DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Land Sales,
Condominiums and Mobile Homes
Arbitration Section

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REGULAR ARBITRATION SUBJECT MATTER INDEX

June 2005

Note: This interim supplement contains summaries of final orders entered by division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, from September 1, 2001 through June 30, 2005. The final order summaries are organized by subject matter. Final orders entered on or after July 1, 2005, will be reported in a subsequent publication. Volume One and Volume Two of the Final Order Index (available separately) summarize final orders entered from January 1992 through August 1997, and from September 1997 through August 2001, respectively.

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Arbitration

Affirmative defenses

610 Island Way Condo. Ass'n, Inc. v. Nelson,
Case No. 01-2710 (Pasley / Summary Final Order / January 16, 2002)

- Where unit owner and tenant were ordered to provide an affidavit containing the weight of the tenant's pet and they failed to do so, the tenant's pet's weight was found to exceed the 20-pound weight limit.

- Where the affirmative defenses raised in the answer were struck because the defenses were inadequately detailed and the unit owner and tenant were given until May 30, 2001, to file amended affirmative defenses, the unit owner and tenant were not permitted to raise an affirmative defense on October 22, 2001, well after the deadline.

Bovio v. Lely Pines Condo. Ass'n, Inc.,
Case No. 2005-01-0788 (Mnookin / Final Order of Dismissal / April 12, 2005)

- Where a unit owner sends a written request for access to the association's official records and the required pre-arbitration notice letter to the property management company that no longer operated as the property manager for that association, the arbitrator ruled that because the required pre-arbitration demand letter was not served on the proper management company, the petition must be dismissed for failure to comply with Section 718.1255, F.S.

Burns v. Paradise Park Condo. Ass'n, Inc.,
Case No. 03-6076 (Scheuerman / Summary Final Order / February 24, 2004)

- Where two condominiums merged in 1993 but failed to obtain the consent of 100% of the owners of each condominium as required by Sections 718.110(4) and 718.110(7), F.S., the merger would have been defective and void. However, Section 718.110(10), F.S., contains a curative provision that operated to validate the merger where more than 3 years passed after recordation of the declaration, and the sufficiency of the declaration was not challenged within that period of time.

The Claridge Condo. Ass'n, Inc. v. Donelan,
Case No. 2004-02-6247 (Bembry / Final Order / March 4, 2005)

- The owner's argument that her due process rights had been abridged where the association determined her pet to be a nuisance without providing the owner an opportunity to be present and present evidence was rejected where due process rights were afforded the owner in the course of the arbitration proceeding.

Costa Bella Ass'n, Inc. v. Simmons,
Case No. 02-4624 (Richardson / Final Order / June 7, 2002)

- Section 718.111(5), F.S., gives an association the irrevocable right of access to a unit, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association or to prevent damage to the common elements or to a unit or units. The right of access of the association is provided for the protection of all unit owners, and a key may be required for the same because, in the event of an emergency, precious minutes could be lost if the association had to find the owner or neighbor (as suggested by respondents as alternatives to providing a key) or resort to a locksmith or breaking the door down.

- In light of the irrevocable nature of the right of association access, numerous defenses to providing a key to the association have been considered and rejected, including: the defense that the owner does not trust persons connected with the association, the defense that property was stolen, damaged, used or disarranged by persons gaining entry with the key provided, and even the claim that the owner keeps national defense secrets unsecured in his unit was rejected. Therefore, respondents' defenses of fear of damage to or loss of property, distrust of association personnel and preservation of evidence, must be denied.

Crystal Cove Condo., Inc. v. Heimmerman,
Case No. 2004-06-0283 (Grubbs / Order Dismissing Petition / February 11, 2005)

- The petition was dismissed because the petitioner failed to provide the notice required by Section 718.1255(4)(b), F.S. A letter sent by certified mail that is returned to the sender does not establish that the respondents were given the notice required by statute.

Cypress Chase Condo. "A", Inc. v. Lehrer,
Case No. 2005-03-1657 (Grubbs / Order Dismissing Petition without Prejudice / June 16, 2005)

- Where the pre-arbitration notice only stated that the respondent was creating an "ongoing and unreasonable noise disruption," the notice failed to advise the respondent of the specific behavior causing the "noise disruption" or afford the respondent an opportunity to correct the behavior. Therefore, the petition for arbitration would be dismissed without prejudice for failure to comply with Section 718.1255(4)(b), F.S.

- When the association is aware that a guardian has been appointed for the respondent, indicating that the respondent might be incapacitated, the petition should

indicate the nature of the guardianship and the name and address of the guardian so that the guardian can be served with the pleadings. A judgment cannot be entered against an incapacitated person unless he is represented in the action by a guardian or other representative. Further, sufficient pre-arbitration notice should be provided to the respondent and his guardian.

Crystal Cove Condo., Inc. v. Heimmerman,
Case No. 2004-06-0283 (Grubbs / Order Dismissing Petition / February 11, 2005)

- The petition was dismissed because the petitioner failed to provide the notice required by Section 718.1255(4)(b), F.S. A letter sent by certified mail that is returned to the sender does not establish that the respondents were given the notice required by statute.

Englehardt v. Carlton Terrace Condo. Ass'n, Inc.,
Case No. 2003-06-3375 (Scheuerman / Summary Final Order / February 17, 2004)

- The statute of limitations barred the challenge by the owner to amendments to the declaration recorded in 1987, 1988, 1993, and 1996. The owner could properly challenge the 2001 amendment to the declaration.

The Fairways at Emerald Greens Condo. Ass'n, Inc. v. Goetten,
Case No. 2004-02-7704 (Earl / Final Order / February 2, 2005)

- The unit owner's defense that she needed to maintain the non-conforming dog for security was rejected because security concerns are not accepted as justification to violate a legitimate pet restriction, as self-help measures are not a recognized defense to claims of violation of condominium documents.

Gateway Estates Park Condo. Ass'n Inc. v. Klefeker,
Case No. 02-5927 (Mnookin / Summary Final Order / February 20, 2003)

- Unit owners are not permitted to engage in self-help remedies by parking vehicles on common elements to frustrate the association's construction projects that the owners disagreed with, whether the project was authorized or not. Section 718.303, F.S., requires both associations and owners to comply with statutes and documents, and allows either to sue the other to force compliance. This statutory provision, coupled with the arbitration remedy to be utilized where appropriate, offers an owner the only remedy authorized by law to redress violations of the statute or documents.

High Point of Delray West Condo. Ass'n Section III v. Sharwell,
Case No. 2003-06-2857 (Mnookin / Summary Final Order / August 5, 2003)

- When an individual purchases a condominium unit, it is that owner's responsibility to obtain the governing condominium documents, become familiar with them, and act in compliance with them. A unit owner cannot claim as a defense to violating the

condominium documents that he was unaware of a restriction because the association never provided him with the governing documents.

- In light of the irrevocable nature of the right of association access, numerous defenses to providing a key to the association have been considered and rejected, including: the defense that the owner does not trust persons connected with the association, the defense that property was stolen, damaged, used or disarranged by persons gaining entry with the key provided, and even the claim that the owner keeps national defense secrets unsecured in his unit was rejected. Therefore, respondents' defenses of fear of damage to or loss of property, distrust of association personnel and preservation of evidence, must be denied.

Kemmesat v. Holiday Travel Park Co-Op Inc.,
Case No. 02-5244 (Coln / Final Order / April 17, 2003)

- The unit owner sought entry of a final order requiring the association to enforce the association's rule restricting the use of electrical appliances by the unit owners which resulted in power outages to the units. However, according to the facts, the unit owner/petitioner himself had modified his unit so that he relied completely upon electricity to power the unit’s appliances, including the central air conditioning. In fact, the petitioner was shown to be the worst violator of the rule. The arbitrator ruled that the petitioner’s claim for relief on this issue is barred by the doctrine of unclean hands. The doctrine applies to deny relief where the petitioner has engaged in inequitable, unfair, and deceitful conduct regarding the issue in dispute.

Koppelman v. Galt Ocean Manor Condo. Ass’n Inc.,
Case No. 02-4893 (Pasley / Final Order of Dismissal / August 7, 2002)

- Request to substitute the holding company that actually owns the unit as petitioner was denied where the holding company had not filed any of the pleadings or papers filed in the case and where none of the correspondence from the individual to the association listed the holding company as the complainant nor indicated that the individual was acting on behalf of or as an officer of the holding company.

Leonard v. Pebble Springs Condo. Ass’n, Inc.,
Case No. 2005-02-7273 (Earl / Final Order of Dismissal / June 7, 2005)

- Although the petitioning unit owner’s correspondence to the association described the nature of the dispute, the unit owner did not provide the association with proper pre-arbitration notice in that she failed to state a demand for relief and provide a reasonable opportunity to comply or to provide the relief requested and failed to provide notice of her intent to file an arbitration petition or other legal action in the absence of resolution of the dispute.

Meisner v. The Fountains of Palm Beach Condo. No. 9,
Case No. 2004-04-0249 (Scheuerman / Final Order Dismissing Petition / October 26, 2004)

- Statute of limitations barred owner's request for damages and claim for remediation for the association's alleged failure to repair the common element roof that resulted in water intrusion in the unit. Any possible negligence concerning maintenance of the roof occurred in 1998, over six years before the filing of the petition. Since the roof was promptly replaced at that time, there was no continuing alleged negligence claim, distinguishing Klopstad v. Park West Condominium Association, Inc., Arb. Case No. 95-0084, Final Order (December 13, 1995).

Mesnick v. Hillsboro Le Baron Condo. Apts. Inc.,
Case No. 02-5367 (Scheuerman / Partial Summary Final Order / February 4, 2003)

- A series of amendments to the declaration, passed without joinder of the mortgagees as required by the declaration, was void. The statute of limitation does not act as a bar to bringing the action because the amendments were void and not merely voidable.

Meyer v. Southseas Northwest Condo. Apartments of Marco Island, Inc.,
Case No. 02-5477 (Scheuerman / Final Order Dismissing Petition without Prejudice / September 5, 2003)

- Where a trial court had previously ordered the unit owner/petitioner to sue the association only through an attorney, the court order is broad enough to encompass the owner's activities in filing a petition for arbitration in his own name alleging that the association had failed to provide access to the official records, and the petition must be dismissed.

Miami Shores Condo. Ass'n, Inc. v. Moreau,
Case No. 2004-03-2435 (Bembry / Final Order / May 5, 2005)

- The association's request for an order enjoining the unit owner from using laundry facilities at certain times of the evening was denied where the association was unable to establish that the unit owner had continued the prohibited use of the laundry facilities after the date she received the association's pre-arbitration notice.

Ovanes v. The Marina at the Bluffs Condo. Ass'n, Inc.,
Case No. 02-5672 (Coln / Order Denying Motion for Rehearing / November 12, 2002)

- The provision in s. 718.1255, F.S., requiring that the petitioner provide pre-arbitration notice to the respondent along with a demand for the relief requested is not a jurisdictional impediment to hearing the case. The failure to provide pre-arbitration notice is an affirmative defense that must be timely raised by the respondent or it will be deemed waived. Certainly waiting until the case is disposed of and asserting the defense for the first time in a response to the petitioner's motion for prevailing party attorney's fees is not timely.

Paradise Lakes Park Condo. Ass'n, Inc. v. Qualls,

Case No. 02-4832 (Coln / Summary Final Order / July 31, 2002)

- Defense that the board of directors is not lawfully constituted due to its failure to hold the annual election, and therefore had no authority to bring this action against unit owner for violations of the declaration is without merit. Individuals who are elected or appointed to office will be regarded as de facto officers if they assume the duty of such office.

- Unit owner defense that since he holds title to his condominium unit in "fee simple", the condominium restriction on pets does not apply to him was invalid. The term "fee simple" refers to an estate in land and the ability of the owner to dispose or transfer the property to another and does not denote a right to use land fee from restrictions. The declaration of condominium clearly applied prohibition on pets to all condominium property including the individual units.

Park East Home Owners Ass'n v. Lesterio,
Case No. 2005-01-2464 (Mnookin / Summary Final Order / May 27, 2005)

- Where a unit owner claims he is permitted to maintain his dog on the condominium property because his pet is grandfathered and because he registered his dog with the association prior to the deadline stated in the rules and regulations that prohibited pets, but failed to submit any evidence to support this defense as required by the arbitrator, the defense is stricken.

- Where a unit owner argues that he is entitled to maintain his dog on the condominium property because the association has engaged in selective enforcement of the pet prohibition, but fails to cite any examples of selective enforcement that he intends to use in this case, as required by Rule 61B-45.019(3), F.A.C., the defense is stricken.

Parkside Condo. Ass'n, Inc. v. Valdez,
Case No. 01-3937 (Scheuerman / Final Order / June 5, 2002)

- Where the owner raised laches formally the final hearing but did not expressly raise laches in his statement of defenses, the arbitrator permitted the answer to be amended because of lack of prejudice. The owner had raised similar defenses and had pled all facts necessary for the laches defense, in the answer.

- Where association initiated arbitration proceedings against an owner alleging that satellite dish constituted an unauthorized alteration to the common elements, case was dismissed where it was shown that satellite dishes dotted the landscape of the condominium and the association had never informed the owner in advance that the specific problem with the dish was the cable running down the side of the building which should have been contained in a service column running vertically down the building. Association failed to give pre-arbitration notice required by statute and this count was dismissed.

Richardson v. Jupiter Bay Condo. Ass'n, Inc.,
Case No. 02-4354 (Scheuerman / Final Order on Motion for Rehearing / August 26, 2002)

- Where the association in purporting to pass amendments to the bylaws failed to follow appropriate procedures for passing substantive restrictions on the right to lease found in the declaration, and ultimately amended the wrong set of documents, bylaw amendments are considered void and statute of limitations is not available to association seeking to avoid a challenge to the validity of the bylaw amendments.

- Where the articles of incorporation provided the board with the authority to approve or disapprove the leasing, transfer, ownership and possession of the units "as may be provided by the Declaration," and where the declaration contained no implementing language, the association was not authorized to approve or disapprove the leasing of the units. The supposed right of the association as set forth in the Articles of Incorporation to approve rentals rings hollow without specific accompaniment in the declaration.

Scariati v. The Villages at Emerald Lakes One Condo. Ass'n, Inc.,
Case No. 2005-02-1485 (Grubbs / Order Denying Motion to Dismiss / June 7, 2005)

- The pre-arbitration notice required by §718.1255(4)(b), F.S., is not necessary when a petition for arbitration challenges the board's certification of a recall, just as it is not necessary in a recall case brought by the board pursuant to §718.112(2)(j)3, F.S. When a former board member challenges the certification of her recall, the issues are the same as those that might be raised in a recall petition. In either case the question is whether the board has acted properly in fulfilling its responsibilities in accordance with the statutes and rules relating to the recall of board members. Moreover, because of the nature of a recall and the finality of the decision by the board, subject to review by an arbitrator, it is questionable whether a pre-arbitration notice in a recall case would serve any purpose, since the purpose of pre-arbitration notice is to allow the offender to correct his errors and cure his violations without the necessity of formal legal proceedings. Once a board determines that a recall is certified, it is a final decision for all practical purposes.

Schooner Cove Condo. Ass'n Inc. v. Meda,
Case No. 02-5484 (Scheuerman / Summary Final Order / March 5, 2003)

- The unit owner's defense that his actions in trimming his limited common element boat dock and installing a boat lift on the common element boat dock were necessary in order to compensate for certain maintenance activities undertaken erroneously by the association on the boat dock area was rejected. A unit owner cannot resort to self-help remedies to justify his violation of the statute and documents. It is the association that is given the duty and the authority to repair and maintain the common elements. If the owners want to challenge the manner in which the association has undertaken its duties

of operating and maintaining the common elements, a court challenge is authorized pursuant to s. 718.303, F.S.

Sea Breeze South Apartments Condo., Inc. v. Beck,
Case No. 00-1734 (Pasley / Final Order / May 17, 2002)

- Where the association sent a violation letter to the unit owners less than seven months and filed a petition for arbitration less than one year after the installation of the non-conforming windows, the association cannot be said to have unreasonably delayed in its enforcement of the rule against the unit owners. The affirmative defense of laches was rejected.

Sea Ranch Villas Ass'n, Inc. v. Reinhardt, Jr.,
Case No. 00-1830 (Pasley / Final Order / May 8, 2002)

- Where a violation of a covenant contained in the declaration of condominium is shown, no proof of irreparable harm is required in order to obtain injunctive relief because irreparable harm is presumed.

- Defense of unclean hands will not lie where the basis for the unit owner's argument is that the board failed to enforce the relevant provision in the past. The board's failure to enforce the declaration in the past does not support a finding that the board has engaged in dishonest activity.

Sunflower Condo. Ass'n, Inc. v. Halko, Jr.,
Case No. 01-3733 (Scheuerman / Summary Final Order / January 2, 2002)

- Where documents prohibited motorcycles on the condominium property, fact that motorcycle was used for charitable events, that no owner had filed a noise complaint, and that the association had failed to post "no motorcycle parking" signs failed to state cognizable defenses.

Thornhill v. Admiral Farragut Condo. Ass'n, Inc.,
Case No. 2004-04-4863 (Mnookin / Summary Final Order / April 25, 2005)

- Because the unit owner's dispute regarding the construction of steps outside her unit balcony was previously adjudicated by the circuit court in that the steps were ordered to be removed and such a ruling was affirmed by the 3rd DCA and DOAH, the dispute has been settled by prior judicial decisions and is not eligible for arbitration pursuant to Rule 61B-45.013(3), F.A.C.

Villages at Emerald Lakes III Condo. Ass'n, Inc. v. Cesario,
Case No. 2005-00-5748 (Grubbs / Final Order Dismissing Case without Prejudice / June 29, 2005)

- During the course of a pre-hearing conference call, the respondents alleged that they had never received the pre-arbitration notice required by Section 718.1255(4)(b), F.S. Counsel for petitioner admitted that the letter had been returned undelivered. Because the only other letter sent to respondents by the association did not provide the notice required by the statute, *i.e.* it did not advise the respondents of the specific violation, it did not tell the respondents what they must do to correct the violation, and it did not specify a time period for making corrections, the petition for arbitration was dismissed without prejudice for failure to comply with Section 718.1255(4)(b), F.S.

Watergate Condo. Ass'n Inc. v. Mazurek,
Case No. 02-5550 (Coln / Final Order / May 14, 2003)

- Unit owner claimed that her dog was a service animal necessary to treat her son's discontent and lack of a father figure. The defense was stricken where the unit owner failed to produce any evidence to support her claim that the dog was a reasonable accommodation necessary to treat a disability or medical condition.

Wooley v. Ocean Inlet Yacht Club Condo. Ass'n, Inc.,
Case No. 02-4469 (Scheuerman / Final Order Dismissing Petition / July 25, 2002)

- Where arbitrator had in a prior arbitration case ruled on the precise issue sought to be raised by the owner in the present arbitration proceeding (whether the expenses of maintaining the boat basin constituted a regular common expenses or a limited common expenses), the owner's petition was dismissed. Despite the fact that this particular owner was not named as a party in the prior proceeding, the association, a party in both proceedings, was specifically authorized to maintain the prior action on behalf of all the owners, and may be considered as a representative of its members for purposes of collateral estoppel.

Evidence

Villager Ass'n, Inc. v. Dowling,
Case No. 2004-00-7743 (Grubbs / Final Order / February 9, 2005)

- Where unit owner was charged with violating the declaration by installing an awning over the balcony, and unit owner defended by affirmatively stating that she had received permission and attached a copy of the association's approval for "awnings," the association should have replied to the defense by stating that the approval was only for those awnings requested on December 23rd, which did not include the awning over the balcony. Affirmative defenses based on factual matters that raise a new point require an avoidance by reply. The avoidance admits the facts alleged in the former pleading and shows cause why they should not have their ordinary legal effect. However, the board's approval, or lack thereof, for the awning over the balcony was considered one of mutual mistake, with neither the association nor unit owner prevailing on the issue.

Generally

Burleigh House Condo., Inc. v. Moody,

Case No. 2004-05-5677 (Grubbs / Final Order Dismissing Petition for Arbitration / March 7, 2005)

- The association charged the respondent with violating the condominium documents by having a dog in her unit without the approval of the board. However, the association admitted that it had no application process through which a unit owner could gain board approval. Where the declaration indicated that dogs were allowed with board approval, the association cannot charge the unit owner with violating the declaration by not having board approval when the association makes it impossible for the unit owner to apply for approval.

Golden Bay Lodge, Inc. v. Curcio,
Case No. 2004-04-5853 (Grubbs / Final Order Incorporating Settlement / April 1, 2005)

- Petitioner was allowed to amend the petition for arbitration to allege several other violations committed by the respondent since sufficient statutory notices with a sufficient amount of time to cure the violations had been given for each of the additional violations alleged.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

- The association filed a lien foreclosure action in circuit court against a unit owner. The owner's answer included affirmative defenses and counterclaims naming disputes that were appropriate for arbitration and was ordered to file a petition for arbitration with the Division. In such a case, compliance with pre-arbitration notice requirements under Section 718.1255, F.S., is still required to the extent that an issue was not part of the court proceeding. Because the owner's petition for arbitration included a dispute that was not included as a defense or counterclaim in the circuit court answer and there was no additional documentation demonstrating compliance with pre-arbitration notice requirements, that dispute is dismissed for failure to comply with Section 718.1255, F.S.

- Where an association is provided with notice of arbitration dispute within a foreclosure action brought against a unit owner, pre-arbitration notice required by Section 718.1255, F.S., has been satisfied for those disputes raised in the foreclosure action. This is the case even if the dispute involves an owner's right to lease his or her unit and is wholly unrelated to the foreclosure action.

Koppelman v. Galt Ocean Manor Condo. Ass'n Inc.,
Case No. 02-4893 (Pasley / Final Order of Dismissal / August 7, 2002)

- Request to substitute the holding company that actually owns the unit as petitioner was denied where the holding company had not filed any of the pleadings or papers filed in the case and where none of the correspondence from the individual to the association listed the holding company as the complainant nor indicated that the individual was acting on behalf of or as an officer of the holding company.

Lake Park Gardens #1, Inc. v. Rivera,
Case No. 2005-00-5745 (Bembry / Order Administratively Closing Case File / May 24, 2005)

- Order administratively closing case was issued where the association failed to submit proof that it had obtained relief from the automatic stay from the federal court in the bankruptcy case involving one of the unit owners after attorney handling bankruptcy case filed suggestion of bankruptcy in the arbitration case.

Park East Home Owners Ass'n v. Lesterio,
Case No. 2005-01-2464 (Mnookin / Summary Final Order / May 27, 2005)

- Where a unit owner claims he is permitted to maintain his dog on the condominium property because his pet is grandfathered and because he registered his dog with the association prior to the deadline stated in the rules and regulations that prohibited pets, but failed to submit any evidence to support this defense as required by the arbitrator, the defense is stricken.

- Where a unit owner argues that he is entitled to maintain his dog on the condominium property because the association has engaged in selective enforcement of the pet prohibition, but fails to cite any examples of selective enforcement that he intends to use in this case, as required by Rule 61B-45.019(3), F.A.C., the defense is stricken.

Riviera Apartments South, Inc. of Hallandale v. Carrier,
Case No. 2005-00-6518 (Grubbs / Final Order Dismissing Petition as Moot / April 13, 2005)

- Although admitting that the dispute was moot, the petitioner requested that jurisdiction be retained to award attorney's fees. Rule 61B-45.048, F.A.C., authorizes an award of fees if a motion for attorney's fees is filed within 45 days after the final order is filed as long as the initial request for fees was made prior to rendition of the final order. An express reservation of jurisdiction in a final order is not necessary for attorney's fees to be subsequently awarded if a motion is timely filed.

Scariati v. The Villages at Emerald Lakes One Condo. Ass'n, Inc.,
Case No. 2005-02-1485 (Grubbs / Order Denying Motion to Dismiss / June 7, 2005)

- The pre-arbitration notice required by §718.1255(4)(b), F.S., is not necessary when a petition for arbitration challenges the board's certification of a recall, just as it is not necessary in a recall case brought by the board pursuant to §718.112(2)(j)3, F.S. When a former board member challenges the certification of her recall, the issues are the same as those that might be raised in a recall petition. In either case the question is whether the board has acted properly in fulfilling its responsibilities in accordance with the statutes and rules relating to the recall of board members. Moreover, because of

the nature of a recall and the finality of the decision by the board, subject to review by an arbitrator, it is questionable whether a pre-arbitration notice in a recall case would serve any purpose, since the purpose of pre-arbitration notice is to allow the offender to correct his errors and cure his violations without the necessity of formal legal proceedings. Once a board determines that a recall is certified, it is a final decision for all practical purposes.

Stone's Throw Condo. Ass'n, Inc. v. Corsi,
Case No. 00-2173 (Pasley / Final Order / October 16, 2001)

- A unit owner is accountable for the actions taken by his visitors when they are on the condominium property and is charged with the responsibility of preventing his visitors from violating the governing documents.

Sugar Creek Resort Ass'n, Inc. v. Koons,
Case No. 2005-01-0824 (Grubbs / Order Administratively Closing Case File / April 1, 2005)

- When the answer reflects that issues involving state and federal fair housing laws and the rules promulgated hereunder must be determined, and the respondents are pursuing those issues before HUD and the Fla. Commission on Human Relations, the arbitration case will be administratively closed to allow the other administrative agencies to determine the state and federal fair housing issues, but may be reopened at the request of either party after the agencies have completed their investigations and proceedings.

Villager Ass'n, Inc. v. Dowling,
Case No. 2004-00-7743 (Grubbs / Final Order / February 9, 2005)

- Where unit owner was charged with violating the declaration by installing an awning over the balcony, and unit owner defended by affirmatively stating that she had received permission and attached a copy of the association's approval for "awnings," the association should have replied to the defense by stating that the approval was only for those awnings requested on December 23rd, which did not include the awning over the balcony. Affirmative defenses based on factual matters that raise a new point require an avoidance by reply. The avoidance admits the facts alleged in the former pleading and shows cause why they should not have their ordinary legal effect. However, the board's approval, or lack thereof, for the awning over the balcony was considered one of mutual mistake, with neither the association nor unit owner prevailing on the issue.

Jurisdiction (See Dispute)

Misarbitration

Three Horizons North Condo., Inc. v. Kleinschmidt,
Case No. 01-2611 (Pine / Order Dismissing Case with Prejudice / September 14, 2001)

- Pursuant to s. 38.10, F.S., when a party to any proceeding files an affidavit stating a fear that he will not get a fair trial on account of prejudice of the court, the trier of fact must be recused. When all of the arbitrators in the arbitration section are accused of wrongdoing or all have been involved in a case in which the arbitrators as a group or the Division itself is accused of wrongdoing, arbitration, pursuant to s. 718.1255, F.S., ceases to be available to the parties and the case must be dismissed with prejudice for filing in court.

Parties (See also Dispute-Standing)

BCP Condo. Ass'n, Inc. v. Castro,
Case No. 00-1828 (Scheuerman / Final Order Dismissing Petition / January 2, 2002)

- Petition dismissed when association and unit owner who had installed tile agreed that owner would install area rugs and that association would dismiss petition. Intervenor unit owner who lived adjacent to the respondent owner and objected to settlement must file his claim in court; case dismissed.

The California Club Condo. Ass'n Inc. v. Ralby,
Case No. 02-5895 (Mnookin / Summary Final Order / May 1, 2003)

- When the respondent unit owners allege that ownership of the condominium unit has been transferred to other individuals not made parties, those individuals must be joined as necessary party respondents.

Cypress Chase Condo. "A", Inc. v. Lehrer,
Case No. 2005-03-1657 (Grubbs / Order Dismissing Petition without Prejudice / June 16, 2005)

- When the association is aware that a guardian has been appointed for the respondent, indicating that the respondent might be incapacitated, the petition should indicate the nature of the guardianship and the name and address of the guardian so that the guardian can be served with the pleadings. A judgment cannot be entered against an incapacitated person unless he is represented in the action by a guardian or other representative. Further, sufficient pre-arbitration notice should be provided to the respondent and his guardian.

Heather Hill Master Condo. Ass'n, Inc. a/k/a/ Heather Hill Master Ass'n, Inc. v Henick,
Case No. 00-0111 (Pasley / Summary Final Order / March 18, 2002)

- Where four condominium associations joined to form a master association and one of the original associations later re-filed its corporate documents with the Department of State, unit belonging to respondents was found to be within the enforcement authority of both associations because the master association's documents permitted the master association to enforce its own rules, and because the re-filed documents of the original association did not contain evidence of any intent to withdraw from the master association.

Held v. Board of Directors, Gabriel Towers Condo. Ass'n, Inc.,
Case No. 02-4510 (Scheuerman / Final Order Dismissing Petition / February 27, 2002)

- Where petition named board members individually in election challenge, board members were not appropriate parties. Arbitration pursuant to s. 718.1255, F.S., involves disputes between associations and unit owners.

Koppelman v. Galt Ocean Manor Condo. Ass'n Inc.,
Case No. 02-4893 (Pasley / Final Order of Dismissal / August 7, 2002)

- Petition dismissed for lack of jurisdiction where the individual who resides in the unit filed the petition for arbitration naming himself as the petitioner, where the unit was actually owned by a holding company and the individual was not a unit owner.

Maxine H. Freeman Trust v. Ballantrae Condo. Ass'n, Inc.,
Case No. 2004-01-7060 (Mnookin / Final Order of Dismissal / May 3, 2004)

- The division may only exercise jurisdiction over disputes between unit owners and an association. Those persons having an ownership interest in a unit must be joined or designated as a party to the proceeding; thus, a trustee must be named as a party when the property in question is owned by a trust.

Natho v. Water Crest of Falling Waters, Inc.,
Case No. 02-5873 (Coln / Order on Motion to Add Third Party and Final Order Dismissing Petition for Lack of Jurisdiction / May 1, 2003)

- The unit owner alleged that rainwater entered into her unit from the common elements which caused damage to the drywall. The association argued that the developer should be added as a party to this action as the damage complained of occurred when the property was under developer control. The association asserts that the developer is primarily responsible for the damage and making the repairs to the petitioner's unit and is, therefore, an indispensable party. Since arbitration may only occur between an association and an owner, the addition of the developer as a party would take the dispute outside the jurisdiction of the arbitrator.

Weiss v. Garnet Condo. Ass'n Inc.,
Case No. 02-4901 (Scheuerman / Summary Final Order / October 23, 2002)

- Where the board was powerless to assign or reassign limited common element parking because the space was an appurtenance to the unit and could only be transferred with the unit, the association was neither a necessary party nor a proper party in lawsuit brought by owner complaining that the association had re-assigned his parking space. In actuality, it was the City that had exercised its police powers to appropriate the parking space due to the building code's requirement of a greater

turnaround for fire and emergency vehicles. The association merely performed the ministerial task of re-assigning spaces.

Wooley v. Ocean Inlet Yacht Club Condo. Ass'n, Inc.,
Case No. 02-4469 (Scheuerman / Final Order Dismissing Petition / July 25, 2002)

- Where arbitrator had in a prior arbitration case ruled on the precise issue sought to be raised by the owner in the present arbitration proceeding (whether the expenses of maintaining the boat basin constituted a regular common expenses or a limited common expenses), the owner's petition was dismissed. Despite the fact that this particular owner was not named as a party in the prior proceeding, the association, a party in both proceedings, was specifically authorized to maintain the prior action on behalf of all the owners, and may be considered as a representative of its members for purposes of collateral estoppel.

Prevailing party (see separate index on attorney's fees cases)

Horizons Condo. No. 3 Ass'n Inc. v. Pollack,
Case No. 02-4992 (Scheuerman / Final Order / October 18, 2002

- Where the association requested the removal of the nuisance dog and the arbitrator only ordered the respondent to comply with the leash rules, the association did not prevail in the matter. Moreover, the association was ordered to uniformly enforce its rules and regulations. Also, the owner who sought dismissal of the case did not prevail since she was ordered to provide certain affirmative relief.

Sanctions

The Sherwin Condo. Management Ass'n Inc. v. Garvin,
Case No. 02-5366 (Gioia / Final Order on Default / January 23, 2003)

- When the owner fails to cooperate with the arbitration process by failing to attend two duly noticed hearings, the assertions set forth in the petition are deemed to be true, and the owner is deemed to have acquiesced in the relief requested by the petitioner. This is especially true where a party has refused to take part in the final hearing after repeated efforts to hold a hearing on a date to which the owner would consent.

Watergate Condo. Ass'n Inc. v. Mazurek,
Case No. 02-5550 (Coln / Final Order May 1, 2003)

- Unit owner claimed that her dog was a service animal necessary to treat her son's discontent and lack of a father figure. The defense was stricken where the unit owner failed to produce any evidence to support her claim that the dog was a reasonable accommodation necessary to treat a disability or medical condition.

Assessments for Common Expenses (See Common Expenses)

Associations, Generally (For association records, See Official Records)

Burns v. Paradise Park Condo. Ass'n, Inc.,

Case No. 03-6076 (Scheuerman / Summary Final Order / February 24, 2004)

- Where two condominiums merged in 1993 but failed to obtain the consent of 100% of the owners of each condominium as required by Sections 718.110(4) and 718.110(7), F.S., the merger would have been defective and void. However, Section 718.110(10), F.S., contains a curative provision that operated to validate the merger where more than 3 years passed after recordation of the declaration, and the sufficiency of the declaration was not challenged within that period of time.

