

# **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

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

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## **FINAL ORDER INDEX** **(Attorney's Fees, Election, and Recall Decisions)**

**September 2007**

Note: This supplement contains summaries of final and interim orders entered by division arbitrators in the arbitration program described by Section 720.311, Florida Statutes, from January 2005 through September 2007. The final order summaries are organized by dispute type and subject matter.

**Table of Contents**

ATTORNEY’S FEES SUBJECT MATTER ..... 4

Costs ..... 4

Defenses ..... 4

    Failure to timely file/request fees ..... 4

    General defenses ..... 4

Excessive / Reasonable ..... 4

Generally ..... 5

Prevailing Party ..... 5

ELECTION DISPUTES SUBJECT MATTER ..... 6

Arbitration ..... 6

    Affirmative defenses ..... 6

    Evidence ..... 6

    Generally ..... 6

    Jurisdiction (See Dispute-jurisdiction) ..... 8

    Misarbitration ..... 8

    Parties (See also Dispute-Standing) ..... 8

    Prevailing party (See separate heading on attorney’s fees cases) ..... 8

    Sanction ..... 8

    Dispute ..... 8

        Considered Dispute ..... 8

        Jurisdiction ..... 8

        Not Considered Dispute ..... 9

        Standing ..... 9

Developer ..... 9

    Disclosure ..... 9

    Exemptions (See also Declaration-Exemptions) ..... 9

    Filing ..... 9

    Generally ..... 9

    Transfer of control (See also Elections/Vacancies) ..... 9

Elections/Vacancies ..... 10

    Candidate information sheet ..... 10

    Generally ..... 10

    Master association ..... 11

    Notice of election ..... 11

    Term limitations ..... 11

    Vacancies ..... 12

    Voting certificates ..... 12

    Voting rights ..... 12

Governing Documents ..... 12

    Amendments ..... 12

    Covenants/restrictions ..... 12

    Exemptions ..... 12

    Generally ..... 13

    Interpretation ..... 13

Validity ..... 13

Meetings..... 13

    Board meetings..... 13

    Committee meetings..... 13

    Emergency ..... 13

    Generally ..... 13

    Notice/agenda ..... 13

    Quorum..... 13

    Ratification..... 13

Pre-Arbitration Notice ..... 13

Voting Rights (See Developer-Transfer of control; Elections) ..... 14

RECALL DISPUTES SUBJECT MATTER ..... 15

    Arbitration Procedure..... 15

*Authority to file petition*..... 15

*Failure to comply with 61B-80 / Order of the arbitrator*..... 15

*Generally*..... 15

        Withdrawal of petition / Withdrawal of written agreement..... 17

Attorney’s Fees / Costs ..... 17

Board’s Failure to Certify Recall..... 17

    Failure to date recall agreements / Failure of agreements to be executed within a finite period of time ..... 17

    Failure to obtain a majority of voting interests / Failure to properly calculate a majority of voting interests..... 17

    Failure to properly serve written agreements on the board..... 17

    Generally ..... 17

    Home owner delinquent in assessment..... 17

    Home owner meeting to recall failed to comply with 61B-81.002 ..... 17

        Generally..... 17

        Presiding officer ..... 17

        Quorum ..... 17

    Illegible or incorrect signatures / Failure to print name ..... 17

    Misleading information given to voters / Fraud ..... 17

    Pre-marked ballots..... 17

    Proxy ..... 17

    Qualifications of replacement candidates / Replacement candidates not properly elected (See also, Replacement Candidates)..... 18

    Representative ..... 18

    Vote cast by unauthorized person ..... 18

        Power of attorney ..... 18

        Proxy..... 18

        Trusts / Trustee ..... 18

        Voting certificate..... 18

    Vote cast improperly ..... 18

    Vote withdrawn / Rescission / Added after service of petition..... 18

    Written agreement form did not substantially comply with 61B-81.003(1) ..... 18

        Recall / Retain lines ..... 19

Written agreement held to be defective..... 20

Written agreement held to substantially comply ..... 20

Class Voting ..... 20

Conflict of Interest ..... 20

Corporations / Chapter 617, Florida Statutes ..... 20

Developer ..... 20

Dispute Moot (i.e., election held after recall, recalled director resigns) ..... 20

Effect of Recall ..... 20

Jurisdiction ..... 20

Power of Attorney..... 21

Proxy ..... 21

Reconsideration / Rehearing..... 21

Replacement Candidates (See *also*, Board’s Failure to Certify Recall) ..... 21

Standing ..... 21

Time Limits / Legitimate Justification (See *also*, Failure to timely file petition) ..... 21

Home Owner Defenses to Petition for Arbitration..... 21

    Division advice..... 21

    Failure of association to previously enforce voting certificate requirement ..... 21

    Failure of minutes to include specific reasons for not certifying ..... 21

    Failure to give proper notice of board meeting ..... 22

    Failure to have a quorum at board meeting ..... 22

    Failure to hold or timely hold board meeting..... 22

    Failure to timely file petition (see *also*, Time Limits/Legitimate Justification) ..... 22

    Generally ..... 22

    No Legitimate Reasons for Failing to Certify ..... 22

    Ratification..... 22

Vacancies..... 22

## **ATTORNEY'S FEES SUBJECT MATTER**

### **Costs**

### **Defenses**

#### ***Failure to timely file/request fees***

#### ***General defenses***

#### **[Luis Michaels v. Pine Ridge Property Owners Association, Inc.,](#)**

Case No. 2007-02-8816 (Chavis / Order Striking Petitioner's Motion for Attorney's Fees and Costs, Notice of Communication, Order Denying Petitioner's Motion for Re-hearing / November 20, 2007)

- Rule 61B-80.123(3), Florida Administrative Code, provides, in pertinent part, "[a] party prevailing in an arbitration must file a motion requesting an award of costs and attorney's fees within 30 days following the entry of a final order, or final order on rehearing entered in response to a timely filed motion for rehearing." Petitioner's motion is premature.

