SUMMARY FINAL ORDER

Comes now, the undersigned arbitrator, and issues this summary final order as follows:

Petitioners filed their petition in this matter on January 23, 2004. The petition alleges that the association, in its conduct of an election in August 2003, discarded a number of ballots for lack of a voting certificate. The petitioners argue that under the documents, no voting certificate is required where a unit is owned jointly by a husband and wife. The petition alleges that as many as 40 ballots were discarded on this basis, and requests the arbitrator to order a new election.

The association in its answer filed on February 19, 2004 claims that the documents require voting certificates and that 22 votes were rejected for not having all the required signatures. The election records were made available for inspection by the petitioners on March 8, 2004.
According to supplemental information filed by the association on March 15, 2004, the total votes cast at the election was 521. Sixteen votes were rejected because the owners were married couples who did not have a designated voting representative. Fifteen ballots were rejected for unrelated reasons. Of the 521 votes cast, 484 were determined to be legal by the association and were used and counted in the election of directors.¹ According to the minutes, votes were cast for candidates as follows:

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Number of Votes</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judy Anderson</td>
<td>208</td>
<td></td>
</tr>
<tr>
<td>Scott Bodiford</td>
<td>238</td>
<td>Winner</td>
</tr>
<tr>
<td>Linda Caddell</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>David Christian</td>
<td>260</td>
<td>Winner</td>
</tr>
<tr>
<td>Mike Garrett</td>
<td>229</td>
<td></td>
</tr>
<tr>
<td>Richard Koehler</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>Melvin Leonard</td>
<td>235</td>
<td>Winner</td>
</tr>
<tr>
<td>Carolyn Simpson</td>
<td>197</td>
<td></td>
</tr>
</tbody>
</table>

Section 6 of the bylaws provides as follows:

**Designation of Voting Member.**

If a condominium unit is owned by one person, his right to vote shall be established by the recorded title to the unit. If a condominium unit is owned by more than one person, the person entitled to cast the vote for the unit shall be designated in a Certificate signed by all of the recorded owners of the unit and filed with the Secretary of the Association. The person designated in these Certificates who is entitled to cast the vote for a unit shall be known as the “voting member.” If such a certificate is not on file with the Secretary of the Association for a unit owned by more than one person or

¹ These numbers do not appear to be entirely accurate; 521 votes less 31 rejected votes yields 490 votes accepted, and not 484 votes. The minutes add to the uncertainty of the final tally by simply concluding that 48 votes were rejected for various reasons.
by a Corporation, the vote for the unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the unit, except if said unit is owned by a husband and wife. Such Certificates shall be valid until revoked, or until superseded by a subsequent Certificate, or until a change of ownership of the unit concerned. If a condominium unit is jointly owned by a husband and wife, the following three provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.
(b) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a unit is not divisible.)
(c) Where they do not designate a voting member, and only one is present at the meeting, the person present may cast the unit vote, just as though he or she owned the unit individually, and without establishing the concurrence of the absent person. [emphasis added.]

As a preliminary observation, the arbitrator finds that the association’s conduct in disallowing written election ballots that are not signed by both co-owners or signed by a voting representative is on its face contrary to section 6(a) providing in the broadest terms possible that husbands and wives are not subject to the voting certificate requirements applicable to other multiple or corporate owners of a unit: “They may, but they shall not be required to, designate a voting member.” If this provision means what it says, there is no voting certificate requirement for married couples jointly owning a unit, regardless of how a couple may choose to exercise their right to vote.
Uncertainty arises because while the bylaws address certain specific voting scenarios involving units owned by married couples, such as voting live at a meeting or voting by proxy, the bylaws fail to address voting by written ballot for elections in this context. The arbitrator has examined the bylaws in their entirety. As pointed out by petitioners, section 6 does exempt husband and wives from voting certificate requirements, and as pointed out by the association, this section does not contain a provision specifically exempting husbands and wives from the voting certificate requirement as regards to the use of proxies submitted in advance of meetings or applicable to written ballots.² The arbitrator does, however, find that section 5 provides additional guidance in this regard. Section 5 provides in part:

Section 5. Proxies
Votes may be cast in person or by a limited proxy. All limited proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 6), and shall be filed with the Secretary....Where a unit is owned jointly by a husband and a wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated. [emphasis added].

A declaration of condominium (or here, the bylaws), should be interpreted and applied in a manner similar to a statute, and those rules of construction applicable to statutes in general are applicable to condominium documents as well.

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² The letter of August 22, 2003 from the association CAM to the petitioners announcing that their vote had been rejected, suggests that Florida law requires the use of voting certificates which is not correct. Florida law permits, but does not require, the use of voting certificates.
Koplowitz v. Imperial Towers Condominium Association, Inc., 478 So. 2d 504 (Fla.)
4th DCA 1985). Every part of a declaration should be given effect. Sweetwater Oaks Condominium Association, Inc. v. Creative Concepts of Tampa, Inc., 432 So. 2d 654 (Fla. 2d DCA 1983). The declaration should be interpreted as a whole, in a manner that gives it a reasonable interpretation and meaning. Towerhouse Condominium v. Millman, 475 So. 2d 674 (Fla. 1985). Also, it must be recalled that the mention of one thing implies the exclusion of the other. This rule of expressio unius est esclusio alterius was used in Towerhouse, supra, with the court holding that since the statute expressly permits associations to purchase certain real property, no other power to purchase real property may be implied.