Markos v. Sandy Shores Condo. Ass'n, Inc.,
Case No. 2005-00-7877 (Scheuerman / Final Order Dismissing Petition / April 5, 2005)

- Timeshare associations are exempted from the election provisions of Chapter 718, F.S., and no violation occurred where the association used general proxies for the conduct of the election. Similarly, timeshare associations may properly engage in proxy solicitation efforts.

- The association was not required to respond to a written inquiry submitted pursuant to Section 718.112(2)(a), F.S., that was not sent by certified mail, regardless of whether the association has responded to similar inquires in the past not sent by certified mail.

Attorney-Client Privilege

Heaton v. Ocean View Towers Condo. Ass'n Inc.,
Case No. 02-4872 (Coln / Summary Final Order / August 20, 2002)

- Association's retainer agreement with its attorney is not protected by the attorney-client or work product privileges. Retainer agreement, which expresses neither legal opinions nor legal strategy, is fact based and was therefore not exempt from disclosure.

- Memorandum attached to a retainer agreement, entitled Recommended Collections Procedures and containing a detailed listing of the tactics, opinions, and recommendations of the association's attorney, was protected by both the attorney-client and work product privileges, and therefore was exempt from disclosure.

Board of Administration

Business judgment rule

Carr v. River Reach Inc.,
Case No. 2003-06-1654 (Scheuerman / Final Order Denying Motion for Emergency Relief and Final Order Dismissing Petition / May 21, 2003)

- The board may properly decide in the exercise of its business judgment not to administratively contest the findings of the fire marshal that an upgraded fire alarm system is required in order to bring the condominium into compliance with the applicable building code. The board may properly decide to forego the specter of large

fines and expensive litigation and appeals by agreeing to remedy the violations without requiring issuance of a formal charging citation.

Classic Towne House Condo. West, Inc. v. Goldgerg,
Case No. 2004-00-3548 (Mnookin / Final Order on Motion for Rehearing / January 20, 2005)

- Where the arbitrator determines that an association has engaged in selective enforcement by demanding that an owner remove a shed he installed on the common elements but fails to take action against other owners who installed similar sheds without board permission, the association cannot argue that its decision for the shed removal was permissible under the business judgment doctrine. While a board is given broad discretion when deciding day-to-day decisions concerning the welfare and maintenance of the condominium's common elements, this discretion does not operate an unfettered or limitless right entitling the association to selectively enforce its governing documents all in the name of the business judgment doctrine.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

- A board's decision to install a new termite control system on the condominium property is protected by the business judgment rule in that the board is permitted discretion in making decisions about the day-to-day operations of the condominium, including maintenance of common elements.

Mikulova v. Harbour Lights Condo. Ass'n, Inc.,
Case No. 2004-03-9070 (Mnookin / Summary Final Order / May 20, 2005)

- Where a unit owner appeared next in line for a dock space, but momentarily became a non-unit owner when the closing on his purchase contract to buy a different unit in the same condominium was delayed, the board, in its exercise of business judgment, was not shown to have violated the documents by retaining the owner's name in its priority position on the list of owners waiting for a dock space.

South Gate Village Condo. Ass'n, Section I v. Monsen,
Case No. 02-4561 (Richardson / Summary Final Order / June 24, 2002)

- When, as here, a condominium's declaration vest discretion in a board of administration to decide an issue, the decision will not be overturned unless it is shown to be unreasonable, arbitrary, or in other words, without rational basis.

- The unit owners did not show the board's decision to be arbitrary or unreasonable where the board met, and upon due deliberation, decided not to accept the unit owners' replacement of a door with a piece of plywood decorated to look similar to a door, because it decided that the unit owners' particular type of plywood does not match the

rest of the unit, does not look like other doors in the condominium and detracts from the appearance of the condominium.

Tilney v. Ass'n of the Fountains, Inc.,
Case No. 02-5651 (Scheuerman / Summary Final Order / February 7, 2003)

- Even if the landscaping project resulted in a material alteration, the degree of maintenance chosen by the board for the parcel is subject to a presumption of correctness through operation of the business judgment rule. The fact that the current board has chosen a higher standard of maintenance is in the nature of maintenance decisions that comes within the Tiffany exception to the material alteration requirements of the statute and documents.

Tresize v. Holiday Apartments Condo. Ass'n Inc.,
Case No. 02-4660 (Pasley / Final Order / September 11, 2002)

- The board would not be ordered to install gutters to allow unit owner to leave his unit during periods of heavy rain. The actions of the board in maintaining the common elements are protected by the business judgment doctrine and there was no showing that the board had been arbitrary or irrational in this regard.

Winston Towers 600 Condo. Ass'n Inc. v. Jablonki,
Case No. 02-5528 (Gioia / Summary Final Order / May 15, 2003)

- The association passed a rule prohibiting the placement of plants on the balconies of the units. Actions of the board in maintaining the common elements are protected by the business judgment doctrine. Since the unit owners failed to demonstrate that the association had acted in an arbitrary or irrational manner, the rule adopted by the board falls within the bounds of the business judgment doctrine and is valid.

Ratification (See Meetings-Board meetings-Ratification)

Resignation

Freed v. Gulf Island Beach & Tennis Club I Condo., Inc.,
Case No. 2003-05-3724 (Mnookin / Summary Final Order / June 17, 2003)

- When a board member submits an undated resignation to the board, it is considered effective as of the date of delivery, even though it is undated. Pursuant to Section 617.0807, F.S., a board member's resignation is effective when notice is delivered, unless the notice specifies a later effective date. Here, since the resignation failed to specify a later effective date; it is ruled effective when delivered to the board.

- When the arbitrator rules that a board member's resignation is deemed effective upon the board months ago, his actions at board meetings prior to the arbitrator's ruling are not ruled null and void. The individual was acting in good faith as a board member, and, as such, all transactions involving his participation as a board member will stand.

Term limitations (See Elections/Vacancies-Term limitations)

Vacancies (See Elections/Vacancies)

Board Meetings (See Meetings-Board meetings)

Boats

Mikulova v. Harbour Lights Condo. Ass'n, Inc.,
Case No. 2004-03-9070 (Mnookin / Summary Final Order / May 20, 2005)

- Where a unit owner appeared next in line for a dock space, but momentarily became a non-unit owner when the closing on his purchase contract to buy a different unit in the same condominium was delayed, the board, in its exercise of business judgment, was not shown to have violated the documents by retaining the owner's name in its priority position on the list of owners waiting for a dock space.

Budget

McKenney v. Ocean Resorts Co-Op, Inc.,
Case No. 2003-07-5537 (Earl / Summary Final Order / February 3, 2004)

- Where the association's by-laws require the board of directors to propose and adopt a budget each fiscal year and do not permit the unit owners to adopt the budget or offer a substitute budget, the unit owners were not entitled to vote on the board's proposed budget or offer a substitute budget. If the documents requiring a proposed budget to be approved by "members" were interpreted as referring to the unit owners, then a conflict would arise with a prior paragraph requiring the board to adopt the budget, which could only be resolved by finding that, in part, the prior paragraph should not be given effect. However, such finding is not appropriate, as the by-laws should be construed so as to give every part effect. Additionally, the term "members" refers to members of the board throughout the by-laws.

- Petitioner's reliance upon Section 719.106(1)(e)(3), F.S., in support of his argument that the unit owners must be given an opportunity to vote on the proposed budget is misplaced. Section 719.106(1)(e) F.S., is only applicable where a special owners' meeting has been called pursuant to Section 719.106(1)(e)(2), F.S.

- Failure to refer to the meeting at which the budget was considered as a "budget meeting" in the notice letter sent to the unit owners is immaterial as the letter clearly indicated that the purpose of the meeting was to adopt a budget and provided all the information required by the association's by-laws.

Bylaws

Amendments

Bay Pointe Waterfront Condo. Ass'n Inc. v. Peavy,
Case No. 02-5765 (Scheuerman / Summary Final Order / January 31, 2003)

- Any board rule that infringes on a right either expressly stated or readily inferable from the bylaws or declaration is invalid.

Gosselin v. Sand Castle Condo. Ass'n Inc.,
Case No. 02-5465 (Coln / Amended Final Order / February 19, 2003)

- Where association had not amended its bylaws to allow for the annual meeting to be held in November of each year, the association had violated the provision of its bylaws requiring the annual meeting to be held in February of each year by holding the annual meetings in November instead.

- Where the association had not amended the bylaws to allow for a change in its accounting method, the association had violated the provision of its bylaws requiring the budget to be prepared on an annual basis by preparing its annual budget from December 1st to November 30th each year.

Levy v. Embassy House Ass'n, Inc.,
Case No. 01-4093 (Scheuerman / Final Order Dismissing Petition / January 10, 2002)

- In a case where the owners sought an arbitration final order invalidating an amendment to the bylaws, the fact that the agenda of a board meeting at which the board considered the amendment failed to describe the specific subject matter of the amendment was irrelevant, as the bylaws only authorized the membership, and not the board, to pass bylaw amendments. Absent fraud or similar circumstance, what occurred at the board meeting was irrelevant.

- Where the notice of membership meeting stated that purpose was to "confirm membership approval" of a proposed amendment to the bylaws removing term limits for directors, use of phrase by board was improvident and improper where the membership had never voted on the amendment before. Likewise, the fact that the board sent a letter along with the notice expressing approval of the proposed amendment, while cumulatively unsavory, did not violate the statue, rules or documents. Where notice also included the entire text of the proposed amendment, it could not be said that the owners lacked meaningful notice of the subject matter of the amendment, and the validity of the amendment was upheld by the arbitrator.

Paula v. Sea Rocket Motel, Inc.,
Case No. 02-4767 (Pasley / Summary Final Order / May 24, 2002)

- Where the association admitted the invalidity of a bylaw amendment that permits each owner to be billed $50 for each of two workdays but would not issue an invoice if an owner attends the workday and agreed to rescind the amendment and reverse the assessments and late fees, a summary final order was entered requiring the association to provide the relief that it agreed to.

Richardson v. Jupiter Bay Condo. Ass'n, Inc.,
Case No. 02-4354 (Scheuerman / Summary Final Order / July 3, 2002)

- Where declaration permitted leasing and where association, having unsuccessfully attempted to amend the declaration to impose substantive restrictions on leasing, amended the bylaws to prohibit leasing for a term of less than 30 days, bylaw amendments were invalid as inconsistent with rights granted by the declaration.

Richardson v. Jupiter Bay Condo. Ass'n, Inc.,
Case No. 02-4354 (Scheuerman / Final Order on Motion for Rehearing / August 26, 2002)

- Where certain bylaw amendments adopted maximum occupancy limits based on unit type, the amendment was consistent with the declaration which affirmatively contemplated these occupancy limits.

Generally

Gosselin v. Sand Castle Condo. Ass'n Inc.,
Case No. 02-5465 (Coln / Amended Final Order / February 19, 2003)

- Where association had not amended its bylaws to allow for the annual meeting to be held in November each year, the association had violated the provision of its bylaws requiring the annual meeting to be held in February each year by holding the annual meetings in November instead.

Palm Greens at Villa Del Ray Recreation Ass'n, Inc. v. Angela Keller, No. 2 Condo. Ass'n, Inc. and Unit Owners Voting for Recall,
Case No. 2003-07-4043 (Scheuerman / Summary Final Order / August 15, 2003)

- Where the bylaws of the condominium association only enumerated recall by vote taken at a meeting while the condominium statute permits recall by agreement in writing or by vote at a meeting, the statute prevailed and the owners were free to recall the board by written agreement.

Schultz v. La Costa Beach Club Condo. Ass'n, Inc.,
Case No. 2003-08-3347 (Scheuerman / Amended Summary Final Order / November 21, 2003 and Final Order on Rehearing / November 24, 2003) (currently on appeal)

- Bylaw purporting to permit the board to remove a board member from the board for being delinquent in the payment of assessments was invalid. The statute permits only the owners to remove board members by using the recall provision contained in s. 718.112, F.S. Moreover, permitting the board to remove a member has the effect of disenfranchising the unit owners who have the right to elect and remove their representatives on the board. Also, the statute, in prescribing remedies available to the association where an owner fails to pay assessments, provides a list of exclusive remedies which may not be supplemented by the association.

Interpretation

Libby v. The Island House Apartments, Inc.,
Case No. 01-3767 (Scheuerman / Summary Final Order / December 4, 2001)

- Where the bylaws provided that special meetings "may" be called by the president or secretary upon the request of not less than twenty percent of the shares of the association, the arbitrator ruled that the calling of a special meeting was permissive and not required of the association. The bylaws as a whole exhibited a deliberate usage and measured pattern for the words "shall" and "may", with "may" used in the permissive, discretionary sense and "shall" used in the directory sense. The arbitrator under these circumstances hesitates to re-write the documents. The remedies of the membership may be to amend the bylaws or to recall the board.

McKenney v. Ocean Resorts Co-Op, Inc.,
Case No. 2003-07-5537 (Earl / Summary Final Order / February 3, 2004)

- Where the association's by-laws require the board of directors to propose and adopt a budget each fiscal year and do not permit the unit owners to adopt the budget or offer a substitute budget, the unit owners were not entitled to vote on the board's proposed budget or offer a substitute budget. If the documents requiring a proposed budget to be approved by "members" were interpreted as referring to the unit owners, then a conflict would arise with a prior paragraph requiring the board to adopt the budget, which could only be resolved by finding that, in part, the prior paragraph should not be given effect. However, such finding is not appropriate, as the by-laws should be construed so as to give every part effect. Additionally, the term "members" refers to members of the board throughout the by-laws.

- Petitioner's reliance upon Section 719.106(1)(e)(3), F.S., in support of his argument that the unit owners must be given an opportunity to vote on the proposed budget is misplaced. Section 719.106(1)(e) F.S., is only applicable where a special owners' meeting has been called pursuant to Section 719.106(1)(e)(2), F.S.

Cable Television

Champlain Towers South Condo. Ass'n Inc. v. Utrilla,
Case No. 02-5969 (Coln / Summary Final Order / April 14, 2003)

- The installation of the dish on the common element balcony railing constitutes a material alteration to the common elements.

The Oaks of Suntree Condo. Ass'n v. Haven,
Case No. 02-5756 (Coln / Summary Final Order / April 1, 2003)

- The association's rule prohibiting the installation of a satellite dish on the common element was not pre-empted by 47 C.F.R. § 1.4000, Federal Telecommunications Act.

- In a proceeding commenced by the association seeking removal of a satellite dish, the unit owner asserted the defense of selective enforcement and cited as examples that the president installed a birdbath on the front lawn, other residents had plants, planters, decorations, bird feeders, benches, flags and other items on the common

elements, and a resident had installed a concrete slab for a barbecue grill. Selective enforcement involves the failure of an association to enforce the condominium documents in other instances bearing sufficient similarity to the instant case to warrant the conclusion that it is discriminatory, unfair, or unequal to permit the association to enforce the restriction in the present case. The unit owner failed to demonstrate the existence of any other satellite dish or similar device on the common elements, without board approval against which the association has failed to take enforcement action; thus, the unit owner's defense of selective enforcement was rejected.

Common Elements/Common Areas

Generally

Gateway Estates Park Condo. Ass'n Inc. v. Klefeker,
Case No. 02-5927 (Mnookin / Summary Final Order / February 20, 2003)

- Unit owners are not permitted to engage in self-help remedies by parking vehicles on common elements to frustrate the association's construction projects that the owners disagreed with, whether the project was authorized or not. Section 718.303, F.S., requires both associations and owners to comply with statutes and documents, and allows either to sue the other to force compliance. This statutory provision, coupled with the arbitration remedy to be utilized where appropriate, offers an owner the only remedy authorized by law to redress violations of the statute or documents.

The Oaks of Suntree Condo. Ass'n v. Haven,
Case No. 02-5756 (Coln / Summary Final Order / April 1, 2003)

- The association's rule prohibiting the installation of a satellite dish on the common element lawn was not pre-empted by 47 C.F.R. § 1.4000, Federal Telecommunications Act.

Ovanes v. The Marina at the Bluffs Condo. Ass'n, No. 23, Inc.,
Case No. 02-5538 (Coln / Summary Final Order / February 6, 2003)

- The unit owner sought to challenge the association's installation of tile on the elevator landing in her building. The declaration provided that approval of two-thirds of the unit owners shall be required for improvements exceeding $1,000.00. The association provided a billing breakdown for the costs of the tile installation in the elevator landing indicating that the cost of installing tile on the elevator landing was $952.67. Since the costs of installing the tile landing was less than one thousand dollars, the association was not required to obtain unit owner approval before making the changes to the common elements.

Valdes v. Atrium Garden Condo. Ass'n, Inc.,
Case No. 2003-08-4988 (Mnookin / Final Order of Dismissal / October 22, 2003)

- An association may properly restrict the number of keys issued to unit owners for a common element lobby door due to safety concerns.

Hurricane shutters (See Hurricane Shutters)

Bennett v. Solamar Condo. Ass'n, Inc.,
Case No. 01-2207 (Scheuerman / Final Order / January 2, 2002)

- Where board had approved hurricane shutter specifications providing for electric roll down shutters installed on the windows and doors opening onto the limited common element balconies, board properly rejected as inconsistent with duly adopted hurricane shutter specifications application by owner to install accordion shutters protecting entire patio area. There was nothing shown in the record demonstrating that the board's choice of roll down shutters was anything but reasonable. Moreover, there was no right shown in the statute for an owner to install shutters protecting the limited common element patio itself if as opposed to the windows and door openings on the balcony.

- Where the board refused to approve application to install accordion shutters on limited common element balcony because board had previously approved specifications calling for roll down shutters on the balconies, board decision not shown to be arbitrary or unreasonable even where board had installed accordion shutters on the atrium openings to the building. All atrium openings had uniformly been equipped with accordion shutters, and all patio areas that had shutters used only roll down shutters. The condominium was not a hodge-podge of varying styles, and a sense of aesthetics still existed. There is still overall a sense of consistency when viewing the external frame of the building, and the decision of the board was upheld.

Limited common elements

Bennett v. Solamar Condo. Ass'n, Inc.,
Case No. 01-2207 (Scheuerman / Final Order / January 2, 2002)

- Where board had approved hurricane shutter specifications providing for electric roll down shutters installed on the windows and doors opening onto the limited common element balconies, board properly rejected as inconsistent with duly adopted hurricane shutter specifications application by owner to install accordion shutters protecting entire patio area. There was nothing shown in the record demonstrating that the board's choice of roll down shutters was anything but reasonable. Moreover, there was no right shown in the statute for an owner to install shutters protecting the limited common element patio itself if as opposed to the windows and door openings on the balcony.

- Where the board refused to approve application to install accordion shutters on limited common element balcony because board had previously approved specifications calling for roll down shutters on the balconies, board decision not shown to be arbitrary or unreasonable even where board had installed accordion shutters on the atrium openings to the building. All atrium openings had uniformly been equipped with accordion shutters, and all patio areas that had shutters used only roll down shutters. The condominium was not a hodge-podge of varying styles, and a sense of aesthetics still existed. There is still overall a sense of consistency when viewing the external frame of the building, and the decision of the board was upheld.

The Preserve at Walnut Creek Condo. Ass'n, Inc. v. Galvao,
Case No. 2004-04-4276 (Grubbs / Summary Final Order / November 15, 2004)

- The declaration of condominium identifies the areas that are limited common elements. An area that is not so identified cannot become a limited common element through custom and usage.

The Residence Condo. Ass'n, Inc. v. Wills,
Case No. 01-3113 (Pasley / Summary Final Order / September 24, 2001)

- Where a unit owner's satellite dish extends beyond the owner's windowsill out over a part of the common elements which is not a limited common element and the declaration prohibits changes or alterations of any kind on the exterior portion of the condominium unit by a unit owner (including TV or radio antennas), the unit owner's installation of a satellite dish was found to be a violation of the declaration.

- The Telecommunication Act of 1996 does not preempt portions of the condominium documents that prohibit installation of this type of device on or over portions of the common elements that have not been designated limited common elements.

- Unit owner's assertion that because she is the only owner who has access to the area where the satellite dish is installed, that she has exclusive control over that area was rejected. Although the area of installation was nearest to the unit owner's unit, she did not have a greater legal right to any portion of the common elements, which had not been designated a limited common element appurtenant to her unit, than any other unit owner.

Sea Ranch Villas Ass'n, Inc. v. Reinhardt, Jr.,
Case No. 00-1830 (Pasley / Final Order / May 8, 2002)

- Where there is no separate provision governing alterations to limited common elements, alterations to these areas are governed by the general rule that governs alterations to all common elements, as limited common elements are a subset of the common elements.

Maintenance and protection

Carr v. River Reach Inc.,
Case No. 2003-06-1654 (Scheuerman / Final Order Denying Motion for Emergency Relief and Final Order Dismissing Petition / May 21, 2003)

- Where the unit owner filed a motion for an emergency temporary injunction seeking to stop the association from upgrading the fire alarm system as required by the fire marshal, the unit owner's argument that the upgrade constituted a material alteration to the common elements was rejected. The upgrade was held to fit squarely within the maintenance doctrine that has been recognized by the courts to nullify the owner vote requirement that otherwise would be applicable. The board's duty to maintain and preserve the common elements is broad enough to encompass the operational activities

designed to bring the association into conformity with the requirements of local ordinances.

Castellano v. Shore Colony Condo. Ass'n Inc.,
Case No. 02-5481 (Scheuerman / Summary Final Order / May 9, 2003)

- Where the unit owner who owned 2 units with adjacent balconies filed a petition against the association alleging that the association was responsible for replacing tile on the balcony removed as part of a concrete restoration project, the arbitrator held that with reference to the unit whose tile had been added *after* the construction of the condominium, the owner is responsible for tile replacement. An owner who installs improvements to his balconies under such circumstances do so at their own peril, and if it becomes necessary to remove these improvements, the owners are held responsible for the costs of removal and replacement. On the other hand, where certain improvements were part of the original construction, the improvements became infused into the common elements and building components and as such became the responsibility of the association when it was necessary to remove them to repair the common elements.

The Fountains of Palm Beach Condo., Inc. v. Meisner,
Case No. 2004-03-1219 (Scheuerman / Final Order / August 25, 2004)

- Rule requiring that owners leave their thermostat at a setting not higher than 80 degrees is a valid exercise of the association's duty to maintain the common elements. An ambient temperature higher than 80 degrees contributes to the levels of humidity and facilitates the proliferation of mold in the unit itself and in the building in which the unit is located. An owner, even if he does not reside in the unit, has the affirmative duty to take reasonable precautions to prevent the unit from becoming a source of hazardous pollutants to the other units and their inhabitants.

Graveline v. Spinnaker Cove Condo. Ass'n, Inc.,
Case No. 01-3831 (Scheuerman / Final Order / December 18, 2001)

- Association correctly required owners with chimneys added after construction was completed to maintain chimneys individually.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

- Where an association decides without an unit owner vote to install a new termite control system which materially alters the common elements, it is ruled that the new termite system falls under the maintenance exception rule which does not require unit owner approval for maintenance, protection, repair or replacement of common elements of association property.

Kemmesat v. Holiday Travel Park Co-Op Inc.,

Case No. 02-5244 (Coln / Final Order / April 17, 2003)

- The unit owner claimed that the association remodeled its office building, without unit owner approval. The remodeling of the office did not appreciably change the use and function of the office. The remodeled area is still an office and contains a lobby area, with tables and chairs, available for use by the co-op residents, just as before the remodeling. The essential character of the property has not changed in a material sense. Some change in appearance is inevitable where a building's details are altered, but this does not compel the conclusion that all changes are material.

- The association acquired land to be use by the association as a rental campsite. The association subsequently cleared the land. The unit owner claimed that the clearing of this land, without a unit owner vote, constitutes an improper material alteration of the common elements. Unit owner's claim is without merit because the authorization to clear the land was implied in the vote to acquire the property. When the association acquired the land, the land was unsuitable for use as a campsite. The unit owners previously voted to acquire the land to be used as a rental campsite, thus, the unit owner acknowledged that the land would be cleared to make it suitable for that purpose.

Knight v. Venetial Isle Condo., Inc.,
Case No. 02-5968 (Coln / Final Order of Dismissal / August 11, 2003)

- An owner filed a petition for arbitration seeking a determination as to whether the association or the individual unit owners were responsible for maintaining the air conditioning units serving the units. The declaration provides that the owners are liable and responsible for the maintenance, repair and replacement of all air conditioning and heating equipment. This provision, when read in conjunction with the other relevant sections of the declaration, places the responsibility for maintenance and repair of the air conditioners upon the individual unit owner whose unit is served by the air conditioner. Accordingly, the unit owners are responsible for undertaking the maintenance and repair of the air conditioning units serving their units.

Kreeger v. Seven Lakes Ass'n, Inc.,
Case No. 02-5167 (Scheuerman / Final Order Dismissing Petition / January 10, 2003)

- The arbitrator concluded that the documents did not permit the board, in the absence of a unit owner vote, to make material changes to the association property recreational auditorium. The articles of incorporation authorized the board to maintain and repair the property and to improve the property after casualty; the bylaws gave the board the power to exercise all lawful authority and duties and authorized the board to perform any lawful act not otherwise required to be done by the members of the association; and the declaration authorized the board to make such capital improvements to the common elements and association property designed to meet the requirements of the Fair Housing Act of 1988. The provisions in the articles and bylaws simply contain ordinary statements of general authority and did not confer specific

authority on the board to make material alterations. In addition, the association did not present evidence or legal arguments in support of its contention that the improvements to the auditorium were required by the fair housing laws, and hence the declaration did not authorize the board to undertake the changes.

Lee v. Winston Towers 100 Ass'n, Inc.,
Case No. 02-4897 (Richardson / Final Order / January 3, 2003)

- Where the petitioner owner proved that the plumbing had backed up into his unit with some regularity but did not offer expert testimony tending to prove that the association had been negligent in addressing the issue and did not provide an expert opinion on what the best remedy was, the owner was deemed not to have proved his case and was not entitled to the relief requested.

Ovanes v. The Marina at the Bluffs Condo. Ass'n, No. 23, Inc.,
Case No. 02-5538 (Coln / Summary Final Order / February 6, 2003)

- The unit owner sought to challenge the association's installation of tile on the elevator landing in her building. The declaration provided that approval of two-thirds of the unit owners shall be required for improvements exceeding $1,000.00. The association provided a billing breakdown for the costs of the tile installation in the elevator landing indicating that the cost of installing tile on the elevator landing was $952.67. Since the costs of installing the tile landing was less than one thousand dollars, the association was not required to obtain unit owner approval before making the changes to the common elements.

Pope v. Rough Creek Ass'n, Inc.,
Case No. 2003-09-1274 (Coln / Summary Final Order / December 15, 2003)

- Where the declaration of condominium clearly placed the burden of maintenance and repair of windows, and therefore skylights, upon the unit owner, the unit owner was responsible for repairing the roof leak in her skylight and the costs associated with the repair.

Portugal Towers Condo. Ass'n Inc. v. Freyre,
Case No. 02-4842 (Pasley / Summary Final Order / August 27, 2002)

- Where the declaration of condominium provided that the association shall maintain, repair and replace all conduits, ducts, plumbing, air conditioning, wiring and other facilities for the furnishing of utility services, the maintenance of the air conditioning system was the duty of the association. Changes to the existing plumbing route and the addition of control valves also fell within the duty of the association. The unit owner's assertion that the air conditioning project constitutes a material alteration was rejected.

Sea Shores Estates Ass'n, Inc. v. Stanley, Jr.,
Case No. 2003-06-0829 (Coln / Summary Final Order / July 16, 2003)

- The association sought to repair the unit owners' balcony. The declaration provides that the association has a duty to maintain, repair and replace the balconies when necessary. Where an alteration or addition is necessary to maintain or preserve the common elements, it is exempt from the requirement of unit owner approval. The fact that such maintenance and repair is not "common" or occurs infrequently does not render the repairs subject to unit owner approval.

Then v. Horizons West Condo. No. 2 Ass'n "A", Inc.,
Case No. 02-4237 (Coln / Summary Final Order / September 18, 2003)

- The unit owner alleged that the association had failed to properly maintain the common element plumbing which resulted in damage to her unit. Pursuant to the declaration of condominium, the association is responsible for maintaining the common element plumbing. The fact that the plumbing is more prone to problems due to its design is not a factor that relieves the association of liability, nor does it shift the burden to maintain the plumbing to the unit owners. Accordingly, the association is the entity responsible for maintaining the mainline plumbing and is therefore responsible for the damage to the petitioner's unit resulting from its failure to properly maintain the same.

Tilney v. Ass'n of the Fountains, Inc.,
Case No. 02-5651 (Scheuerman / Summary Final Order / February 7, 2003)

- Where the board adopted a landscaping plan that incorporated the prior use of the vacant parcel of land and which provided a heightened level of maintenance on the property, including the placement of additional trees, landscape rocks, and munch material for a parking surface, the function and use of the property was not appreciably changed, and no material alteration resulted. While the appearance of the property changed, the essential character of the property has not changed in a material manner.

- Owners have less of a legitimate expectation that landscaping details will remain unchanged on the condominium property, and hence a traditional approach and application of the material alteration analysis is not warranted.

- Even if the landscaping project resulted in a material alteration, the degree of maintenance chosen by the board for the parcel is subject to a presumption of correctness through operation of the business judgment rule. The fact that the current board has chosen a higher standard of maintenance is in the nature of maintenance decisions that comes within the Tiffany exception to the material alteration requirements of the statute and documents.

Tresize v. Holiday Apartments Condo. Ass'n Inc.,
Case No. 02-4660 (Pasley / Final Order / September 11, 2002)

- The board would not be ordered to install gutters to allow unit owner to leave his unit during periods of heavy rain. The actions of the board in maintaining the common elements are protected by the business judgment doctrine and there was no showing that the board had been arbitrary or irrational in this regard.

Villager Ass'n, Inc. v. Dowling,
Case No. 2004-00-7743 (Grubbs / Final Order / February 9, 2005)

- Although the balcony was to be maintained and repaired by the unit owner, the association had the right to protect and repair common element structural components and could require removal of carpeting over the wood floor of the balcony; however, when the association failed to repair the flooring under the carpeting within 45 days, and floor was dangerous in its present condition, it was reasonable for the respondents to fill in the areas of rot and place fitted plywood panels over the floor until the association was able to do the permanent repair work that was required.

Winston Towers 600 Condo. Ass'n Inc. v. Jablonki,
Case No. 02-5528 (Gioia / Summary Final Order / May 15, 2003)

- The association passed a rule prohibiting the placement of plants on the balconies of the units. Actions of the board in maintaining the common elements are protected by the business judgment doctrine. Since the unit owners failed to demonstrate that the association had acted in an arbitrary or irrational manner, the rule adopted by the board falls within the bounds of the business judgment doctrine and is valid.

- The association passed a rule prohibiting the placement of plants on the balconies of the units. The unit owners alleged that since they had been keeping plants on their balcony prior to the passage of the rule, their plants were grandfathered in as an exception to the rule. Because the rule was implemented due to a need to protect the structural integrity of the balconies, the prior right to place plants on balconies must yield to the overriding safety considerations of the new rule.

Wooley v. Ocean Inlet Yacht Club Condo. Ass'n, Inc.,
Case No. 02-4469 (Scheuerman / Final Order Dismissing Petition / July 25, 2002)

- Where arbitrator had in a prior arbitration case ruled on the precise issue sought to be raised by the owner in the present arbitration proceeding (whether the expenses of maintaining the boat basin constituted a regular common expenses or a limited common expenses), the owner's petition was dismissed. Despite the fact that this particular owner was not named as a party in the prior proceeding, the association, a party in both proceedings, was specifically authorized to maintain the prior action on behalf of all the owners, and may be considered as a representative of its members for purposes of collateral estoppel.

Material alteration or addition (See also Fair Housing Act)

Bayside Village Condo. v. Fardie,
Case No. 02-5869 (Mnookin / February 4, 2003)

- It is immaterial whether a "garden" is classified as an addition, alteration, improvement or landscaping because according to condominium documents, all such

designations require prior written consent from the association before construction on the common elements, limited common elements or outside the owner's unit.

Belle Isle Apartments Corp. d/b/a Terrace Towers v. Bernstein, and
Bernstein v. Belle Isle Apartments Corp. d/b/a Terrace Towers,
Case No. 2004-02-0386 and 2004-02-2097 (Mnookin / Final Order / April 29, 2004)

- Where the association approved a unit owner's remodeling plans that included the installation of air conditioning condensors on the common areas of the cooperative property, the owner, despite the approval of the board, is not permitted to install the condensors as it violates Section 719.105(2), F.S, which entitles cooperative owners to use common areas only for the purpose for which they are intended and prohibits an owner from hindering or encroaching upon the rights of others in using the common areas. Based on the owner's reliance on the association's approval, the association was required to reimburse the unit owner for one-half of the expenses associated with re-installing the condensors in a permissible location.

Classic Towne House Condo. West, Inc. v. Goldgerg,
Case No. 2004-00-3548 (Mnookin / Summary Final Order / September 14, 2004)

- Where an association alleges that a unit owner damaged the common elements by tearing up and flattening a portion thereof for a soccer field and by landscaping an entranceway with out permission from the board, and the owner argues that he had permission from the board to conduct such acts, but is unable to provide proof of the board's permission, the owner is required to reimburse the association for restoring the affected areas to their prior condition.