#### **[Luis Michaels v. Pine Ridge Property Association, Inc.,](#)**

Case No. 2007-04-6322 (Chavis / Final Order on Motion Seeking an Award of Attorney's Fees and Costs / January 2, 2008)

- Petitioner's response to respondent's motion for fees and costs was the assertion that such an award could not be entered as the association's documents were extinguished on or about February 12, 2007, when the association's Board of Directors failed to record a Statement of Marketable Title Action pursuant to section 712.06, Florida Statutes. At the time the petitioner filed the petition, the dispute fell within the statutory parameters and the fact that the non-prevailing party, the petitioner, now raises a new issue of the possible failure of the association to comply with the requirement of section 712.06, Florida Statutes, does not extinguish the arbitrator's authority to award attorney's fees and costs relating to petitioner's election challenge in the underlying case.

### **Excessive / Reasonable**

#### **[Christensen v. Palm Beach Polo Property Owners' Ass'n, Inc.,](#)**

Case No. 2008-02-4754 (Earl / Final Order on Petitioner's Motion for Attorney's Fees and Costs / July 21, 2008)

- Rates of \$295.00, \$225.00, and \$210.00, per hour for attorneys who have practiced law for 22, 15 and 8 years, respectively, were reasonable.
- Attorney's fees incurred prior to the drafting of the petition for arbitration were not fees incurred "in the arbitration proceeding" and were therefore not awarded.

- Efforts related to proving the amount of fees and costs are not recoverable whereas efforts related to proving entitlement to fees and costs are recoverable.

### **Generally**

#### **Prevailing Party**

[Christensen v. Palm Beach Polo Property Owners' Ass'n, Inc.](#)

Case No. 2008-02-4754 (Earl / Final Order on Petitioner's Motion for Attorney's Fees and Costs / July 21, 2008)

- Where petitioners prevailed on the significant issue of the arbitration and received a significant benefit, petitioners were the prevailing party.

## **ELECTION DISPUTES SUBJECT MATTER**

### **Arbitration**

#### ***Affirmative defenses***

#### ***Evidence***

#### ***Generally***

#### **[Christensen v. Palm Beach Polo Property Owner's Ass'n, Inc.,](#)**

Case No. 2007-05-7745 (Earl / Summary Final Order / March 17, 2008).

The association consisted of different residential classes and the bylaws provided that each class was entitled to elect a one director with the developer electing the five remaining board members. The bylaws providing that the developer was entitled to the number of votes at any time equal to two (2) times the total number of other votes outstanding at any time could not be interpreted as applicable to election of the directors as this would render the class provision meaningless. However, as the weighted developer voting provision was found not to be applicable to the election of directors, the developer would be permitted to cast votes for the Estate units it owns in the same fashion as other owners.

- Section of bylaws entitling each class to elect a member of the board of directors did not require that the member elected to that seat be resident of that class, especially considering that the bylaws did not require directors to be members of the association.

#### **[St. Andrews of Boynton Beach Condo. Ass'n, Inc. v. The Springs of Boynton Beach Condo. Ass'n, Inc.,](#)**

Case No. 2007-03-9081 (Earl / Summary Final Order / March 17, 2008).

- A section of the governing documents provided that if the parcel containing rental units was converted to condominiums the purchasers of the condominiums would be class A members. Since the rentals had been converted to condominiums, the condominium residents were found to be entitled to vote in manner provided for class A members in the governing documents. There is no requirement that voting rights be proportional or otherwise related to the amount or manner in which a member is assessed maintenance costs.

#### **[TSB Bayou Grande, LLC, v. Bayou Grande Villa Association, Inc.,](#)**

Case No. 2008-00-4566 (Campbell / Summary Final Order / May 6, 2008)

- Like condominiums, homeowners' associations are governed by Florida Statutes, particularly Chapter 617 and 720. Chapter 617 has limited application to, and specifically recognizes the authority of chapter 720 over, membership and election rights in homeowners' associations. Basic law for interpreting statutes and governing

documents for HOA's is same as for condominiums. In case of a conflict between the governing documents and Chapter 720 with respect to voting, Chapter 720 must control. In the application of Chapter 720 to homeowners' association elections, the arbitrator must follow the rule of statutory construction that where the statute permits or requires something to be accomplished in a stated manner, the Legislature did not intend any other method to be authorized.

