

OFFICE OF GENERAL COUNSEL

Legal Bulletin News

Importance of Regulating Mobile Home Installers

With the sea of regulations for mobile home installers, one cannot help but think, “Is all of this really necessary?” The answer is a resounding yes! After all, most mobile homes are not just a place to eat or sleep on occasion, but rather homes where people will live and raise families.

In a recent case, a consumer contacted us regarding a problem that she was having with a licensed mobile home installer. The mobile home was bought in Monticello, Florida, but had to be setup at a rural site several miles away in Leon County. The set-up of the mobile home was to include digging a well, installing septic system, and proper site preparation. A contract was executed between the mobile home dealer and the consumer, but the consumer had not chosen a mobile home

installer. Instead the consumer signed a contract with a mobile home installer recommended by the dealer. The consumer made a substantial down payment with the balance due upon completion. Once paid, the installer had little incentive to transport and properly setup the home.

After hearing nothing from the installer for several weeks, the consumer called the installer to ask why the mobile home had not been transported to her home site. Unable to get in touch with the installer, she left a message. This pattern repeated itself for more than a month. To make matters worse, Christmas was fast approaching and the consumer was having problems with her landlord who was forcing her to move out. Without any recourse, she, her

husband and baby had to move in with her in-laws.

After several phone calls from the consumer and at the insistence of DHSMV, the mobile home installer finally decided to contact the consumer and install the mobile home, just before Christmas.

Shortly after January 1, 2011, the mobile home installer signed-off the installation, claiming it was complete and to code. The consumer paid the remaining balance owed for the installation. Soon thereafter, the mobile home was inspected by two department inspectors, who found 31 violations of the mobile home installation code including missing shingles, unattached or missing vinyl siding, a leaky chimney and improper tie-downs. This was **(continued on page 2)**

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OGC Hosts General Counsel Association Luncheon

The Department proudly hosted the monthly meeting of the General Counsel Association on April 21st in the auditorium. Executive Director Julie Jones welcomed approximately 45 attorneys from dozens of state agencies to DHSMV. After a few words from General Counsel Steve Hurm, the group ate box lunches provided by Metro Deli and listened to a very informative presentation by Patty Nelson, the deputy director of the Governor’s Office of Fiscal Accountability and Regulatory Reform, otherwise known as OFARR.

Ms. Nelson and a staff of two have the unenviable task of reviewing all existing agency rules and those being proposed in the future. Reviewing the governor’s first executive order, Ms. Nelson discussed rulemaking authorization, rule review, forms and templates

available to agencies and the web dashboard created to help the public understand the rulemaking process. The dashboard and other helpful materials related to rules and rule-making can be found at http://floridahasarighttoknow.com/regulation_rulemaking.html.

Many attendees commented quite favorably on the terrific meeting accommodations. Those were the result of work by OGC Office Manager Pam Decambra and her staff of paralegals who assisted in setting up the auditorium with tables and chairs, even purchasing tablecloths and flowers! Thanks to Pam, Cyndi Hunt, Donna Hartsfield, Hattie Jones-Williams, Audrey Littlefield and Patty Turnage for a job well done!



Doing the Right Thing



Always aspire to meet the highest ethical standards, not to see how close you can come to the edge of doing what is wrong.

WHEN THE GOING GETS TOUGH, THE TOUGH GET . . . ETHICAL???

As the legislative session comes to an end, many in state government service may be questioning their career choice. We are all understandably disheartened by the reality of a 3% pay cut on top of years of no raises and the diminishing hope for a secure retirement. Some folks will be losing their jobs entirely. Discouragement may cause some of us to decide to stop doing our best; the perception is that working hard doesn't really matter. Others may be tempted to cut corners on things like time sheets and travel vouchers.

David Callahan, author of the 2004 book "The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead" believes that unethical behavior, or what he calls cheating, is pervasive in American society. Cheating is rampant among what Callahan calls the "Winner Class" made up of the very well-to-do who believe they are exempt from most rules and standards and an "Anxious Class" tempted to cheat during hard economic times to try and catch up to those who have more. All of this cheating occurs in a cultural climate that values money and power above personal integrity. Pretty grim stuff, huh?

Do tough times necessarily mean a downturn in ethical behavior? I submit that the answer is absolutely not!

In fact, difficult times give us a chance to showcase what Abraham Lincoln called the "better angels of our nature." We have an opportunity to demonstrate those better angels – the kind of character and integrity that led us to choose government service in the first place – every day when we come to work. Times like this are when ethical issues become very real, not just "what if" conversations for training classes.