Condo. Ass'n of Le Mer Estates, Inc. v. Cohen,
Case No. 2003-08-7556 (Bembry / Summary Final Order / June 28, 2004) (currently on appeal)

- Owners found to be in violation of the association's declaration of condominium prohibiting changes to the limited common elements after owners modified the balcony railing of their ground floor unit by installing a gate which functioned as a second entrance to their unit.

Grogis v. Marina Harbour South Ass'n, Inc.,
Case No. 2003-07-5139 (Mnookin / Summary Final Order / February 8, 2005)

- Where the unit owners demonstrate that other owners have placed wall decorations on similar common element hallways, the unit owners are not required to remove their decorations as the association has engaged in selective enforcement by permitting other owners to maintain similar decorations.

Kline v. Tamarind Cay Recreation Ass'n, Inc.,
Case No. 03-6102 (Scheuerman / Summary Final Order / January 6, 2004)

- Where four individual condominium associations were merged into a single recreational association, and where the articles of merger provided that the surviving recreational association would possess all the power, authority and property of the individual associations, the right of the board of a non-surviving association as per the declaration to approve material alterations to the condominium property became infused into the recreational association board and permitted the board to approve the installation of a pollution abatement fence located on property formerly constituting the common elements of a non-surviving corporation.

- The addition of a noise and pollution abatement fence by an owner constructed on association property constituted a material alteration to the common elements requiring compliance with Section 718.113(2), F.S., and the condominium documents.

Lido Ambassador Condo. Ass'n, Inc. v. Bawol,
Case No. 2003-06-8975 (Bembry / Summary Final Order / March 30, 2004)

- Unit owners were not permitted to replace original wooden door with a fiberglass door, despite replacement door's increased weather-resistance, as door did not conform to standards contained in the association's governing documents. Replacement door was a material alteration of the common elements and the owners were required to remove it.

Lindback v. Sand Pebbles of Islamorada Ass'n, Inc.,
Case No. 2004-02-2086 (Mnookin / Summary Final Order / June 21, 2005)

- Where an exterior two story stairwell structure constructed outside a single condominium unit is considered a common element and the association membership attains at least 75% affirmative votes to materially alter the structure by removing the top portion thereof, the vote is deemed valid and the resulting action of removing the top portion of the stairwell structure does not operate to discriminate against the owners of the unit to which the structure is attached, notwithstanding the altered version of the structure.

- The enactment of the 1992 statutory amendment providing for 75% approval for material changes to the common elements, where the declaration is silent on such changes, has not been ruled to affect protected property rights and is properly applied to pre-existing condominiums.

Ocean Two Condo. Ass'n, Inc. v. Kilger,
Case No. 2004-00-7007 (Coln / Summary Final Order / June 29, 2004)

- The association alleged that the unit owners had improperly installed a basketball hoop on their lanai in violation of the association's governing documents. The unit owners asserted that their basketball hoop did not violate the association's rules and regulations, as their basketball hoop was "patio type" furniture within the meaning of the

rule. As a basketball hoop, under no reasonable interpretation or definition, can be considered furniture, the unit owners defense fails.

Villager Ass'n, Inc. v. Dowling,
Case No. 2004-00-7743 (Grubbs / Final Order / February 9, 2005)

- Where the association alleged that unit owner had violated a particular provision of the declaration by installing a light fixture on the limited common element balcony without the board's permission, but that provision only required the board's approval for changes or additions to the common elements in areas specifically maintained by the association or for changes that could affect the safety of the building, the association could only demand removal of the light fixture on safety grounds, since the limited common area balcony was not an area maintained by the association under the declaration. Under that provision, the association did not have the authority to grant or deny permission to install the light fixture based on the style of the light fixture. The association did not allege that the fixture was a material alteration that required the approval of 75% of the unit owners pursuant to Section 718.113(2)(a), F.S., or allege facts showing a violation of any other section of the declaration

Right to use

Benjamin v. Bay Mariner Condo. Ass'n, Inc.,
Case No. 2003-05-4382 (Scheuerman / Final Order / October 13, 2003)

- In an action commenced by the association to enforce its rule prohibiting the use of snorkels in the pool, the evidence showed that the owners' use of snorkels combined with their circuitous and repetitive swimming route along the entire perimeter of the pool appreciably interfered with the other owners' use of the pool facility. However, it was not shown that use of the snorkels in and of itself constituted a nuisance; in this respect, the pool rule exceeds the boundary of reason and exhibits arbitrary characteristics. The owners/swimmers were ordered to confine their repetitive laps to the North/South lanes of the pool where they were allowed to continue to use their snorkels.

Mikulova v. Harbour Lights Condo. Ass'n, Inc.,
Case No. 2004-03-9070 (Mnookin / Summary Final Order / May 20, 2005)

- Where a unit owner appeared next in line for a dock space, but momentarily became a non-unit owner when the closing on his purchase contract to buy a different unit in the same condominium was delayed, the board, in its exercise of business judgment, was not shown to have violated the documents by retaining the owner's name in its priority position on the list of owners waiting for a dock space.

The Preserve at Walnut Creek Condo. Ass'n, Inc. v. Galvao,
Case No. 2004-04-4276 (Grubbs / Summary Final Order / November 15, 2004)

- The satellite dish located in the entryway to respondents' unit was not located in a limited common element, and therefore, was not protected by federal law (47 C.F.R.

§1.4000). Further, Section 1.4000(a)(3)(iii), does not authorize placement of a satellite dish on the common elements, even if it is the only place that the unit owner can receive an acceptable quality signal. Federal regulations simply prohibit a restriction that impairs the installation, maintenance, or use of an antenna located "on the property within the exclusive control of the antenna user."

St. Denis v. Oasis Village of Okeechobee Owners Ass'n, Inc.,
Case No. 02-5253 (Scheuerman / Final Order / November 6, 2002)

- Where the association seized control over the internal affairs and monies of an informal resident social club which was not a committee of the association, the association was ordered to cease interfering with the operation of the club and to make association facilities reasonably available to the club. The association had purported to unilaterally change the rules of the club to make the association president a member of the board of the club, and had passed a rule siphoning off club funds into the association bank account while the club members were in Canada during the summer months. The association also changed club rules to prohibit non-owner residents from voting on club affairs.

Thornhill v. Admiral Farragut Condo. Ass'n, Inc.,
Case No. 2004-04-4863 (Mnookin / Summary Final Order / April 25, 2005)

- Where a unit owner moves out of his or her unit and utilizes the unit as rental property, the condominium governing documents do not support the petitioner's proposition that a unit owner forfeits his or her dock privileges if the owner does not reside in the unit permanently.

Common Expenses

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Even assuming such a provision is valid, a provision in the articles of incorporation purporting to prohibit an owner who is delinquent in the payment of assessments from voting in an election or from running for the board is not applicable where an owner has refused to pay a fine imposed by the board. A fine is not an assessment for common expenses and cannot be used in this manner, even assuming that the articles of incorporation may condition the right to vote on the payment of assessments, which they cannot do.

Constitution

Corporation

Equal protection

Free speech

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- An association, assuming it possesses the requisite authority, has the ability to adopt rules designed to further the safety, welfare, and convenience of its members. See, Neuman v. Grandview at Emerald Hills, Inc., 861 So. 2d 494 (Fla. 4th DCA 2003). Petitioners have not presented any convincing authority, constitutional or otherwise, that a rule prohibiting the placement of literature on the doors of the owners would violate any constitutional or statutory entitlement.

Santa Monica Condo. Ass'n, Inc. v. O'Connor,
Case No. 02-4691 (Coln / Final Order / July 31, 2002)

- Unit owner's acts of whistling, dragging a chair across the floor and banging upon the wall is not speech, but rather conduct, and is not protected by the 1st Amendment to the Constitution. Where purpose of conduct is the personal abuse of another, the conduct is not communication that falls under the protection of 1st Amendment. (Cantwell v. Connecticut, 60 S.ct 900, 906 (1942).

Generally

The Claridge Condo. Ass'n, Inc. v. Donelan,
Case No. 2004-02-6247 (Bembry / Final Order / March 4, 2005)

- The owner's argument that her due process rights had been abridged where the association determined her pet to be a nuisance without providing the owner an opportunity to be present and present evidence was rejected where due process rights were afforded the owner in the course of the arbitration proceeding.

State action

Covenants (See Declaration-Covenants/restrictions)

Declaration

Alteration to appurtenances to unit (See Unit-Appurtenances)

Federal National Mortgage Ass'n, Inc. v. Oakbrook Condo. Ass'n, Inc.,
Case No. 01-2949 (Scheuerman / Final Order on Rehearing / September 5, 2001)

- Where the declaration of condominium conferred upon mortgagees of record the unfettered right to sell or lease any unit foreclosed upon, and further provided that no amendment could be adopted that altered or amended whatsoever the rights and privileges granted to first mortgagees, amendment that prohibited the sale or lease of a unit during the first 12 months of ownership was invalid. Where the declaration itself contains assurances that no amendment may impair certain rights and privileges contained in the declaration, it cannot be argued that the purchaser acquired title subject to his knowledge that as a general matter, the declaration could be amended.

- Assignee of first mortgage who accepted assignment of mortgage in 2000, well after the 1997 amendment that assignee sought to challenge eliminating the right to rent or sell a unit within one year of acquisition of title, was not granted any rights under the declaration as it existed prior to the assignment; provision that granted to first mortgagees of record the unqualified right to rent or sell units foreclosed upon was not intended to benefit an entity other than a first mortgagee of record. However, since association did not contest the fact that mortgagees of record did not receive notice of the amendment as required by the declaration for such amendments, arbitrator found amendment invalid.

Amendments

Bay Pointe Waterfront Condo. Ass'n Inc. v. Peavy,
Case No. 02-5765 (Scheuerman / Summary Final Order / January 31, 2003)

- Where the declaration did not address the issue of pets, where the bylaws contained only a passing reference to pets, (used as an example of a nuisance), and where the original rules permitted certain pets, the challenged amendment to the rules and regulations prohibiting pets was not invalid because of any express or implied conflict with the declaration or bylaws. The board had express authority to create or amend rules regarding use of the condominium property and parcels. Additionally, the fact that the original rules and regulations addressed the subject of pets bolsters the conclusion that the rules were intended to address and contain substantive restrictions regarding pets.

Belardo v. Four Sea Suns Condo. Ass'n, Inc.,
Case No. 2003-07-7037 (Coln / Summary Final Order / February 10, 2004)

- In a proceeding brought by an owner challenging an amendment to the declaration, where the association's bylaws require that ballots cast for units owned by more than one unit owner or by a corporation or other entity must have a voting certificate on file to be considered valid, the association improperly counted ballots approving of an amendment to the declaration by units owned by multiple unit owners, a corporation or other entity, without a voting certificate on file.

- Where the association obtained valid voting certificates for all units subsequent to the vote of the unit owners, this action did not retroactively resurrect the improperly counted votes initially cast without benefit of a voting certificate. The association, having obtained the necessary voting certificates required by the association's governing documents, needs to conduct a new vote of the unit owners.

Englehardt v. Carlton Terrace Condo. Ass'n, Inc.,
Case No. 2003-06-3375 (Scheuerman / Summary Final Order / February 17, 2004)

- There is no support shown in the case law or statute that a series of amendments to the declaration that placed increased restrictions on the ability of an owner to transfer his unit impaired any vested or fundamental rights. Rather, consistent with the case of

Woodside Village Condo. Ass'n, Inc. v. Jehren, 806 So. 2d 452 (Fla. 2002), owners are charged with constructive knowledge that the declaration may be amended in the manner set forth in the declaration, and the amendment may diminish or impair the ability of an owner to freely sell or rent his unit. Here the declaration allowed the board itself to amend the declaration, and the owner was charged with knowledge of this fact.

Mesnick v. Hillsboro Le Baron Condo. Apts. Inc.,
Case No. 02-5367 (Scheuerman / Partial Summary Final Order / February 4, 2003)

- A series of amendments to the declaration, passed without joinder of the mortgagees as required by the declaration, was void. The statute of limitation does not act as a bar to bringing the action because the amendments were void and not merely voidable.

Sarcone v. Adalia Bayfront Condo. Ass'n, Inc.,
Case No. 01-3777 (Richardson / Partial Summary Final Order and Order Requiring More Definite Statement / March 28, 2002)

- The fact that an owner served on the board at a board meeting a proposed rule amendment signed by a sufficient number of unit owners to both propose the amendment and enact it, does not actually effect the amendment even if the president of the board states that he would see that it was enacted, where the proposed amendment was never voted on after notice to all owners as required by the declaration.

Seychelles Condo. Management Ass'n, Inc. v. Ehlen,
Case No. 01-3639 (Gioia / Final Order / May 15, 2002)

- Required procedure to amend the declaration: when a right is explicit in the declaration, and the declaration requires a specific vote, super majority, or unanimity, that right may not be amended by a lesser vote using indirect means. When the right and its related restrictions on amendment are in different sections of the declaration they should be read together in pari materia to give the unified effect intended by the drafter.

Covenants/restrictions

El Galeon by the Sea Condo. Ass'n, Inc. v. Heisey,
Case No. 02-4252 (Scheuerman / Summary Final Order / June 17, 2002)

- Where the declaration permits short term leasing but requires that units be used for a single-family residence, use of units for short term transient renting where owner is licensed under Ch. 509 does not constitute a commercial nonresidential purpose and the declaration was not violated thereby. Considering all relevant portions of the declaration together and giving meaning to each, the residential requirement cannot be seen as addressing the right to rent or the duration of the lease, and cannot be construed to prohibiting short-term leases, a right conferred by another portion of the declaration. Residential restriction must be understood as speaking to who may occupy

the units, whether through lease or deed, and what activities the occupants may conduct.

Exemptions

Generally

High Point of Delray West Condo. Ass'n Section III v. Sharwell,
Case No. 2003-06-2857 (Mnookin / Summary Final Order / August 5, 2003)

- When an individual purchases a condominium unit, it is that owner's responsibility to obtain the governing condominium documents, become familiar with them, and act in compliance with them. A unit owner cannot claim as a defense to violating the condominium documents that he was unaware of a restriction because the association never provided him with the governing documents.

Interpretation

Beachplace Ass'n Inc. v. Hurwitz,
Case No. 02-5940 (Mnookin / Summary Final Order / April 11, 2003)

- Because the declaration does not expressly state that pets are permitted, there is no contradiction with restrictions set forth in the rules and regulations prohibiting all pets where the board is given clear rule making authority in this area. Additionally, the right to maintain a pet is not reasonably inferred from a nuisance section which merely mentions house pets.

Boulevard Ass'n, Inc. v. Slater,
Case No. 2003-05-0118 (Coln / Final Order / July 22, 2003)

- In an action taken by the association to require the removal of a commercial vehicle, the rule sought to be enforced provided that: "No commercial truck or van (over 3/4 ton pickup) allowed on premises other than for service calls." The unit owners parked two Chevrolet Express vans on the property that were used for business purposes and were covered on three sides with commercial lettering advertising their business. The vehicles were plainly commercial vehicles prohibited by the rule. The phrase "over 3/4 ton pickup" obviously refers to trucks and not to vans, contrary to the owners' argument made in an effort to exclude smaller commercial vans.

El Galeon by the Sea Condo. Ass'n, Inc. v. Heisey,
Case No. 02-4252 (Scheuerman / Summary Final Order / June 17, 2002)

- Where the declaration permits short term leasing but requires that units be used for a single-family residence, use of units for short term transient renting where owner is licensed under Ch. 509 does not constitute a commercial nonresidential purpose and the declaration was not violated thereby. Considering all relevant portions of the declaration together and giving meaning to each, the residential requirement cannot be seen as addressing the right to rent or the duration of the lease, and cannot be construed to prohibiting short-term leases, a right conferred by another portion of the

declaration. Residential restriction must be understood as speaking to who may occupy the units, whether through lease or deed, and what activities the occupants may conduct.

Federal National Mortgage Ass'n, Inc. v. Oakbrook Condo. Ass'n, Inc.,
Case No. 01-2949 (Scheuerman / Final Order on Rehearing / September 5, 2001)

- Where the declaration of condominium conferred upon mortgagees of record the unfettered right to sell or lease any unit foreclosed upon, and further provided that no amendment could be adopted that altered or amended whatsoever the rights and privileges granted to first mortgagees, amendment that prohibited the sale or lease of a unit during the first 12 months of ownership was invalid. Where the declaration itself contains assurances that no amendment may impair certain rights and privileges contained in the declaration, it cannot be argued that the purchaser acquired title subject to his knowledge that as a general matter, the declaration could be amended.

Kline v. Tamarind Cay Recreation Ass'n, Inc.,
Case No. 03-6102 (Scheuerman / Summary Final Order / January 6, 2004)

- Where four individual condominium associations were merged into a single recreational association, and where the articles of merger provided that the surviving recreational association would possess all the power, authority and property of the individual associations, the right of the board of a non-surviving association as per the declaration to approve material alterations to the condominium property became infused into the recreational association board and permitted the board to approve the installation of a pollution abatement fence located on property formerly constituting the common elements of a non-surviving corporation.

Kreeger v. Seven Lakes Ass'n, Inc.,
Case No. 02-5167 (Scheuerman / Final Order Dismissing Petition / January 10, 2003)

- The arbitrator concluded that the documents did not permit the board, in the absence of a unit owner vote, to make material changes to the association property recreational auditorium. The articles of incorporation authorized the board to maintain and repair the property and to improve the property after casualty; the bylaws gave the board the power to exercise all lawful authority and duties and authorized the board to perform any lawful act not otherwise required to be done by the members of the association; and the declaration authorized the board to make such capital improvements to the common elements and association property designed to meet the requirements of the Fair Housing Act of 1988. The provisions in the articles and bylaws simply contain ordinary statements of general authority and did not confer specific authority on the board to make material alterations. In addition, the association did not present evidence or legal arguments in support of its contention that the improvements to the auditorium were required by the fair housing laws, and hence the declaration did not authorize the board to undertake the changes.

Leisure Village, Inc. of Stuart v. Adams,

Case No. 02-5048 (Coln / Summary Final Order / August 21, 2002)

- Where association's rule regarding pets was ambiguous and subject to differing interpretations, principles of statutory construction are employed to resolve the discrepancies.

Leonardo Arms Beach Club Condo. Ass'n, Inc. v. Redder,
Case No. 01-4076 (Richardson / Amended Summary Final Order / May 22, 2002)

- Where the association's documents provided that all apartments shall be carpeted except in entryways, bathrooms and kitchens, the unit owners' argument that the provision would allow them to have tile so long as it covered by loose or fixed carpeting and padding was rejected because construction of the association's documents, pursuant to the expressio unius est exclusio alterius doctrine results in the finding that where the documents provided for carpeting in certain areas, that excludes all other floor coverings in those areas, and where the documents require floor coverings other than carpet in certain areas, that precludes the use of those floor coverings elsewhere.

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Rule providing that no signs, posters, circulars, notices or other lettering shall be affixed to a unit or parked vehicle except for commercial vehicles parked in designated areas was not on its face intended to prohibit a unit owner from leaving newsletter containing political criticism towards the board on the doors of the various units. Rather, the rule was intended to prohibit or regulate commercial advertising on the property, and the $1,500 fine imposed by the association was invalid for this reason.

- Even assuming such a provision is valid, a provision in the articles of incorporation purporting to prohibit an owner who is delinquent in the payment of assessments from voting in an election or from running for the board is not applicable where an owner has refused to pay a fine imposed by the board. A fine is not an assessment for common expenses and cannot be used in this manner, even assuming that the articles of incorporation may condition the right to vote on the payment of assessments, which they cannot do.

Ocean Two Condo. Ass'n, Inc. v. Kilger,
Case No. 2004-00-7007 (Coln / Summary Final Order / June 29, 2004)

- The association alleged that the unit owners had improperly installed a basketball hoop on their lanai in violation of the association's governing documents. The unit owners asserted that their basketball hoop did not violate the association's rules and regulations, as their basketball hoop was "patio type" furniture within the meaning of the rule. As a basketball hoop, under no reasonable interpretation or definition, can be considered furniture, the unit owners defense fails.

Ovanes v. The Marina at the Bluffs Condo. Ass'n, No. 23, Inc.,
Case No. 02-5538 (Coln / Summary Final Order / February 6, 2003)

- The unit owner sought to challenge the association's installation of tile on the elevator landing in her building. The declaration provided that approval of two-thirds of the unit owners shall be required for improvements exceeding $1,000.00. The association provided a billing breakdown for the costs of the tile installation in the elevator landing indicating that the cost of installing tile on the elevator landing was $952.67. Since the costs of installing the tile landing was less than one thousand dollars, the association was not required to obtain unit owner approval before making the changes to the common elements.

Palermo v. The Tower Residences Condo. Ass'n, Inc.,
Case No. 2005-01-7027 (Scheuerman / Summary Final Order / June 30, 2005)

- Where the board pursuant to authorization contained in the declaration had imposed additional rental restrictions by rule on October 19, 2004, which was after the amendment creating Section 718.110(13), F.S., had taken effect on October 1, 2004, the rental rule violated the statutory amendment prohibiting the enforcement of amendments to the declaration imposing additional rental restrictions against owners who did not consent to the amendments. The fact that the declaration, the supreme document, is prohibited from containing these amended restrictions of necessity forecloses a lesser document from containing these same restrictions. If the declaration cannot be so amended, it follows that no rule adopted under the authority of the declaration, may be adopted.

Pope v. Rough Creek Ass'n, Inc.,
Case No. 2003-09-1274 (Coln / Summary Final Order / December 15, 2003)

- Where the declaration of condominium clearly placed the burden of maintenance and repair of windows, and therefore skylights, upon the unit owner, the unit owner was responsible for repairing the roof leak in her skylight and the costs associated with the repair.

Richardson v. Jupiter Bay Condo. Ass'n, Inc.,
Case No. 02-4354 (Scheuerman / Summary Final Order / July 3, 2002)

- Where declaration permitted leasing and where association, having unsuccessfully attempted to amend the declaration to impose substantive restrictions on leasing, amended the bylaws to prohibit leasing for a term of less than 30 days, bylaw amendments were invalid as inconsistent with rights granted by the declaration.

Shoreline Towers Phase I Condo. Ass'n, Inc. v. Star Property, Inc.,
Case No. 01-3857 (Pasley / Partial Summary Final Order and Election Order / March 19, 2002)

- Where the declaration provided that an owner "shall not keep any pet in his Apartment except under the regulations promulgated by the association," a rule prohibiting pets was found to be valid because it contravened neither an expressed provision of the declaration nor a right reasonably inferable there from. The declaration appeared to have grant the authority to the board to allow or not to allow pets.

Tanasychuk v. 625 Espanola Way, Inc.,
Case No. 2003-06-3311 (Scheuerman / Summary Final Order / August 28, 2003)

- Where the declaration was recorded prior to the 1991 amendments to the election portion of the statute and provided that the membership would set the number of directors at between five and seven at the annual meeting and election at which the positions would be elected, the declaration conflicted with the statute requiring the number of candidates be ascertained in advance of the election so that the ballots may be prepared. Since the declaration in this regard is invalid, the statutory provision setting the number of directors at five unless otherwise provided in the bylaws, takes precedence and applies.

Validity

Bedford 'A' Condo. Ass'n, Inc. v. Skaggs,
Case No. 2003-06-8354 (Bembry / Summary Final Order / March 8, 2004) (currently on appeal)

- A provision contained in the declaration that prohibited ownership of pets unless the owner obtained prior written consent of the board was upheld as valid, as there was no showing that the restriction was wholly arbitrary, violative of public policy or abrogated a fundamental or constitutional right.

Centre Court I Condo. Ass'n, Inc. v. Kish,
Case No. 00-1752 (Pasley / Summary Final Order / February 22, 2002)

- Where the declaration provides three methods of amending the declaration and one of those methods is by the approval of 100% of the entire board, a unit owner's challenge to the validity of a provision that bans pets because the provision was not approved by 80% of the unit owners was rejected where 100% of the board had approved the amendment. The amendment did not fit within s. 718.110(4) or 718.110(8), F.S., which require unit owner approval under certain circumstances.

- Where the unit owner did not cite to any provision within the condominium documents that would require distribution of a rule to all owners before it can become effective, the unit owner's assertion that the rule in question was invalid for this reason was rejected.

Doral Grand Condo. Ass'n Inc. v. Unit Owners Voting For Recall,
Case No. 2003-06-6354 (Mnookin / Summary Final Order / August 11, 2003)

- The association rejected recall votes submitted by unit owners who were delinquent in the payment of maintenance fees. However, recall votes will not be invalidated on the basis that unit owners are delinquent in assessments, even where the declaration provides for such.

Default

Generally

Lakeshore at University Park Section One Condo. Ass'n, Inc. v. Davis,
Case No. 2003-09-1326 (Earl / Final Order on Default / May 25, 2004)

- A defaulting party admits well-pleaded facts and acquiesces in the relief sought.

Peruvian Terrace Condo. Apartments, Inc. v. Mittica,
Case No. 2004-04-7249 (Mnookin / Order Denying Motion to Set Aside Default / December 3, 2004)

- Where a unit owner files a motion to set aside a default over 30 days after the final order on default was entered arguing that a misunderstanding between him and his attorney resulted in his failure to file an answer to the arbitration petition, the motion was denied. The arbitrator's entry of default clearly notified the unit owner that an answer had not been filed and any misunderstanding or mistake as to the filing of an answer would terminate at that point. Because the unit owner was unable to demonstrate excusable neglect, mistake, inadvertence or surprise in failing to file an answer in this matter and failed to show that he used due diligence when notified that an answer had not been filed, there is no legal basis for granting his motion.

The Sherwin Condo. Management Ass'n Inc. v. Garvin,
Case No. 02-5366 (Peter Gioia / Final Order on Default / January 23, 2003)

- When the owner fails to cooperate with the arbitration process by failing to attend two duly noticed hearings, the assertions set forth in the petition are deemed to be true, and the owner is deemed to have acquiesced in the relief requested by the petitioner. This is especially true where a party has refused to take part in the final hearing after repeated efforts to hold a hearing on a date to which the owner would consent.

Sanctions (See Arbitration-Sanctions)

Developer

Disclosure

Exemptions (See also Declaration-Exemptions)

Filing

Generally

Central Florida Investments, Inc. v. Sand Lake Village Condo. Ass'n, Inc.,
Case No. 2003-07-1426 (Scheuerman / Summary Final Order / December 18, 2003) (currently on appeal)

- Where an election was scheduled in a multi-condominium association, evidence supported the finding that an entity which owned multiple units in a number of the separate condominiums operated by the association was a developer in one of the condominiums by virtue of having offered more than five units in that condominium for rent in the past year. Hence, the developer was precluded from casting votes on behalf of units owned in that condominium at the general election.

Transfer of control (See also Elections/Vacancies)

Rodstein v. Rimini Beach I Condo. Ass'n, Inc.,
Case No. 02-4250 (Scheuerman / Second Summary Final Order / June 18, 2002)

- Where turnover of control of the association by the developer had already occurred, and where at the time of the post-turnover election, the developer still held at least 5% of the units for sale, developer was entitled to one seat on the three-member board.

- Where turnover from developer control had occurred and where the developer was entitled to one seat of three on the board, wife of the president of the developer corporation, who had recently been transferred title to a unit in the condominium, was not entitled to run for a unit owner position on the board. Due to her status with the president of the developer and in recognition of her relationship with the developer corporation, she is considered a developer representative. To permit her to occupy a seat alongside the other developer designee would effectively permit the developer to re-acquire control of the board, which is prohibited by statute.

Disability, Person with (See Fair Housing Act)

Discovery

Attorney-client privilege (See Attorney-Client Privilege)

Generally

Dispute

Considered dispute

El Galeon by the Sea Condo. Ass'n, Inc. v. Heisey,
Case No. 02-4252 (Scheuerman / Summary Final Order / June 17, 2002)

- Petition alleging that half of the units in the condominium were rented out on a transient basis pursuant to Ch. 509 and seeking to challenge the rental program described a residential condominium as defined by s. 718.103, F.S., for purposes of jurisdiction under s. 718.1255, F.S.

Generally

Jurisdiction

Moot

5825 Corinthian Condo. Ass'n, Inc. v. Garcia,
Case No. 2003-06-7861 (Bembry / Final Order / June 10, 2004)

- Evidence was insufficient to establish an ongoing violation of the restriction prohibiting unit owners from keeping washers and dryers in unit, where the unit owner admitted appliances had already been installed in her unit when she purchased it, asserted that they had been removed, and the association was unable produce evidence that the appliances were still present at the time it filed its petition for arbitration.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

- Where a unit owner's petition alleges misconduct in elections conducted from 1998 through 2003, there is no actual or present dispute as any election irregularities occurring during those years would have been mooted by the following year's election.

- Where a board passes rules and regulations limiting the rights of owners to lease their condominium units but fails to enforce such rules, considers the rules invalid and amends the declaration to render the leasing rules ineffective, the owners' dispute regarding the rules and regulations on leasing is moot.

Kings Lake Condo. Ass'n, Inc. v. Olivarea,
Case No. 2003-07-7063 (Mnookin / Final Order of Dismissal / September 30, 2003)

- Where a tenant removes an illegal pet from the condominium property before any respondent was served with the order requiring answer, the issue in dispute has been cured, and the petition is dismissed as moot.

Riviera Apartments South, Inc. of Hallandale v. Carrier,
Case No. 2005-00-6518 (Grubbs / Final Order Dismissing Petition as Moot / April 13, 2005)

- Although admitting that the dispute was moot, the petitioner requested that jurisdiction be retained to award attorney's fees. Rule 61B-45.048, F.A.C., authorizes an award of fees if a motion for attorney's fees is filed within 45 days after the final order is filed as long as the initial request for fees was made prior to rendition of the final order. An express reservation of jurisdiction in a final order is not necessary for attorney's fees to be subsequently awarded if a motion is timely filed.

Tresize v. Holiday Apartments Condo. Ass'n Inc.,
Case No. 02-4660 (Pasley / Final Order / September 11, 2002)

- Where water leak into unit complained of by petitioner no longer occurred at the time of the hearing, this portion of the petition was moot.

Whisper Walk Section E Ass’n Inc. v. Wigdor,
Case No. 02-5393 (Coln / Summary Final Order / October 17, 2002)

- Since the unit owner removed the plants from the common elements that he had placed there, the issue in the case was moot. Other plants install by prior owner of unit could be removed by association at will.

Not considered dispute

Adkins v. Bear's Paw Condo. I Ass’n, Inc.,
Case No. 2004-02-6536 (Mnookin / Final Order of Dismissal / June 24, 2004)

- Where a unit owner's petition alleges that the association has failed to enforce the condominium documents against another unit owner who had constructed a fish pond and patio extension on the common elements, the case was dismissed because the division lacks jurisdiction over disputes alleging that an association has failed to enforce the condominium documents, pursuant to rule 61B-45.013(6), F.A.C.

BCP Condo. Ass’n, Inc. v. Castro,
Case No. 00-1828 (Scheuerman / Final Order Dismissing Petition / January 2, 2002)

- Petition dismissed when association and unit owner who had installed tile agreed that owner would install area rugs and that association would dismiss petition. Intervenor unit owner who lived adjacent to the respondent owner and objected to settlement must file his claim in court; case dismissed.

Belleair Forest Condo., Inc. v. Dear,
Case No. 02-4900 (Richardson / Order on Motion for Expedited Determination of Jurisdiction; Order Closing File / May 22, 2002)

- Division did not have jurisdiction over allegations of actions of a unit owner toward other individuals including association vendors and employees, and other owners, where the acts are not alleged to be a nuisance.

- Division did not have jurisdiction over allegations that a unit owner was acting as a board member without authorization where the acts are not alleged to be a nuisance.

Carrollbrook Lakeside Condo. Ass’n Inc. v. Gerri Willett,
Case No. 03-6020 (Scheuerman / Final Order Dismissing Petition / January 8, 2003)

- Where the association, in an arbitration proceeding brought against a tenant alleging that the tenant was engaging in nuisance activities, sought entry of a final order canceling or terminating the tenant's lease, the relief sought was tantamount to eviction or removal of the tenant, and the arbitrator lacked jurisdiction over the dispute. Setting

aside or terminating a lease involved removing the authority of the tenant to occupy the unit and is akin to actual removal.

Colonnade Bay Condo. Ass'n, Inc. v. Garcia,
Case No. 2005-00-5762 (Mnookin / Final Order of Dismissal / February 9, 2005)

- Where the association alleges that the unit owners have not applied for approval from the association for tenants to occupy their condominium unit and requests an order requiring the owners to evict the tenants, the petition is dismissed as the Division is without jurisdiction to entertain a claim that requests eviction or removal of tenants from a condominium unit.

Cooper v. Kinsington Walk Master Ass'n,
Case No. 2004-00-8633 (Bembry / Order Vacating Final Order Determining Jurisdiction and Final Order Dismissal / March 30, 2004)

- Although the subject matter of the dispute described in the petition for expedited jurisdiction fell within division's jurisdiction pursuant to Section 718.1255, F.S., the arbitrator declined to exercise jurisdiction of a dispute that was pending in circuit court, upholding the general principle that jurisdiction vests in the forum in which service of process is first perfected.

- Arbitrator determined that circuit court should make the determination as to whether arbitration had been waived by the party petitioning for expedited determination of jurisdiction, given that dispute was pending in circuit court and there was no indication by the parties that the court had relinquished jurisdiction of the matter.

Corbo v. Versailles Hotel Condo. Ass'n, Inc.,
Case No. 02-4750 (Pasley / Final Order of Dismissal for Lack of Jurisdiction / May, 31, 2002)

- Arbitrator lacks jurisdiction over dispute that arises in a mixed-use condominium and where the essence of the dispute originates in a commercial unit, regardless of whether the owner also owns a residential unit in the condominium.

