culminating in an onslaught of rodents, vermin, and mosquitoes; failure to maintain real property and upkeep of dwellings by a mobile home owner involving structural damage that presents a danger to residents and neighbors; failure to abide by regulations that required clearance of lots, junk, abandoned vehicles, and debris sitting for excessive periods of time that result in danger, rust, filth, and rubbish; failure to correct fire and electrical code violations attributable to a mobile home owner's neglect, carelessness, or abandonment; construction of an addition without a building permit that is not up to code that can be easily blown away during high winds and storms, and that is dangerous. See Harry M. Hipler, *Do Code Enforcement Violations “Run with the Land”? Competing Interests of Local Governments and Private Parties and Their Constitutional Considerations in Code Enforcement Proceedings*, 43 STETSON L. REV. 257, 258 (2013); Harry M. Hipler, *Special Magistrates in Code Enforcement Proceedings: Local Government Agents or Arbiters of Fairness and Justice*, 38 STETSON L. REV. 519, 519–20 (2008); Jason Gibilisco, *How Code Enforcement Mitigates Hoarding in the Community*, 465 SJSU SCHOLAR WORKS: MASTER'S PROJECT, 1, 5–10, http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1465&context=etd_projects.

responsible party? This option may be the most expedient and least expensive alternative as the time and costs associated with resolving a dispute in one administrative proceeding is a supporting reason to join both parties in the same proceeding so as to give them an opportunity to provide evidence as to responsibility based upon the facts and circumstances.²⁸⁸ Evidence can be presented by the local government, and the land owner and non-real property owner can be given the opportunity to present evidence on their own behalf to refute charges so that all interested parties air out the evidence and present their defenses in the same proceeding.²⁸⁹ When circumstances warrant, a single proceeding is best for the parties and a local government, rather than piecemeal or multifaceted proceedings that invariably costs more and may result in longer, protracted proceedings before administrative finality and certainty is reached.²⁹⁰ The question whether the mobile home owner and mobile home park owner ought to be joined in one proceeding should remain open for consideration by local government counsel, and this should be regarded as an option rather than a necessity for local government counsel after considering whether a mobile home owner and/or the mobile home park owner should be charged separately or jointly. If section 723.024 of the Florida Statutes is followed literally and only one party is charged, there is nothing to preclude the party appearing in a quasi-judicial proceeding from making an argument and presenting evidence that the non-joined party is responsible; and if it turns out that the party charged is not responsible, a subsequent prosecution could be filed against the non-joined party to determine responsibility in a subsequent proceeding.²⁹¹

There should be no question that Chapter 162 of the Florida Statutes, along with sections 723.022, 723.023, and 723.024 of the Florida Statutes, require local governments to act with due diligence in determining which party is responsible for code violations after considering the statutory factors provided in these statutes and local government regulations.²⁹² This can be accomplished only after there is consideration of the facts and circumstances of the code violations in determining

288. See discussion *supra* Parts VI.A, C–E, X.

289. See *Horne v. USDA*, 133 U.S. 2053, 2062–64 (2013) (*Horne I*); *Horne v. USDA*, 135 U.S. 2419, 2433 (2015) (*Horne II*). For purposes of this article, *Horne I* is pertinent, because the Supreme Court of the United States ruled that the Ninth Circuit had jurisdiction to consider *Horne*'s case. The US Supreme Court first ruled that *Horne*'s attempt to avoid the AMAA by restructuring his farm as a combined raisin grower and handler was ineffective, because the law applied to *Horne*, and his challenge to the raisin reserve was ripe. The Supreme Court of the United States also concluded that the Tucker Act did not require *Horne* to sue in the Court of Federal Claims, because the AMAA had a comprehensive regulatory scheme. Consequently, the case was remanded to the Ninth Circuit to consider the merits of *Horne*'s takings claim in the same proceeding.

290. *Horne I*, 133 U.S. at 2062–64; *Horne II*, 135 U.S. at 2433; *Delray Med. Ctr., Inc. v. State, Agency for Health Care*, 5 So. 3d 26, 29–30 (Fla. Dist. Ct. App. 2009); *Wood v. Dep't of Prof. Reg.*, 490 So. 2d 1079, 1081–82 (Fla. Dist. Ct. App. 1986); see *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So. 2d 679, 681 (Fla. 1979).

291. Equitable estoppel was an issue raised in *Castro v. Metro-Dade County Code Enforcement*, but the language in this decision calls attention to the possibility of disputes as to which party is responsible. *Castro v. Metro-Dade Cty. Code Enf't.*, 967 So. 2d 230, 234 (Fla. Dist. Ct. App. 2007) (“One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon.”).

