DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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RECALL ARBITRATION SUBJECT MATTER INDEX

September 2007

Note: This supplement contains summaries of arbitration recall final orders entered by division arbitrators in the arbitrator program described by Sections 718.112(2)(j), and 718.1255, Florida Statutes, during the period January 1, 2006, through September 5, 2007. The final order summaries are organized by subject matter. Indexes of earlier final order decisions are available separately online at the above web address.

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Authority to file petition

Tree Garden Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-01-5580 and 2008-01-5576 (Earl / Final Order of Dismissal / April 28, 2008)

- Where recall petition was filed by group claiming to be the association's board of directors and the circuit court had ruled that they were not the current board, the group did not have authority to file a recall petition.

Failure to comply with 61B-50 / Order of the arbitrator

Generally

The Carlton Condominium Association, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-02-1722 (Chavis / Notice of Communication, Order Striking Communication, and Order Adopting Stipulation / November 7, 2007)

- An arbitration proceeding initiated pursuant to section 718.112(2)(j), Florida Statutes, is limited to disputes relating to the determination of the validity of the recall. Allegations relating to the Board's alleged failure to recognize individuals as board members cannot be properly considered as part of the recall dispute.

Isle of Sandalfoot Condominium 6, Inc., D/B/A Isle of Boca Dunes 6 v. Unit Owners Voting For Recall,
Case No. 2007-06-2199 (Chavis / Notice of Communication, Order Instructing Respondent Not to Attempt to File by e-mail, and Order for Case Management Dates / November 19, 2007)

- Rule 61B-50.115(4), Florida Administrative Code, provides, in pertinent part, "[p]leadings including the initial petition or other communications may be filed by regular hard copy or facsimile…." The rule does not authorize the filing of documents or communications by e-mail.

European Village Condo. Commercial Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2007-05-8895 (Earl / Final Order of Dismissal / November 16, 2007)

- Arbitrator lacked jurisdiction over a recall dispute involving commercial condominium that did not contain any residential units.

Silver Sands Beach and Racquet Club Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2007-06-8520 (Earl / Summary Final Order / January 28, 2008)

- Where the unit owners failed to file an answer to the petition, unit owners were deemed not to dispute the facts alleged in the petition or the accuracy of the Association's exhibits.

Tree Garden Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-01-5580 and 2008-01-5576 (Earl / Final Order of Dismissal / April 28, 2008)

- Where challenge to the recall was pending before the circuit court, the arbitrator could not consider the validity of the recall.

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. Under the relevant case law, the arbitrator recused himself because the order went beyond addressing the mere legal sufficiency of the motion.

Inlet House Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-0128, (Grubbs / Summary Final Order / July 3, 2008)

- Where a board member asserted in writing that she had received a written recall agreement, the board acted properly in attempting to obtain the agreement and by ultimately voting to reject the alleged recall agreement because they had never seen it. The erroneous notice the board member delivered to the board combined with her failure to explain the situation caused the association to expend time, effort and money needlessly.

Unit Owners Voting for Recall v. The Cove at South Beaches Condo. Ass'n, Inc.,
Case No. 2008-00-7774 (Earl / Final Order of Dismissal / July 3, 2008)

- Case was dismissed where the petitioner failed to correct deficiencies in its filing which included failing to pay the filing fee, and failure to include a complete set of the condominium documents for the arbitrator and a copy of the petition to serve on the respondent.

Bleau Grotto Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-03-0134 (Earl / Summary Final Order / July 16, 2008)

- Where the unit owners failed to file an answer disputing the facts alleged in he petition, such fact were accepted by the arbitrator.

Unit Owners Voting for Recall and Frank Cipolla v. Pearl Condominium Ass'n, Inc.,
Case No. 2008-03-0146, (Grubbs / Summary Final Order / July 25, 2008)

- When the Unit Owners Voting for Recall file a "reverse recall" pursuant to section 718.1255(1)(b), Florida Statutes, a unit owner must also be named as a petitioner. Attorney's fees may be awarded to the association against the named petitioner should the association prevail. However, in this type of proceeding, even if a recall is not certified for some reason, the association would not prevail if the association was properly served, it failed to hold a recall meeting as required by statute, and it appears from the face of the agreement that majority of the unit owners signed the recall agreement.

Inlet House Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-4508, (Grubbs / Summary Final Order / August 1, 2008)

- Because no unit owner representative was named in the recall agreement or the petitioner, the association was required to post the arbitrator's order allowing the representative to make an appearance and answer the petition for recall arbitration.

Westland Gardens Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-03-8977, (Grubbs / Summary Final Order / August 7, 2008)

- A petition for arbitration cannot include any reasons for rejecting a recall that were not considered by the board. The board cannot list a group of generic reasons for the

rejection of the recall and have an attorney find ballots that may fit the generic description to list in the petition for arbitration. If a specific ballot is to be rejected, that specific ballot must be rejected by the board at its meeting and it must be identified in the minutes.