Cruz v. Flanco Condo. Ass'n, Inc.,
Case No. 2005-01-5893 (Scheuerman / Final Order Dismissing Petition / April 13, 2005)

- The arbitrator dismissed the petition for lack of jurisdiction where the owners sought to challenge a special assessment for hurricane shutter replacement, and sought as relief a credit for amounts paid.

Daly, III v. The Association of Pelican Point, Inc.,
Case No. 2003-08-8440 (Mnookin / Final Order of Dismissal / December 12, 2003)

- Where a unit owner filed a petition for arbitration alleging that the association purchased association property without obtaining the approval of 75% of the unit owners, the petition was dismissed for lack of jurisdiction. This dispute does not involve the authority of the board of directors to alter or add to a common element or area, but involves title to the property in question and therefore fails to fall within the definition of disputes eligible for arbitration.

- Where the relief sought by a unit owner in his petition for arbitration is reimbursement for an allegedly improper assessment, the petition is dismissed because a dispute which primarily involves the levy of an assessment is not within the jurisdiction of the arbitration division.

Demma v. Brighton North, Inc.,
Case No. 2003-07-1146 (Coln / Final Order on Request for Expedited Determination of Jurisdiction / July 25, 2003)

- The unit owners alleged that they had previously filed a lawsuit in small claims court regarding access to the official records of the association. The lawsuit was ultimately dismissed as the parties had reached a settlement agreement. The unit owners' petition alleges that the association has violated the terms of the settlement agreement entered into in the small claims proceeding and requests the arbitrator to enforce the terms of the agreement. Pursuant to rule 61B-45.013(3), F.A.C., the unit owners' claim belongs in court.

Dumas v. Sun Isles Condo. Ass'n of Merritt Island, Inc.,
Case No. 2005-01-1525 (Earl / Final Order of Dismissal / March 9, 2005)

- Arbitrator lacked jurisdiction over petition filed by unit owners alleging that another unit owner had modified his unit in violation of the condominium documents because the dispute fundamentally involved the association's failure to enforce the condominium documents and was in essence a dispute between unit owners.

Erstein v. Ramblewood East Condo. Ass'n, Inc.,
Case No. 2003-09-1268 (Mnookin / Final Order of Dismissal / December 10, 2003)

- The arbitrator lacks jurisdiction over a dispute where the unit owner requests reimbursement for payment for plumbing services required to fix a broken pipe within a common element wall. As disputes which primarily involve claims for damages based upon the failure of the association to maintain the common elements do not qualify for arbitration, the petition was dismissed.

The Falls of Inverrary Condo. Inc. v. Piracoca,
Case No. 2003-06-3335 (Mnookin / Final Order of Dismissal / June 6, 2003)

- When the association files a petition for arbitration and requests as relief an order requiring the unit owner to remove all illegal and unapproved tenants from the

condominium unit, the petition must be dismissed for lack of jurisdiction. The arbitrator does not have jurisdiction to entertain claims which primarily involve the eviction or other removal of a tenant from a unit.

- When the association files a petition for arbitration and requests as relief an order requiring the unit owner to pay both delinquent and future assessments, the petition is properly dismissed for lack of jurisdiction. The arbitrator does not have jurisdiction to entertain disputes which involve the levy of a fee or assessment or the collection of an assessment levied against a party.

Field v. Blind Pass Lagoons, Unit 1 Condo., Inc.,
Case No. 2004-03-2642 (Earl / Final Order of Dismissal / November 22, 2004)

- Where a petitioner alleged that a condominium association that he was not a member of failed to comply with an easement and cross license agreement, the arbitrator lacked jurisdiction over the dispute, as it did not involve a dispute between a condominium association and a member of the association.

Filardi v. Boca Teeca Condo. No. 3, Inc.,
Case No. 2004-01-7187 (Coln / Final Order Dismissing Petition for Lack of Jurisdiction / June 28, 2004)

- The petition was dismissed for lack of jurisdiction where the owner sought damages for leaks caused by the association's failure to maintain the common elements. The arbitrator also lacked jurisdiction over the requested relief that the association be required to file an insurance claim on behalf of the owner against the association's insurance company.

Glickfield Revocable Trust v. Regency Tower South Condo. Inc.,
Case No. 03-6037 (Scheuerman / Final Order Dismissing Petition / February 11, 2003)

- Where the petitioning unit owner sought consequential damages incurred where the association failed to allow prospective purchasers access to the unit due to the failure of the owner to pay a transfer fee, the validity of which was being challenged by the owner, the arbitrator lacked jurisdiction over the controversy that primarily concerned the levy of a fee.

Haakenson v. The Nautilus Condominium,
Case No. 2005-01-6811 (Mnookin / Final Order of Dismissal / April 18, 2005)

- Where a unit owner files a petition alleging that the association has failed to enforce its governing documents in that it is impermissibly allowing short-term rentals, the petition is dismissed because the Division does not have jurisdiction over disputes alleging an association's failure to enforce the condominium documents, pursuant to Rule 61B-45.013(6), F.A.C.

Haines v. Sandford,

Case No. 02-5333 (Pasley / Final Order on Jurisdiction / August 5, 2002)

- Arbitrator lacks jurisdiction over one of the parties where the petitioner/unit owner names as respondent an individual who owns a unit within a neighboring condominium and seeks to require the named respondent to take action regarding his boatlift, which is allegedly installed on the property of the petitioner's condominium with approval from petitioner's board of directors.

Homemax, Inc. v. River Cove Landings Condo. II Ass'n, Inc.,
Case No. 2003-08-3058 (Scheuerman / Final Order on Jurisdiction / June 2, 2004)

- Where certain owners sought to challenge an amendment to the declaration purporting to remove 42 of 52 units from the condominium on grounds that the amendment violated Section 718.110(4), F.S., and sought a declaration that the units were still part of the condominium and subject to assessments, the dispute primarily concerned title to the disputed parcel and would be dismissed by the arbitrator.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

- Where unit owners allege that the board has failed to properly maintain reserve accounts in the condominium budget, the dispute cannot be entertained because it is not within the jurisdiction of the arbitrator.

Kilbourn v. The Colonage at Park Shore Owners Ass'n, Inc.,
Case No. 2004-00-8529 (Earl / Final Order on Request for Expedited Determination of Jurisdiction / February 18, 2004)

- Arbitrator is without jurisdiction over petitioner's claim for damages where petitioners allege that the association failed to timely remove an insect infested beehive from the common elements causing the petitioners' unit to become infested and requiring them to hire an exterminator. Since the claim is, in essence, a claim for damages based upon the failure of the association to maintain the common element, it is, therefore, not eligible for arbitration pursuant to Section 718.1255(1), F.S.

Lago Del Rey Condo., Inc. 9 v. Balka,
Case No. 2003-07-8514 (Mnookin / Final Order of Dismissal / September 26, 2003)

- The association argues that the personal representative of a decedent's is not permitted to authorize a tenant to reside in the decedent's unit prior to opening a probate proceeding in the State of Florida and prior to being named as the personal representative of the estate, and requests removal of the tenant in its petition for arbitration. As this dispute involves title to a unit, including who is permitted to authorize a tenant to reside in a unit, and requests evictions of a tenant, the petition is dismissed because the division does not accept jurisdiction over cases involving title disputes or eviction requests.

Maison Grande Condo. Ass'n, Inc. v. Joran Realty, Inc.,
Case No. 2005-03-1690 (Earl / Final Order of Dismissal / June 22, 2005)

- In a dispute filed by the association seeking a final order voiding the sale of a unit, the arbitrator lacked jurisdiction over dispute alleging that the unit owner had transferred title to her unit without prior approval of the association as the dispute would involve title to a unit and would necessarily involve a non-unit owner, the party to whom the unit was transferred.

Marco v. River Run of Sebastian Condo. Ass'n, Inc.,
Case No. 2003-08-5836 (Mnookin / Final Order of Dismissal / November 10, 2003)

- A unit owner's petition for arbitration requesting an order determining that an assessment for the cost of maintaining a parking lot retaining wall should only be levied against those residents owning units in one condominium and not assessed as a common expense against the residents of all the condominiums within a multi-condominium organization, did not state a dispute eligible for arbitration. Since the unit owner seeks a ruling on the levy of an assessment, the dispute is outside the jurisdiction of the arbitrator.

- Where a unit owner's petition for arbitration requests an order ruling that a parking lot retaining wall is part of the common elements of only one condominium and not property of the remaining condominiums in a multi-condominium setting, the petition failed to state a dispute subject to arbitration under Section 718.1255, F.S. As the essence of this dispute concerns ownership or title to the retaining wall, the dispute is not within the jurisdiction of the arbitration division and must be dismissed.

Migliorino v. The Jupiter Beachcomber Condo. Ass'n Inc.,
Case No. 2003-06-0842 (Mnookin / Final Order Dismissing Petition for Arbitration / June 3, 2003)

- The unit owner's petition for arbitration was dismissed for lack of jurisdiction where the dispute alleges that the association improperly paid for the repair costs of two limited common element patios which will result in a higher assessment charged to the unit owner. Pursuant to Section 718.1255. F.S., disputes eligible for arbitration do not include those involving the levy of a fee or assessment. Furthermore, if the unit owner were to allege that the association misused its funds by paying for the patio repairs, the arbitration division would still lack jurisdiction to entertain the claim because it involves a breach of fiduciary duty on the part of the association. Disputes involving the alleged breach of fiduciary duty by one or more directors are also not within the jurisdiction of the arbitrator.

Natho v. Water Crest of Falling Waters, Inc.,
Case No. 02-5873 (Coln / Order on Motion to Add Third Party and Final Order Dismissing Petition for Lack of Jurisdiction / May 1, 2003)

- The unit owner sought an award of damages for the negligent failure of the association to maintain the common elements. The unit owner did not seek injunctive relief against the association to require it to remedy the leaks of which she complains. Thus the dispute primarily involves a claim for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property and as such is outside the jurisdiction of the arbitration section.

- The unit owner alleged that rainwater entered into her unit from the common elements which caused damage to the drywall. The association argued that the developer should be added as a party to this action as the damage complained of occurred when the property was under developer control. The association asserts that the developer is primarily responsible for the damage and making the repairs to the petitioner's unit and is, therefore, an indispensable party. Since arbitration may only occur between an association and an owner, the addition of the developer as a party would take the dispute outside the jurisdiction of the arbitrator.

Paradise Shores Apartment, Inc. v. Misirlic,
Case No. 2004-02-3943 (Coln / Final Order of Dismissal / April 27, 2004)

- The association alleged that the unit owners had violated the 55 and over restrictions of the condominium documents by allowing a tenant under the age of 18 to reside in their unit. As relief, the association requested an order requiring the removal of the tenant. Pursuant to Section 718.1255, F.S., this disagreement does not fall within the definition of a "dispute" subject to arbitration, but instead is specifically exempted from the grant of jurisdiction given the division.

Poinciana Island Yacht and Racquet Club Condo. Ass'n Inc. v. Anderson,
Case No. 02-5955 (Scheuerman / Final Order Dismissing Petition / January 22, 2003)

- Where the association sued an owner that had been removed from the board for missing 3 consecutive board meetings because the ex-board member continued to hold herself out as a board member, the arbitrator lacked authority over the dispute which did not involve the failure of the board to properly conduct elections or meetings.

Raymond v. Solamar Condo. Ass'n, Inc.,
Case No. 2004-00-1763 (Earl / Final Order of Dismissal / January 20, 2004)

- Where petitioners alleged that unit owners above them installed tile in their unit without proper soundproofing materials in violation of the declaration of condominium and that the association has failed or refused to enforce the soundproofing requirement, arbitrator lacked jurisdiction over the matter because it was fundamentally a dispute between unit owners and because the dispute alleges that the association has failed to enforce declaration.

Robertson v. Fountain Gate Condo. Ass'n, Inc.,
Case No. 02-5823 (Coln / Order Dismissing Petition / December 4, 2002)

- Arbitrator does not have jurisdiction over unit owner's claim that association is failing to enforce city and county zoning regulations relating to the parking of vehicles. Dispute does not involve the authority of the board to require the unit owner to take or not take any action with respect to his unit and therefore the division is without jurisdiction pursuant to Section718.1255(1)a.

Sandalfoot South One, Inc. v. Perez,
Case No. 2005-00-1209 (Bembry / Order on Request for Expedited Determination of Jurisdiction / March 9, 2005)

- Where the dispute involved the leasing of unit to relatives and raised the issue of whether two families could reside in unit under the association's leasing restrictions, and where relief sought would involve eviction of occupants of unit, arbitrator lacked jurisdiction over dispute.

Sarcone v. Adalia Bayfront Condo. Ass'n, Inc.,
Case No. 01-3777 (Richardson / Partial Summary Final Order and Order Requiring More Definite Statement / March 28, 2002)

- Claims alleging board harassment do not fall within the Division's jurisdiction.

- The Division has no jurisdiction over owners' request for an order requiring the association to place him on two committees.

Schaffer v. Townhouses of Highland Beach Condo. Ass'n, Inc.,
Case No. 2003-07-0746 (Mnookin / Final Order Dismissing Petition for Lack of Jurisdiction / July 17, 2003)

- The unit owner alleged that the association failed to properly maintain the condominium roof, resulting in damages to his unit. Since the primary relief sought by the unit owner is an award of damages, the dispute is not within the jurisdiction of the arbitration section pursuant to Section 718.1255(1), F.S.

Schottmuller V. Chateau Terese Condo. Apartments, Inc.,
Case No. 02-5300 (Coln / Final Order Dismissing Petition for Arbitration / July 31, 2002)

- Unit owner filed petition seeking award of attorney's fees and cost for actions by his attorney in dealing with the association. Request for fees and cost were not related to a prior arbitration action. Pursuant to Section 718.1255(4)(k) and 718.1255(1), Fla. Stat. and Arbitrator had no jurisdiction over an attorney fee and cost recovery request that was not related to or based upon a prior arbitration action.

Scott v. Paradise Lake RV Park Ass'n, Inc.,
Case No. 2003-09-4746 (Coln / Final Order of Dismissal / January 8, 2004)

- The arbitrator lacked jurisdiction over dispute involving whether the unit owner or the association owned a shed that was located on the common elements near the owner's unit, and whether the association was permitted to remove or sell the shed.

Serda v. Shores Villas Condo. Ass'n Inc.,
Case No. 2003-06-4150 (Coln / Final Order Dismissing Petition for Lack of Jurisdiction / June 4, 2003)

- The relief sought by the petitioner is an award of damages for the negligent failure of the association to maintain the common elements. The dispute contained in the petition for arbitration primarily involves a claim for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property. Pursuant to Section 718.1255(1), F.S. (1997), such a dispute is outside the jurisdiction of the arbitration section.

Sheffield I Condo. Ass'n, Inc. v. Costa,
Case No. 2005-01-0837 (Mnookin / Final Order of Dismissal / March 16, 2005)

- Where an association files a petition for arbitration against individual unit owners alleging that the owners, as "self appointed board" members, conducted an illegal election to usurp control of the association, the case is dismissed because jurisdiction is not proper when the authority of someone other than the board to initiate an election is the primary focus of the dispute.

Skylake Gardens No. 3, Inc. v. Ramos,
Case No. 2005-02-9274 (Mnookin / Final Order of Dismissal / June 9, 2005)

- Where the association's petition alleges that the unit owners are permitting unauthorized individuals to reside in the condominium unit and request as relief an order requiring the removal of these individuals, the petition is dismissed based on lack of jurisdiction over disputes involving the removal or eviction of tenants or occupants from a unit as required by Section 718.1255, F.S.

Soho Property, Inc. v. Ceviche Restaurant,
Case No. 2005-02-2817 (Mnookin / Final Order of Dismissal / April 24, 2005)

- Where the owners of a commercial restaurant unit has a dispute over the number of parking spaces allocated to the restaurant patrons by the association, the controversy is not within the jurisdiction of the Division because the dispute involves a commercial unit and not a residential unit.

Thornhill v. Admiral Farragut Condo. Ass'n, Inc.,
Case No. 2004-04-4863 (Mnookin / Summary Final Order / April 25, 2005)

- Because the unit owner's dispute regarding the construction of steps outside her unit balcony was previously adjudicated by the circuit court in that the steps were ordered to

be removed and such a ruling was affirmed by the 3rd DCA and DOAH, the dispute has been settled by prior judicial decisions and is not eligible for arbitration pursuant to Rule 61B-45.013(3), F.A.C.

Torquati v. The Atrium Ass'n, Inc.,
Case No. 2003-04-4270 (Coln / Final Order Dismissing Petition for Arbitration / March 14, 2003)

- The unit owners sought an order from the arbitrator requiring the association to enforce the declaration of condominium and require their upstairs neighbors to remove the tile from their unit and repair any damage caused by its installation. The dispute was one between unit owners and not a dispute between a unit owner and the association. Pursuant to Section 718.1255(1) F.S., the arbitrator lacks the jurisdiction to entertain the case.

The Verandas on the Gulf Condo. Ass'n, Inc. v. Rudz,
Case No. 2004-03-4271 (Earl / Final Order of Dismissal / February 24, 2005)

- Where a unit owner sells his unit during the pendency of an arbitration proceeding, the dispute is no longer eligible for arbitration and the arbitrator may no longer retain jurisdiction.

Winfield Gardens South Condo. Ass'n, Inc. v. Castro,
Case No. 2005-00-7924 (Mnookin / Final Order of Dismissal / February 22, 2005)

- Where the association alleges that the unit owners have not applied for or received approval from the association for tenants to occupy their condominium unit and requests an order requiring the owners to permanently remove all unauthorized and unapproved occupants from the unit, the petition is dismissed as the arbitrator is not without jurisdiction to entertain a claim that requests the eviction or removal of any occupants from a condominium unit.

Zona v. Randall and the Cottages at Barefoot Condo. Ass'n, Inc.,
Case No. 2004-00-4369 (Mnookin / Final Order of Dismissal / February 5, 2004)

- Where unit owners had alleged that the association failed to enforce the condominium documents by permitting another unit owner to construct a balcony that extended beyond the boundaries of his unit without the approval of the membership, the dispute does not qualify for arbitration. Those disputes claiming that the association has failed to enforce provisions of the condominium documents are not eligible for arbitration.

Not ripe/bona fide dispute / live controversy

Gulf Island Beach & Tennis Club I Condo. Inc. v. Lapenna,
Case No. 2003-04-2125 (Coln / Final Order Dismissing Petition / March 11, 2003)

• Where the association filed a petition for arbitration seeking a judicial declaration that an election was properly or improperly conducted, the arbitrator dismissed the petition. The association cannot challenge its own conduct of an election, and the association was duty-bound to either certify the results of the election or conduct a new election. The claim was speculative and did not constitute a present dispute.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

• Where the unit owners allege that rule restricting unit owner participation at board meetings is invalid but cannot show that the rule has ever been enforced against any owners and the rule is not published as part of the current rules because the board even acknowledges that the rule is void ab initio, the dispute is dismissed as there is no bona fide, actual and present dispute required by Rule 61B-45.013, F.A.C..

Scariati v. The Villages at Emerald Lakes One Condo. Ass'n, Inc.,
Case No. 2005-02-1485 (Grubbs / Order Denying Motion to Dismiss / June 7, 2005)

• The pre-arbitration notice required by §718.1255(4)(b), F.S., is not necessary when a petition for arbitration challenges the board's certification of a recall, just as it is not necessary in a recall case brought by the board pursuant to §718.112(2)(j)3, F.S. When a former board member challenges the certification of her recall, the issues are the same as those that might be raised in a recall petition. In either case the question is whether the board has acted properly in fulfilling its responsibilities in accordance with the statutes and rules relating to the recall of board members. Moreover, because of the nature of a recall and the finality of the decision by the board, subject to review by an arbitrator, it is questionable whether a pre-arbitration notice in a recall case would serve any purpose, since the purpose of pre-arbitration notice is to allow the offender to correct his errors and cure his violations without the necessity of formal legal proceedings. Once a board determines that a recall is certified, it is a final decision for all practical purposes.

Pending court or administrative action / abatement / stay

Belleair Forest Condo., Inc. v. Dear,
Case No. 02-4900 (Richardson / Order on Motion for Expedited Determination of Jurisdiction; Order Closing File / May 22, 2002)

• Rule 61B-45.013(4), F.A.C., provides that "Where a controversy involves both matters eligible and ineligible for arbitration, the arbitrator shall determine by order whether the ineligible matters may properly be severed from the controversy so that the remaining eligible issues may be arbitrated."

• Where arbitration would only provide partial relief, the Arbitrator declined jurisdiction in favor of the tribunal having jurisdiction over the whole matter.

Colonial Manor West Apartments Condo. Ass'n, Inc. v. Aiello,

Case No. 2005-00-8159 (Mnookin / Final Order Acknowledging Stipulation for Dismissal / June 17, 2005)

- Where both parties stipulate to a dismissal so the matter can proceed to circuit court and where the disputed issue is already pending in circuit court with a different unit owner in the same condominium, the case is appropriately dismissed.

Cooper v. Kinsington Walk Master Ass'n,
Case No. 2004-00-8633 (Bembry / Order Vacating Final Order Determining Jurisdiction and Final Order Dismissal / March 30, 2004)

- Although the subject matter of the dispute described in the petition for expedited jurisdiction fell within division's jurisdiction pursuant to Section 718.1255, F.S., the arbitrator declined to exercise jurisdiction of a dispute that was pending in circuit court, upholding the general principle that jurisdiction vests in the forum in which service of process is first perfected.

- Arbitrator determined that circuit court should make the determination as to whether arbitration had been waived by the party petitioning for expedited determination of jurisdiction, given that dispute was pending in circuit court and there was no indication by the parties that the court had relinquished jurisdiction of the matter.

Lake Park Gardens #1, Inc. v. Rivera,
Case No. 2005-00-5745 (Bembry / Order Administratively Closing Case File / May 24, 2005)

- Order administratively closing case was issued where the association failed to submit proof that it had obtained relief from the automatic stay from the federal court in the bankruptcy case involving one of the unit owners after attorney handling bankruptcy case filed suggestion of bankruptcy in the arbitration case.

Nechtman v. Three Seasons Ass'n No. 1, Inc.,
Case No. 02-5863 (Scheuerman / Final Order Dismissing Petition / January 21, 2003)

- Where the official record dispute had been litigated and ultimately settled by the parties in court, the arbitrator would not accept jurisdiction over the dispute alleging a failure to provide access to the records. It is not within the province of the arbitrator to pass on the issue of whether the court originally had subject matter jurisdiction over the dispute, and the parties should be required to abide by the final judgment incorporating their settlement agreement. Enforcement of the agreement would ordinarily lie in the forum in which the agreement was created.

Towerhouse Condo. Ass'n, Inc. v. Schultz,
Case No. 2005-00-8080 (Grubbs / Order Administratively Closing Case File / June 27, 2005)

- The case was closed administratively when the respondent provided documentation establishing that respondent had elected to pursue the fair housing issue involving his two dogs with the US Department of Housing and Urban Development (HUD) and had filed a housing discrimination complaint through the Miami Dade County Equal Opportunity Board.

Villager Ass'n, Inc. v. Dowling,
Case No. 2004-00-7743 (Grubbs / Final Order / February 9, 2005)

- When a unit owner has failed to seek approval from the association for some improvement, the appropriate remedy is to require the unit owner to apply for approval, if the lack of approval is the only problem. Injunctive-type relief should be no broader than is necessary to restrain the unlawful conduct and should constitute the least intrusive remedy that will be effective.

Relief granted or requested

The Atrium on the Bayshore Ass'n Inc. v. Garcia,
Case No. 02-4682 (Coln / Final Order / August 1, 2002)

- The testimony presented demonstrated that the unit owner was able to control his dog's barking by using the electronic bark collar and that the use of this collar has been 100% effective when used properly. Where lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. See Knecht v. Katz, 785 So.2d 754, 755 (Fla. 5th DCA 2002). Accordingly, since dog's barking can be controlled, the removal of the dog is an excessive remedy. Unit owner order to use bark collar at all times.

Belle Isle Apartments Corp. d/b/a Terrace Towers v. Bernstein, and
Bernstein v. Belle Isle Apartments Corp. d/b/a Terrace Towers,
Case No. 2004-02-0386 and 2004-02-2097 (Mnookin / Final Order / April 29, 2004)

- Where the association approved a unit owner's remodeling plans that included the installation of air conditioning condensors on the common areas of the cooperative property, the owner, despite the approval of the board, is not permitted to install the condensors as it violates Section 719.105(2), F.S, which entitles cooperative owners to use common areas only for the purpose for which they are intended and prohibits an owner from hindering or encroaching upon the rights of others in using the common areas. Based on the owner's reliance on the association's approval, the association was required to reimburse the unit owner for one-half of the expenses associated with re-installing the condensors in a permissible location.

Carr v. River Reach Inc.,
Case No. 2003-06-1654 (Scheuerman / Final Order Denying Motion for Emergency Relief and Final Order Dismissing Petition / May 21, 2003)

- Where the unit owner filed a motion for an emergency temporary injunction seeking to stop the association from upgrading the fire alarm system as required by the fire marshal, the unit owner's argument that the upgrade constituted a material alteration to the common elements was rejected. The upgrade was held to fit squarely within the maintenance doctrine that has been recognized by the courts to nullify the owner vote requirement that otherwise would be applicable. The board's duty to maintain and preserve the common elements is broad enough to encompass the operational activities designed to bring the association into conformity with the requirements of local ordinances.

Fairbanks Terrace South, Inc. v. Broniecki,
Case No. 2003-07-6318 (Earl / Final Order / December 29, 2003)

- Where a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. Since the respondent's cat can be kept out of the common elements by the respondent not walking, exercising or otherwise permitting her cat on the common elements, the respondent was ordered to immediately cease from exercising, walking or otherwise permitting her cat on the common elements.

Hadden v. Whiteway Terrace Villas Condo. Ass'n,
Case No. 2003-07-6575 (Mnookin / Final Order / October 23, 2003)

- In order for a unit owner to be eligible for statutory damage awards pursuant to Section 718.111(12)(c), F.S., for an association's willful failure to allow access to its official records, the petition for arbitration must specifically request damages as relief. A mere reference to the statutes in the statement of facts section of the petition does not put the association on notice that statutory damages are contemplated and will not result in an award of damages.

Held v. Board of Directors, Gabriel Towers Condo. Ass'n, Inc.,
Case No. 02-4510 (Scheuerman / Final Order Dismissing Petition / February 27, 2002)

- Where petition challenging election requested as relief that the board members who won the election be ordered never to run for the board again, there was no statutory support for such an award of relief and no such relief would be granted. The right to run for the board is a right associated with unit ownership and is given meaning in the condominium documents permitting all owners to run for the board. The right cannot be taken away absent an appropriate amendment to the documents.

- The arbitrator lacked the authority to fine individual board members for conducting an alleged-illegal election. While the Division sitting in an enforcement capacity is authorized to fine an association for statutory violations, and while the Division may under appropriate circumstances fine a board member individually, the legislature did not authorize a Division arbitrator to fine a board member.

Lakeshore at University Park Section One Condo. Ass'n, Inc. v. Davis,

Case No. 2003-09-1326 (Earl / Final Order on Default / May 25, 2004)

As relief, the association requested that the arbitrator order the respondent to remove the dog from her unit. However, where a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. The Atrium on the Bayshore Ass'n Inc. v. Garcia,, Arb. Case No. 02-4682, Final Order (August 1, 2002) citing Knecht v. Katz, 785 So.2d 754 (Fla. 5th DCA 2002). Accordingly, where condominium documents did not contain an absolute pet prohibition, but required the unit owners to seek in writing the association's approval for pets, the association's complaints may be remedied by prohibiting the respondent from maintaining her dog on the balcony of her unit and discarding its waste off the balcony onto the ground below.

La Renaissance #1 Condo., Inc. v. Mueller,
Case No. 2003-07-3457 (Scheuerman / Final Order / December 22, 2003)

- Where the unit owner had a history of placing various illegal objects on his patio only to remove them when the association's enforcement efforts neared completion, whereupon a different object would be placed on the patio, the arbitrator entered a general order prohibiting the owner from placing any and all illegal objects on his patio.

Lee v. Winston Towers 100 Ass'n, Inc.,
Case No. 02-4897 (Richardson / Final Order / January 3, 2003)

- Where the petitioner owner proved that the plumbing had backed up into his unit with some regularity but did not offer expert testimony tending to prove that the association had been negligent in addressing the issue and did not provide an expert opinion on what the best remedy was, the owner was deemed not to have proved his case and was not entitled to the relief requested.

Los Prados Condo. Ass'n, Inc. v. Lemley,
Case No. 03-6092 (Scheuerman / Final Arbitration Order / May 25, 2004)

- Preliminary injunctive relief was awarded where an owner refused to remediate his mold-ridden unit and the association was permitted to enter the unit, remediate and rebuild the unit, and to bill the owner for the costs thereof.

Maqueira v. International Park Condo. II Ass'n, Inc.,
Case No. 01-3939 (Pasley / Amended Final Order / May 30, 2002)

- A new election was ordered to be held where the association failed to provide a credible explanation as to why it failed to mail the first notice of election (60-day notice) to several unit owners with whom the association and/or the management company had contentious relationship. The failure to provide the 60-day notice to the unit owners deprived these individuals of the opportunity to seek election as a board member.

Natho v. Water Crest of Falling Waters, Inc.,

Case No. 02-5873 (Coln / Order on Motion to Add Third Party and Final Order Dismissing Petition for Lack of Jurisdiction / May 1, 2003)

- The unit owner sought an award of damages for the negligent failure of the association to maintain the common elements. The unit owner did not seek injunctive relief against the association to require it to remedy the leaks of which she complains. Thus the dispute contained in the petition for arbitration primarily involves a claim for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property and as such is outside the jurisdiction of the arbitration section.

Ocean Club Townhomes at Jupiter Condo. Ass'n, Inc. v. Spiegel,
Case No. 01-2593 (Scheuerman / Final Order / December 20, 2001)

- Where dogs were shown to have roamed without a leash on the common elements in the past, but not recently, there is no need for entry of an order requiring the pet owner to do that which he is otherwise required to do.

Stone's Throw Condo. Ass'n, Inc. v. Corsi,
Case No. 00-2173 (Pasley / Final Order / October 16, 2001)

- Where a unit owner committed multiple violations of the "Pets" section of the rules and regulations, including allowing the dog outside of the unit without having dog on a leash and by allowing the dog to swim in the swimming pool, wherein the dog defecated, the unit owner was ordered to permanently remove the dog from the condominium property because the unit owner had placed the health of the other unit owners in jeopardy.

Trillo v. Arlen House Condo., Inc.,
Case No. 2003-07-9525 (Bembry / Order on Petitioner's Emergency Motions / January 14, 2004)

- The unit owners' motion for temporary injunction, wherein owners sought to prevent the association from altering and repairing the balconies, would be denied where the owners had an adequate remedy at law; an award of damages would be available to redress any injury.

Windrush Bay Condo. Ass'n, Inc. v. Lucus,
Case No. 00-2092 (Gioia / Final Arbitration Order / April 24, 2002)

- In a case brought by the association seeking damages against an owner accused of destroying a tree on common elements, the association's witness claimed to have observed the respondent/owner attack the subject tree and inflict the fatal injury. As the owner failed to attend the final hearing, the credible testimony offered by the association remains undisputed. Based on the evidence discussed above, the Arbitrator found that

the respondent was responsible for the death of the subject pine tree and should bear the cost of its replacement.

Standing

Maxine H. Freeman Trust v. Ballantrae Condo. Ass'n, Inc.,
Case No. 2004-01-7060 (Mnookin / Final Order of Dismissal / May 3, 2004)

- The division may only exercise jurisdiction over disputes between unit owners and an association. Those persons having an ownership interest in a unit must be joined or designated as a party to the proceeding; thus, a trustee must be named as a party when the property in question is owned by a trust.

Ovanes v. The Marina at the Bluffs Condo. Ass'n, No. 23, Inc.,
Case No. 02-5538 (Coln / Summary Final Order / February 6, 2003)

- The unit owner, the owner of a unit in building 23 of a 28-building multi-condo, sought to challenge the changes made to common elements of a condominium in which she did not reside. It is elementary that a person is not permitted to challenge the validity of a statute unless the statute in some way injuriously affects that person's rights. The only individuals who would have standing to challenge the changes to the common elements of those condominiums are the unit owners of the units within those condominiums.

Pellan v. Ancient Oaks RV Resort Condo. Ass'n,
Case No. 2003-05-4356 (Coln / Final Order of Dismissal / April 15, 2003)

- Former board members filed a petition for arbitration challenging the board's decision to certify their recall from the board. Only the board, on behalf of the association, is empowered under Section 718.112(2)(j), F.S., to seek to challenge a recall. If the board determines not to challenge a recall, or if a board does not file a petition for arbitration within the time required for the filing of a petition, the recall is deemed certified. A former board member does not have standing under Section 718.112(2)(j), F.S., to challenge the decision of the board in this regard.

Streeter, Jr. v. Sun Island Ass'n Inc.,
Case No. 03-6100 (Coln / Final Order on Determination of Jurisdiction / February 7, 2003)

- Only the board of directors has standing under Section 718.112(2)(j), F.S., to seek to challenge a recall by filing a petition for recall arbitration. A unit owner/former board member has no standing to maintain an action under Section 718.112(2)(j), F.S., to challenge a recall; and the unit owners/former board member may not resort to Section 718.1255, F.S., to reopen the recall as to do so would compromise the finality of recalls under the statute.