292. FLA. STAT. §§ 162.06–162.08, 723.022–723.24 (2016).

whether there is substantial, competent evidence to support a conviction.²⁹³ Who other than the local government code enforcement prosecution counsel and team is uniquely qualified to decide who should be charged and for which violations?²⁹⁴ In any quasi-judicial hearing before a special magistrate, the respondents should be able to make whatever defenses they deem necessary and proper; if either party disagrees with the result of the code enforcement hearing, then an appeal by way of a writ of certiorari can be filed in the circuit court to consider the ruling and any issues that were raised in the quasi-judicial proceeding.²⁹⁵

XIII. SECTION 723.024 OF THE FLORIDA STATUTES AND THE IMPACT OF SELECTIVE PROSECUTION AND ENFORCEMENT

A local government must be careful not to selectively enforce code enforcement ordinances against similarly situated parties.²⁹⁶ A local government must evenhandedly and uniformly enforce any type of code violations against all persons in the same or similarly situated positions.²⁹⁷ If a local government is charged with selectively enforcing violations against one violator but not others in similar or identical situations, this could result in protracted disputes and litigation, causing a lack of trust and confidence in the local governments' credibility and the prospect of potential money damage awards against the local governments if selective prosecution and enforcement is proved.²⁹⁸

XIV. CONCLUSION

The enactment of section 723.024 of the Florida Statutes raises many questions that have yet to be resolved. Ever since the enactment of section 162.09(3) in 1987, code enforcement violations and liens have run with the land.²⁹⁹ After section 723.024 of the Florida Statutes became effective on June 2, 2011, the question became whether the legislature has carved out an exception for mobile home park lot tenancies to bifurcate responsibility between mobile home owners and mobile home park owners.³⁰⁰ Section 723.024 of the Florida Statutes says that each of these parties has its own responsibility in mobile home park lot tenancies, which is a

293. See *Sarasota Cty. v. Bow Point on the Gulf Condo. Developers, LLC*, 974 So. 2d 431, 432–33 (Fla. Dist. Ct. App. 2007); *Orange Cty. v. Lewis*, 859 So. 2d 526, 528 (Fla. Dist. Ct. App. 2003); *Lee Cty. v. Sunbelt Equities, II, Ltd. P'ship.*, 619 So. 2d 996, 1003 (Fla. Dist. Ct. App. 1993).

294. See discussion *supra* Part VII.

295. FLA. STAT. § 162.11 (2016); *Kirby v. City of Archer*, 790 So. 2d 1214, 1215 (Fla. Dist. Ct. App. 2001).

296. See *Zuccarelli v. Barfield*, 199 So. 3d 399, 405–06 (Fla. Dist. Ct. App. 2016); *Powell v. City of Sarasota*, 953 So. 2d 5, 7–8 (Fla. Dist. Ct. App. 2006); *Ads in Motion – Fla. Inc. v. City of Fort Lauderdale*, 429 So. 2d 806, 806–07 (Fla. Dist. Ct. App. 1983).

297. See *Zuccarelli*, 199 So. 3d at 405–06; *Powell*, 953 So. 2d at 7–8; *Ads in Motion – Fla. Inc.*, 429 So. 2d at 806–07.

298. See *Metro. Dade Cty. Fair Hous. & Emp't Appeals Bd. v. Sunrise Village Mobile Home Park Inc.*, 511 So. 2d 962, 965–66 (Fla. 1987); *Fla. Dept. of Transp. v. E.T. Legg & Co.*, 472 So. 2d 1336, 1336–38 (Fla. Dist. Ct. App. 1985); Harry M. Hipler, *Special Magistrates in Code Enforcement Proceedings: Local Government Agents or Arbiters of Fairness and Justice?*, 38 STETSON L. REV. 519, 519–20 (2008).