[Preston v. Spanish Isles Property Owners Assn, Inc.,](#)

Case No. 2007-06-4581 (Lang / Order on Motion for Recusal of Arbitrator and Vacating Final Hearing / June 20, 2008)

- Underlying case involved “reverse recall” in a homeowners’ association. Respondent Association sought arbitrator to recuse himself alleging: 1) Association and its president had a well-founded fear that fair final hearing could not be had before arbitrator; 2) Section 38.10, Florida Statutes, requires a judge to proceed no further once a party to a proceeding files an affidavit stating the affiant fears that he or she will not receive a fair trial in the court where the suit is pending due to the prejudice of the judge; 3) Respondent Association has a reasonable fear arbitrator will not conduct a fair hearing because arbitrator has provided to the parties a copy of a “petition” which was filed with the arbitrator, unbeknownst to the association, and signed by a number of homeowners seeking to have petitioner cease “harassing” and filing claims against the association and by sending a copy of the “petition” to petitioner, the arbitrator has allowed petitioner to gain access to the names of the signatories, and petitioner is threatening them with litigation; 4) Respondent Association should not be required to provide citations when respondent raised and arbitrator struck the same affirmative defenses that were raised and struck in respondent’s earlier motion to dismiss; and 5) Arbitrator is applying a personal standard for retention of records by a homeowners’ association because no such standard is found in section 718.303(4), Florida Statutes.

- Section 38.10, Florida Statutes, and Florida Rule of Judicial Administration 2.330 apply only to judges under Article V of the Florida Constitution and therefore, a section 718.1255 arbitrator is not bound by that statute or rule, but the arbitrator may look to the statute and the rule for guidance, in the arbitrator’s discretion.

- Arbitrator is bound by Rule 61B-45.007, Florida Administrative Code, to enter a Notice of Communication, and send to both parties a copy of the notice and a copy of the “petition” that had been signed by a number of homeowners. The “petition” was also stricken from the record under the relevant case law, the arbitrator recused himself because the order went beyond addressing the mere legal sufficiency of the motion.

[Ostrowski v. Melrose Property Owners’ Ass’n, Inc.,](#)

Case No. 2008-03-0367 (Earl / Final Order of Dismissal / June 26, 2008)

- Pre-arbitration notice must be provided prior to the filing of a petition as its purpose is to provide the respondent an opportunity to provide the requested relief without the necessity of a formal legal proceeding.

[TSB Bayou Grande LLC, et al., v. Bayou Grande Villa Association, Inc.,](#)

Case No. 2008-02-9922 (Campbell / Final Order on Fees and Costs / July 2, 2008).

- Parcel owners in HOA election dispute were prevailing party where arbitrator ordered a new election and reinstated two members of the board of directors.

[Maloney v. Berkshire Lakes Master Ass'n, Inc.,](#)

Case No. 2008-00-9654 (Earl / Summary Final Order / July 21, 2008)

- Where the association failed to handle and count ballots as required by its governing documents and was unaware that it had misplaced 131 ballots for two weeks, the election irregularities were substantial meriting the ordering of a new election.

[Southport Homeowners Association, Inc. v. Homeowners Voting For Recall,](#)

Case No. 2008-03-6907 (Campbell / Final Order / August 25, 2008)

- Where four separate recall agreements, one for each director, were served on the board and the board considered and rejected only one of them, the petition for arbitration could not be amended by the petitioner to encompass all four agreements on the ground the board mistakenly assumed that the other agreements were duplicates of the one considered. There was no dispute that separate agreements had been served and that each agreement addressed only one director.

***Jurisdiction (See [Dispute-jurisdiction](#))***

***Misarbitration***

***Parties (See also [Dispute-Standing](#))***

[Dolphin Isles Homeowners Ass'n \(DIHOA\) ad hoc committee v. Kalb,](#)

Case No. 2008-04-1792 (Earl / Order Dismissing Petition with Leave to Amend / August 7, 2008)

- Petitioning owners named the association's president and vice president as respondents individually. The arbitrator lacked jurisdiction over a dispute between owners. Moreover, in an election dispute, the association is the proper respondent.

***Prevailing party ([See separate heading on attorney's fees cases](#))***

***Sanction***

***Dispute***

**Considered Dispute**

**Jurisdiction**

[Drayton Place Owners Association, Inc., v. Taylor,](#)

Case No. 2007-05-9736 (Campbell / Final Order of Dismissal / December 3, 2007)

- Dispute arose at duly noticed annual election meeting, when sitting board refused to allow voting for candidates nominated from the floor. Large group of members voted to have non-board member preside over election, but board adjourned meeting before recognizing presiding officer. Members remaining at the meeting conducted an election for new board members; old board members conducted election and reelected themselves. New board members filed a petition for arbitration, in the name of the association, against old board members, named individually as respondents. No jurisdiction, because election dispute must be brought by individual candidate against association, and individual board members may never be named parties to arbitration.

### **Not Considered Dispute**

#### **Standing**

[Dolphin Isles Homeowners Ass'n \(DIHOA\) ad hoc committee v. Kalb,](#)

Case No. 2008-04-1792 (Earl / Order Dismissing Petition with Leave to Amend / August 7, 2008)

- Ad hoc group of owners did not qualify as member of the association and, therefore, lacked standing to file an election dispute.