Remember that personal integrity is ultimately what drives our choices. It can be a challenge in the current circumstances, but we choose to do what's right because it is right.

Ultimately, this bleak situation for public workers will not last forever; economic recovery will occur. Losing our ethical bearings due to hard times, however, can have an impact that does last forever. Don't let that happen. Let's do the right thing.

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Importance of Regulating Mobile Home Installers (cont'd)



not a home, but rather a house of cards waiting to be blown over by the first significant breeze.

The consumer again made multiple phone calls to the installer to no avail. Finally, by threatening revocation of the installer's license, the department was able to coerce the installer to go back and try to correct most of the problems.

The department eventually filed an Administrative Complaint against the installer seeking a substantial fine, suspension, or revocation of

the installer's license. Thus far, the installer has failed to respond to the department or the consumer, but he has been paid in full. The tragedy was compounded when the consumer's February electric bill exceeded \$1,000. It appears that the ductwork in the attic was not properly connected and the consumer was providing more heat to the deer in the area than she was to the inside of the home.

The department gave the consumer the installer's bond information, and she made a

claim against the bond. She learned there were four other claims on the bond at the same time. Florida law only requires a \$10,000 bond. When it comes to a mobile home, that money can be quickly exhausted.

So, be sure to pre-screen installers and check references. After all, home is where the heart is.

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The **BAR** Scene (inside the **B**ureau of **A**ddministrative **R**eviews)

When a person is arrested for DUI, there are consequences that may take effect immediately. These consequences include the automatic suspension of his or her driving privilege if he or she was driving with an unlawful breath/blood alcohol level in excess of 0.08, or if he or she refused a breath, blood or urine test. The person's driving privilege will be suspended for a minimum of 6 months even if he or she is NOT found guilty of DUI at a criminal trial or even criminally charged with DUI. For a first offense, if the driver participated in a breath test and had a breath alcohol level of 0.08 or higher, his or her driver's license will be

suspended for six months with a thirty day "hard time suspension." This means that he or she cannot drive for any reason during those thirty days and will not be issued a driving permit. Even worse, if the driver refused the breath test, then his or her driver's license will be suspended for no less than twelve months with a minimum ninety-day "hard time suspension." The administrative penalties only get longer with each subsequent administrative suspension. For a second offense, if the driver took the breath test and had an unlawful breath alcohol level, his or her driver's license will be suspended for a minimum of one year. If he or she refused the

breath test for a second time, then the license will be suspended for eighteen months with all eighteen months being a "hard time suspension," meaning that no driving at all for a year and a half. For a third DUI conviction, if the driver took the breath test and drove with an unlawful breath alcohol level, he or she will serve a twelve-month administrative suspension with all twelve months being a "hard time suspension." If one of the prior offenses was a refusal, then the suspension will be for 18 months with the entire year and a half being "hard time." All of this and the driver may not have been even criminally charged, tried or sentenced yet!

And if he or she was then criminally convicted of DUI after already serving the administrative penalty, the entire process starts over. Only this time, the penalties are even harsher. For a first DUI conviction, in addition to the administrative penalties above, the driver must complete DUI school in order to apply for a hardship driver's license.



A second DUI conviction requires a minimum five-year license revocation with no eligibility for a hardship for the entire first year of the revocation. Upon a third DUI conviction, a driver earns a ten-year revocation with no hardship eligibility for the first two years. A fourth DUI conviction results in a mandatory permanent license revocation. Such a driver must wait **ten years** before becoming eligible to even be considered for a hardship license. These restrictions are not punishment; they were all passed by our Legislature in order to protect the welfare and safety of all people who share the road. If anyone ever needs a reason to decide not to drink and drive, the foregoing should help. And by the way, if that's not bad enough for someone, wait 'til they see the defense attorney's bill!

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State, involved a drug dog's sniff at the front door of a private residence. The court ruled that the sniff was really a search and thus required probable cause. Justice Perry wrote that the sniff by a law enforcement canine without a search warrant was an unreasonable government intrusion into the sanctity of the home. The Office of Attorney General is considering an appeal to the U.S. Supreme Court.

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FHP Legal Corner — K-9 Drug Alerts: Gone to the dogs?

In *Harris v. State*, one of two recent Florida Supreme Court opinions related to law enforcement use of K-9s for drug interdiction, the court explored when a dog sniff may form probable cause for a warrantless search of a motor vehicle. The high court, concerned with the reliability of such K-9 alerts, ruled that the state must produce evidence to permit the trial judge to objectively evaluate the reasonableness of the officer's belief in the dog's reliability in determining probable cause.