299. See *supra* notes 1–3.

300. See discussion *supra* Parts II, VI.A.

reversal of approximately thirty years of code enforcement law and procedure.³⁰¹ Section 723.024 of the Florida Statutes is deceptively simple, until one studies the statute and finds that it contains inconsistencies and contradictions.³⁰² The wording of section 723.024 of the Florida Statutes undermines long-standing agency and strict liability principles that have existed since the 1980s in code enforcement law and procedure.³⁰³ Section 723.024 of the Florida Statutes arguably removes agency and strict liability from section 162.09(3) of the Florida Statutes as it pertains to mobile home park lot tenancies. By enacting section 723.024 of the Florida Statute, the legislature appears to have involved itself in attempting to reshape code enforcement law and procedure, and it has placed itself into the dynamics of real property owners and lessees' responsibilities in code enforcement violations and liens with the help of mobile home park owners' interest groups.³⁰⁴

There are still questions that remain after the enactment of section 723.024 of the Florida Statutes. Is the statute's wording clear and unambiguous? Does this statute conflict with the separation of powers doctrine in article I, section 3 of the Florida Constitution? What effect does the preemption doctrine in article VIII, section 2(b) of the Florida Constitution have on section 723.024 of the Florida Statutes and local governments' code provisions? Is section 723.024 of the Florida Statutes mandatory or discretionary as to code enforcement law and procedure? Can section 723.024 be reconciled with section 162.09(3) of the Florida Statutes and can they both be construed together? Is there a legal duty, as distinguished from a moral obligation, on mobile home park owners to report mobile home owners to local governments if there appears to be a code violation? In light of the different interpretations that can be given to section 723.024 of the Florida Statutes and the constitutional considerations that need to be addressed, will local governments decide for themselves how to construe and apply the statute resulting in confusion and various interpretations from one local government to another?

For the skeptic, why should a discussion about the conflicts within section 723.024 of the Florida Statutes and the tensions existing between that statute and section 162.09(3) matter? No one is being sent to jail for a crime they did not commit, as Chapter 162 prosecutions are non-criminal.³⁰⁵ Code enforcement only concerns

301. See discussion *supra* Parts II, XI

302. See discussion *supra* Parts II, VI.A, XI.

303. See discussion *supra* Parts III–IV.

304. The Florida Manufactured Housing Association (FMHA) represents the spectrum of park owner interests. Florida Manufactured Housing Association, Inc., <http://www.fmha.org/about-fmha/> (last visited Nov. 22, 2016). Although lobbying is protected free speech, *U.S. v. Rumely*, 345 U.S. 41, 46 (1953), there is no question but that interest groups have become powerful organizations that some call a fourth branch of government. See Lloyd Hitoshi Mayer, *What Is This "Lobbying" that We Are So Worried About?*, 26 YALE L.J. 485, 528 (2008); Cornelia Woll, *Leading the Dance? Power and Political Resources of Business Lobbyists*, 27 J. PUB. POL'Y 57, 65 (2007).

305. See FLA. STAT. §§ 162.02, 162.06–162.07, 162.09 (2016); see also *Thomas v. State*, 583 So. 2d 336, 340 (Fla. Dist. Ct. App. 1991), *aff'd*, 614 So. 2d 468, 471 (Fla. 1993) (suggesting that ordinance violations were non-criminal in nature). Article I, section 18 of the Florida Constitution provides that there can be no imprisonment for local government ordinance violations, "except as provided by law." In Attorney General Opinion 2009-29, the Attorney General suggested that a county is an "administrative agency" for purposes of article I, section 18 of the Florida Constitution, therefore no imprisonment is allowed "except as provided by law." More specifically, the Attorney General stated that a county could not enact an ordinance providing that the failure to timely pay a civil penalty imposed pursuant to Part II of Chapter 162, Florida Statutes, was a criminal misdemeanor, and is therefore

real and personal property code violations, and these violations can be corrected, so what is there to fear? Are code violations *de minimis* in the total scheme of things? Local governments' goals in enforcing uniform code provisions is to maintain good quality, habitable, and livable neighborhoods by obtaining compliance with local government code regulations, not to assess a tax or special assessment against a real property owner and violator.³⁰⁶ What harm can result even if the mobile home park owner and the mobile home owner/tenant ignore code violations, especially when local governments may substantially mitigate or abate accrued fines upon compliance with local government code regulations?³⁰⁷ These are some of the concerns raised by residents and property owners who may claim "so what" as to the impact of section 723.024 of the Florida Statutes.