Easements

Elections/Vacancies

Candidate information sheet

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Where a candidate for an election mailed his notice of intent of candidacy by certified mail and where the post office attempted delivery more than 40 days prior to the election, although the association was not in actual possession of the notice, the association was constructively in possession of the notice, and the candidate was properly included on the ballot.

- Neither the board nor the articles of incorporation may properly bar an owner who is allegedly delinquent in the payment of a fine to vote in an association election or from running for the board. First, the fine is invalid because the rule sought to be enforced did not prohibit the conduct complained of. Secondly, the board was shown to have selectively enforced the rule sought to be enforced by the board. Thirdly, a condominium is a creature of statute and may only exercise those remedies provided for in the Condominium Act. These remedies do not include a denial of voting rights, denial of the right to run for the board, or the ability to lock an owner out of the common elements for failure to pay a fine.

Generally

Aloha Bay Condo. Ass'n, Inc. v. Meyers,
Case No. 2004-06-0542 (Scheuerman / Order Dismissing Petition without Prejudice / March 8, 2005)

- The arbitrator lacked jurisdiction over the dispute filed by former board members in the name of the association challenging the conduct of the annual election by the management company who had wrested control over the election meeting from the former board. The old board may not, consistent with Section 718.1255, F.S., file a challenge to an election conducted by a mutinous management company, naming as respondents the newly elected members of the board. The association cannot within the confines of Section 718.1255, F.S., challenge another person's conduct of an election. Additionally, the jurisdiction of the arbitrator is not properly invoked where the association claims that its appurtenant right to vote its units was denied in the election; this is only available where the association has impacted on the appurtenances to the unit. Here, it was the management company and the counterfeit members of the new board that denied the rights appurtenant to units owned by the association.

Central Florida Investments, Inc. v. Sand Lake Village Condo. Ass'n, Inc.,
Case No. 2003-07-1426 (Scheuerman / Summary Final Order / December 18, 2003) (currently on appeal)

- Where an election was scheduled in a multi-condominium association, evidence supported the finding that an entity which owned multiple units in a number of the separate condominiums operated by the association was a developer in one of the condominiums by virtue of having offered more than five units in that condominium for rent in the past year. Hence, the developer was precluded from casting votes on behalf of units owned in that condominium at the general election.

Doral Grand Condo. Ass'n Inc. v. Unit Owners Voting For Recall,
Case No. 2003-06-6354 (Mnookin / Summary Final Order / August 11, 2003)

- The association rejected recall votes submitted by unit owners who were delinquent in the payment of maintenance fees. However, recall votes will not be invalidated on the basis that unit owners are delinquent in assessments, even where the declaration provides for such.

Gentry v. Casa Del Sol (Winter Haven) Condo. Ass'n Inc.,
Case No. 02-5687 (Scheuerman / Summary Final Order / February 6, 2003)

- Where the association failed to utilize the 2-envelope ballot system mandated by the administrative rules and only used the inner envelope accompanying the ballot, this error could not be characterized as technical or harmless error as suggested by the association. The failure of an association to adopt election protocol that ensures the confidentiality of the election process is a substantial error that goes to the very heart of the election process. However, in the absence of evidence that the failure to use the outer envelopes compromised the secrecy of the vote or otherwise impacted the outcome of the election in a material manner, the association was not ordered to conduct a new election but was ordered to comply with the statute in future elections.

Gosselin v. Sand Castle Condo. Ass'n Inc.,
Case No. 02-5465 (Coln / Amended Final Order / February 19, 2003)

- Where association had not amended its bylaws to allow for the annual meeting to be held in November each year, the association had violated the provision of its bylaws requiring the annual meeting to be held in February each year by holding the annual meetings in November instead.

- Where the association had not amended bylaws to allow for a change in its accounting method, the association had violated the provision in it bylaws requiring the budget to be prepared on an annual basis by preparing its annual budget from December 1st to November 30th each year.

Gulf Island Beach & Tennis Club I Condo. Inc. v. Lapenna,
Case No. 2003-04-2125 (Coln / Final Order Dismissing Petition / March 11, 2003)

- Where the association filed a petition for arbitration seeking a judicial declaration that an election was properly or improperly conducted, the arbitrator dismissed the petition. The association cannot challenge its own conduct of an election, and the

association was duty-bound to either certify the results of the election or conduct a new election. The claim was speculative and did not constitute a present dispute.

Held v. Board of Directors, Gabriel Towers Condo. Ass'n, Inc.,
Case No. 02-4510 (Scheuerman / Final Order Dismissing Petition / February 27, 2002)

- Petition failed to state a cause of action upon which relief could be awarded where petition alleged that association published newsletter criticizing unit owner/petitioner who was a candidate for the board. Rule 61B-23.0032, F.A.C., only prohibits the association from endorsing or disapproving candidates where such material accompanies the second notice of election, which did not occur here.

- Where petition challenging election requested as relief that the board members who won the election be ordered never to run for the board again, there was no statutory support for such an award of relief and no such relief would be granted. The right to run for the board is a right associated with unit ownership and is given meaning in the condominium documents permitting all owners to run for the board. The right cannot be taken away absent an appropriate amendment to the documents.

- The arbitrator lacked the authority to fine individual board members for conducting an alleged-illegal election. While the Division sitting in an enforcement capacity is authorized to fine an association for statutory violations, and while the Division may under appropriate circumstances fine a board member individually, the legislature did not authorize a Division arbitrator to fine a board member.

Hopkins v. Tamarynd Place Condo., Inc.,
Case No. 2004-02-7664 (Mnookin / Summary Final Order / November 24, 2004)

- Where there are five board seats and only five individuals submit their names for candidacy for the election, an election is not necessary and all five individuals are automatically seated as board members, in compliance with Section 718.112(2)(d)1, F.S.

Kamber v. Kenilworth Condo. Ass'n, Inc.,
Case No. 2003-06-2726 (Scheuerman / Summary Final Order / July 23, 2003) (on appeal)

- Where the bylaws provided for a range of directors between 7 and 15 but failed to provide a mechanism to determine the actual number of directors for a given election, the statutory default mechanism provided by s. 718.112(2)(a)1, F.S., applied and the board was composed of five members. While this result does not comport with the intent found in the documents, the documents failed to perfect this intent with a procedure designed to establish a precise number.

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,

Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Even assuming such a provision is valid, a provision in the articles of incorporation purporting to prohibit an owner who is delinquent in the payment of assessments from voting in an election or from running for the board is not applicable where an owner has refused to pay a fine imposed by the board. A fine is not an assessment for common expenses and cannot be used in this manner, even assuming that the articles of incorporation may condition the right to vote on the payment of assessments, which they cannot do.

Markos v. Sandy Shores Condo. Ass'n, Inc.,
Case No. 2005-00-7877 (Scheuerman / Final Order Dismissing Petition / April 5, 2005)

- Timeshare associations are exempted from the election provisions of Chapter 718, F.S., and no violation occurred where the association used general proxies for the conduct of the election. Similarly, timeshare associations may properly engage in proxy solicitation efforts.

Maqueira v. International Park Condo. II Ass'n, Inc.,
Case No. 01-3939 (Pasley / Amended Final Order / May 30, 2002)

- A new election was ordered to be held where the association failed to provide a credible explanation as to why it failed to mail the first notice of election (60-day notice) to several unit owners with whom the association and/or the management company had contentious relationship. The failure to provide the 60-day notice to the unit owners deprived these individuals of the opportunity to seek election as a board member.

McWilliam v. Maya Marca Condo. Ass'n, Inc.,
Case No. 2003-09-4468 (Mnookin / Amended Summary Final Order / April 12, 2004)

- Where an association's by-laws provide that a board member must be the owner of a unit, "have an interest therein" or be an officer or designated agent of an owner corporation, the spouse of a unit owner is not eligible to serve on the board. The by-laws do not define what qualifies as an "interest therein" and simply being married to the record title-holder is not sufficient to qualify as a legal interest. It is more reasonable to interpret this language to apply to current, legal interests, such as trustees or life estate holders. There is no legally recognized "marital interest" not associated with a dissolution proceeding either under Illinois or Florida Law.

Murray v. Ironwood Recreation One Ass'n, Inc.,
Case No. 2005-00-6498 (Scheuerman / Summary Final Order / June 8, 2005)

- No election procedure contained in Chapter 718, F.S., was violated where representatives for the board of a master association operating recreational property used in common by the owners of 5 condominiums were elected at the sub-association

level by the unit owners in each respective sub-association, where the election procedure used conformed to the requirements of Section 718.112(2)(d)3, F.S.

Noellert v. Palm Lake Estates Condo. Ass'n, Inc., and Pickering v. Palm Lake Estates Condo. Ass'n, Inc.,
Case No. 2005-02-2111 and 2005-01-9943 (Scheuerman / Summary Final Order / June 15, 2005)

- Where a candidate, upon being wrongfully excluded from the ballot by the association, withdraws his candidacy and filed for arbitration, the withdrawal of his candidacy would not foreclose him from challenging the election. The withdrawal of his already-rejected candidacy was merely a gesture of social protest of no practical or legal significance.

- Where the ballot used by the association did not indicate how many candidates the owners should vote for out of the slate of three candidates, but instead implied that only one should be chosen, a new election would be ordered. The ballot did not fairly apprise voters of their ability to vote for a full slate of candidates and further infringed on the candidates right to run for office.

- Where the association improperly excluded a candidate from the ballot, and used a misleading ballot form, the special election that was ordered by the arbitrator was to include only those candidates who should have been listed on the original ballot, and the association was ordered to dispense with the first notice of election and to proceed with the election within 45 days of the final order

Palm Greens at Villa Del Ray Recreation Ass'n, Inc. v. Angela Keller, No. 2 Condo. Ass'n, Inc. and Unit Owners Voting for Recall,
Case No. 2003-07-4043 (Scheuerman / Summary Final Order / August 15, 2003)

- Pursuant to s. 718.112(2)(k), F.S., only "members" in the association are entitled to recall the board. Where in a master association, the unit owners who were members in their respective condominium associations directly elected representative board members to the master association, the owners were allowed to recall their representatives pursuant to s. 718.112(2)(j), F.S., where the condominium association documents provided for recall by the owners. Although the owners were not made direct members in the master association, by giving the owners the right to first vote in and then recall their representatives, the unit owners were made de facto limited voting members in the master and the statute permitted the owners to recall the representatives.

Prawdzik v. Marine Colony Condo. Ass'n, Inc.,
Case No. 2003-05-8285 (Mnookin / Summary Final Order / August 11, 2003)

- Where an owner/candidate filed an election challenge alleging that the association had miscounted the votes cast for him and another candidate, who was ultimately

named as the victorious candidate, the arbitrator, when counting the votes, found that in fact the association had mistallied the votes and that each candidate had actually received 24 votes. Rather than order a runoff election, since the candidate originally named to the board had since resigned, the arbitrator simply entered an order appointing the petition/owner to the board.

Randolph v. Decoplage Condo. Ass'n, Inc.,
Case No. 02-4995 (Coln / Final Order / December 11, 2002)

- Where the association adopted a varying standard of review for challenged votes in order to count as many ballots as possible, a varying standard of review that counts some votes while disqualifying others with the same defect is improper. Uniform standards must be adopted and applied equally to all votes cast. See Bush v. Gore, 121 S.Ct. 525, (2000)(Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.)

Riviera Villas Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2003-04-5722 (Mnookin / Final Order Dismissing Petition for Recall Arbitration / April 22, 2003)

- The initiation of an arbitration proceeding pursuant to Section 718.1255(1)(b)3., F.S., based solely on the fact that the annual meeting was held on the wrong date will not result in the ordering of a new election. Instead, the association will be ordered to adhere to notice and meeting procedure requirements for future elections for its board of directors.

Rodstein v. Rimini Beach I Condo. Ass'n, Inc.,
Case No. 02-4250 (Scheuerman / Second Summary Final Order / June 18, 2002)

- Where turnover of control of the association by the developer had already occurred, and where at the time of the post-turnover election, the developer still held at least 5% of the units for sale, developer was entitled to one seat on the three member board.

- Where turnover from developer control had occurred and where the developer was entitled to one seat of three on the board, wife of the president of the developer corporation, who had recently been transferred title to a unit in the condominium, was not entitled to run for a unit owner position on the board. Due to her status with the president of the developer and in recognition of her relationship with the developer corporation, she is considered a developer representative. To permit her to occupy a seat alongside the other developer designee would effectively permit the developer to re-acquire control of the board, which is prohibited by statute.

Schultz v. La Costa Beach Club Condo. Ass'n, Inc.,
Case No. 2003-08-3347 (Scheuerman / Amended Summary Final Order / November 21, 2003 and Final Order on Rehearing / November 24, 2003) (currently on appeal)

- Bylaw purporting to permit the board to remove a board member from the board for being delinquent in the payment of assessments was invalid. The statute permits only the owners to remove board members by using the recall provision contained in s. 718.112, F.S. Moreover, permitting the board to remove a member has the effect of disenfranchising the unit owners who have the right to elect and remove their representatives on the board. Also, the statute, in prescribing remedies available to the association where an owner fails to pay assessments, provides a list of exclusive remedies which may not be supplemented by the association.

- The statute contains no qualifications for a unit owner to serve on the board except as to felony convictions. Every unit owner has the right to nominate himself and run for office. A residency requirement for running for the board is per se invalid. If an owner is qualified to run for the board, he is qualified to continue to serve on the board for the remainder of his term and may not be removed for reasons unrelated to those provided by statute. Likewise, a bylaw providing for automatic removal of a board member upon missing three consecutive meetings is violative of the statute because removal of a board member is not a tool provided by the Legislature for failure to attend meetings.

St. Denis v. Oasis Village of Okeechobee Owners Ass'n, Inc.,
Case No. 02-5253 (Scheuerman / Final Order / November 6, 2002)

- Where the association seized control over the internal affairs and monies of an informal resident social club which was not a committee of the association, the association was ordered to cease interfering with the operation of the club and to make association facilities reasonably available to the club. The association had purported to unilaterally change the rules of the club to make the association president a member of the board of the club, and had passed a rule siphoning off club funds into the association bank account while the club members were in Canada during the summer months. The association also changed club rules to prohibit non-owner residents from voting on club affairs.

Spevack v. Plaza Del Prado Condo. Ass'n, Inc.,
Case No. 2004-00-2794 (Mnookin / Summary Final Order / March 30, 2004)

- Where the documents required that board members be unit owners, the arbitrator held that a board member who was a co-trustee with a life estate in a unit was eligible to sit on the board. Life tenants are entitled to the use and enjoyment of their property, which includes those rights provided to condominium owners via the governing documents, like voting and board member eligibility. Additionally, since a trustee possesses legal title to trust property, the trustee is considered the record title owner and would also be eligible for those rights guaranteed by the condominium documents, like voting and board eligibility. Thus, the board member, as a life tenant and co-trustee, is a unit owner and is eligible to serve on the board.

Stevens v. Cricket Club Condo. Ass'n, Inc.,
Case No. 2005-00-7443 (Scheuerman / Order Abating Action and Requiring Runoff Election / April 4, 2005)

- Where the parties agreed prior to the conduct of the contested election that disputed votes would be set aside and would not be considered in the final tally unless a tie resulted, the agreement of the parties did not bind the arbitrator who was able to examine the rejected ballots.

- Where an examination of the contested ballots did nothing to resolve legitimate issues surrounding their validity, and where the ballots rejected could have impacted the outcome of the election, the arbitrator ordered the association to conduct a runoff election so that the will of the electorate could be determined.

Stevens v. Cricket Club Condo. Ass'n, Inc.,
Case No. 2005-00-7443 (Scheuerman / Final Order Dismissing Petition / April 7, 2005 and Final Order Denying Motion for Reconsideration / April 14, 2005)

- In a prior partial summary final order, the arbitrator had ordered the association to conduct a run-off election, but subsequently, where one of the two candidates who were to participate in the run-off election had withdrawn her candidacy, the arbitrator dismissed the petition as moot.

Tanasychuk v. 625 Espanola Way, Inc.,
Case No. 2003-06-3311 (Scheuerman / Summary Final Order / August 28, 2003)

- Where the declaration was recorded prior to the 1991 amendments to the election portion of the statute and provided that the membership would set the number of directors at between five and seven at the annual meeting and election at which the positions would be elected, the declaration conflicted with the statute requiring the number of candidates be ascertained in advance of the election so that the ballots may be prepared. Since the declaration in this regard is invalid, the statutory provision setting the number of directors at five unless otherwise provided in the bylaws, takes precedence and applies.

- Where the election error was not shown to have affected the outcome of the election, no new election was ordered. Here, less than the required number of unit owners voted at the election/annual meeting in favor of decreasing the number of board members from seven to five, and the vote was invalid. However, for unrelated reasons, the correct number of board seats was determined to be five, and the petitioning unit owner who received the seventh highest number of votes at the election, was not entitled to a seat on the board.

Van Weelden v. Gulf Island Beach & Tennis Club I Condo., Inc.,
Case No. 2003-05-2528 (Coln / Final Order / August 13, 2003)

- A unit owner filed a petition challenging the association's decision not to accept the outcome of an election. The arbitrator found that the election violated rule 61B-23.0021, F.A.C., in multiple ways including: counting more ballots than were received, counting

ballots not cast in inner envelopes, allowing a unit owner to retrieve his ballot and change his vote, opening the ballot envelopes outside the presence of the unit owners, failing to verify the signatures on the outer envelopes and allowing a unit owner to cast a ballot after the balloting had ceased. These violations are so varied and numerous as to clearly affect the reliability of the election results. While each of these deficiencies considered in isolation may not warrant a conclusion that the election results do not fairly reflect the will of the electorate, the defects considered in conjunction with each other cumulatively create a substantial doubt concerning the outcome of the election.

Vargas v. Versailles Gardens I Condo. Ass'n, Inc.,
Case No. 02-4520 (Scheuerman / Summary Final Order / April 30, 2002)

- Where board cancelled a scheduled election, actions taken by the board subsequent to the election including passing a special assessment were not ultra vires or invalid due to the cancelled election, pursuant to the holdover doctrine authorizing the incumbent board to exercise the powers of the corporation until successor board members are appointed or elected.

Ziomek v. The Jupiter Beachcomber Condo. Ass'n Inc.,
Case No. 02-4874 (Coln / Summary Final Order / August 26, 2002)

- Unit owners timely filed notice of candidacy 40 days from the date of election. Four candidates filed for five positions on the board. Pursuant to Section 718.112(2)(d), F.S., and Rule 61B-23.0021(d) F.A.C., no election was necessary and these four individuals were elected by operation of law to the board. The association failed to demonstrate any legitimate reason for rescheduling the election; therefore the resetting of the election and reopening of the nominations process for all five positions on the board was improper.

- There are instances where the board would properly exercise its judgment in favor of canceling a duly scheduled election, such as where first or second notices were fatally defective.

Master association

Murray v. Ironwood Recreation One Ass'n, Inc.,
Case No. 2005-00-6498 (Scheuerman / Summary Final Order / June 8, 2005)

- No election procedure contained in Chapter 718, F.S., was violated where representatives for the board of a master association operating recreational property used in common by the owners of 5 condominiums were elected at the sub-association level by the unit owners in each respective sub-association, where the election procedure used conformed to the requirements of Section 718.112(2)(d)3, F.S.

Notice of election

Maqueira v. International Park Condo. II Ass'n, Inc.,
Case No. 01-3939 (Pasley / Amended Final Order / May 30, 2002)

• A new election was ordered to be held where the association failed to provide a credible explanation as to why it failed to mail the first notice of election (60-day notice) to several unit owners with whom the association and/or the management company had contentious relationship. The failure to provide the 60-day notice to the unit owners deprived these individuals of the opportunity to seek election as a board member.

Noellert v. Palm Lake Estates Condo. Ass'n, Inc., and Pickering v. Palm Lake Estates Condo. Ass'n, Inc.,
Case No. 2005-02-2111 and 2005-01-9943 (Scheuerman / Summary Final Order / June 15, 2005)

• Where the association inadvertently miscalculated the due date for notices of candidacy and as a consequence barred an otherwise eligible owner from becoming a candidate, this was a fatal error requiring the conduct of a new election. The effect of the violation was to block a potential candidate from appearing on the ballot.

Randolph v. Decoplage Condo. Ass'n, Inc.,
Case No. 02-4995 (Coln / Final Order / December 11, 2002)

• The letter from the board included with the second notice of election, which clearly comments on several candidates; praising them for their assistance and further indicating that their service had helped the association save millions of dollars on various projects, was clearly the type of material prohibited by the Rule 61B-23.0021(8), F.A.C..

Yanniello v. Arrowhead Golf & Tennis Club Number One Ass'n, Inc.,
Case No. 2003-05-0146 (Coln / Final Order / January 7, 2004)

• The president of the association prepared a letter on association letterhead, signed by him as president of the association, which commented in a negative light upon the assertions made in the petitioning unit owner's candidate information sheet which was included in the second notice of election mailed to the unit owners. Rule 61B-23.0021(8), F.A.C., clearly prohibits the board from commenting on a candidate in the second notice of election. To permit a board member to comment on a candidate even where such action is short of full board participation or board approval, would render the safe haven provisions of the rule meaningless.

Ziomek v. The Jupiter Beachcomber Condo. Ass'n Inc.,
Case No. 02-4874 (Coln / Summary Final Order / August 26, 2002)

• Unit owners timely filed notice of candidacy 40 days from the date of election. Four candidates filed for five positions on the board. Pursuant to Section 718.112(2)(d), F.S., and Rule 61B-23.0021(d) F.A.C., no election was necessary and these four individuals were elected by operation of law to the board. The association failed to demonstrate any legitimate reason for rescheduling the election; therefore the resetting of the

election and reopening of the nominations process for all five positions on the board was improper.

Term limitations

Katz v. The Thirty-Three Sixty Condo. Ass'n,
Case No. 02-4683 (Pasley / Summary Final Order / September 11, 2002)

- Bylaw requiring that an owner who has served 3 consecutive terms of the board to spend one year off the board is not inconsistent with Ch. 718, F.S. or with the administrative rules promulgated thereunder. Term limitation held to be a permissible provision.

Schultz v. La Costa Beach Club Condo. Ass'n, Inc.,
Case No. 2003-08-3347 (Scheuerman / Amended Summary Final Order / November 21, 2003 and Final Order on Rehearing / November 24, 2003) (currently on appeal)

- The statute contains no qualifications for a unit owner to serve on the board except as to felony convictions. Every unit owner has the right to nominate himself and run for office. A residency requirement for running for the board is per se invalid. If an owner is qualified to run for the board, he is qualified to continue to serve on the board for the remainder of his term and may not be removed for reasons unrelated to those provided by statute. Likewise, a bylaw providing for automatic removal of a board member upon missing 3 consecutive meetings is violative of the statute because removal of a board member is not a tool provided by the Legislature for failure to attend meetings.

Voting certificates

Frazier v. Venture out at Panama City Beach, Inc.,
Case No. 2004-00-3580 (Scheuerman / Summary Final Order / April 12, 2004)

- Where the documents require the use of voting certificates for jointly-owned units but provide an exemption from the voting certificate requirements for married couples, the exemption was applied to excuse married couples however they choose to cast their vote, whether live and in person or via secret ballot or by limited proxy.

Estoppel (See also Selective Enforcement; Waiver)

Bedford 'A' Condo. Ass'n, Inc. v. Skaggs,
Case No. 2003-06-8354 (Bembry / Summary Final Order / March 8, 2004) (currently on appeal)

- The owner's affirmative defense of equitable estoppel was rejected where the unit owner failed to demonstrate that reliance on a single board member's verbal representation, which was contrary to express prohibition against pets in recorded documents, was reasonable.

The California Club Condo. Ass'n Inc. v. Ralby,
Case No. 02-5895 (Mnookin / Summary Final Order / May 1, 2003)

- When an association provides a tenant with a letter setting forth guidelines for the proper installation of satellite dishes, but fails to include every provision included in the condominium documents concerning such installation, the tenant is, nonetheless, responsible for complying with all provisions regarding the installation of satellite dishes, even those not included in the association's letter.

Hillcrest East No. 25, Inc. v. Rock,
Case No. 02-4980 (Coln / Summary Final Order / August 16, 2002)

- While the association's rule prohibiting trucks, passed in October 2000, was not in effect when the unit owner acquired unit and began parking his 1995 pickup truck upon the property, the association was entitled to enforce the rule against the unit owner when he subsequently acquired a new 2002 pickup truck. Subsequently acquired vehicle was not grandfathered in and constitutes a violation of the rule prohibiting trucks.

Hypoluxo Harbor Club Homeowners Ass'n, Inc. v. Stearn,
Case No. 2003-08-3592 (Mnookin / Summary Final Order / June 23, 2004)

- Where a unit owner asserts the defense of estoppel and claims that she observed other pets on the cooperative property, reliance on such observations is not reasonable since these pets could be permissible service animals or grandfathered pets; thus, the defense is rejected.

- Where an owner is unable to demonstrate evidence that she had knowledge of and relied upon an amended rule that allowed pets before she signed a contract to purchase a share in the cooperative, the defense of estoppel is rejected.

Noellert v. Palm Lake Estates Condo. Ass'n, Inc., and Pickering v. Palm Lake Estates Condo. Ass'n, Inc.,
Case No. 2005-02-2111 and 2005-01-9943 (Scheuerman / Summary Final Order / June 15, 2005)

- Where a candidate, upon being wrongfully excluded from the ballot by the association, withdraws his candidacy and filed for arbitration, the withdrawal of his candidacy would not foreclose him from challenging the election. The withdrawal of his already-rejected candidacy was merely a gesture of social protest of no practical or legal significance, and the association, which had excluded him from the ballot prior to the withdrawal, was estopped from asserting that the withdrawal made the petition moot.

Ocean Club Townhomes at Jupiter Condo. Ass'n, Inc. v. Spiegel,
Case No. 01-2593 (Scheuerman / Final Order / December 20, 2001)

- Owner presented insufficient evidence to establish that developer waived the association's pet restrictions. In any event, the developer lacked the authority to grant exemptions from the pet restrictions.

- Where the board approved the owner's application to install railings on his balcony, and gave the owner the building plans used for a previously approved balcony, the board cannot require removal of the railings installed consistent with the drawn plans, where the plans did not accurately reflect the construction of the previously approved balcony. The owner will not be penalized for the failure of the board to take due care in its communication.

Plaza East Condo. Ass'n, v. Blake,
Case No. 2003-05-9262 (Mnookin / Final Order / April 28, 2004) (reversed on other grounds)

- Where the condominium documents specifically prohibit pets and a unit owner who is maintaining a dog in her unit asserts estoppel as a defense alleging that she relied on permission from the former manager and former association president to keep her dog, such reliance is not reasonable when the action is expressly prohibited by the governing documents. The board does not have the authority to approve an action that is prohibited by the condominium documents unless this authority is specifically delegated to the board by the governing documents.

Pompano Beach Club North Ass'n Inc. v. Freyvogel,
Case No. 02-5892 (Mnookin / Summary Final Order / May 15, 2003)

- The unit owner asserted estoppel as a defense for relying on representations made in 1992 when he purchased his unit that there were no pet restrictions prohibiting his dog on the condominium property. In 1998, the association passed an amendment prohibiting all pets, except those pets residing on the condominium property prior to the date the amendment was passed. The unit owner did not acquire his pet until after the pet amendment. It is not reasonable for a unit owner to rely on those representations when the declaration of condominium clearly provides for the power to amend its provisions. The unit owner was on notice, by virtue of the recorded declaration, that the unique form of ownership in purchasing a condominium unit was subject to change through the amendment process, and that he would be bound by properly adopted amendments. The unit owner's defense of estoppel is rejected.

Quince Gardens Condo. Ass'n, Inc. v. Slakter,
Case No. 2004-02-8376 (Bembry / Summary Final Order / February 18, 2005)

- Unit owner's allegations that the association's former board president had verbally consented to the owner keeping cats in his unit would not be sufficient to establish defense of waiver or estoppel where the association's declaration of condominium prohibited association members from keeping pets without written consent of the board of directors. Unit owner's reliance on a single board member's consent is insufficient to establish that the association had approved the pets and to support the defense of estoppel.

Sea Breeze South Apartments Condo., Inc. v. Beck,
Case No. 00-1734 (Pasley / Final Order / May 17, 2002)

- Estoppel will not derive from silence or inaction where the association has explicitly denied the unit owners' request to install new windows.

Turtle Bay Condo. v. Hatcher,
Case No. 01-3035 (Pasley / Final Order / March 6, 2002)

- Where a unit owner installed windows with more windowpanes than the original windows and sliding glass doors with more sections than the original doors and admitted that he did not inform the board that he intended to make these changes, the board was not found to have approved the specific material alterations made by the respondent.

Villas at Bonaventure Tract 37 North Condo. Ass'n, Inc. v. Grant,
Case No. 2003-07-3127 (Earl / Final Order / February 12, 2004)

- Estoppel will not lie unless a party asserting it is ignorant of the truth. Where a provision is contained in the condominium documents, which are recorded in the public records, a unit owner is on constructive notice of the documents. As an accurate copy of the by-laws was recorded in the public records, the respondents had constructive notice of the pet weight restriction and cannot assert they are ignorant of the restriction.

- Even if the respondents had been provided an outdated copy of the association's rules and regulations which did not contain the association's pet weight restriction, the defense of estoppel failed, because reliance upon the outdated documents was not reasonable where during the pre-purchase interview the association had provided information indicating that there was a pet weight restriction.

Evidence (See Arbitration-Evidence)

Fair Housing Act

Chateaux de Lac Condo. Ass'n, Inc. v. Yarbrough,
Case No. 01-3451 (Pasley / Final Order / June 6, 2002)

- Association ordered to permit owner with MS to use washer and dryer in her unit as an accommodation to her disability.

Coco Wood Condo. Inc. v. Davis,
Case No. 2003-04-2208 (Mnookin / Summary Final Order / May 28, 2003)

- Where a unit owner asserts medical disability as a defense to maintaining a cat in his condominium unit, he must provide evidence of his current medical status and how his cat is a necessary or reasonable accommodation for his disability. An outdated letter from a physician which states that the unit owner suffers from several medical

conditions, but does not state his current medical status or that his cat is a reasonable or necessary accommodation for his disability or is otherwise related to his disability is not sufficient.

Sugar Creek Resort Ass'n, Inc. v. Koons,
Case No. 2005-01-0824 (Grubbs / Order Administratively Closing Case File / April 1, 2005)

- When the answer reflects that issues involving state and federal fair housing laws and the rules promulgated thereunder must be determined, and the respondents are pursuing those issues before HUD and the Fla. Commission on Human Relations, the arbitration case will be administratively closed to allow the other administrative agencies to determine the state and federal fair housing issues, but may be reopened at the request of either party after the agencies have completed their investigations and proceedings.

Sunrise Lakes Condo. Ass'n Phase One, Inc. v. Rudich,
Case No. 02-5899 (Mnookin / Summary Final Order / May 2, 2003)

- When a unit owner alleges that his dog is an accommodation to a medical disability, the unit owner must establish that he is in fact disabled and that his dog is a reasonable or necessary accommodation for his disability. Here, the unit owner failed to provide any competent evidence that his dog was a necessary or reasonable accommodation for his disability or even otherwise related to his disability. A letter from the unit owner's doctor stating that he has become disabled due to a severe myocardial infarction, but fails to establish that the dog is a reasonable or necessary accommodation to his disability, is not enough to support this defense.

Tresize v. Holiday Apartments Condo. Ass'n Inc.,
Case No. 02-4660 (Pasley / Final Order / September 11, 2002)

- Disabled unit owner, who had difficulty traversing stepping stones outside his unit, sought an order requiring the association to install a sidewalk. Found that association was obligated only to allow the unit owner to install sidewalk at his expense.

Winding Wood Condo VIII Ass'n, Inc. v. Rizzo,
Case No. 2004-00-1759 (Bembry / Final Order on Motion for Rehearing and Notice of Communication / April 5, 2004)

- Disabled unit owner failed to demonstrate that a motorcycle was a necessary accommodation to afford him an equal opportunity to enjoy his home and that other reasonable accommodations were not available to him.

Family (See also Fair Housing Act; Guest; Tenant)

El Galeon by the Sea Condo. Ass'n, Inc. v. Heisey,
Case No. 02-4252 (Scheuerman / Summary Final Order / June 17, 2002)

• Where the declaration permits short term leasing but requires that units be used for a single family residence, use of units for short term transient renting where owner is licensed under Ch. 509 does not constitute a commercial nonresidential purpose and the declaration was not violated thereby. Considering all relevant portions of the declaration together and giving meaning to each, the residential requirement cannot be seen as addressing the right to rent or the duration of the lease, and cannot be construed to prohibiting short term leases, a right conferred by another portion of the declaration. Residential restriction must be understood as speaking to who may occupy the units, whether through lease or deed, and what activities the occupants may conduct.

Financial Reports/Financial Statements

Fines

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

• Rule providing that no signs, posters, circulars, notices or other lettering shall be affixed to a unit or parked vehicle except for commercial vehicles parked in designated areas was not on its face intended to prohibit a unit owner from leaving a newsletter containing political criticism towards the board on the doors of the various units. Rather, the rule was intended to prohibit or regulate commercial advertising on the property, and the $1,500 fine imposed by the association was invalid for this reason.