- The board may have attorneys or board members review all of the ballots before the meeting and present their findings to the board, and the board may chose to accept all or some of their specific findings and may even attach to the minutes those findings that have been approved by the board. But the board must decide whether it will accept or reject a specific ballot or vote, and it must state the reason for the rejection. Those decisions of the board must be reflected in the minutes.

The Villas of Costa del Sol Homeowners Ass'n, Inc. v. Homeowners Voting for Recall, Case No. 2008-04-6827, (Grubbs / Final Order Dismissing Petition for Arbitration / September 16, 2008)

- When the respondent unilaterally withdraws a recall agreement, a final order affirming the board's decision not to certify the agreement will be entered. When a petition for recall arbitration is unilaterally dismissed or withdrawn by an association, a final order certifying the recall will be entered. However, when the parties jointly agree that pursuing the recall will waste the association's resources, as a second recall arbitration petition will resolve the issues, the petition for arbitration simply will be dismissed.

Withdrawal of petition / Withdrawal of written agreement

The Preserve at the Savannahs Condo. Ass'n, Inc. v. Unit Owners Voting for Recall, Case No. 2008-02-5933 (Earl / Final Order / June 10, 2008)

- Where the unit owner representative filed notice that the unit owners did not wish to contest the association's decision not to certify the recall, the association's decision was affirmed.

The Villas of Costa del Sol Homeowners Ass'n, Inc. v. Homeowners Voting for Recall, Case No. 2008-04-6827, (Grubbs / Final Order Dismissing Petition for Arbitration / September 16, 2008)

- When the respondent unilaterally withdraws a recall agreement, a final order affirming the board's decision not to certify the agreement will be entered. When a petition for recall arbitration is unilaterally dismissed or withdrawn by an association, a final order certifying the recall will be entered. However, when the parties jointly agree that pursuing the recall will waste the association's resources, as a second recall arbitration petition will resolve the issues, the petition for arbitration simply will be dismissed.

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

Tiara East Condo., Inc. v. Homeowners Voting for Recall,
Case No. 2008-04-8212, (Grubbs / Summary Final Order on Petition for Recall Arbitration / October 3, 2008)

- Where the petition for arbitration alleged that the board certified the recall as to two of the board members sought to be recalled, but did not certify the recall of the third board member because there were not enough votes to recall him, and the respondent did not refute the allegations, the board's action was affirmed.

Hills of Inverrary Condo., Inc. v. Unit Owners Voting for Recall,
Case Number 2007-04-9804 (Earl / Summary Final Order / October 18, 2007).

- Where condominium association consisted of three tracts and the governing documents provided that each tract was entitled to elect 1/3 of the members of the board of directors, the owners who elected a board member were the voting interests within the meaning of section 718.112(2)(j), F.S., entitled to vote to recall such board member.

- By-law that permitted any director to be recall by 2/3 vote of the general membership found invalid because of conflict with section 718.112(2)(j), F.S.

Westchester Manor Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2008-02-6966 (Campbell / Final Order / July 7, 2008)

- Association noticed membership meeting to consider recall after receiving a list of signatures from more than 10% of the unit owners. Less than a quorum of the unit owners convened at the time of the scheduled meeting, so the meeting was adjourned without a vote. The failure to achieve a quorum conclusively establishes that the recall effort was not approved by a majority of all voting interests, as required by section 718.112(2)(j), F.S.

Bleau Grotto Condominium Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-03-0362, (Grubbs / Summary Final Order / July 8, 2008)

- Because the unit owner representative may not be aware of rescissions given to the board prior to service of the recall agreement, a recall agreement that clearly does not have a majority of unit owner signatures, due to the rescissions, could be served on the board. This process costs the association time and money, which could be avoided if the unit owner representative had been aware of the rescissions. Therefore, before a recall agreement is served on the board, especially one using many of the same ballots as used in a prior recall attempt, the representative should request that the board

provide him or her with access to any rescissions that the board may have received relative to the recall agreement, and this request should be honored by the board immediately.

L'Hermitage II Condominium Association, Inc. v. Unit Owners Voting For Recall,
Case No. 2008-04-1770 (Campbell / Final Order / August 18, 2008)

- Association had received 10 rescissions of written agreements more than two weeks before recall by written agreement was served on the board. Unit owners objected that such rescissions should not be counted because the association had not notified anyone when the rescissions were received. Unit owner has a personal right to rescind a recall vote by delivering the rescission to any board member. Rescission will not be invalidated because the association does not announce its receipt, but rescissions must be provided in response to official records request pursuant to section 718.111(12)(c), F.S.