The enactment of section 723.024 of the Florida Statutes may effectively change what has been long standing policy that made landowners strictly responsible for code violations. If it is determined that this statute results in a bifurcation of responsibility between mobile home owners and mobile home park owners, then long standing code enforcement law and procedure will be changed between mobile home park owners and mobile home owners.³⁰⁸ There is tension and conflict within section 723.024 of the Florida Statutes, as well as between sections 723.024 and 162.09(3) of the Florida Statutes. If these statutes cannot be reconciled and harmonized then the public may be subjected to varying interpretations from one local government to another.³⁰⁹ If section 723.024 of the Florida Statutes is construed literally, that position may make code enforcement less consistent rather than more consistent with long standing policy of Chapter 162 of the Florida Statutes, which

proscribed from doing so by article I, section 18 of the Florida Constitution. Still, it would appear that a local government might be able to enact an ordinance providing for imprisonment as long as a state statute has not preempted a subject from enactment of laws by local governments. When the legislature takes action and enacts a statute, a local government cannot adopt or enforce an ordinance that conflicts with the state statute and any penalty provided by a statute. In *Phantom of Clearwater v. Pinellas County*, 894 So. 2d 1011, 1021–21 (Fla. Dist. Ct. App. 2005), the court suggested that a local government could enact an ordinance providing for a penalty as long as it does not exceed the penalty imposed by the state statute. See also *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008), which approved the decision in *Phantom of Clearwater*. However, if criminal penalties can be enacted by local governments under these restricted circumstances, any prosecution involving a criminal violation would have to be filed in county court. See FLA. STAT. § 162.22, Fla. Stat. (2016) (providing enforcement methods: "These enforcement methods may include, but are not limited to, the issuance of a citation, a summons, or a notice to appear in county court or arrest for violation of municipal ordinances as provided for in chapter 901."). Still, the question of whether a local government should involve itself into criminal matters is left for another day.

306. See *Collier Cty. v. State*, 733 So. 2d 1012, 1016 (Fla. 1999); *Desiderio Corp. v. City of Boynton Beach*, 39 So. 3d 487, 494 (Fla. 2010).

307. See FLA. STAT. § 162.09(2)(c) (2016).

308. Is section 723.024 of the Florida Statutes an opening of a Pandora's Box and of the flood-gates to further diminution by the legislature of the long-standing principal that code violations and liens run with the land? We will just have to wait and see. See *Collier Cty.*, 733 So. 2d at 1016.

309. *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1037–38 (Fla. 2001); *Panama City Beach Cmty. Redevelopment Agency v. State*, 831 So. 2d 662, 665–69 (Fla. 2002); *Las Olas Tower v. City of Ft. Lauderdale*, 742 So. 2d 308, 312–13 (Fla. Dist. Ct. App. 1999). In rezoning matters that are considered to be quasi-judicial proceedings, Florida law grants local governments great deference in their decision-making authority. See *Bd. of Cty. Comm'rs of Brevard Cty., Fla. v. Snyder*, 627 So. 2d 469 (Fla. 1993); *Samara Dev'p Corp. v. Marlow*, 556 So. 2d 1097 (Fla. 1990); *Public Employees Relations Comm'n v. Dade Cty. Police Benevolent Ass'n*, 467 So. 2d 987 (Fla. 1985); *Daniel v. Fla. State Turnpike Auth.*, 213 So. 2d 585 (Fla. 1968); *Sw. Ranches Homeowners Ass'n, Inc. v. Broward Cty.*, 502 So. 2d 931 (Fla. Dist. Ct. App. 1987).

has made violations and liens run with the land in order to insure quicker and speedier compliance with code violations.³¹⁰

While there should be cooperation between residents located in mobile home parks in mobile home park lot tenancies, is there a guarantee after enactment of section 723.024 that mobile home park owners and mobile home owners will cooperate with each other to obtain compliance? Cooperation matters in helping a community remain habitable and livable; if each real property owner helps the local government obtain compliance with its uniform code provisions, there is hope that the values of real property will gradually increase in value, resulting in an increase in the local government's tax base as the health, safety, and welfare of the community is safeguarded for all.³¹¹

The legislative enactment of section 723.024 of the Florida Statutes may be business as usual. Whether special interests got the legislature to carve out an exception to a long-standing policy that has proven valuable to local governments and the public for years by exempting mobile home park owners from strict responsibility for code violations on their land remains open for discussion and dispute. Until there is a better understanding of the impact and ultimate construction and enforceability of section 723.024 of the Florida Statutes, these questions will continue to exist and we will just have to wait and see.

310. *Henley v. MacDonald*, 971 So. 2d 998, 1000 (Fla. Dist. Ct. App. 2008) (explaining that code violation run with the land and can make title unmarketable by subjecting the buyer to administrative proceedings and litigation cost after closing); *see also* FLA. STAT. § 162.02 (2016).

311. Harry M. Hipler, *Do Code Enforcement Violations "Run with the Land"? Competing Interests of Local Governments and Private Parties and Their Constitutional Considerations in Code Enforcement Proceedings*, 43 STETSON L. REV. 257, 297 (2013); *see* FLA. STAT. § 162.02 (2016).