• Neither the board nor the articles of incorporation may properly bar an owner who is allegedly delinquent in the payment of a fine to vote in an association election or from running for the board. First, the fine is invalid because the rule sought to be enforced did not prohibit the conduct complained of. Secondly, the board was shown to have selectively enforced the rule sought to be enforced by the board. Thirdly, a condominium is a creature of statute and may only exercise those remedies provided for in the Condominium Act. These remedies do not include a denial of voting rights, denial of the right to run for the board, or the ability to lock an owner out of the common elements for failure to pay a fine.

• Even assuming such a provision is valid, a provision in the articles of incorporation purporting to prohibit an owner who is delinquent in the payment of assessments from voting in an election or from running for the board is not applicable where an owner has refused to pay a fine imposed by the board. A fine is not an assessment for common expenses and cannot be used in this manner, even assuming that the articles of incorporation may condition the right to vote on the payment of assessments, which they cannot do.

• Where the board simply posted notice 48 hours in advance of a committee meeting wherein an owner may be fined thousands of dollars for an alleged violation of a board rule, and where no personal delivery of notice occurred, the board failed to give

reasonable notice of the fine committee meeting, and the fine imposed was invalid. Reasonable notice under Section 718.303, F.S., has two elements. Reasonable notice means notice actually calculated to apprise the owner of the nature of the proceeding and notice that further provides the owner with an adequate opportunity to prepare a defense. Notice via the posting of notice of a board meeting is the functional equivalent of service by publication and is inadequate; personal delivery is required, and notice of 48 hours is inadequate notice to permit the owner to prepare a defense.

- Pursuant to Section 718.112(2)(c), F.S., unless otherwise provided in the bylaws, notice of all committee meetings, whether or not the committee takes final board action or makes recommendations to the board on the budget, must be posted on the condominium property at least 48 hours in advance. A fining committee is also subject to the reasonable notice requirements of Section 718.303, F.S., and must give personal notice in advance of a meeting at which the committee will consider a fine, in enough time to permit the owner to prepare an adequate defense.

- Where a unit owner attended a fining committee meeting for which inadequate notice was given as a matter of law, and protested the adequacy of notice at the meeting but defended himself on the merits of the fining issue, the unit owner did not waive the issue of the adequacy of notice.

Pompano Beach Club North Ass'n Inc. v. Freyvogel,
Case No. 02-5892 (Mnookin / Summary Final Order / May 15, 2003)

- The fine imposed by the association for the unit owner's violation of the pet restriction is disallowed when the unit owner did not receive actual notice of the hearing where the fining committee recommended the imposition of the fine. Additionally, the association failed to produce evidence that demonstrated that the unit owner's dog was actually on the condominium property ten days after notification of the violation, which is required to justify imposition of the fine.

Guest (See also Family; Tenant)

Stone's Throw Condo. Ass'n, Inc. v. Corsi,
Case No. 00-2173 (Pasley / Final Order / October 16, 2001)

- A unit owner is accountable for the actions taken by his visitors when they are on the condominium property and is charged with the responsibility of preventing his visitors from violating the governing documents.

Hurricane Shutters

Bennett v. Solamar Condo. Ass'n, Inc.,
Case No. 01-2207 (Scheuerman / Final Order / January 2, 2002)

- Where board had approved hurricane shutter specifications providing for electric roll down shutters installed on the windows and doors opening onto the limited common element balconies, board properly rejected as inconsistent with duly adopted hurricane shutter specifications application by owner to install accordion shutters protecting entire patio area. There was nothing shown in the record demonstrating that the board's

choice of roll down shutters was anything but reasonable. Moreover, there was no right shown in the statute for an owner to install shutters protecting the limited common element patio itself if as opposed to the windows and door openings on the balcony.

- Where the board refused to approve application to install accordion shutters on limited common element balcony because board had previously approved specifications calling for roll down shutters on the balconies, board decision not shown to be arbitrary or unreasonable even where board had installed accordion shutters on the atrium openings to the building. All atrium openings had uniformly been equipped with accordion shutters, and all patio areas that had shutters used only roll down shutters. The condominium was not a hodge-podge of varying styles, and a sense of aesthetics still existed. There is still overall a sense of consistency when viewing the external frame of the building, and the decision of the board was upheld.

Injunctive Type Relief (See Dispute-Relief granted)

Insurance

Jurisdiction (See Dispute)

Becker v. Tidy Island Condo. Ass’n, Inc.,
Case No. 02-5766 (Scheuerman / Final Order Determining Jurisdiction / December 6, 2002)

- Division lacked authority to arbitrate a dispute involving a third party board member where the unit owner brought an action for damages for breach of fiduciary duty against a board member.

- Division lacked authority to hear a petition filed by an owner alleging that the association had fraudulently induced a subsequent developer to purchase units in bulk, where the petition sought damages resulting to the unit from the alleged fraudulent inducement.

- Where the unit owner presented a petition for arbitration alleging that the association had violated numerous provisions of the statute and documents, but failed to show any current violations or allege that the association would violate the law in the future, the petition fails to state a cause of action for injunctive relief.

- Where the arbitrator found that complaint and all its component parts revolved around a central dispute such that it would make little sense to fragment the related causes of action and hear each in a different forum, the ineligible parts of the petition would not be served from any eligible matters, and it was determined that the dispute should be heard by the courts consistent with considerations of trial convenience and economy in administration.

Graveline v. Spinnaker Cove Condo. Ass’n, Inc.,
Case No. 01-3831 (Scheuerman / Final Order / December 18, 2001)

- Arbitrator lacked jurisdiction to hear complaint that association failed to apportion cost of sewer line repair correctly among several condominiums operated by the association. Dispute primarily concerned assessments and maintenance of the common elements.

Laches (See also Estoppel; Waiver)

The Claridge Condo. Ass'n, Inc. v. Donelan,
Case No. 2004-02-6247 (Bembry / Final Order / March 4, 2005)

- Unit owner failed to establish affirmative defense of laches despite the fact that the association waited approximately three years to initiate an action for removal of the unit owner's pets, where it was shown that association made unsuccessful attempts to resolve the dispute with the unit owner prior to filing its petition for removal of the owner's pets.

The Four Ambassadors Ass'n, Inc. v. Lindsay Properties, Inc.,
Case No. 01-3350 (Scheuerman / Final Order / November 22, 2002)

- Where the association discovered illegal washing equipment in a unit in 1997 and has been working with the owner since then until the filing of the arbitration petition in 2001 to encourage the owner to voluntarily remove the washer and dryer, and where the owner was a seasonal resident occupying the unit on limited occasions, laches was rejected as a defense.

Maqueira v. International Park Condo. II Ass'n, Inc.,
Case No. 01-3939 (Pasley / Partial Summary Final Order and Order Setting Prehearing Procedure / February 20, 2002)

- Where unit owners filed a petition for arbitration nineteen days after the challenged election, the delay did not cause undue prejudice to the association, and the defense of laches was rejected.

Pelican Reef Condo. Ass'n, Inc. v. Fulton,
Case No. 02-4836 (Gioia / Final Order / November 19, 2002)

- The defense of laches flows from a delay in enforcement. The fact that the association sought to exhaust informal means of resolution does not mean laches can be invoked to prevent legal action seeking enforcement.

Pompano Beach Club North Ass'n Inc. v. Freyvogel,
Case No. 02-5892 (Mnookin / Summary Final Order / May 15, 2003)

- The unit owner's defense of laches is rejected when it cannot not be established that the association's delay in filing the petition for arbitration was unreasonable, especially since the unit owner was a seasonal resident.

Sea Breeze South Apartments Condo., Inc. v. Beck,
Case No. 00-1734 (Pasley / Final Order / May 17, 2002)

- Where the association sent a violation letter to the unit owners less than seven months and filed a petition for arbitration less than one year after the installation of the non-conforming windows, the association can not be said to have unreasonably delayed in its enforcement of the rule against the unit owners. The affirmative defense of laches was rejected.

Villas at Bonaventure Tract 37 North Condo. Ass'n, Inc. v. Grant,
Case No. 2003-07-3127 (Earl / Final Order / February 12, 2004)

- The respondents' defense of laches failed where the association provided the respondents with notice of violation within seven months of the respondents' purchase of the unit.

Lien

Marina

Meetings

Board meetings

Committee meetings

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Where the board simply posted notice 48 hours in advance of a committee meeting wherein an owner may be fined thousands of dollars for an alleged violation of a board rule, and where no personal delivery of notice occurred, the board failed to give reasonable notice of the fine committee meeting, and the fine imposed was invalid. Reasonable notice under Section 718.303, F.S., has two elements. Reasonable notice means notice actually calculated to apprise the owner of the nature of the proceeding and notice that further provides the owner with an adequate opportunity to prepare a defense. Notice via the posting of notice of a board meeting is the functional equivalent of service by publication and is inadequate; personal delivery is required, and notice of 48 hours is inadequate notice to permit the owner to prepare a defense.

- Pursuant to Section 718.112(2)(c), F.S., unless otherwise provided in the bylaws, notice of all committee meetings, whether or not the committee takes final board action or makes recommendations to the board on the budget, must be posted on the condominium property at least 48 hours in advance. A fining committee is also subject to the reasonable notice requirements of Section 718.303, F.S., and must give personal notice in advance of a meeting at which the committee will consider a fine, in enough time to permit the owner to prepare an adequate defense.

- Where a unit owner attended a fining committee meeting for which inadequate notice was given as a matter of law, and protested the adequacy of notice at the meeting but defended himself on the merits of the fining issue, the unit owner did not waive the issue of the adequacy of notice.

St. Denis v. Oasis Village of Okeechobee Owners Ass'n, Inc.,
Case No. 02-5253 (Scheuerman / Final Order / November 6, 2002)

- Where the association seized control over the internal affairs and monies of an informal resident social club which was not a committee of the association, the association was ordered to cease interfering with the operation of the club and to make association facilities reasonably available to the club. The association had purported to unilaterally change the rules of the club to make the association president a member of the board of the club, and had passed a rule siphoning off club funds into the association bank account while the club members were in Canada during the summer months. The association also changed club rules to prohibit non-owner residents from voting on club affairs.

Emergency

Generally

Freed v. Gulf Island Beach & Tennis Club I Condo., Inc.,
Case No. 2003-05-3724 (Mnookin / Summary Final Order / June 17, 2003)

- When the arbitrator rules that a board member's resignation is deemed effective upon the board months ago, his actions at board meetings prior to the arbitrator's ruling are not ruled null and void. The individual was acting in good faith as a board member, and, as such, all transactions involving his participation as a board member will stand.

Kemmesat v. Holiday Travel Park Co-Op Inc.,
Case No. 02-5244 (Coln / Final Order / April 17, 2003)

- The unit owner claimed that the board of directors for the association held private meetings in violation of Section 719.106(1)(c), F.S. Several members of the board of directors, often constituting a quorum, held unnoticed meetings prior to the main board meetings in the back room of the office. Business of the association, including agenda items of the board meetings, was discussed and debated among the board members present. While the board did not necessarily vote on the matters discussed, discussion and debate of association matters did occur. These meetings were not open to the unit owners and no records of the discussions were maintained. The association violated Section 719.106(1)(c), F.S., by holding meetings of the board, where a quorum was present, and discussing association business without making the meetings open to the unit owners.

McTaggart v. Burgundy Unit Two Condo. Ass'n, Inc.,
Case No. 02-5879 (Scheuerman / Final Order / July 18, 2003)

• Where the board members met informally outside the context of formal noticed board meetings and voted via the device of a written poll whereby each individual board member who was consulted on a particular matter voted on matters that would come to a vote in a later formal board meeting, the board was ordered to cease its informal meetings and to conduct its meetings in accordance with the statute and documents, with due notice and open to all owners. Board meetings are intended to embrace the discussion of matters coming before the board for consideration including deliberation and eventual vote, and the association is required to honor the letter and spirit of the law. The board is a public body that is charged with having its deliberations and decisions made in the sunshine.

Notice/agenda

McKenney v. Ocean Resorts Co-Op, Inc.,
Case No. 2003-07-5537 (Earl / Summary Final Order / February 3, 2004)

• Failure to refer to the meeting at which the budget was considered as a "budget meeting" in the notice letter sent to the unit owners is immaterial as the letter clearly indicated that the purpose of the meeting was to adopt a budget and provided all the information required by the association's by-laws.

Quorum

Madden v. Windmill Village by the Sea Condo. No. 1 Ass'n, Inc.,
Case No. 2004-03-1746 (Grubbs / Summary Final Order / February 16, 2005)

• When a quorum was not present for the board meeting noticed to determine whether to certify a written recall agreement, in accordance with Rule 61B-23.001(a), F.A.C., a meeting could not be held. Because no meeting was held within five days of service of the agreement, the recall was deemed effective by operation of Section 718.112(2)(j)(4), F.S., and Rule 61B-23.0028(7), F.A.C..

Ratification

Recall (See separate index on recall arbitration)

Pellan v. Ancient Oaks RV Resort Condo. Ass'n,
Case No. 2003-05-4356 (Coln / Final Order of Dismissal / April 15, 2003)

• Former board members filed a petition for arbitration challenging the board's decision to certify their recall from the board. Only the board, on behalf of the association, is empowered under Section 718.112(2)(j), F.S., to seek to challenge a recall. If the board determines not to challenge a recall, or if a board does not file a petition for arbitration within the time required for the filing of a petition, the recall is deemed certified. A former board member does not have standing under Section 718.112(2)(j), F.S., to challenge the decision of the board in this regard.

Unit Owners Voting for Recall v. Ashby "D" Condo. Ass'n, Inc.,

Case No. 2003-08-2948 (Coln / Summary Final Order / October 22, 2003)

- Where the unit owner served the board with a recall petition and the association never held a meeting to determine whether or not to certify the recall, did not file petition for recall and failed to provide a sufficient explanation as to why neither action was taken, the recall of the board was certified.

Right to tape record

Unit owner meetings

Generally

Libby v. The Island House Apartments, Inc.,
Case No. 01-3767 (Scheuerman / Summary Final Order / December 4, 2001)

- Where the bylaws provided that special meetings "may" be called by the president or secretary upon the request of not less than twenty percent of the shares of the association, the arbitrator ruled that the calling of a special meeting was permissive and not required of the association. The bylaws as a whole exhibited a deliberate usage and measured pattern for the words "shall" and "may", with "may" used in the permissive, discretionary sense and "shall" used in the directory sense. The arbitrator under these circumstances hesitates to re-write the documents. The remedies of the membership may be to amend the bylaws or to recall the board.

Notice

Quorum

Recall (See separate index on recall arbitration)

Moot

Mortgagee

Federal National Mortgage Ass'n, Inc. v. Oakbrook Condo. Ass'n, Inc.,
Case No. 01-2949 (Scheuerman / Final Order on Rehearing / September 5, 2001)

- Where the declaration of condominium conferred upon mortgagees of record the unfettered right to sell or lease any unit foreclosed upon, and further provided that no amendment could be adopted that altered or amended whatsoever the rights and privileges granted to first mortgagees, amendment that prohibited the sale or lease of a unit during the first 12 months of ownership was invalid. Where the declaration itself contains assurances that no amendment may impair certain rights and privileges contained in the declaration, it cannot be argued that the purchaser acquired title subject to his knowledge that as a general matter, the declaration could be amended.

Nuisance

5825 Corinthian Condo. Ass'n, Inc. v. Garcia,
Case No. 2003-06-7861 (Bembry / Final Order / June 10, 2004)

- Unit owner's action of frequently hosting late night parties, playing loud music, and allowing guests and occupants of her unit to generate excessive noise that disturbed other residents constituted a nuisance that warranted entry of injunction prohibiting such activities.

The Atrium on the Bayshore Ass'n Inc. v. Garcia,
Case No. 02-4682 (Coln / Final Order / August 1, 2002)

- The testimony presented demonstrated that the unit owner was able to control his dog's barking by using the electronic bark collar and that the use of this collar has been 100% effective when used properly. Where lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. See Knecht v. Katz, 785 So.2d 754, 755 (Fla. 5th DCA 2002). Accordingly, since dog's barking can be controlled, the removal of the dog is an excessive remedy. Unit owner order to use bark collar at all times.

Benjamin v. Bay Mariner Condo. Ass'n, Inc.,
Case No. 2003-05-4382 (Scheuerman / Final Order / October 13, 2003)

- In an action commenced by the association to enforce its rule prohibiting the use of snorkels in the pool, the evidence showed that the owners' use of snorkels combined with their circuitous and repetitive swimming route along the entire perimeter of the pool appreciably interfered with the other owners' use of the pool facility. However, it was not shown that use of the snorkels in and of itself constituted a nuisance; in this respect, the pool rule exceeds the boundary of reason and exhibits arbitrary characteristics. The owners/swimmers were ordered to confine their repetitive laps to the North/South lanes of the pool where they were allowed to continue to use their snorkels.

Burleigh House Condo., Inc. v. Moody,
Case No. 2004-05-5677 (Grubbs / Final Order Dismissing Petition for Arbitration / March 7, 2005)

- Because the petition contained no factual allegations sufficient to establish that the dog was a nuisance, the conclusory allegation that the dog was a nuisance was dismissed.

Carollwood Village Pine Lake Garden Villas Condo. Ass'n, Inc. v. Smith,
Case No. 03-6107 (Mnookin / Final Order / November 18, 2003)

- The association's petition alleged that the respondent's dogs bark such that a nuisance had been created, which interfered with other condominium owners' enjoyment of their property. At the final hearing, testimony was heard by the unit owner who resided below and her daughter, who visits the property regularly, board members and the property manager. All of these individuals attested to the frequency, duration and volume of the barking and how it is an unreasonable nuisance. As the respondent failed to produce compelling evidence that her dogs' barking did not constitute a

nuisance, the barking was found to be a nuisance and the dogs were ordered to be removed from the property.

The Claridge Condo. Ass'n, Inc. v. Donelan,
Case No. 2004-02-6247 (Bembry / Final Order / March 4, 2005)

- Unit owner's dogs were determined to be a nuisance after the association presented evidence that the owners dog's barking had frequently and continuously disturbed neighboring unit owners.

Eagles Glen Condo. Ass'n, Inc. v. Danielesi,
Case No. 2003-08-5609 (Bembry / Summary Final Order / February 2, 2004)

- The owner's son's repeated disturbances of the community, including harassing and threatening other residents, playing loud music, and driving a car at high speeds in parking areas, were deemed to be a nuisance, in violation of the association's governing documents. Respondent's son's continuing violations are sufficient to require parental supervision of the minor.

The Four Ambassadors Ass'n, Inc. v. Lindsay Properties, Inc.,
Case No. 01-3350 (Scheuerman / Final Order / November 22, 2002)

- Unapproved rogue washers and dryers were shown by expert testimony to pose an actual threat to the common elements and to the units and the property contained therein. Without predictability, but with eventual certainty, the washers will malfunction, backups in the units will occur, or a hose will rupture. Water may overflow and saturate a portion of the building that is not discoverable until after extensive damage has already occurred. Also, the buildings were not designed to accommodate individual washers and dryers in the units. Accordingly, the washer and dryer violated that portion of the declaration providing that the common elements shall only be used for the furnishing of goods and services for which they are reasonable suited and which are incident to the use and occupancy of the units. The owners also violated the prohibition in the declaration against changing the common elements or units in such a manner as to interfere with other owners' use or enjoyment of the property.

Miami Shores Condo. Ass'n, Inc. v. Moreau,
Case No. 2004-03-2435 (Bembry / Final Order / May 5, 2005)

- Where the unit owners' children's action of screaming, riding bikes and throwing household items in the common areas of the condominium disturbed several neighboring residents, the children's behavior was deemed to be a nuisance and was enjoined.

Ocean Club Townhomes at Jupiter Condo. Ass'n, Inc. v. Spiegel,
Case No. 01-2593 (Scheuerman / Final Order / December 20, 2001)

- Dogs were not shown to be a nuisance where dogs were allowed on the property by the documents and where it was not shown that these dogs barked any more than any other dog, or that their barking impaired the ability of owners to use and enjoy their units.

- Evidence insufficient to demonstrate that owner was a nuisance. Although in the past he had punched his punching bag late at night and had played his drum set in a manner calculated to annoy, this behavior not shown to be recent or likely to recur.

Parkside Condo. Ass'n, Inc. v. Valdez,
Case No. 01-3937 (Scheuerman / Final Order / June 5, 2002)

- Where unit entry alarm was activated constantly during one weekend last year in the owner's absence but had not accidentally been activated with any degree of regularity since that weekend, the association did not show that the alarm was a nuisance. The owner regularly serviced the system, and some alarms were triggered by neighborhood children climbing the exterior walls to gain access to the unit above the respondent's unit. No owner testified that they had lost sleep due to the alarm, or that their use or enjoyment of their unit or the condominium property had been significantly diminished as a result of the alarm.

- Although the arbitrator did not find that the unit alarm constituted a present nuisance, the owner was directed to cooperate with the association to find a way to address activated alarms during those times that the owner was out of town for an extended time; the failure to so cooperate coupled with additional weekend of false alarms may warrant a future finding of nuisance.

Santa Monica Condo. Ass'n, Inc. v. O'Connor,
Case No. 02-4691 (Coln / Final Order / July 31, 2002)

- Where witnesses testified that the unit owner approached several unit owners on a consistent basis and whistled in a loud and irritating fashion coupled with testimony that the unit owner banged on walls and dragged chairs across the floor of her unit in an attempt to irritate and annoy others, behavior of unit owner found to constitute a nuisance.

- Unit owner's acts of whistling, dragging a chair across the floor and banging upon the wall is not speech, but rather conduct, and is not protected by the 1st Amendment to the Constitution. Where purpose of conduct is the personal abuse of another, the conduct is not communication that falls under the protection of 1st Amendment. (Cantwell v. Connecticut, 60 S.ct 900, 906 (1942).

Terranova Condo. Ass'n, Inc. v. Darvania,
Case No. 2003-06-5661 (Bembry / Final Order / March 18, 2004)

- A nuisance was established where it was shown that the activities that the unit owners and their children engaged in while gathering in the parking area outside their home disturbed other residents and interfered the neighboring residents' peaceful possession of their property. Unit owners were enjoined from playing loud music and creating other loud noises which would disturb other residents while gathered in the parking areas outside their home, and the children were prohibited from playing in the parking areas without supervision during the late evening hours.

Victoria Park Tower Ass'n, Inc. f/k/a Leisure Park v. Haywood,
Case No. 01-3779 (Pasley / Final Order / February 21, 2002)

- The association proved that one of the unit owners and his guests have created a nuisance by engaging in behavior that resulted in an attempt by the respondents' guest to enter another owner's unit, an infestation of ants in the downstairs neighbors' unit, a verbal attack on a realtor, the dumping of urine on one of the downstairs neighbors, the soiling of another owner's parking spot and numerous other incidents.

- Where the association received numerous complaints regarding loud noises emanating from the respondents' unit and some of the incidents involving loud noises occurred during the night after 10:00 p.m. and as early as 4:00 a.m. or 5:00 a.m. and the rules prohibit disturbing noises between the hours of 11:00 p.m. and 9:00 a.m., the association proved that the noise emanating from respondents' unit unreasonably interferes with other unit owners' use and enjoyment of their property.

Villas of West Miami Condo. Ass'n, Inc. v. Fernandez,
Case No. 2003-07-0820 (Mnookin / Final Order / February 25, 2004)

- In a dispute alleging that a unit owner's dog created a nuisance by its excessive barking, the association only presented one unit owner to testify at the final hearing that the owner unit's dog barked in an annoying manner. It was not shown that the duration, frequency or degree of the barking was sufficient to establish a nuisance, but, rather, the barking appeared to be occasional and merely associated with everyday living in a condominium community that permits dogs.

Official Records

Accardi v. Leisure Beach South, Inc.,
Case No. 2003-05-6179 (Coln / Summary Final Order / October 2, 2003)

- The unit owner requested the minutes of the three board meetings and the certificate of insurance for unit 308. At the time of the request, the minutes did not exist and the board did not have a copy of the insurance policy. While the association has an obligation to maintain minutes of its meetings and would be obligated to maintain the certificate of insurance should the same ever come into the association's possession, the evidence presented by the unit owner reveals that the minutes for these board meeting had not yet been transcribed and adopted by the board, and that the association does not and has never had the certificate of insurance in its possession.

Accordingly, the association did not willfully deny the unit owner access to these records.

Agan v. Plaza East Ass'n, Inc.,
Case No. 2003-09-2374 (Earl / Summary Final Order / January 20, 2004)

- Where months prior to the official records request, the association was placed on notice via a discovery request in a court case that it was not maintaining certain official records requested to be maintained and accessible, and failed to timely correct such problem, the association willfully failed to provide access to the official records within the meaning of Section 718.111(12), F.S.

- An association is not exempt from providing access to its official records because they are maintained in a format that no association employee knows how to access. To allow such a circumstance as a defense would allow associations to avoid compliance with statutory access requirements simply by maintaining the records in a cryptic, ill-considered format.

- It is not an adequate defense to the requirement to make the records available that some of them are in custody of the association's accountant.

- Requiring a unit owner or his representative to hack into the association's computer or to otherwise figure out how to operate the association's computer or programs in order to obtain requested official records most certainly does not make the records available within the meaning of Section 718.111(12), F.S.

- Section 718.111(12), F.S., does not prohibit unit owners from requesting records they already possess.

- The unit owner's intent in making an official records request does not alleviate the association's duty to comply with Section 718.111(12), F.S.

- Section 718.111(12), F.S., and the Florida Rules of Civil Procedure are independent of one another. Civil court litigation between unit owners and association does not prevent the unit owners from seeking official records pursuant to Section 718.111(12), F.S., instead of the discovery methods outlined by the Rules of Civil Procedure, or they may use both methods.

Amsel v. Condo. Ass'n of Gateway House Apartments, Inc.,
Case No. 2003-04-2792 (Coln / Summary Final Order / July 24, 2003)

- The unit owner requested to inspect the official records of the association on February 5, 2003. The association responded by informing him that the records would be available to him on March 6, 2003. Subsequently, the association informed the unit owner that the records would not be available on March 6, 2003, and that the association would need two additional weeks notice before providing the unit owners

access to the records. While the parties are free to negotiate a time frame in which the records of an association will be made available, there was no agreement shown to exist here. The time period set by the association for providing the official records was in excess of the five business days specified by Section 718.111(12)(b), F.S., (2002), and was not shown to be otherwise agreed to by the parties.

- The association's defense, that the records were unavailable to the unit owner because they were in the possession of its accountant, is not a defense to the time requirements of Section 718.111(12)(b), F.S. To accept the association's defense that it permissibly placed its official records in the possession of its accountant (resulting in a delay over two weeks long), would effectively permit the association to circumvent the time requirements of the statute and defeat its plain and obvious purpose. Associations routinely transfer some of their financial documents to an accountant for preparation of year-end financial statements; it is incumbent upon the association to make some procedure allowing for access to these records by owners during that period that may well extend for a period of months.

Cabrera v. Oakland Forest Club Condo., Inc.,
Case No. 2003-06-7454 (Mnookin / Summary Final Order / October 28, 2003)

- Where an association's official records are maintained on the property of the management company, that company operates as the custodian and agent of the association's records. Any request for access to the association's records received by the management company will be treated as a proper official records request subject to the provisions set forth in s. 718.111(12)(b) and (c), F.S. If the management company fails to comply with the statute, the association will be liable for consequences flowing there from.

Franklin v. Carlton Tower Condo. Ass'n,
Case No. 02-5115 and 02-5712 (Coln / Final Order Dismissing Case as Settled / February 11, 2003)

- With the exception being where an association is aware of the absence of a required record and fails to replace it over time, the failure of the association to maintain those records required by Section 718.111(12), F.S., does not in and of itself constitute a willful violation of the access to records provisions that section giving life to statutory damages. Where an association fails to maintain certain records, the precise violation of the statute involved is the failure to maintain a specific record, rather than the failure to allow inspection of the record. Since the association did not have in its possession or control but had misplaced the minutes sought by the unit owners as well as the tape recording of the meeting, the association cannot be held to have willfully failed to provide the unit owner with access to them.

Funk v. Hallmark of Hollywood Condo. Ass'n, Inc., and Hanna v. Hallmark of Hollywood Condo. Ass'n, Inc.,
Case No. 2005-00-0499 and 2005-00-0712 (Scheuerman / Summary Final Order / April 25, 2005)

• Telephone numbers, fax numbers, and email addresses of the unit owners in the possession of the association constitute official records within the meaning of Section 718.111(12)(a), F.S.

• The association is not authorized to strike the balance between the perceived privacy interests of its membership and the right of access to the official records. The Legislature has already struck the balance by adopting a statute setting forth a broad right of access with limited statutory exceptions.

• There is no constitutional or statutory right to privacy concerning telephone numbers, fax numbers, or email addresses of the residents in the possession of the association. Rather, the association was required to provide access to this information upon proper request of an owner.

• As there was no substantial confusion or uncertainty in the law regarding whether the association was obligated to allow access to telephone numbers, fax numbers, and email addresses of the residents within the possession of the association, the failure of the association to timely afford access to there documents upon proper request of an owner could only be considered willful, thus giving rise to statutory damages of $500.00

• Although the statute allows owners to revoke their consent to received notice from the association via email or fax, in which event this information would cease to constitute official records subject to inspection, the statute does not permit the association to withhold access to this information pending notification to the owners of the official records request, particularly where this procedure exceeds the five day period of time in which the association is required to provide access to such records.

• Although the association is authorized to pass reasonable regulations regarding the frequency, time, location, notice, and manner of records inspections, the statute does not authorize the association to pass rules that are inconsistent with the statute. The association cannot re-create the statutory list of public records, less the documents it does not wish to disclosure, under the guise of regulation.

Gosselin v. Sand Castle Condo. Ass'n Inc.,
Case No. 02-5465 (Coln / Amended Final Order / February 19, 2003)

• Unit owner failed to demonstrate that the association had willfully delayed in providing him access to the association's official records where the unit owner, through counsel, requested the records and then was unavailable to schedule a review time and had cancelled the scheduled review time. The association had contacted the unit owner and had attempted to schedule a time for him to review the records in a timely manner. The inability of counsel for the parties to coordinate their schedules for more than a month does not demonstrate that the association willfully failed to provide access.

Hadden v. Whiteway Terrace Villas Condo. Ass'n,
Case No. 2003-07-6575 (Mnookin / Final Order / October 23, 2003)

- In order for a unit owner to be eligible for statutory damage awards pursuant to Section 718.111(12)(c), F.S., for an association's willful failure to allow access to its official records, the petition for arbitration must specifically request damages as relief. A mere reference to the statutes in the statement of facts section of the petition does not put the association on notice that statutory damages are contemplated and will not result in an award of damages.

- Without proof that an association actually received a written request for access to the association's records, which can be documented, for example, by a certified mailing receipt, it cannot be said that the association willfully denied access to its official records. In such a case, the unit owner will not be entitled to an award of statutory damages.

- The arbitration process is not the proper vehicle for a unit owner to use for continuous access to official records not requested prior to the filing of the original petition. If a unit owner wishes to be provided with access to records not included within the scope of the arbitration petition, the proper vehicle to utilize is the statutory provision contained within Section 718.111(12), F.S.

Heaton v. Ocean View Towers Condo. Ass'n Inc.,
Case No. 02-4872 (Coln / Summary Final Order / August 20, 2002)

- Association's retainer agreement with its attorney is not protected by the attorney-client or work product privileges. Retainer agreement, which expresses neither legal opinions nor legal strategy, is fact based and was therefore not exempt from disclosure.

- Memorandum attached to a retainer agreement, entitled Recommended Collections Procedures and containing a detailed listing of the tactics, opinions and recommendations of the association's attorney, was protected by both the attorney-client and work product privileges and therefore was exempt from disclosure.

Jetson v. Paragon Condo. Ass'n, Inc.,
Case No. 2004-05-5713 (Bembry / Final Order / June 10, 2005)

- Where the association failed to demonstrate its ability to comply with the unit owner's official records request was hindered by two major storms which struck the area in which the condominium property was located, the association's failure to provide the requested records within the time provided by Section 718.111(12), F.S., was deemed willful. Failure of the association to provide specific reasons that the storms precluded its compliance with the unit owner's records request, such as lack of power or damage to building or loss of stored records, precluded a finding that its lack of compliance was not willful.

Kapfhamer v. Sabal Pine Condo., Inc.,

Case No. 02-5893 (Scheuerman / Final Order Dismissing Petition / September 26, 2003)

- Section 718.111(12), F.S., permits a disappointed unit owner to elect between minimum statutory damages in the maximum amount of $500, or actual damages which have no upwards cap set forth in the statute. If an owner fails to prove actual damages exceeding the amount established in the statute, then the owner will be awarded minimum statutory damages for a willful failure to grant access to the records.

- Where an owner elects to pursue actual damages for a willful failure of the association to grant access to the records, the owner is required to plead and prove his actual damages with specificity. The owner must include an itemization of each and every item of actual damages claimed in the petition or attachment thereto. Lost wages may be claimed as a component of actual damages but must be pled with specificity and proved at trial.

Koslaga v. Atlantic Apartments, Inc.,
Case No. 2003-04-4384 (Coln / Final Order / November 10, 2003)

- Where the unit owner requested access to the same official records of the association on several occasions, and where the association failed to timely provide access to the official records, claiming that the unit owner had previously been provided with the records and that the requests were unduly burdensome, the arbitrator found that the association willfully denied access to the official records. The three requests made by the unit owner over a seven-month period do not constitute frequent, encompassing or comprehensive requests that would negate the presumption of willfulness by the association in failing to provide the records.