#### **Developer**

[Kiceina v. Plantation Bay Community Association, Inc.,](#)

Case No. 2007-05-8889 (Campbell / Summary Final Order / November 27, 2007)

- Candidate for at-large seat on board of directors challenged the weight given to votes for unimproved parcels owned by developer. Declaration provided that votes for unimproved parcels owned by class A "Land Segment Owners" could be counted as only one vote for every four parcels. While Declaration created Class "A" votes for normal owners and Class "B" votes for the developer, it automatically converted the Developer's Class "B" votes to Class "A" votes in January 2006. Petitioner argued that change made the developer a Land Segment Owner, reducing the weight of the developer's votes to one-fourth. Specific distinctions between the developer and the definition of "Land Segment Owners" in the Declaration continued after January 2006, and developer votes must still be counted as one vote for one parcel.

#### ***Disclosure***

***Exemptions (See also [Declaration-Exemptions](#))***

#### ***Filing***

#### ***Generally***

***Transfer of control (See also [Elections/Vacancies](#))***

## Elections/Vacancies

### *Candidate information sheet*

#### *Generally*

#### [Michaels v. Pine Ridge Property Owners Association, Inc.,](#)

Case No. 2007-02-8816 (Chavis / Summary Final Order / August 14, 2007)

- Section 720.306(9) requires, in pertinent part, that homeowner elections be conducted in accordance with the procedures set forth in the governing documents. Substantial, rather than strict, compliance with the association's governing documents is required to cast a valid ballot.
- The inquiry to determine if election substantially complied with the association's governing documents is whether the irregularity has prevented a full, fair and free expression of the public will. Petitioner has not alleged nor provided proof that the ballots opened by the respondent prior to or under the observation of the Election Committee were in any manner improperly included or excluded or, in the alternative, modified or destroyed, resulting in change in the outcome of the election. Petitioner has failed to document any harm to the integrity of the election process or outcome of the election because of the removal of one member of the Election Committee.

#### [Parker, v. East Linden Estates Homeowners Association, Inc.,](#)

Case No. 2007-04-5781 (Campbell / Summary Final Order / October 1, 2007)

- Where section 720.306(9), F.S., and association's notice provide that election of directors will be held at the annual meeting, and neither provide for a recount, at the conclusion of the annual meeting, the announced election results become final. Rules governing condominium elections provide guidelines for evaluation of procedures used by homeowners association. Trust in integrity of election is impaired if ballots are not counted in the presence of members at the meeting, or if ballots are left in control of candidate.

#### [Preston v. Spanish Isles Property Owners' Association, Inc.,](#)

Case No. 2007-04-5085 (Campbell / Summary Final Order / October 10, 2007)

- By-laws of association provide that vacancy on board may be filled by majority of remaining board members and that replacement directors serve out the full term of the vacant seat. Association has nine-member board, with staggered three-year terms, so that normally three directors are elected each year. After election of three new board members, petitioner, a losing candidate, argued there should have been six seats up for election. In the previous year, vacancies occurred in seats that had substantial time remaining in their terms. Three directors, whose terms would have expired, resigned from their designated seats and were immediately appointed to seats with longer time remaining in their terms. Petitioner's request for relief denied because nothing in statute or by-laws bars this maneuver.

[Samuel M. Rosenfeld v. Coconut Bayou Association, Inc.,](#)

Case No. 2007-03-7364 (Campbell / Summary Final Order / January 31, 2008)

- In HOA election, if the number of candidates is less than the number of positions on the board each candidate becomes a board member without the need for an election. The word “plurality” in section 720.306, F.S., only applies when all candidates are seeking a smaller number of seats, so that an individual director may be elected without a majority of the votes cast.
- Section 720.306, F.S., requires that members be able to nominate candidates from the floor at annual meeting, therefore HOA must schedule election every year to learn whether there are more candidates than vacancies.

[Lichter v. Timber Oaks Community Services Ass'n, Inc.,](#)

Case No. 2007-05-1323 (Earl / Summary Final Order / March 10, 2008)

- Where the association informed the petitioner in writing that it thought he was under the misapprehension that he had to run for reelection of the neighborhood seat he occupied, but his term was not up at this election, the petitioner intended to run for an open at-large position, the association did not wrongfully exclude petitioner from the ballot since petitioner did not attempt to clarify the association’s misunderstanding of the position he was seeking.
- Substantial, rather than strict, compliance with election procedures is required. Association’s inclusion of an additional candidate on the ballot who submitted his notice of intent to be a candidate one day late is a minor procedural error. The owner’s argument that that inclusion of the additional candidate might have influenced the chances of another candidate being elected was rejected. The standard is whether the integrity of the democratic process has been compromised and it cannot be argued that inclusion of an additional candidate prevented a full, fair and free expression of the membership’s will.

***Master association***

***Notice of election***

***Term limitations***

[Samuel M. Rosenfeld v. Coconut Bayou Association, Inc.,](#)

Case No. 2007-03-7364 (Campbell / Summary Final Order / January 31, 2008)

- When annual elections are required and the controlling documents do not specify otherwise, term of office for directors is one year. Bylaw providing that director serve until his successor is elected does not specify a term longer than one year.