Failure to properly serve written agreements on the board

Caribbean Gardens Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-05-3419 (Campbell / Summary Final Order / October 24, 2007)

- Service of new set of written recall agreements on board attorney who was representing association in pending recall arbitration. Board held meeting within five days to vote not to certify recall. Under interpretation of Rule 61B-23.0028, FAC, and case law allowing any service that provides adequate notice, board may not reject recall because of technically improper service.

Shadybrook Village Owners Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-06-1596 (Campbell / Summary Final Order / November 28, 2007)

- Petition for recall by lists of signatures on pages with text typed at the top: "We the undersigned request that action be taken by the members of Shady Brook Village Owners' Association, Inc. to recall the entire Board of Directors that are now in office." Each of the lists also had inscribed, in handwriting, the names of the six sitting directors. Board ignored service on treasurer/director, which is sufficient to require board action within 5 days under statute. Board held meeting 14 days after service and voted not to certify. Exception to automatic certification under 718.112(j)(4), because form of recall did not comply with 63B-23.0028. Board action not to certify affirmed.

Unit Owners Voting for Recall and Frank Cipolla v. Pearl Condominium Ass'n, Inc.,
Case No. 2008-03-0146, (Grubbs / Summary Final Order / July 25, 2008)

- When a recall agreement is sent by certified mail, and it is returned to the sender, the association has not been served. When service by certified mail is ineffective, the unit owners may obtain the services of a process server and the "return of service" signed by the process server would establish the date of service.

Generally

Fontainebleau Gardens Condo. Assn., Inc. v. Unit Owners Voting for Recall,
Case No. 2007-03-5089 (Lang / Summary Final Order / September 12, 2007)

- Unit owner ballots in first recall indicated a vote to recall board members, but ballots for same unit owners in second recall did not indicate vote to recall or retain. Ballot in second recall election controls. Ballots are evaluated and ruled upon based on information presented in the instant proceeding and not on previous recall proceedings.

Ro-Mont South Condominium, M, Inc. v. Unit Owners Voting for Recall,
Case No. 2007-06-2245 (Earl / Summary Final Order / December 26, 2007)

- The written recall agreement consisted of two ballots similar to the Division's form recall agreement/ballot listing directors subject to the recall with the recall boxes checked and listed the "Ro-Mont South Executive Council" as the replacement board member. In the name and signature block the ballots stated, "See Attached Documents". Attached to the ballots was a cover letter from unknown "concerned owners" addressed to "All Unit Owners Building M Ro-Mont South" stating that there would be a special meeting on October 17 at the clubhouse for all unit owners to remove the board of directors and appoint the Executive Council, Inc. to take temporary responsibility for building M. Also attached were two signature pages titled "Petition, Demand, Notice Special Meeting of Ro-Mont South Condominium M, Inc." and containing 19 signatures. The written recall agreement was found fatally flawed on its face as it failed to provide each unit owner the independent opportunity to recall or retain each director as required by rule 61B-23.0028(1)(b), Fla. Admin. Code, so that the person executing the agreement could indicate whether that individual board member should be recalled or retained. To extent that the recall was intended be by unit owner meeting, it failed since there is no indication that if a recall by owner meeting occurred, it complied with rule 61B-23.0027, Fla. Admin. Code.

Inlet House Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-0128, (Grubbs / Summary Final Order / July 3, 2008)

- Where a board member asserted in writing that she had received a written recall agreement, the board acted properly in attempting to obtain the agreement and by ultimately voting to reject the alleged recall agreement because they had never seen it. The erroneous notice the former board member delivered to the board combined with her failure to write to the board and explain the situation caused the association to expend time, effort and money needlessly.

Illegible or incorrect signatures / Failure to print name

Misleading information given to voters / Fraud

Pre-marked ballots

Proxy

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

Representative

Inlet House Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-4508, (Grubbs / Summary Final Order / August 1, 2008)

- Because no unit owner representative was named in the recall agreement, the association was required to post the arbitrator's order allowing the representative to make an appearance and answer the petition for recall arbitration.

Unit owner delinquent in assessment

Unit owner meeting to recall failed to comply with 61B-23.0027

Generally

Treasure Island Tennis & Yacht Club Condominium #2, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-05-7697 (Campbell / Summary Final Order / November 8, 2007)

- Board served with notice advising of a meeting at which unit owners had voted to recall the current board, which notice transmitted a document containing signatures of unit owners representing 11 units, and a list of 24 unit owners representing votes solicited either over the telephone or by some sort of proxy. Meeting was not called or noticed as required by statute, so the recall cannot succeed as a recall by meeting of the unit owners. Statute requires written notice, including an agenda for the meeting, mailed or hand delivered to each unit owner at least 14 days prior to the meeting, and posted at a conspicuous place on the property. The list of signatures cannot be considered as a recall by written agreement because of failure to comply with Rule 61B-23.0028, F.A.C. The failure to name each director individually, with the opportunity to recall or retain each one was a fatal flaw.