In the instant case, the arbitrator must consider not only section 6 but also section 5. Section 6 is entitled “Designation of Voting Member” and addresses the designation process in general terms and exempts husband and wives from the designation requirement applicable to other multiple or corporate owners. This section also addresses the process of how a husband and wife, without certificate, may vote live at a meeting. Section 5 addresses proxies. How the documents address the use of proxies may offer insight into how the documents should be interpreted to apply to written ballots. Section 5 contains this statement: “Where a unit is owned jointly by a husband and a wife, and if they have not designated

3 The letter of October 3, 2003 from counsel for the association to counsel for the petitioners agrees that married owners are exempt from the voting certificate requirement but states that this exemption “does not eliminate the requirement that only one of them can vote. This was intended to allow either to vote but does not grant to them the right to both vote on the same issue.” The arbitrator is unaware of any allegations that the petitioners cast two ballots on behalf of the same unit and will not assume that they did so. Nowhere in its pleadings does the association rely on this as a basis for excluding petitioners’ vote.
one of them as a voting member, a proxy must be signed by both husband and wife if a third person is designated.” Implicit in the statement is authority for the proposition that a married couple, without the benefit of a voting certificate, may in fact vote by a proxy not signed by each co-owner, so long as the proxy form does not designate a third person as the proxy holder. So where only one of the co-owners signs the limited proxy, under the bylaws, the proxy is effective and must be counted where the proxy names as the proxy holder, one of the co-owners but is not signed by all co-owners.

The bylaws do not specifically address the use of written ballots for elections where a unit is owned by more than one person. The requirement that a condominium association conduct its election by written ballot or voting machine came into the law by virtue of Ch. 91-103, Laws of Florida. The bylaws have been changed in some respects to embrace the 1991-92 changes; for example, the use of limited proxies is now required in the bylaws, and elections as per the bylaws are required to held by written ballot. It is odd that the bylaws, while addressing several particularities in the use of voting certificates for married couples who vote by proxy or live and in person at a meeting, do not have a corresponding provision addressing how a couple, without a voting certificate, may vote by written ballot.

Regardless of the perceived shortcomings and omissions contained in the bylaws, the arbitrator finds that effect should be given to the provisions that are located in the documents. The bylaws contain the general rule that married couples are not required to file a voting certificate with the association in order to
cast a vote on behalf of the unit. The fact that other portions of the bylaws apply this general rule in the context of voting in person and voting by proxy and not when addressing written ballots does not detract from the force and effect of this general rule, in other non-enumerated situations. The arbitrator does not find, for example, that because the bylaws do not specifically allow a married couple to cast a written ballot that only one signs, that this practice is disallowed. The general rule still exists and applies, and based on the rule, married couples are not required to file a voting certificate in order to cast a vote, whether they choose to vote in person, by proxy or by written ballot during an election. The general rule should be applied in a manner consistent with the concern of the association that only one vote per unit should be counted. Thus, where a married couple submits two written ballots voting for two different candidates, no unit vote should count.

WHEREFORE, the arbitrator declares that petitioners are entitled to vote by written ballot signed by only one of the owners/spouses without a voting certificate on file, and that it was error for the association to have excluded their vote. If the association is able to re-tally the total votes cast in a manner that accurately counts and tabulates petitioners’ vote and all other married persons whose vote was denied on this basis, the association shall do so within 10 days.

Likewise, the fact that the bylaws enumerate instances where married couples without a voting certificate will not be permitted to cast a vote, as where they cannot agree with one another when voting live and in person, implies that no other instances of disallowed votes are contemplated.

Even in other cases where the documents affirmatively require the use of voting certificates, where all owners have signed the ballot but have not filed a voting certificate with the association, it is error to exclude the vote. Olsen Hotel v. Unit Owners Voting for Recall, Arb. Case Nos. 98-4295 and 98-4478, Summary Final Order (August 19, 1998); Palmsea Condominium Association, Inc. v. Unit Owners Voting for Recall, Final Order (September 7, 2001).
hereof and shall immediately thereafter announce the correct board. If the association cannot
reconstruct the count, the association shall within 14 days deliver to each married couple whose ballot was improperly rejected a new ballot that may be completed and returned to the association within 10 days thereof for re-tabulating, after which the association shall announce the correct board. The association may, but is not required to, amend its bylaws to specifically state that ballots signed by only one married owner will be considered a valid ballot in the absence of a competing and conflicting ballot from the other co-owner.

DONE AND ORDERED this 12th day of April, 2004, at Tallahassee, Leon County, Florida.

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Karl M. Scheuerman, Arbitrator
Department of Business and Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida  32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing summary final order has been sent by U.S. Mail to the following persons on this 12th day of April, 2004, to the following persons:

Mark D. Dreyer, Esquire
747 Jenks Avenue
Suite G
Panama City, Florida  32401

Jack G. Williams, Esquire
502 Harmon Avenue
Panama City, Florida  32401
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this order. This order does not constitute final agency action and is not appealable to the district courts of appeal.

Attorney’s Fees

As provided by s. 718.1255, F.S., the prevailing party in an arbitration proceeding is entitled to have the other side pay its reasonable costs and attorney’s fees. As provided by rule 61B-45.048, F.A.C., a motion seeking an award of attorney’s fees and costs, which motion must conform to the requirements of the administrative rule, must be filed with the Division within 45 days of the date of the entry and mailing of this final order.