[Lichter v. Timber Oaks Community Services Ass'n, Inc.,](#)

Case No. 2007-05-1323 (Earl / Summary Final Order / March 10, 2008)

- Term limitation in the governing documents was valid and not prohibited by statute.
- For the purpose of calculating term limits, service as a neighborhood director on the board applies towards service in an at-large position since the at-large position has all the authority of the neighborhood director.

***Vacancies***

***Voting certificates***

***Voting rights***

[Kiceina v. Plantation Bay Community Association, Inc.,](#)

Case No. 2007-05-8889 (Campbell / Summary Final Order / November 27, 2007)

- Candidate for at-large seat on board of directors challenged the weight given to votes for unimproved parcels owned by developer. Declaration provided that votes for unimproved parcels owned by class A “Land Segment Owners” could be counted as only one vote for every four parcels. While Declaration created Class “A” votes for normal owners and Class “B” votes for the developer, it automatically converted the Developer’s Class “B” votes to Class “A” votes in January 2006. Petitioner argued that change made the developer a Land Segment Owner, reducing the weight of the developer’s votes to one-fourth. Specific distinctions between the developer and the definition of “Land Segment Owners” in the Declaration continued after January 2006, and developer votes must still be counted as one vote for one parcel.

[TSB Bayou Grande, LLC, v. Bayou Grande Villa Association, Inc.,](#)

Case No. 2008-00-4566 (Campbell / Summary Final Order / May 6, 2008)

- Association documents which provided board with power to suspend voting rights for violation of a rule or regulation of the association could not stand up to Chapter 720, which provides that an association can suspend the voting rights of a member for only one cause, nonpayment of regular annual assessments. The power to suspend voting rights is, “expressly limited or restricted” by Chapter 720, so the homeowners’ association does not have that power for violation of rules and regulations. New election required where association notified owners of 37 lots that they could not vote and the winners of the election received fewer than 30 votes.

**Governing Documents**

***Amendments***

***Covenants/restrictions***

***Exemptions***

**Generally****Interpretation**[Lichter v. Timber Oaks Community Services Ass'n, Inc.,](#)

Case No. 2007-05-1323 (Earl / Summary Final Order /March 10, 2008)

- For the purpose of calculating term limits, service as a neighborhood director on the board applies towards service in an at-large position since the at-large position has all the authority of the neighborhood director.
- By-law adopting term limitations may not be applied retroactively.
- Provisions in governing documents limiting voting on matters affecting the senior residents to senior residents did not prohibit a member from another neighborhood from serving as an at-large member of the board of directors. Neither the statutes nor governing documents prohibit a person currently holding a neighborhood seat on the board from running for an open, at-large seat.

**Validity**[Lichter v. Timber Oaks Community Services Ass'n, Inc.,](#)

Case No. 2007-05-1323 (Earl / Summary Final Order /March 10, 2008)

- Term limitation in the governing documents was valid and not prohibited by statute.

**Meetings*****Board meetings******Committee meetings******Emergency******Generally******Notice/agenda******Quorum******Ratification*****Pre-Arbitration Notice**[Burnaman v. South Oaks Homeowners Ass'n of Melbourne, Inc.,](#)

Case No. 2008-00-9901 (Earl / Final Order of Dismissal / March 18, 2008)

- Election dispute was dismissed where petitioning unit owner failed to provide the association with prearbitration notice in accordance with section 718.1255(4)(b), Florida Statutes.
- Homeowners' argument that pre-arbitration notice was not required because rule 61B-80.103(1), Fla. Admin. Code, requires an election dispute to be filed using Form HOA 6000-3 and the form does not include any specific provision for the allegation of pre-arbitration notice required by section 718.1255(4)(b), Florida Statutes, was rejected. The form does not conflict with the statute in that it does not exempt homeowner association election disputes from the statutory requirements. The statute is controlling.

[Drish v. Ivy Lake Estates Ass'n, Inc.](#)

Case No. 2008-01-7683 (Earl / Final Order of Dismissal / May 7, 2008).

- Pre-arbitration notice requirements of section 718.1255, F.S., are applicable to homeowner association election disputes subject to arbitration pursuant section 720.311(1), F.S.
- A motion in opposition to the petition due to lack of pre-arbitration notice is permitted by Rule 61B-80.111(2), Fla. Admin. Code.

[Dolphin Isles Homeowners Ass'n \(DIHOA\) ad hoc committee v. Kalb.](#)

Case No. 2008-04-1792 (Earl / Order Dismissing Petition with Leave to Amend / August 7, 2008)

- The pre-arbitration notice requirements of section 718.1255(4)(b), F.S. are applicable to homeowner's election disputes.

[Garcia v. The Sunset Harbour Homeowners' Ass'n, Inc.](#)

Case No. 2008-04-1760 (Earl / Final Order of Dismissal / August 25, 2008)

- Case dismissed where the petitioner failed to provide pre-arbitration notice as required by section 718.1255(4)(b), F.S.