The court noted that a dog cannot be cross-examined like an officer on the scene; the state must therefore introduce evidence of the dog's reliability.

Further, since there are no state standards for single purpose, drug detection dogs, training certificates and records are insufficient to show reliability. The justices wrote that acceptable evidence might include such things as training and certification records, field performance records showing both positive alerts where drugs were found

and where no drugs were found (false alerts), and information concerning the experience and training of the officer handling the dog. (Note: "false alerts" may be indications that the sniffed area was recently in contact with drugs that are no longer present.) FHP's K-9 handlers are trained to maintain such logs and information. This opinion reminds us again of the importance of documentation in cases. As has been said in the past, "if it isn't written down, it didn't happen."

The second case, *Jardines v.*

News and Notes

Looking for old Legal Bulletins?
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OFFICE LOCATIONS

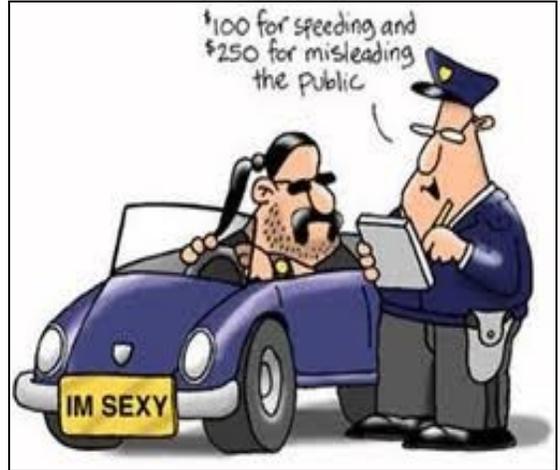
Headquarters:
2900 Apalachee Parkway
A-432, MS 02
Tallahassee, FL 32399-0504

Lake Worth:
Lake Worth Regional
Communications Center
Florida's Turnpike MM 94
Lake Worth, FL 33463

Orlando:
133 S. Semoran Blvd. Suite A
Orlando, FL 32807



- Congratulations to Tallahassee Sr. Asst. G. C. Judd Chapman on becoming a grandfather for the second time. His daughter, Cecilia, gave birth to a baby girl, Catherine Parker, on April 28!
- Welcome back to Sandee Coulter who recently spent 10 days in Rome! (Italy, not Georgia)
- May/June birthdays:
Judy Medina 5/12
Jim Fisher 5/22
Pam Decambra 6/1
Judd Chapman 6/7
Jennifer Clark 6/25
Hattie Jones-Williams 6/26



The Funny Bone

Have an idea or request for a future Bulletin article? Click on the button to send it to us!



SPOTLIGHT ON Damaris Reynolds, Asst. General Counsel



Our spotlight this month is on Damaris Reynolds. Damaris is the FHP legal advisor assigned to Troop F and handles forfeitures in south Florida arising from Troops E, F, and L. Additionally, Damaris handles appeals from administrative license suspensions, and has successfully represented the Department of Highway Safety and Motor Vehicles in the Second District Court, the Third District Court, the Fourth District Court, and the Fifth District Court. Damaris has even represented the Department before the Florida Supreme Court, where one of her cases is currently pending.

Damaris is a lifelong resident of Palm Beach County. She earned her bachelor's degree at the University of Miami and her law degree at Nova Southeastern University. After serving two years as an assistant public defender in Volusia County, Damaris returned to Palm Beach County and served as an assistant public defender in her hometown. In 2000, Damaris accepted a position with the Department of Children and Families, where she served as a senior attorney representing the State of Florida in the fifteenth and nineteenth judicial circuits, which encompass Palm Beach County and the Treasure Coast. In 2008, Damaris joined our Lake Worth Legal Office, which is located at Troop L headquarters on the Turnpike by the Lake Worth Service Plaza. Damaris, her husband, Patrick, twelve year old daughter, Isabella, and eight year old son, John Patrick, reside nearby in Greenacres with their English Pointer, Pebbles, who was recently adopted from the DAWGS in prison program at Gulf Forestry Camp in Port St. Joe.

APRIL CASES	WRITS OF CERTIORARI	FORFEITURES
OPENED	29	13
CLOSED	35	23
WON	22	5
SETTLED	2	18
LOST	3	0
DISMISSED	4	0
REMANDED	3	0