Lee v. Winston Towers 100 Ass'n, Inc.,
Case No. 02-4897 (Richardson / Final Order / January 3, 2003)

- Where the association, in response to a request in writing for access to specified official records, directed a letter to the owner discussing the other issues contained in the letter and indicating that the association was available to address any further inquiries, the association did not offer access to the records and was deemed to have intentionally failed to provide access.

- The association was not required, pursuant to Ch. 718, to provide copies of the official records and to mail them to the requesting owner. Rather, the statute guarantees that an owner shall have access to the official records.

Noellert v. Palm Lake Estates Condo. Ass'n, Inc., and Pickering v. Palm Lake Estates Condo. Ass'n, Inc.,
Case No. 2005-02-2111 and 2005-01-9943 (Scheuerman / Summary Final Order / June 15, 2005)

- Where an owner following an election requested to view "all voter verification documents", the phrase was ambiguous and would not support a finding that the association willfully failed to allow access to the official records, where the owner really desired to view any deeds that would establish unit ownership. While few would argue that a deed, in retrospect, would constitute a voter verification document, a deed is perhaps not the first or even a necessary document that would come to mind. This phrase might refer to a voting certificate, the owner roster, tally sheets, signature cards, deeds, or other indicia of ownership. An owner seeking damages is required to communicate clearly to the association the identity or nature of the records sought. The owner, as the party who writes the request, properly bears the risk of imprecise or problematic communication.

- Deeds, required by the declaration to be provided to the association by the new owners, were not exempt from disclosure as a record relating to the transfer of a unit. The exemption does not apply to a lease or deed itself but to information contained in the transfer documents that is otherwise made confidential by state or federal law such as social security numbers and medical information.

- Where the declaration required new purchasers to present the association with a certified copy of their deed, where purchasers had failed to do so, the documents were satisfied where the association obtained a regular copy of the deed from the public records and maintained these records with its official records.

Quittschreiber v. Crestwoode Condo. Ass'n, Inc.,
Case No. 2004-03-9011 (Grubbs / Summary Final Order / November 8, 2004)

- The association may not excuse its failure to produce records on its own failure to properly keep them. Whether the records are kept in an orderly fashion or not, the association must produce what it has. If the association is positive that it does not have certain records that are required to be kept, it must advise the petitioner that the records do not exist or were lost.

Sea Shores Estates Ass'n, Inc. v. Stanley, Jr.,
Case No. 2003-06-0829 (Coln / Summary Final Order / July 16, 2003)

- Where the owners/petitioners directed a letter to the association asking how much money had been spent on a project, the letter constituted an inquiry under s. 718.112(2)(a)2., F.S., and was not a request to view the official records under s. 718.111(12), F.S., and therefore would not give rise to a cause of action for statutory damages under the official records section of the statute.

Suncoast Resort Rentals, Inc. v. Sea Oats of Redington Shores Condo. Ass'n Inc.,
Case No. 01-4143 (Gioia / Final Order / March 25, 2003)

- Where a unit owner sought access to certain rental records held by the association president who operated a rental program as an accommodation to the other owners, the records were held not to constitute official records of the association where the

president considered that she operated the program independent of the association and had procured a separate tax identification number for her activities once confusion arose concerning whether the rental program was an association activity. Even assuming that the rental program was operated by the association, there was no evidence of a willful failure to provide access to the records since business records were not maintained and were not available for inspection in any event.

Thornhill v. Admiral Farragut Condo. Ass'n, Inc.,
Case No. 2004-04-4863 (Mnookin / Summary Final Order / April 25, 2005)

- Where it is shown that the association failed to timely respond to a unit owner's request for access to the association's official records, the association is ordered to provide the requested records to the unit owner. Because the petition filed by the unit owner failed to request statutory damages as relief, none is awarded.

Trillo v. Arlen House Condo., Inc.,
Case No. 2003-07-9525 (Bembry / Partial Summary Final Order / February 23, 2004)

- A unit owner's telephone number, when known to an association, is an official record of the association.

- Unit owner roster that omitted unit owner telephone numbers which were in the possession of the association failed to comply with Section 718.111(12)(a)(7), F.S. Unit owner telephone numbers were not considered confidential information and are not exempt from disclosure, even though the telephone numbers were obtained with other information related to a transfer or sale of a unit that is exempt from disclosure under Section 718.111(12)(c)(2), F.S.

Twin Fountains Club Owners Ad-Hoc Committee v. Twin Fountain Club, Inc.,
Case No. 01-3329 (Scheuerman / Final Order / January 28, 2002)

- Where group of owners requested access to the financial records in writing, and were granted certain dates for inspection, where dates passed through inadvertence without an inspection occurring, owners not required to submit an additional request to inspect in writing. There is no basis in the statute or rule for the association's actions. The association was already aware that the owners desired access to the records, and a request in writing had already been submitted. The association will not be permitted to riddle the field of the owners' rights of access to the records with administrative land mines in effect nullifying the right of access guaranteed by statute. The denial was deemed willful.

- Association is required to cooperate in good faith with a request for access to the official records, and shall not hide behind hastily created and ill-advised policies having no root in the statute or administrative rules.

- Where policy of association was to restrict records inspection to a 1 hour period regardless of the volume of records sought to be viewed, policy was inconsistent with

the statutory right of access and could only lead to a finding that access had been willfully denied.

Parking/Parking Restrictions

Boulevard Ass'n, Inc. v. Slater,
Case No. 2003-05-0118 (Coln / Final Order / July 22, 2003)

- In an action taken by the association to require the removal of a commercial vehicle, the rule sought to be enforced provided that: "No commercial truck or van (over 3/4 ton Pickup) allowed on premises other than for service calls." The unit owners parked two Chevrolet Express vans on the property that were used for business purposes and were covered on three sides with commercial lettering advertising their business. The vehicles were plainly commercial vehicles prohibited by the rule. The phrase "over 3/4 ton Pickup" obviously refers to trucks and not to vans, contrary to the owners' argument made in an effort to exclude smaller commercial vans.

Fountain Cove Condo. Ass'n, Inc. v. Jones,
Case No. 2003-05-4864 (Coln / Final Order / September 9, 2003)

- A taxicab was found to be a commercial vehicle prohibited by the condominium documents.

Grogis v. Marina Harbour South Ass'n, Inc.,
Case No. 2003-07-5139 (Mnookin / Summary Final Order / February 8, 2005)

- Where a condominium's governing documents restrict pick-up trucks parking to certain locations on the condominium property and do not restrict the parking of other types of trucks or vans, the rule is found to be reasonable because those trucks differ from pick-up trucks in terms of function, design, appearance, and use. Where a board rule does not contravene either an expressed or implied right contained in the declaration of condominium, the rule is found to be valid and within the board's authority.

Hillcrest East No. 25, Inc. v. Rock,
Case No. 02-4980 (Coln / Summary Final Order / August 16, 2002)

- Association's parking rule prohibiting trucks, but permitting sport utility vehicles to be parked upon the property was not arbitrary or without rational basis. Sport utility vehicles, unlike pickup trucks, are primarily designed for the transportation of persons not cargo. Accordingly, the parking rule prohibiting trucks makes a rational distinction between trucks and sport utility vehicles and enforcement of the rule does not constitute selective enforcement.

- While the association's rule prohibiting trucks, passed in October 2000, was not in effect when the unit owner acquired unit and began parking his 1995 pickup truck upon the property, the association was entitled to enforce the rule against the unit owner when he subsequently acquired a new 2002 pickup truck. Subsequently acquired

vehicle was not grandfathered in and constitutes a violation of the rule prohibiting trucks.

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Rule providing that no signs, posters, circulars, notices or other lettering shall be affixed to a unit or parked vehicle except for commercial vehicles parked in designated areas was not on its face intended to prohibit a unit owner from leaving a newsletter containing political criticism towards the board on the doors of the various units. Rather, the rule was intended to prohibit or regulate commercial advertising on the property, and the $1,500 fine imposed by the association was invalid for this reason.

Number 4 Condo. Ass'n Village Green, Inc. v. Cottrell,
Case No. 2003-05-5188 (Mnookin / Summary Final Order / October 14, 2003)

- Even if a unit owner received permission from the president or other board member to park his motorcycle on the condominium property, the action of one board member is insufficient to bind the board when the unit owner's action is prohibited by the condominium documents.

- Where the condominium documents prohibit motorcycle parking and a unit owner parks a motorcycle-like vehicle on the property, the association properly took into account the vehicle's size, function, appearance and noise to determine that the vehicle's features are consistent with motorcycles and required its removal.

Parkside Condo. Ass'n, Inc. v. Valdez,
Case No. 01-3937 (Scheuerman / Final Order / June 5, 2002)

- Where an owner seeks to take advantage of the condominium's handicapped parking space, while no provision of the law or provision contained in the documents affirmatively required the owner to provide information to the association regarding use of his handicapped parking permit, such as an identification of the holder of the permit, the owner is nonetheless reasonably required to provide relevant information to the association including the identity of the permit holder.

Rokest Condo. Ass'n, Inc. v. Tenen,
Case No. 2003-05-7617 (Mnookin / Summary Final Order / August 8, 2003)

- In its petition, the association alleges that the unit owner, in violation of the condominium documents, has used parking spaces #1 and #2 which are assigned to other unit owners. The unit owner provided a letter from the unit owner assigned to space #1 granting him permission to use space #1 and forwarded this letter to the association before the petition for arbitration was filed. The unit owner also asserted that he has not parked in space #2 since prior to the filing of the petition. Where the

association fails to dispute the allegation concerning the permission given to the unit owner to park in space #1 and fails to allege that the unit owner currently parks in space #2, the arbitrator found sufficient evidence to rule that any parking violations were cured prior to the filing of the petition for arbitration.

Sunflower Condo. Ass'n, Inc. v. Halko, Jr.,
Case No. 01-3733 (Scheuerman / Summary Final Order / January 2, 2002)

- Where documents prohibited motorcycles on the condominium property, fact that motorcycle was used for charitable events, that no owner had filed a noise complaint, and that the association had failed to post "no motorcycle parking" signs failed to state cognizable defenses.

Weiss v. Garnet Condo. Ass'n Inc.,
Case No. 02-4901 (Scheuerman / Summary Final Order / October 23, 2002)

- Where the board was powerless to assign or reassign limited common element parking because the space was an appurtenance to the unit and could only be transferred with the unit, the association was neither a necessary party nor a proper party in lawsuit brought by owner complaining that the association had re-assigned his parking space. In actuality, it was the City that had exercised its police powers to appropriate the parking space due to the building code's requirement of a greater turnaround for fire and emergency vehicles. The association merely performed the ministerial task of re-assigning spaces.

Parties (See Arbitration-Parties)

Pets

5825 Corinthian Condo. Ass'n, Inc. v. Garcia,
Case No. 2003-06-7861 (Bembry / Final Order / June 10, 2004)

- Unit owner's admission to periodically keeping a dog in her unit while attempting to find another home for the pet was found to be a violation of the association's governing documents prohibiting pets on the condominium property.

610 Island Way Condo. Ass'n, Inc. v. Nelson,
Case No. 01-2710 (Pasley / Summary Final Order / January 16, 2002)

- Where unit owner and tenant were ordered to provide an affidavit containing the weight of the tenant's pet and they failed to do so, the tenant's pet's weight was found to exceed the 20 pound weight limit.

The Atrium on the Bayshore Ass'n Inc. v. Garcia,
Case No. 02-4682 (Coln / Final Order / August 1, 2002)

- Where witnesses testified that the unit owner's dog barked in a consistently irritating manner for long periods of time at all hours and that the dog had done so for a several years, the dog's barking found to disturb the quiet enjoyment of other unit owners to their units and to create a nuisance.

- The testimony presented demonstrated that the unit owner was able to control his dog's barking by using the electronic bark collar and that the use of this collar has been 100% effective when used properly. Where lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. See Knecht v. Katz, 785 So.2d 754, 755 (Fla. 5th DCA 2002). Accordingly, since dog's barking can be controlled, the removal of the dog is an excessive remedy. Unit owner order to use bark collar at all times.

Bay Pointe Waterfront Condo. Ass'n Inc. v. Peavy,
Case No. 02-5765 (Scheuerman / Summary Final Order / January 31, 2003)

- Where the declaration did not address the issue of pets, where the bylaws contained only a passing reference to pets, (used as an example of a nuisance), and where the original rules permitted certain pets, the challenged amendment to the rules and regulations prohibiting pets was not invalid because of any express or implied conflict with the declaration or bylaws. The board had express authority to create or amend rules regarding use of the condominium property and parcels. Additionally, the fact that the original rules and regulations addressed the subject of pets bolsters the conclusion that the rules were intended to address and contain substantive restrictions regarding pets.

Bay Pointe Waterfront Condo. Ass'n Inc. v. Velasco,
Case No. 02-5742 (Coln / Final Order / February 20, 2003)

- The association failed to prove that the unit owner's dog Kaia was acquired after the February 15, 2000, the effective date of the no-pets provision of the rules and regulations. The unit owner presented competent testimony that his dog was acquired in 1999, prior to the effective date of the no-pets rule, and accordingly the relief requested by the association was denied.

Beachplace Ass'n Inc. v. Hurwitz,
Case No. 02-5940 (Mnookin / Summary Final Order / April 11, 2003)

- For the defense of selective enforcement, only comparable violations are acceptable. Examples of cats or birds are not acceptable for a case involving a dog.

- The unit owner's reliance on provisions contained in an offering circular was not reasonable when other condominium documents clearly provide for a no-pet policy. It is the recorded documents, not the offering plan or prospectus, which become binding upon the association and the unit owners.

- Because the declaration does not expressly state that pets are permitted, there is no contradiction with restrictions set forth in the rules and regulations prohibiting all pets

where the board is given clear rule making authority in this area. Additionally, the right to maintain a pet is not reasonably inferred from a nuisance section which merely mentions house pets.

Burleigh House Condo., Inc. v. Moody,
Case No. 2004-05-5677 (Grubbs / Final Order Dismissing Petition for Arbitration / March 7, 2005)

- The association charged the respondent with violating the condominium documents by having a dog in her unit without the approval of the board. However, the association admitted that it had no application process through which a unit owner could gain board approval. Where the declaration indicated that dogs were allowed with board approval, the association cannot charge the unit owner with violating the declaration by not having board approval when the association makes it impossible for the unit owner to apply for approval.

- Because the petition contained no factual allegations sufficient to establish that the dog was a nuisance, the conclusory allegation that the dog was a nuisance was dismissed.

Charter Club, Inc. v. Gary,
Case No. 00-1949 (Coln / Final Order / November 27, 2002)

- The burden of proof rest with the party asserting the affirmative defense to establish facts constituting the elements of the defense. Regarding selective enforcement in pet cases, this includes demonstrating clearly that the animals cited as examples of selective enforcement are over the weight limit, reside in the community and that the board is aware of the infraction. The unit owner failed to demonstrate either the existence of another pet violation or that the association was aware of the violation. Accordingly, the unit owner's defense of selective enforcement fails.

The Claridge Condo. Ass'n, Inc. v. Donelan,
Case No. 2004-02-6247 (Bembry / Final Order / March 4, 2005)

- Unit owner's dogs were determined to be a nuisance after the association presented evidence that the owners dog's barking had frequently and continuously disturbed neighboring unit owners.

Cypress Woods, Inc. v. Rosen,
Case No. 02-4593 (Gioia / Order Granting Motion to Dismiss / April 17, 2002)

- Section 718.1255, F.S., requires notice to all potential respondents, including tenants of the intention to file an arbitration petition or other legal action when tenants will be effected by any final order to be entered. Failure to include the allegations or proof of compliance with this prerequisite requires dismissal of the petition without prejudice.

Fairbanks Terrace South, Inc. v. Broniecki,
Case No. 2003-07-6318 (Earl / Final Order / December 29, 2003)

- Where a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. Since the respondent's cat can be kept out of the common elements by the respondent not walking, exercising or otherwise permitting her cat on the common elements, the respondent ordered to immediately cease from exercising, walking or otherwise permitting her cat on the common elements.

Fairway at the Heather Condo. Ass'n, Inc. v. Kelly,
Case No. 02-5545 (Coln / Summary Final Order / November 6, 2002)

- The fact that the unit owner's real estate agent misrepresented that the association allowed pets was not a defense to keeping a pet in violation of the declaration. Real estate agent did not have authority to speak on behalf of the association or to make representations that were binding upon the association.

The Fairways at Emerald Greens Condo. Ass'n, Inc. v. Goetten,
Case No. 2004-02-7704 (Earl / Final Order / February 2, 2005)

- To prove the defense of selective enforcement, a party has to show that there are instances of similar violation of which the governing body has notice, but on which they have refused to act. The unit owner failed to establish that the association was selectively enforcing its pet restriction as the association established that other pets cited by the unit owner were either grandfathered or the association had taken action concerning them.

- The unit owner's defense that she needed to maintain the non-conforming dog for security was rejected because security concerns are not accepted as justification to violate pet restriction, as self-help measures are not a recognized defense to claims of violation of condominium documents.

Forest Hill Gardens East Condo. Ass'n, Inc. v. Garcia,
Case No. 01-3963 (Pasley / Final Order / February 14, 2002)

- Where another unit owner testified to having seen the respondent/unit owner with a black dog and a blond dog on two separate occasions on the condominium property, and to confronting the respondent on the first occasion, and where another witness, a contractor who has performed work on the property, testified to having seen the respondent with a black dog and a gold dog and to having knocked on the door to the respondent's unit to check to see whether the dogs in question were still there and testified that dogs barked when he knocked, the arbitrator found that the respondent had brought two dogs onto the condominium property and had kept these dogs in his unit.

Greenwich Ass'n, Inc. v. Shannon,
Case No. 02-4705 (Coln / Summary Final Order / June 20, 2002)

• Where association has not enforced the one pet rule and the pet weight restrictions in association's declaration and by-laws, waiver has and the association cannot create new hybrid rule against multiple pets exceeding weight limit. Unwritten hybrid rule created by the board appears to apply the waived pet restrictions in selective circumstances. These restrictions, having not been enforced, cannot simply be enforced in certain instances and not in others. Such a system of enforcement constitutes selective enforcement of these restrictions

Grogis v. Marina Harbour South Ass'n, Inc.,
Case No. 2003-07-5139 (Mnookin / Summary Final Order / February 8, 2005)

• Where a condominium's governing documents prohibit dogs, but allow cats and other pets, the ruling in Prisco v. Forest Villas Condo. Apartments, Inc., was not applicable because it has not been shown that the association is enforcing the pet restriction improperly by enforcing the restriction against dogs but ignoring the prohibition against cats and other pets.

Lakeshore at University Park Section One Condo. Ass'n, Inc. v. Davis,
Case No. 2003-09-1326 (Earl / Final Order on Default / May 25, 2004)

As relief, the association requested that the arbitrator order the respondent to remove the dog from her unit. However, where a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. The Atrium on the Bayshore Ass'n Inc. v. Garcia,, Arb. Case No. 02-4682, Final Order (August 1, 2002) citing Knecht v. Katz, 785 So.2d 754 (Fla. 5th DCA 2002). Accordingly, where condominium documents did not contain an absolute pet prohibition, but required the unit owners to seek in writing the association's approval for pets, the association's complaints may be remedied by prohibiting the respondent from maintaining her dog on the balcony of her unit and discarding its waste off the balcony onto the ground below.

Leisure Village, Inc. of Stuart v. Adams,
Case No. 02-5048 (Coln / Summary Final Order / August 21, 2002)

• Association rule that prohibits permanent pets yet allows temporary guest to have pets with board approval, held to allow all residents to have pets on a temporary basis. While temporary guest need board approval, unit owners do not need approval to keep a pet temporarily on the property. Unit owners' practice of keeping their dog on the property for several months during their visits from England was temporary and did not violate the rule prohibiting the permanent keeping of pets.

Ocean Club Townhomes at Jupiter Condo. Ass'n, Inc. v. Spiegel,
Case No. 01-2593 (Scheuerman / Final Order / December 20, 2001)

• Where dogs each exceeded maximum size established in the declaration, dogs must be removed from the property unless exempted by the operation of estoppel, waiver, or other affirmative defense.

- Where dogs were shown to have roamed without a leash on the common elements in the past, but not recently, there is no need for entry of an order requiring the pet owner to do that which he is otherwise required to do.

- Dogs were not shown to be a nuisance where dogs were allowed on the property by the documents and where it was not shown that these dogs barked any more than any other dog, or that their barking impaired the ability of the owners to use and enjoy their units.

Paradise Shores Apartments, Inc. v. Slovenski,
Case No. 01-2602 (Pasley / Summary Final Order / October 31, 2001)

- Where the declaration prohibits a unit owner from "acquiring or boarding" a four-legged pet, the unit owner was found to be in violation of the declaration because he permitted his visitors to bring their dogs to the unit. The unit owner's assertion that compensation in exchange for the dogs' stay was required to meet the definition of "boarding" was rejected.

Park East Home Owners Ass'n v. Lesterio,
Case No. 2005-01-2464 (Mnookin / Summary Final Order / May 27, 2005)

- Where a unit owner claims he is permitted to maintain his dog on the condominium property because his pet is grandfathered and because he registered his dog with the association prior to the deadline stated in the rules and regulations that prohibited pets, but failed to submit any evidence to support this defense as required by the arbitrator, the defense is stricken.

- Where a unit owner argues that he is entitled to maintain his dog on the condominium property because the association has engaged in selective enforcement of the pet prohibition, but fails to cite any examples of selective enforcement that he intends to use in this case, as required by Rule 61B-45.019(3), F.A.C., the defense is stricken.

Quince Gardens Condo. Ass'n, Inc. v. Slakter,
Case No. 2004-02-8376 (Bembry / Summary Final Order / February 18, 2005)

- Unit owner's defense of selective enforcement was stricken where owner failed to allege sufficient facts to support allegations that the association permitted other owners to keep pets in their units and had taken no action to enforce the restriction contained in its governing documents.

- Unit owner's allegations that the association's former board president had verbally consented to the owner keeping cats in his unit would not be sufficient to establish defense of waiver or estoppel where the association's declaration of condominium prohibited association members from keeping pets without written consent of the board

of directors. Unit owner's reliance on a single board member's consent is insufficient to establish that the association had approved the pets and to support the defense of estoppel.

- Unit owner's defense of waiver was rejected where the unit owner failed to establish that the association's board was aware that cats that were seen on the condominium property were being maintained by the unit owner even though the unit owner had maintained the cats for approximately five years.

Riviera Condo. Apartments, Inc. v. Murphy,
Case No. 01-2734 (Gioia / Final Order / October 16, 2001)

- Where the unit owner demonstrated that the dog in question was physically absent from the property during the times at which petitioner claimed the dog was creating a nuisance by barking and that the other incidents presented by the petitioner failed to established a pattern of behavior that rose to the level of a nuisance, the dog was found not to be a nuisance.

Shoreline Towers Phase I Condo. Ass'n, Inc. v. Star Property, Inc.,
Case No. 01-3857 (Pasley / Partial Summary Final Order and Election Order / March 19, 2002)

- Where the declaration provided that an owner "shall not keep any pet in his Apartment except under the regulations promulgated by the association," a rule prohibiting pets was found to be valid because it contravened neither an expressed provision of the declaration nor a right reasonably inferable there from. The declaration appeared to have grant the authority to the board to allow or not to allow pets.

Stone's Throw Condo. Ass'n, Inc. v. Corsi,
Case No. 00-2173 (Pasley / Final Order / October 16, 2001)

- Where a unit owner committed multiple violations of the "Pets" section of the rules and regulations, including allowing the dog outside of the unit without having the dog on a leash and by allowing the dog to swim in the swimming pool, wherein the dog defecated, the unit owner was ordered to permanently remove the dog from the condominium property because the unit owner had placed the health of the other unit owners in jeopardy.

Tradewinds at Dos Lagos Condo. Ass'n Inc. v. Mazzaferro,
Case No. 02-5121 (Coln / Final Order / January 24, 2003)

- Where the association produced competent and substantial evidence that proved that the dog presently owned by the unit owners was not the same dog for which it conferred a grandfathered status for in 1999, the unit owners were found to have violated article XIII(f) of the declaration of condominium by keeping a dog in excess of twenty-five pounds within their unit.

Villas of West Miami Condo. Ass'n, Inc. v. Fernandez,

Case No. 2003-07-0820 (Mnookin / Final Order / February 25, 2004)

- In a dispute alleging that a unit owner's dog created a nuisance by its excessive barking, the association only presented one unit owner to testify at the final hearing that the owner unit's dog barked in an annoying manner. It was not shown that the duration, frequency or degree of the barking was sufficient to establish a nuisance, but, rather, the barking appeared to be occasional and merely associated with everyday living in a condominium community that permits dogs.

Watergate Condo. Ass'n Inc. v. Mazurek,
Case No. 02-5550 (Coln / Final Order / May 14, 2003)

- Unit owner has the burden of proof establishing the elements of an affirmative defense. Regarding selective enforcement in pet cases, this includes demonstrating clearly that the animals cited as examples of selective enforcement reside in the community and that the board is aware of the infraction. At the final hearing, the unit owner introduced testimony demonstrating that another unit owner, who was blind, had a seeing-eye dog and that another unit owner had a dog. The association granted an exemption to the seeing-eye dog and was therefore not an example of selective enforcement. The unit owner failed to demonstrate that the association had knowledge of the existence of the other unit owner's dog. The unit owner's defense of selective enforcement was struck.

Waterway Plaza, Inc. v. Jauregui,
Case No. 01-2428 (Pasley / Final Order / December 31, 2001)

- Where a unit owner's dog attacked without provocation and injured two unit owners at different times, the unit owner was ordered to remove the dog from the unit because the dog was creating a nuisance and was interfering with other unit owners' peaceful possession of their units.

Woodside Village Condo. Ass'n, Inc. v. Brandes,
Case No. 01-2527 (Pasley / Final Order / January 4, 2002)

- An association may not apply a new provision prohibiting pets against a unit owner who has lived in the unit with the pet prior to the adoption of the prohibition. Where a cat is of a breed known to resemble other cats of the same breed, the veterinarian who began treating the cat in 1992 examined the cat the week before the hearing and testified that he is satisfied that the cat was the same cat, and where the association's previous violation letter referred to the cat by the original cat's name and stated that the unit owners "may have owned this same cat before the covenants were amended," the arbitrator found that the cat was more likely than not the same cat previously maintained by the unit owner.

Prevailing Party (See separate index on attorney's fees cases)

Purchase Contracts

Quorum (See Meetings)

Ratification (See Meetings-Board meetings-Ratification)

Recall of Board Members (See Meetings-Board meetings-Recall) (See separate index on recall arbitration)

Unit Owners Voting for Recall v. Ashby "D" Condo. Ass'n, Inc.,
Case No. 2003-08-2948 (Coln / Summary Final Order / October 22, 2003)

- Where the unit owner served the board with a recall petition and the association never held a meeting to determine whether or not to certify the recall, did not file petition for recall and failed to provide a sufficient explanation as to why neither action was taken, the recall of the board was certified.

Recreation Leases

Relief Requested (See Dispute-Relief granted or requested)

Rental Restrictions/Rental Program (See Tenants-Rental Restrictions/Rental Program)

Seychelles Condo. Management Ass'n, Inc. v. Ehlen,
Case No. 01-3639 (Gioia / Final Order / May 15, 2002)

- Required procedure to amend the declaration: when an right is explicit in the declaration, and the declaration requires a specific vote, super majority, or unanimity, that right may not be amended by a lesser vote using indirect means. When the right and its related restrictions on amendment are in different sections of the declaration they should be read together in pari materia to give the unified effect intended by the drafter.

Reservation Agreements

Reserves

Restraints on Alienation (See Unit-Restraints on alienation)

Sanctions (See Arbitration-Sanctions)

Security Deposits (See Purchase Contracts)

Selective Enforcement (See also Estoppel; Waiver)

Beachplace Ass'n Inc. v. Hurwitz,
Case No. 02-5940 (Mnookin / Summary Final Order / April 11, 2003)

- For the defense of selective enforcement, only comparable violations are acceptable. Examples of cats or birds are not acceptable for a case involving a dog.

Benjamin v. Bay Mariner Condo. Ass'n, Inc.,

Case No. 2003-05-4382 (Scheuerman / Final Order / October 13, 2003)

- Where the pool rule prohibited snorkels or other items in the pool, no selective enforcement was shown where although the association prohibited the use of snorkels in the pool, hats and sunglasses were allowed. These examples are disparate and dissimilar and in any event are often viewed as health related items.

Boulevard Ass'n, Inc. v. Slater,
Case No. 2003-05-0118 (Coln / Final Order / July 22, 2003)

- No selective enforcement was shown where the association sought to enforce the commercial vehicle prohibition against a commercial van but not against the owner of a pickup truck who stored tools and empty paint cans in the truck; there was an insufficient showing that the truck was used as a commercial vehicle. Truck owners habitually store items of varying degrees of utility in their truck beds, the storage of which does not demonstrate a commercial use.

Charter Club, Inc. v. Gary,
Case No. 00-1949 (Coln / Final Order / November 27, 2002)

- The burden of proof rest with the party asserting the affirmative defense to establish facts constituting the elements of the defense. Regarding selective enforcement in pet cases, this includes demonstrating clearly that the animals cited as examples of selective enforcement are over the weight limit, reside in the community and that the board is aware of the infraction. The unit owner failed to demonstrate either the existence of another pet violation or that the association was aware of the violation. Accordingly, the unit owner's defense of selective enforcement fails.

Classic Towne House Condo. West, Inc. v. Goldgerg,
Case No. 2004-00-3548 (Mnookin / Summary Final Order / September 14, 2004)

- Where an association alleges that a unit owner installed a storage shed on the common areas without permission from the board and it is determined that the board has failed to take action against other owners who have installed sufficiently similar shed without approval, selective enforcement is found and the owner was not required to remove his shed.

Condo. Ass'n of Le Mer Estates, Inc. v. Cohen,
Case No. 2003-08-7556 (Bembry / Summary Final Order / June 28, 2004) (currently on appeal)

- Selective enforcement defense was not established where owners, who added a gate to their railing, cited examples of other unit owner additions of furniture, ceiling fans and decorations to balconies as similar violations. Owners' installation of gate in unit balcony railing functioned as a second entrance to the unit and the cited examples of other unit owner violations were not comparable.

Condo. Ass'n of La Mer Estates, Inc. v. Gorlik,
Case No. 03-6138 (Mnookin / Summary Final Order / September 10, 2003)

- In a community composed of several condominiums operated by a single association, there is one set of by-laws and articles of incorporation for all of the condominiums. While each condominium has its own declaration of condominium, the restrictions contained therein are typically identical. When addressing selective enforcement allegations, a multi-condominium association may not selectively enforce declaration provisions against residents in one condominium but not against residents in the other condominiums.

- The association in a multi-condominium community alleged that a unit owner had installed a window modification in his unit in violation of the condominium documents and the owner responded with six examples of selective enforcement, arguing that the association had failed to require the removal of similar window modifications. Where the association only addressed one of six examples of selective enforcement raised by the unit owner, the arbitrator found that the association was engaging in selective enforcement by requiring the unit owner to remove his window modification while permitting other unit owners to retain similar window modifications. Accordingly, the unit owner was not required to remove his window modification.

Cove Village, Inc. v. Vendola,
Case No. 2003-05-5193 (Coln / Summary Final Order / October 9, 2003)

- Where the association brought an action against a unit owner claiming the unit owner had installed French doors on her unit without approval, and where the unit owner admitted that she had installed the French doors but asserted that another unit owner in the condominium had been permitted to install French doors several years ago, the arbitrator found selective enforcement, overruling the association's assertion that one example of selective enforcement was not sufficient to bar the enforcement of the rules in this matter. Whether there is one set of French doors or 100 sets, their existence and the board's decision to permit them to continue to exist indicate an unequal and unfair application of the condominium documents.

The Fairways at Emerald Greens Condo. Ass'n, Inc. v. Goetten,
Case No. 2004-02-7704 (Earl / Final Order / February 2, 2005)

- To prove the defense of selective enforcement, a party has to show that there are instances of similar violation of which the governing body has notice, but on which they have refused to act. The unit owner failed to establish that the association was selectively enforcing its pet restriction as the association established that other pets cited by the unit owner were either grandfathered or the association had taken action concerning them.

Greenwich Ass'n, Inc. v. Shannon,

Case No. 02-4705 (Coln / Summary Final Order / June 20, 2002)

- Where association has not enforced the one pet rule and the pet weight restrictions in association's declaration and by-laws, waiver has and the association cannot create new hybrid rule against multiple pets exceeding weight limit. Unwritten hybrid rule created by the board appears to apply the waived pet restrictions in selective circumstances. These restrictions, having not been enforced, cannot simply be enforced in certain instances and not in others. Such a system of enforcement constitutes selective enforcement of these restrictions

Hillcrest East No. 25, Inc. v. Rock,
Case No. 02-4980 (Coln / Summary Final Order / August 16, 2002)

- Association's parking rule prohibiting trucks, but permitting sport utility vehicles to be parked upon the property was not arbitrary or without rational basis. Sport utility vehicles, unlike pickup trucks, are primarily designed for the transportation of persons not cargo. Accordingly, the parking rule prohibiting trucks makes a rational distinction between trucks and sport utility vehicles and enforcement of the rule does not constitute selective enforcement.