**Voting Rights (See Developer-[Transfer of control](#); [Elections](#))**

## **RECALL DISPUTES SUBJECT MATTER**

### **Arbitration Procedure**

#### ***Authority to file petition***

#### ***Failure to comply with 61B-80 / Order of the arbitrator***

#### ***Generally***

#### **[Isle of Sandalfoot Condominium 6, II d/b/a Isle of Boca Dunes 6 v. Unit Owners Voting for Recall.](#)**

Case No. 2007-06-2199 (Chavis / Notice of Communication and Order Denying Respondent's Motion for Rehearing / December 31, 2007)

- Although represented by counsel, the former Unit Owner Representative faxed two communications to the arbitrator requesting legal advice and a rehearing and failed to serve copies of the communication on the Petitioner. Rule 61B-50-115(1) and (6), Florida Administrative Code requires that "every pleading or other paper filed in the proceedings...shall also be served on each party." Accordingly, copies of the communications were attached to the arbitrator's notice and order.
- Respondent's communication requested legal advice as to how to proceed. The arbitrator is prohibited from providing legal advice to a party; however, pursuant to rule 61B-50.108, Florida Administrative Code, respondent could be advised and represented by a member of the Florida Bar or a qualified representative. Respondent may also access the Division's website to review information and arbitration case law.
- Rule 61B-50.140(3), F.A.C., permits corrections of clerical or technical errors that do not modify the substance of the order. Respondent failed to allege any clear error which would allow the arbitrator to modify the order.

#### **[Preston v. Spanish Isles Property Owners' Assn., Inc.,](#)**

Case No. 2007-06-4581 (Lang / Order on Respondent's Motion for Clarification / February 28, 2008 and Lang / Order After Case Management Conference / February 11, 2008)

- A "reverse recall" is an available remedy under chapter 720, Florida Statutes, as it is in the condominium context. Petition in HOA "reverse recall" may be filed on DBPR Form ARB 6000-001. Governing statute is section 720.303(10)(f), Florida Statutes. Rule 61B-80.102(1), Florida Administrative Code, permits homeowners to file a petition challenging the board's decision not to file for recall arbitration and as in condominium context, a recalled board member may do so.

#### **[Preston v. Spanish Isles Property Owners Assn, Inc.,](#)**

Case No. 2007-06-4581 (Lang / Order on Motion for Recusal of Arbitrator and Vacating Final Hearing / June 20, 2008)

- Underlying case involved “reverse recall” in a homeowners’ association. Respondent Association sought arbitrator to recuse himself alleging: 1) Association and its president had a well-founded fear that fair final hearing could not be had before arbitrator; 2) Section 38.10, Florida Statutes, requires a judge to proceed no further once a party to a proceeding files an affidavit stating the affiant fears that he or she will not receive a fair trial in the court where the suit is pending due to the prejudice of the judge; 3) Respondent Association has a reasonable fear arbitrator will not conduct a fair hearing because arbitrator has provided to the parties a copy of a “petition” which was filed with the arbitrator, unbeknownst to the Association, and signed by a number of homeowners seeking to have petitioner cease “harassing” and filing claims against the Association and by sending a copy of the “petition” to petitioner, the arbitrator has allowed petitioner to gain access to the names of the signatories, and petitioner is threatening them with litigation; 4) Respondent Association should not be required to provide citations when respondent raised and arbitrator struck the same affirmative defenses that were raised and struck in respondent’s earlier motion to dismiss; and 5) Arbitrator is applying a personal standard for retention of records by a homeowners’ association because no such standard is found in section 718.303(4), Florida Statutes.
- Section 38.10, Florida Statutes, and Florida Rule of Judicial Administration 2.330 apply only to judges under Article V of the Florida Constitution and therefore, a section 718.1255 arbitrator is not bound by that statute or rule, but the arbitrator may look to the statute and the rule for guidance, in the arbitrator’s discretion.
- Arbitrator was bound by Rule 61B-45.007, Florida Administrative Code, to enter a Notice of Communication and send to both parties a copy of the notice and a copy of the “petition” that had been signed by a number of homeowners. The “petition” also was stricken from the recorded. The arbitrator recused himself because the order went beyond addressing the mere legal sufficiency of the motion.

[TSB Bayou Grande, LLC, v. Bayou Grande Villa Association, Inc.,](#)

Case No. 2008-00-4566 (Campbell / Summary Final Order / May 6, 2008)

- In general, a community association board of administration has no authority to remove a board member by board action. Removal of a director from the board of an association impacts the right of members to recall directors and the right of members to elect directors. The statute with respect to recalls in homeowners association states a clear intent to limit the power of an association to remove a director. Governing document which allows a board to remove director for being absent from meetings is invalid.

**Withdrawal of petition / Withdrawal of written agreement**

**Attorney's Fees / Costs**

**Board's Failure to Certify Recall**

***Failure to date recall agreements / Failure of agreements to be executed within a finite period of time***

***Failure to obtain a majority of voting interests / Failure to properly calculate a majority of voting interests***

***Failure to properly serve written agreements on the board***

[Westchester Homeowners Ass'n, Inc. v. Homeowners Voting for Recall,](#)

Case No. 2007-06-8541 & [Cynthia Walker v. Westchester Homeowners Ass'n, Inc.,](#)  
Case No. 2008-02-0198 (Earl / Summary Final Order / July 24, 2008).

- Where the owners served the former president of association with the written recall agreement, service on the board was not valid. The owners' argument that service was effective because at the time the former president was listed with secretary of state as a board member was rejected. At the time the agreement was served on the former president, the owners' were aware that former president was no longer a board member and, therefore, the owners could not rely upon any inaccuracies in the corporate filing of which it was aware.

***Generally***

***Home owner delinquent in assessment***

***Home owner meeting to recall failed to comply with 61B-81.002***

**Generally**

**Presiding officer**

**Quorum**

***Illegible or incorrect signatures / Failure to print name***

***Misleading information given to voters / Fraud***

***Pre-marked ballots***

***Proxy***

[Tituswoods Homeowner's Association, Inc., v. Homeowners Voting for Recall,](#)

Case No. 2007-04-4228 (Campbell / Final Order / September 11, 2007)

- Attempted recall by special meeting. Section 720.303(10), F.S., does not provide for recall by special meeting in homeowners' association unless governing documents specifically provide for it. General provision allowing special meetings is not specific enough. Proxies are not allowed where governing homeowners' documents require a voice vote, in person, at membership meeting.

[TSB Bayou Grande, LLC, v. Bayou Grande Villa Association, Inc.,](#)

Case No. 2008-00-4566 (Campbell / Summary Final Order / May 6, 2008)

- Association was required to count votes submitted by proxy because section 720.306(8), F.S., gives members the right, unless otherwise provided in 720.306 or in the governing documents, to vote in person or by proxy. Governing documents that authorize absentee ballots and provide for secret ballots were not specific enough to prohibit the use of proxies. Association rejection of proxy votes conflicted with its own governing documents which allow proxies for any vote on assessments.

***Qualifications of replacement candidates / Replacement candidates not properly elected (See also, [Replacement Candidates](#))***

***Representative***

***Vote cast by unauthorized person***

**Power of attorney**

**Proxy**

**Trusts / Trustee**

**Voting certificate**

***Vote cast improperly***

***Vote withdrawn / Rescission / Added after service of petition***

***Written agreement form did not substantially comply with 61B-81.003(1)***

[Forest Mere Property Owners Association, Inc. v. Homeowners Voting for Recall,](#)

Case No. 2007-04-5813 (Golen / Summary Final Order on Petition for Recall Arbitration / October 2, 2007)

- Where "recall agreement" consisted of a letter and petition to recall two members of the Board of Directors with a list of names, signatures and each person's address the recall substantially failed to conform with the requirements of rule 61B-81.003(1), Florida Administrative Code, and the board correctly determined not to certify the recall.

[Brentwood Lakes Homeowner's Association, Inc., v. Homeowners Voting For Recall,](#)  
Case No. 2008-02-0213 (Campbell / Final Order / May 8, 2008)

- Written recall agreement paired recall of individual director with named replacement candidate, with yes/no check boxes that could not be used to recall director unless the named replacement was also chosen. Free and deliberate choice is improperly compromised if the voter must join a decision to recall a particular director with the selection of a particular replacement. Decision of board not to certify was affirmed.

[Southport Homeowners Association, Inc. v. Homeowners Voting For Recall,](#)  
Case No. 2008-03-6907 (Campbell / Final Order / August 25, 2008)

- Written agreement in the form of a list of names, signatures and parcel identifications on the same page as a typed heading naming one director sought to be recalled does substantially comply with 61B-81.003(1)(b). Lack of recall/retain boxes is not a defect when only one director is sought to be recalled.

**Recall / Retain lines**

[Pine Glenn at Abbey Park I Homeowners Ass'n, Inc. v. Owners Voting for Recall,](#)  
Case No. 2008-01-0412 (Earl / Summary Final Order / April 28, 2008)

- Written recall agreement was deficient where it consisted of a cover page stating that the signatories wished to recall multiple named directors and had attached to it 66 signed pages that closely resembled the signature block for the Division's form recall ballot; however, the recall vote block was absent and only part of the replacement candidate block was provided with none of the ballots casting a vote for a replacement candidate.

[The Villas of Boca Barwood Homeowner's Ass'n, Inc. v. Homeowners Voting for Recall,](#)  
Case No. 2007-05-1346 (Earl / Summary Final Order / July 7, 2008)

- Written recall agreement was fatally flawed because the recall agreement failed to provide separate recall/retain lines for each person subject to the recall as required by the rule so that the person executing the agreement may indicate whether that individual board member should be recalled or retained.

[Southport Homeowners Association, Inc. v. Homeowners Voting For Recall,](#)  
Case No. 2008-03-6907 (Campbell / Final Order / August 25, 2008)

- Written agreement in the form of a list of names, signatures and parcel identifications on the same page as a typed heading naming one director sought to be recalled does substantially comply with 61B-81.003(1)(b). Lack of recall/retain boxes is not a defect when only one director is sought to be recalled.

**Written agreement held to be defective**

[Westchester Homeowners Ass'n, Inc. v. Homeowners Voting for Recall](#), Case No. 2007-06-8541 & [Cynthia Walker v. Westchester Homeowners Ass'n, Inc.](#), Case No. 2008-02-0198 (Earl / Summary Final Order / July 24, 2008).

- The recall ballot form was found defective where the recall/retain check boxes were misaligned with board members names.

**Written agreement held to substantially comply****Class Voting**

[Southport Homeowners Association, Inc. v. Homeowners Voting For Recall](#), Case No. 2008-03-6907 (Campbell / Summary Final Order / August 25, 2008)

- Where governing documents provide that certain directors shall be elected only by the vote of residents of a particular subdivision, a director representing that subdivision, whether elected or appointed, may only be recalled by votes of residents of that subdivision.