Hypoluxo Harbor Club Homeowners Ass'n, Inc. v. Stearn,
Case No. 2003-08-3592 (Mnookin / Summary Final Order / June 23, 2004)

- Defense of selective enforcement was rejected where a unit owner failed to identify any other owners who are currently maintaining pets on the premises in violation of the rules and regulations, of which the association is aware and has failed to take action against. The unit owner had sought to rely on examples of pets that were no longer on the property, pets that the association had no knowledge of, and pets that had been properly grandfathered; such examples fail to support a finding of selective enforcement.

Island's End Condo. Ass'n Inc. v. Thompson,
Case No. 02-5357 (Gioia / Final Order / February 24, 2003)

- Respondents claimed selective enforcement where the association sought action against owners who tiled the dining room but not against those who tiled the hallway adjoining the kitchen and bathroom where tile is allowed. While the hallway area is not de minimus, neither is it comparable in size and impact as the dining room. If the dining room were to remain tiled it would have a far greater impact, in terms of noise, on the unit owners living below. Therefore, the hallway can not be considered an equivalent violation and the defense of selective enforcement fails.

Jade Winds Ass'n Inc. v. Kolker,
Case No. 02-5242 (Gioia / Summary Final Order / October 30, 2002)

- The claim of selective enforcement is found to be without merit. The respondents state that they speak Russian and can only watch Russian language TV by means of

the satellite dish while Spanish language programming is readily available over the cable TV system. No comparable violations of the rules of the association are being countenanced by the association to allow the receiving of Spanish language programming. In this case, the Spanish language programming is received by an authorized cable system.

Lido Ambassador Condo. Ass'n, Inc. v. Bawol,
Case No. 2003-06-8975 (Bembry / Summary Final Order / March 30, 2004)

- Claim of selective enforcement was rejected where the unit owners cited replacement of glass block for glass windows and installation of exterior screen doors as comparable modifications to their replacement of their wooden exterior door with one made of fiberglass; the cited examples of exterior modifications were not found to be sufficiently similar alterations for purposes of selective enforcement.

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No 2003-06-5896 (Scheuerman / Summary Final Order and Final Order on Motion for Rehearing / December 12, 2003 and February 17, 2004)

- Even assuming that a board rule prohibiting the posting of commercial advertising was intended to prohibit an owner from leaving a newsletter containing political criticism towards the board on the doors of the various units, the board was shown to have engaged in selective enforcement where the board interpreted the rule to permit the board itself to deliver the association newsletter also containing political content on the doors of the units.

Mai Kai Condo. Ass'n Inc. v. Mintz III,
Case No. 02-4662 (Richardson / Amended Summary Final Order / October 29, 2002)

- Where there is uncontroverted evidence of reasonable attempts to enforce a rule, the citing of one instance of a violation of the rule without any evidence that the board knew of the instance not sufficient to create an issue of material fact as to the defense of selective enforcement, as a matter of law.

Marina Harbour South Ass'n, Inc. v. Grogis,
Case No. 2003-09-5940 (Mnookin / Summary Final Order / February 8, 2005)

- Where the unit owners demonstrate that other owners have placed wall decorations on similar common elements hallways, the unit owners are not required to remove their decorations as the association has engaged in selective enforcement by permitting other owners to maintain similar decorations.

Number 4 Condo. Ass'n Village Green, Inc. v. Cottrell,
Case No. 2003-05-5188 (Mnookin / Summary Final Order / October 14, 2003)

- In a case brought by the association to remove a motorcycle, the failure by the association to enforce restrictions on trucks does not constitute selective enforcement.

Trucks and motorcycles are fundamentally dissimilar vehicles in size, shape, appearance and function, and examples of alleged truck violations are not similar comparisons and will not support a finding of selective enforcement.

The Oaks of Suntree Condo. Ass'n v. Haven,
Case No. 02-5756 (Coln / Summary Final Order / April 1, 2003)

- In a proceeding commenced by the association seeking removal of a satellite dish, the unit owner asserted the defense of selective enforcement and cited as examples that the president of the association has installed a birdbath on the front lawn, other residents had plants, planters, decorations, bird feeders, benches, flags and other items on the common elements, and a resident had installed a concrete slab for a barbecue grill. Selective enforcement involves the failure of an association to enforce the condominium documents in other instances bearing sufficient similarity to the instant case to warrant the conclusion that it is discriminatory, unfair, or unequal to permit the association to enforce the restriction in the present case. The unit owner failed to demonstrate the existence of any other satellite dish or similar device on the common elements, without board approval against which the association has failed to take enforcement action; thus, the unit owner's defense of selective enforcement was rejected.

Park East Home Owners Ass'n v. Lesterio,
Case No. 2005-01-2464 (Mnookin / Summary Final Order / May 27, 2005)

- Where a unit owner claims he is permitted to maintain his dog on the condominium property because his pet is grandfathered and because he registered his dog with the association prior to the deadline stated in the rules and regulations that prohibited pets, but failed to submit any evidence to support this defense as required by the arbitrator, the defense is stricken.

- Where a unit owner argues that he is entitled to maintain his dog on the condominium property because the association has engaged in selective enforcement of the pet prohibition, but fails to cite any examples of selective enforcement that he intends to use in this case, as required by Rule 61B-45.019(3), F.A.C., the defense is stricken.

Plaza East Condo. Ass'n, v. Blake,
Case No. 2003-05-9262 (Mnookin / Final Order / April 28, 2004) (reversed on other grounds)

- Where an association alleged that the unit owners were maintaining a dog in their unit in violation of the condominium documents and the unit owners assert selective enforcement as a defense, the unit owners must demonstrate that other owners have been and are currently maintaining pets in violation of the governing documents in order to prevail on this defense. While the owners presented credible testimony that a board member had once maintained a cat in his unit, there was no testimony indicating that

the cat was currently on the premises. As no current examples of selective enforcement were shown, the defense was rejected.

Quince Gardens Condo. Ass'n, Inc. v. Slakter,
Case No. 2004-02-8376 (Bembry / Summary Final Order / February 18, 2005)

- Unit owner's defense of selective enforcement was stricken where owner failed to allege sufficient facts to support allegations that the association permitted other owners to keep pets in their units and had taken no action to enforce the restriction contained in its governing documents.

South Gate Village Condo. Ass'n, Section I v. Monsen,
Case No. 02-4561 (Richardson / Partial Summary Final Order and Order Requiring Reply/ May 24, 2002)

- To prove the defense of selective enforcement, a party has to show that there are instances of substantially similar violations of which the governing body has notice, but in which instances the governing body has refused to act.

- Where the petition charged that the unit owners replace their door with a piece of plywood decorated to look like a door, the relevant allegations of selective enforcement were limited by the arbitrator to other instances where the board allowed a door to be replaced with something besides a door, and allegations of violations relating to a work bench which can be seen from the street, broken windows, parking violations, mismatched paint colors and landscape maintenance were excluded, but instances where a door was replaced with a window or with plywood matching the plywood on the rest of the building's exterior were included.

South Gate Village Condo. Ass'n, Section I v. Monsen,
Case No. 02-4561 (Richardson / Summary Final Order / June 24, 2002)

- The unit owners did not show selective enforcement by showing that the board, pursuant to requests, allowed the replacement of a door with a window and allowed a door to be covered with plywood paneling matching the rest of the building's exterior, because those examples are not comparable to the instant case where the unit owners, without the board's approval required by declaration, replaced their door with a piece of plywood decorated to look similar to a door.

Sunrise Lakes Condo. Ass'n Phase One, Inc. v. Rudich,
Case No. 02-5899 (Mnookin / Summary Final Order / May 2, 2003)

- When the respondents assert the defense of selective enforcement, they have the burden of establishing the essential elements of the defense. A minimal allegation that other dogs have been sighted on the condominium property is not sufficient to establish that the association has chosen to selectively enforce the pet policy prohibiting dogs.

Treetops at North Forty Homeowners Ass'n, Inc. v. Dawson,
Case No. 2003-05-5938 (Mnookin / Summary Final Order / October 27, 2003)

- Where an association permits one unit owner to plant a hibiscus tree on her property while requiring an adjacent unit owner to remove a similar hibiscus tree from her property, without providing a legitimate reason for requiring its removal, selective enforcement has been established. The argument that one tree is a replacement tree and the other is not a replacement tree is wholly arbitrary and fails to provide a reasonable or legitimate basis for rejecting the same types of trees.

Watergate Condo. Ass'n Inc. v. Mazurek,
Case No. 02-5550 (Coln / Final Order / May 14, 2003)

- Unit owner has the burden of proof establishing the elements of an affirmative defense. Regarding selective enforcement in pet cases, this includes demonstrating clearly that the animals cited as examples of selective enforcement reside in the community and that the board is aware of the infraction. At the final hearing, the unit owner introduced testimony demonstrating that another unit owner, who was blind, had a seeing-eye dog and that another unit owner had a dog. The association granted an exemption to the seeing-eye dog and was therefore not an example of selective enforcement. The unit owner failed to demonstrate that the association had knowledge of the existence of the other unit owner's dog. The unit owner's defense of selective enforcement was struck.

Standing (See Dispute-Standing)

State Action (See also Constitution)

Tenants

Generally

El Galeon by the Sea Condo. Ass'n, Inc. v. Heisey,
Case No. 02-4252 (Scheuerman / Summary Final Order / June 17, 2002)

- Arrangement whereby owners licensed under Ch. 509 rented out on a short-term basis probably more describes a lease arrangement than a license.

Stone's Throw Condo. Ass'n, Inc. v. Corsi,
Case No. 00-2173 (Pasley / Final Order / October 16, 2001)

- A unit owner is accountable for the actions taken by his visitors when they are on the condominium property and is charged with the responsibility of preventing his visitors from violating the governing documents.

Nuisance (See also Nuisance)

Rental restriction/rental programs

Anisko v. Island Club Condo., Inc.,
Case No. 2004-04-4285 (Scheuerman / Partial Summary Final Order / January 12, 2005)

- Where the declaration provided a 30-day minimum for leases, and an amendment to the bylaws provided a maximum rental period of one year, the bylaw amendment, seen as inconsistent with rights conferred under the declaration, was an illegal amendment to the declaration and was invalid.

El Galeon by the Sea Condo. Ass'n, Inc. v. Heisey,
Case No. 02-4252 (Scheuerman / Summary Final Order / June 17, 2002)

- Where the declaration permits short term leasing but requires that units be used for a single-family residence, use of units for short term transient renting where owner is licensed under Ch. 509 does not constitute a commercial nonresidential purpose and the declaration was not violated thereby. Considering all relevant portions of the declaration together and giving meaning to each, the residential requirement cannot be seen as addressing the right to rent or the duration of the lease, and cannot be construed to prohibiting short-term leases, a right conferred by another portion of the declaration. Residential restriction must be understood as speaking to who may occupy the units, whether through lease or deed, and what activities the occupants may conduct.

Palermo v. The Tower Residences Condo. Ass'n, Inc.,
Case No. 2005-01-7027 (Scheuerman / Summary Final Order / June 30, 2005)

- Where the board pursuant to authorization contained in the declaration had imposed additional rental restrictions by rule on October 19, 2004, which was after the amendment creating Section 718.110(13), F.S., had taken effect on October 1, 2004, the rental rule violated the statutory amendment prohibiting the enforcement of amendments to the declaration imposing additional rental restrictions against owners who did not consent to the amendments. The fact that the declaration, the supreme document, is prohibited from containing these amended restrictions of necessity forecloses a lesser document from containing these same restrictions. If the declaration cannot be so amended, it follows that no rule adopted under the authority of the declaration, may be adopted.

- Where a rule adopted by the board pursuant to express authority in the declaration restricted rentals to once a year for a minimum of 3 months, and where the declaration was never amended after adoption of the rule and continued to provide that units may be rented 4 times a year for not less than 30 days, subject to additional rule restrictions as may be adopted by the board, the rule was inconsistent with the declaration. The rule in effect amends the right to rent found in the declaration and must be accompanied by a corresponding amendment to the declaration removing that right from the declaration.

- The association's argument that the declaration put purchasers on notice that the right to rent may be modified by board rule pursuant to the Woodside opinion failed where the rules promulgated were invalid. Woodside only holds that purchasers are on notice that valid amendments may be adopted; purchasers only agree to be bound by valid future amendments.

Richardson v. Jupiter Bay Condo. Ass'n, Inc.,
Case No. 02-4354 (Scheuerman / Summary Final Order / July 3, 2002)

- Where declaration permitted leasing and where association, having unsuccessfully attempted to amend the declaration to impose substantive restrictions on leasing, amended bylaws to prohibit leasing for a term of less than 30 days, bylaw amendments were invalid as inconsistent with rights granted by the declaration.

Unauthorized tenant/association approval

Huntington Lakes Two Condo. Ass'n, Inc. v. Hall,
Case No. 2003-07-9443 (Bembry / Summary Final Order / April 9, 2004)

- The association was entitled to enforce declaration provision which required unit owners to obtain association approval of tenants, despite fact that unit owners had not been required to submit applications for tenant approval during past three years, where it was not shown the association's board was aware of the change in tenants.

- Although unit owners had leased their unit to different individuals without association approval during the three years preceding the association's action to enforce its tenant approval requirement, unit owner defense of waiver failed because of the lack of evidence that the association had constructive or actual knowledge of change in tenancy since the association approved owner's initial tenant.

Violation of documents

Stone's Throw Condo. Ass'n, Inc. v. Corsi,
Case No. 00-2173 (Pasley / Final Order / October 16, 2001)

- A unit owner is accountable for the actions taken by his visitors when they are on the condominium property and is charged with the responsibility of preventing his visitors from violating the governing documents.

Transfer of Control of Association (See Developer; Election/Vacancies)

Transfer Fees

Unit

Access to unit

Atlantic View Beach Club Condo. No. One Ass'n, Inc. v. Caravias,
Case No. 2003-08-2989 (Coln / Amended Summary Final Order / March 1, 2004)

• An association's right of access to the units is broad and is not restricted to instances in which an emergency is presented, but comes into play whenever the association's related functions of maintenance, repair, or replacement of the property are implicated. While a unit owner may not agree with the right of access granted to the association nor the manner or circumstances in which the association exercises this right, whether the association will or will not access the unit in a manner that meets the unit owner's satisfaction does not excuse the unit owner from providing the association access to her unit as required by F.S., and the association documents.

Costa Bella Ass'n, Inc. v. Simmons,
Case No. 02-4624 (Richardson / Final Order / June 7, 2002)

• Section 718.111(5), F.S., gives an association the irrevocable right of access to a unit, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association or to prevent damage to the common elements or to a unit or units. The right of access of the association is provided for the protection of all unit owners, and a key may be required for the same because, in the event of an emergency, precious minutes could be lost if the association had to find the owner or neighbor (as suggested by respondents as alternatives to providing a key) or resort to a locksmith or breaking the door down.

• In light of the irrevocable nature of the right of association access, numerous defenses to providing a key to the association have been considered and rejected, including: the defense that the owner does not trust persons connected with the association, the defense that property was stolen, damaged, used or disarranged by persons gaining entry with the key provided, and even the claim that the owner keeps national defense secrets unsecured in his unit was rejected. Therefore, respondents' defenses of fear of damage to or loss of property, distrust of association personnel and preservation of evidence, must be denied.

Costa Del Sol Condo. Ass'n Inc. v. Morrell,
Case No. 02-5011 (Coln / Summary Final Order / October 14, 2002)

• The fact that the unit owner disagrees with the right of access granted to the association and the manner and circumstances in which the association exercises that right does not provide the unit owner with a valid basis to withhold from the association a key to his unit. The right of access of the association is provided for the protection of all unit owners, and a key is required for the same because, in the event of an emergency, precious minutes could be lost if the association had to find an owner or resort to a locksmith or break down the door in order to access the unit.

Hillsboro Colonnade, Inc. v. Swasey,
Case No. 2003-07-7277 (Coln / Summary Final Order / November 6, 2003)

- The unit owner violated the association's right of access to the units when she refused to provide the association with a key to her unit. The fact that the unit owner had given a key to her unit to the local police and to two of her agents does not afford the association with access to her unit and does not excuse her failure to provide the association with a key.

Park Lake Towers Condo. Ass'n, Inc. v. Halley,
Case No. 2003-08-3367 (Scheuerman / Amended Final Order on Motions for Attorney's Fees / January 28, 2004)

- Where the association sought access to the respondent's unit in order to fix a plumbing assembly located in the common element space between adjoining units, and where the owner directed a letter to the association, reasonably understood by the association as refusing access unless the association produced for the owner's information and satisfaction a proper building permit and proof of insurance for the contractor chosen, the owner was held to have denied access to the unit in violation of the statute. Hence, the association was the prevailing party in the case and was entitled to an award of costs and attorney's fees. If the owner, who is not on the board and is not, therefore, responsible for maintenance of the common elements, desires to challenge the board's decision to proceed with a particular maintenance project or with a particular contractor, the owner must sue the association in court or arbitration, and may not hold his unit hostage while he extracts items and concessions from the board that exceed his authority as a unit owner. The owner was held to have constructively denied access to the unit.

Sea Shores Estates Ass'n, Inc. v. Stanley, Jr.,
Case No. 2003-06-0829 (Coln / Summary Final Order / July 16, 2003)

- The association sought to repair the unit owners' balcony. The unit owners allege that the association should not be permitted to repair the balcony as one of the owners suffers from Alzheimer's and Parkinson's diseases. These facts, if proven, do not constitute a legal defense or excuse the unit owners interference with the association's right to gain access to their unit, and with the right of the association to use their unit as necessary for the project in repairing the balcony and other portions of the common elements.

South Seas Northwest Condo. Apartments of Marco Island Inc. v. Mosca,
Case No. 02-5389 (Scheuerman / Summary Final Order / September 4, 2002)

- The association rule requiring that owners submit a duplicate key to the association implements the association's statutory right of access to the units and is designed to ensure actual access to the unit when needed and without the necessity of calling names on a list of possible key holders who might be available. The fact that the owner questions the good faith of an association employee or suspects that the association will negligently maintain the keys are not defenses that will permit the owner to continue to flout the requirements of the rule.

Alteration to unit (See also Fair Housing Act)

Chateaux de Lac Condo. Ass'n, Inc. v. Yarbrough,
Case No. 01-3451 (Pasley / Final Order / June 6, 2002)

- Association ordered to permit owner with MS to use washer and dryer in her unit as an accommodation to her disability.

Fairway Village Residents Ass'n, Inc. v. Irwin,
Case No. 2003-04-7190 (Mnookin Final Order / December 17, 2003) (currently on appeal)

- Where an association alleged that an owner's mobile home exceeded the maximum footage allowed when he added a concrete slab and awning to his home, the arbitrator found that when calculating the home's exterior dimensions, the newly constructed slab and awning should not be included in such calculations because the condominium documents only designate the home and carport as areas that must fit within the maximum exterior dimensions.

The Four Ambassadors Ass'n, Inc. v. Lindsay Properties, Inc.,
Case No. 01-3350 (Scheuerman / Final Order / November 22, 2002)

- Unapproved rogue washers and dryers were shown by expert testimony to pose an actual threat to the common elements and to the units and the property contained therein. Without predictability, but with eventual certainty, the washers will malfunction, backups in the units will occur, or a hose will rupture. Water may overflow and saturate a portion of the building that is not discoverable until after extensive damage has already occurred. Also, the buildings were not designed to accommodate individual washers and dryers in the units. Accordingly, the washer and dryer violated that portion of the declaration providing that the common elements shall only be used for the furnishing of goods and services for which they are reasonable suited and which are incident to the use and occupancy of the units. The owners also violated the prohibition in the declaration against changing the common elements or units in such a manner as to interfere with other owners' use or enjoyment of the property.

Mariners Pass Homeowners' Ass'n, Inc. v. Ludwiszewski,
Case No 02-5354 (Mnookin / Final Order / January 16, 2004)

- Where an association's governing documents only permit unit owners to alter the exterior of units with advanced written approval of the board, and where the owner received permission to construct an exterior enclosure that looked like the enclosure of his neighboring unit owner, the fact that the windows on the owner's completed structure were not the same size, number or dimension as the neighboring enclosure required the owner to modify the enclosure accordingly.

Appurtenances; changes to the appurtenances; Section 718.110(4)

Englehardt v. Carlton Terrace Condo. Ass'n, Inc.,

Case No. 2003-06-3375 (Scheuerman / Summary Final Order / February 17, 2004)

- There is no support shown in the case law or statute that a series of amendments to the declaration that placed increased restrictions on the ability of an owner to transfer his unit impaired any vested or fundamental rights. Rather, consistent with Woodside Village Condo. Ass'n, Inc. v. Jehren, 806 So. 2d 452 (Fla. 2002), owners are charged with constructive knowledge that the declaration may be amended in the manner set forth in the declaration, and the amendment may diminish or impair the ability of an owner to freely sell or rent his unit. Here the declaration allowed the board itself to amend the declaration, and the owner was charged with knowledge of this fact.

Held v. Board of Directors, Gabriel Towers Condo. Ass'n, Inc.,
Case No. 02-4510 (Scheuerman / Final Order Dismissing Petition / February 27, 2002)

- Where petition challenging election requested as relief that the board members who won the election be ordered never to run for the board again, there was no statutory support for such an award of relief and no such relief would be granted. The right to run for the board is a right associated with unit ownership and is given meaning in the condominium documents permitting all owners to run for the board. The right cannot be taken away absent an appropriate amendment to the documents.

- The arbitrator lacked the authority to fine individual board members for conducting an alleged-illegal election. While the Division sitting in an enforcement capacity is authorized to fine an association for statutory violations, and while the Division may under appropriate circumstances fine a board member individually, the legislature did not authorize a Division arbitrator to fine a board member.

Lindback v. Sand Pebbles of Islamorada Ass'n, Inc.,
Case No. 2004-02-2086 (Mnookin / Summary Final Order / June 21, 2005)

- Where a common element exterior two-story stairwell structure constructed outside a single unit is changed by the association by removing the top portion of the structure, the appurtenances to the adjacent unit have not been changed. The stairway can still be utilized by the unit owners, although not in the precise manner as before.

Floor coverings

Atlantic Cloisters Ass'n, Inc. v. Courteau,
Case No. 2003-05-7612 (Mnookin / Summary Final Order / March 4, 2004)

- Where a unit owner installed tile flooring in her unit without approval from the association and where such flooring failed to comply with minimum sound proofing requirements set forth in the declaration of condominium, the owner was ordered to remove the non-compliant tile flooring from her unit.

Gulf & Bay Club Condo. Ass'n Inc. v. Diamantino Assuncao, Rose Assuncao & as Trustees of Diamantino & Rose Assuncao Living Trust Dated 1/8/01,

Case No. 02-4468 (Richardson / Final Order / October 21, 2002)

- Where the unit owner replaced tile previously grandfathered in at the time of the adoption of the association rules prohibiting tile except in designated areas, new tile floor was not grandfathered in, and the owner was ordered to remove the tile.

Island's End Condo. Ass'n Inc. v. Thompson,
Case No. 02-5357 (Gioia / Final Order / February 24, 2003)

- Respondents claimed selective enforcement where the association sought action against owners who tiled the dining room but not against those who tiled the hallway adjoining the kitchen and bathroom where tile is allowed. While the hallway area is not de minimus, neither is it comparable in size and impact as the dining room. If the dining room were to remain tiled it would have a far greater impact, in terms of noise, on the unit owners living below. Therefore, the hallway can not be considered an equivalent violation and the defense of selective enforcement fails.

Leonardo Arms Beach Club Condo. Ass'n, Inc. v. Redder,
Case No. 01-4076 (Richardson / Amended Summary Final Order / May 22, 2002)

- Where the association's documents provided that all apartments shall be carpeted except in entryways, bathrooms and kitchens, the unit owners' argument that the provision would allow them to have tile so long as it covered by loose or fixed carpeting and padding was rejected because construction of the association's documents, pursuant to the expressio unius est exclusio alterius doctrine results in the finding that where the documents provided for carpeting in certain areas, that excludes all other floor coverings in those areas, and where the documents require floor coverings other than carpet in certain areas, that precludes the use of those floor coverings elsewhere.

Generally; definition

Rental (See also Tenants)

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Repair

The Fountains of Palm Beach Condo., Inc. v. Meisner,
Case No. 2004-03-1219 (Scheuerman / Final Order / August 25, 2004)

- Rule requiring that owners leave their thermostat at a setting not higher than 80 degrees is a valid exercise of the association's duty to maintain the common elements. An ambient temperature higher than 80 degrees contributes to the levels of humidity and facilitates the proliferation of mold in the unit itself and in the building in which the unit is located. An owner, even if he does not reside in the unit, has the affirmative duty to take reasonable precautions to prevent the unit from becoming a source of hazardous pollutants to the other units and their inhabitants.

Los Prados Condo. Ass'n, Inc. v. Lemley,
Case No. 03-6092 (Scheuerman / Final Arbitration Order / May 25, 2004)

- The association was reimbursed $17,433 in costs it had expended in remediating a unit, where the unit owner had refused to remove the mold infestation and to rebuild the unit. The owner was required to reimburse the association because the association was not shown to have been negligent in the first instance in allowing water to penetrate into the unit through a common element roof where the roof did not have a history of leaking and where the association had no reason to believe that the roof would malfunction, causing a leak. Moreover, the owner was shown to have affirmatively breached his duty to keep his unit in good repair. Where an owner does not reside in a unit, it is incumbent on an owner to routinely and periodically inspect the unit to ensure the absence of leaks and other conditions that could harm the unit and adjoining common elements. The owner/respondent's lack of a meaningful presence in the unit contributed to proliferation of mold throughout the unit and common elements.

- Preliminary injunctive relief was awarded where an owner refused to remediate his mold-ridden unit and the association was permitted to enter the unit, remediate and rebuild the unit, and to bill the owner for the costs thereof.

Timber Lakes Estates, Inc. v. Morlock,
Case No. 2004-06-0996 (Earl / Summary Final Order / February 22, 2005)

- Unit owners found to violate section of declaration and association rule requiring unit owners to maintain unit in good condition and repair where unit owners did not deny that they failed to clean and paint the exterior of the residence.

- Unit owners violated provision association rule requiring them to keep the lot surrounding their unit clean and weeded by not removing dead plants.

- By undertaking repairs and modifications to their unit without first seeking the approval of the association, the unit owners violated the association's rule requiring such approval.

Restraints on alienation

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Case No. 2003-06-3375 (Scheuerman / Summary Final Order / February 17, 2004)

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Sale

Federal National Mortgage Ass'n, Inc. v. Oakbrook Condo. Ass'n, Inc.,
Case No. 01-2949 (Scheuerman / Final Order on Rehearing / September 5, 2001)

- Where the declaration of condominium conferred upon mortgagees of record the unfettered right to sell or lease any unit foreclosed upon, and further provided that no amendment could be adopted that altered or amended whatsoever the rights and privileges granted to first mortgagees, amendment that prohibited the sale or lease of a unit during the first 12 months of ownership was invalid. Where the declaration itself contains assurances that no amendment may impair certain rights and privileges contained in the declaration, it cannot be argued that the purchaser acquired title subject to his knowledge that as a general matter, the declaration could be amended.

Morton v. Sea Dip Beach Resort Condo. Ass'n, Inc.,
Case No. 2003-06-3277 (Coln / Amended Final Order of Dismissal / August 13, 2003)

- The petition alleges that the unit owner submitted an application for the transfer of his unit to another unit owner. Where the association received the application and never acted upon the application for purchase, the application was deemed approved pursuant to the declaration of condominium which provides that where the board fails to act upon an application for transfer within 15 days, the proposed transaction shall be deemed approved.

Use / Restriction (See also, Nuisance; Fair Housing Act)

Curlew Mobile Homes Estates Ass'n, Inc. v. Betts,
Case No. 03-6104 (Mnookin / Final Order / December 5, 2003) (currently on appeal)

- Where an association's governing documents require all units to be maintained in a good, clean and sanitary condition, testimony taken at a final hearing demonstrated the exterior of the unit owners' lot, carport and surrounding yard area to be disorderly and crowded with boxes, trash, supplies and other debris, in violation of the governing documents. The unit owners were ordered to remove excess materials from the exterior of their unit and maintain their unit in good condition and a clean and sanitary manner.

- Where an association's governing documents do not permit a unit to be used for business or commercial uses, a unit owner who occasionally sells picture frames, furniture or holiday decorations to other residents is not in violation of that provision. The mere incidental, casual business use, without harm or damage to neighboring residents or association property, does not rise to the level of conducting a business enterprise.

Unit Owner Meetings (See Meetings)

Voting Rights (See Developer-Transfer of control; Elections)

Waiver (See also Estoppel; Selective Enforcement)

Greenwich Ass'n, Inc. v. Shannon,
Case No. 02-4705 (Coln / Summary Final Order / June 20, 2002)

- Where association has not enforced the one pet rule and the pet weight restrictions in association's declaration and by-laws, waiver has and the association cannot create new hybrid rule against multiple pets exceeding weight limit. Unwritten hybrid rule created by the board appears to apply the waived pet restrictions in selective circumstances. These restrictions, having not been enforced, cannot simply be enforced in certain instances and not in others. Such a system of enforcement constitutes selective enforcement of these restrictions

Huntington Lakes Two Condo. Ass'n, Inc. v. Hall,
Case No. 2003-07-9443 (Bembry / Summary Final Order / April 9, 2004)

- The association was entitled to enforce declaration provision which required unit owners to obtain association approval of tenants, despite fact that unit owners had not been required to submit applications for tenant approval during past three years, where it was not shown the association's board was aware of the change in tenants.

Noellert v. Palm Lake Estates Condo. Ass'n, Inc., and Pickering v. Palm Lake Estates Condo. Ass'n, Inc.,
Case No. 2005-02-2111 and 2005-01-9943 (Scheuerman / Summary Final Order / June 15, 2005)

- Where a candidate, upon being wrongfully excluded from the ballot by the association, withdraws his candidacy and filed for arbitration, the withdrawal of his candidacy would not foreclose him from challenging the election. The withdrawal of his already-rejected candidacy was merely a gesture of social protest of no practical or legal significance, and the association, which had excluded him from the ballot prior to the withdrawal, was estopped from asserting that the withdrawal made the petition moot.

Ocean Club Townhomes at Jupiter Condo. Ass'n, Inc. v. Spiegel,
Case No. 01-2593 (Scheuerman / Final Order / December 20, 2001)

- Owner presented insufficient evidence to establish that developer waived the association's pet restrictions. In any event, the developer lacked the authority to grant exemptions from the pet restrictions.

- Where the board approved the owner's application to install railings on his balcony, and gave the owner the building plans used for a previously approved balcony, the board cannot require removal of the railings installed consistent with the drawn plans, where the plans did not accurately reflect the construction of the previously approved balcony. The owner will not be penalized for the failure of the board to take due care in its communication.

Pompano Beach Club North Ass'n Inc. v. Freyvogel,
Case No. 02-5892 (Mnookin / Summary Final Order / May 15, 2003)

- Considering the unit owner's seasonal nature, where he and his family only occupy the unit from thirty to sixty days per year, the association's delay in filing the petition for arbitration is not unreasonable and does not demonstrate the association's intent to relinquish its right to enforce its pet restrictions, which is required for the defense of waiver.

Quince Gardens Condo. Ass'n, Inc. v. Slakter,
Case No. 2004-02-8376 (Bembry / Summary Final Order / February 18, 2005)

- Unit owner's defense of waiver was rejected where the unit owner failed to establish that the association's board was aware that cats that were seen on the condominium property were being maintained by the unit owner even though the unit owner had maintained the cats for approximately five years.

Sea Breeze South Apartments Condo., Inc. v. Beck,
Case No. 00-1734 (Pasley / Final Order / May 17, 2002)

- The unit owners' assertion that the association intentionally relinquished or abandoned its right to enforce the relevant provision when the association allegedly failed to responded to numerous letters was rejected because the association explicitly disapproved of the alteration and gave no indication that it intended to waive its right to enforce the provision.

Sea Ranch Villas Ass'n, Inc. v. Reinhardt, Jr.,
Case No. 00-1830 (Pasley / Final Order / May 8, 2002)

- Where the declaration requires approval from the board and a majority of the unit owners prior to making alterations to the common elements, the affirmative defense of waiver must fail when the unit owner does not argue that he received approval from a majority of the unit owners, because the board acting along does not have the right to waive the requirement of approval of a majority of the unit owners.

Scariati v. The Villages at Emerald Lakes One Condo. Ass'n, Inc.,
Case No. 2005-02-1485 (Grubbs / Order Denying Motion to Dismiss / June 7, 2005)

- The pre-arbitration notice required by §718.1255(4)(b), F.S., is not necessary when a petition for arbitration challenges the board's certification of a recall, just as it is not necessary in a recall case brought by the board pursuant to §718.112(2)(j)3, F.S. When a former board member challenges the certification of her recall, the issues are the same as those that might be raised in a recall petition. In either case the question is whether the board has acted properly in fulfilling its responsibilities in accordance with the statutes and rules relating to the recall of board members. Moreover, because of the nature of a recall and the finality of the decision by the board, subject to review by an arbitrator, it is questionable whether a pre-arbitration notice in a recall case would serve any purpose, since the purpose of pre-arbitration notice is to allow the offender to correct his errors and cure his violations without the necessity of formal legal proceedings. Once a board determines that a recall is certified, it is a final decision for all practical purposes.