**Conflict of Interest****Corporations / Chapter 617, Florida Statutes****Developer****Dispute Moot (i.e., election held after recall, recalled director resigns)****Effect of Recall**

[Brentwood Lakes Homeowner's Association, Inc., v. Homeowners Voting For Recall](#), Case No. 2008-02-0213 (Campbell / Final Order / May 8, 2008)

- Recall Agreement sought to recall six directors and replace them with six candidates with recall of each director paired to a named replacement. Written agreement also provided replacements would serve term of one year only. Governing documents provided for only three directors, with staggered 3-year terms. Arbitrator's authority in recall proceeding is limited to certifying the recall or affirming board decision not to certify. Arbitrator cannot enter an order to certify a recall when the effect of the recall would be in be in conflict with the governing documents.

**Jurisdiction**

[Indian Lakes Estates, Inc. v. Homeowners Voting for Recall](#), Case No. 2008-02-0238 & [Dureault v. Indian Lakes Estates, Inc.](#), Case No. 2008-02-5986(Earl / Order Reopening Case and Final Order of Dismissal)

Arbitrator lacked jurisdiction over recall dispute since the association was not governed by chapter 720, F.S. Association did not qualify as homeowner's association as defined by section 720.301(9), F.S., because membership in the association was not mandatory and the association lacked the authority to place a lien on parcels for unpaid assessments.

## **Power of Attorney**

## **Proxy**

## **Reconsideration / Rehearing**

### **Replacement Candidates (See also, [Board's Failure to Certify Recall](#))**

[Lee's Crossing Homeowner's Ass'n, Inc. v. Homeowners Voting for Recall](#),  
Case No. 2008-01-9894 (Grubbs / Summary Final Order / August 11, 2008)

- Two of the reasons for rejecting recall ballots were frivolous, since the recall ballots were rejected based on the voters' alleged failure to properly vote on the replacement candidates. Rule 61B-81.003(1)(c), Fla. Admin. Code, which requires the inclusion of candidates for replacement directors on the ballot when a majority of the board is sought to be recalled, states that the "failure to comply with this requirements of this subsection shall not affect the validity of the recall of a director or directors." The ballots where the homeowner voted for more than the number of board members recalled simply should not be counted in the election for replacement directors.

## **Standing**

### **Time Limits / Legitimate Justification (See also, [Failure to timely file petition](#))**

## **Home Owner Defenses to Petition for Arbitration**

### ***Division advice***

### ***Failure of association to previously enforce voting certificate requirement***

### ***Failure of minutes to include specific reasons for not certifying***

[Lakes of Boca Barwood Homeowners' Association, Inc., v. Homeowners Voting For Recall](#),

Case No. 2007-05-1905 (Campbell / Summary Final Order / September 20, 2007)

- The recall was certified where petition showed a signature date on the fifth day after the meeting at which board did not certify recall, but petition was not filed with the Division that day or the following day, and board meeting minutes did not report specific reasons for rejecting particular ballots, but rejected all ballots because the board did not have records to prove the signatures were from homeowners. Arbitrator may not consider other reasons added to the petition.

[Lauderdale West Community Ass'n, Inc. v. Homeowners Voting for Recall,](#)  
Case No. 2007-05-5131 (Earl / Summary Final Order / December 24, 2007)

- Where a list attached to the recall board meeting minutes and specifying the ballots rejected and reason for rejection was found to have been generated after the board meeting, the recall was certified since the minutes failed to provide the specific reasons for rejecting ballots as required by rules 61-B-50.105(5)(h) ad 61B-23.0028(4)(d), Fla. Admin. Code.

***Failure to give proper notice of board meeting***

***Failure to have a quorum at board meeting***

[Lee's Crossing Homeowner's Ass'n, Inc. v. Homeowners Voting for Recall,](#)  
Case No. 2008-01-9894 (Grubbs / Summary Final Order / August 11, 2008)

- The by-laws or articles of incorporation establish the number of directors that are on the board. A quorum is the majority of those members, whether or not the seats are actually filled. There must be a quorum for a board meeting to be held. Where the by-laws established that the board consisted of nine directors and the recall board meeting was attended by only three directors, there was no quorum and thus no official board meeting was held. Because there was no official board meeting held within five days of service of the recall agreement, the recall was certified.

***Failure to hold or timely hold board meeting***

***Failure to timely file petition (see also, [Time Limits/Legitimate Justification](#))***

[Lakes of Boca Barwood Homeowners' Association, Inc., v. Homeowners Voting For Recall,](#)

Case No. 2007-05-1905 (Campbell / Summary Final Order / September 20, 2007)

- The recall was certified where petition showed a signature date on the fifth day after the meeting at which board did not certify recall, but petition was not filed with the Division that day or the following day. Board meeting minutes did not report specific reasons for rejecting particular ballots, but rejected all ballots because the board did not have records to prove the signatures were from homeowners. Arbitrator may not consider other reasons added to the petition.

***Generally***

***No Legitimate Reasons for Failing to Certify***

***Ratification***

**Vacancies**