Dockside North Owners' Association, v. Unit Owners Voting For Recall,
Case No. 2007-05-9351 (Campbell / Summary Final Order / November 21, 2007)

- Recall meeting substantially complied with Rule 61B-23.0027, F.A.C. Board chose not to certify recall at an emergency meeting on the day it received a copy of the minutes from the recall meeting. Board did not "duly notice" a board meeting at which it voted not to certify the recall. No facts overcome presumption of Rule 61B-23.0027, that notice of recall meeting does not create an emergency. Thus, recall was certified.

Presiding officer

quorum

Vote cast by unauthorized person

Royal Arms Condo. Assn.,Inc. v. Unit Owners Voting for Recall,
Case No. 2007-04-9254 (Lang / Summary Final Order / April 15, 2008)

- Person signing ballot was personal representative of estate of unit owner at time of attempted recall. Under section 733.612(5), Florida Statutes, a personal representative, acting reasonably for the benefit of the interested persons, may properly manage an estate asset. Personal representative's recall vote was considered management of the unit as an asset of the decedent's estate.

Lake and Tennis Villas Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-02-8195, (Grubbs / Recall Final Order / September 4, 2008)

- Where there was no testimony to support the testimony of the handwriting expert that the signatures on specified ballots were not signed by the unit owner but the recalling unit owners presented the testimony of a witness to the signature or the testimony of the unit owner stating that he or she had signed the ballot, the testimony of the handwriting expert, as secondary evidence, was rejected.

Power of attorney

Proxy

Trusts / Trustee

Inlet House Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-4508, (Grubbs / Summary Final Order / Aug 1, 2008)

- A recall ballot signed by Alice Kangas was not a valid vote for recall since she was no longer the trustee of the Alice Kangas Revocable Trust, which was the unit owner.

Voting certificate

Destiny Springs Condominium Association v. Unit Owners Voting For Recall,
Case No. 2007-02-1716 (Chavis / Summary Final Order / September 10, 2007)

- The board rejected specific ballots because the voting certificates and ballots were signed on the same day. While the pertinent part of the governing documents indicates that units owned by multiple owners must file voting certificates indicating the individual entitled to vote for the unit, there is no requirement that such certificate be filed prior to the casting of the vote. Additionally, there is no statutory authority or division rule prohibiting the filing of voting certificates simultaneously with the service of the written recall agreements.

Caribbean Gardens Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-05-3419 (Campbell / Summary Final Order / October 24, 2007)

- Board cannot enforce voting certificate requirements where evidence established that no voting certificates had ever been filed with the association, and association had

not needed to hold elections for previous seven years. Board improperly rejected agreements for known unit owners where each individual listed on title signed the agreement but no voting certificate on file. Board improperly rejected agreement signed by known unit owner who had deeded property from himself, individually, to a wholly owned corporation, but had not filed voting certificate.

Vote cast improperly

Village of Glenwood Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-05-5135 (Campbell / Summary Final Order / November 14, 2007)

- Recall by written agreement. The board rejected four ballots because "signature not the same". Each copy of ballot submitted by association contained a handwritten note, indicating a questionable signature, but no other information or comparison is indicated in the petition or minutes. Because minutes did not provide a basis for comparison to a valid signature and no collateral facts support an allegation of four false signatures out of 61 ballots, ballots must be accepted. Board rejected seven ballots because each ballot contained two signatures. Each of these ballots appeared to have been signed by both spouses who reside in the unit. Ballot signed by recognized unit owner cannot be rejected because too many people signed. Recall certified.

Vote withdrawn / Rescission / Added after service of petition

Villas of Lake Arbor Community Association v. Owners Voting for Recall,
Case Number 2007-04-5706 (Chavis / Summary Final Order / October 16, 2007)

- The date of service of the recall agreement on the board controls the validity of ballots, rescissions, and rescissions of rescissions. Rescissions by Shirley Zuzak and Charles Lockhart were valid at the time of the service of the recall. The subsequent ballots or withdrawal of the rescissions by those owners are not valid and cannot be considered as valid ballots to recall the board.

- The board rejected the ballot alleging the owner had printed her name rather than signed her name. The owner submitted a subsequently executed ballot with signature. Because the subsequently executed ballot was executed after the service of the recall agreement on the board, it is invalid as a ballot per se, however, the signature and printing of the owner's name on the subsequently executed ballot is proof of the validity of the prior ballot. Accordingly, the prior ballot is found to be valid.

- Typically, where a unit owner's unit is titled under her maiden name but the unit owner signs her ballot using her married name, the ballot is valid. In the case at hand, it is unclear whether the owner's name is her married or maiden name. Regardless, there was no allegation that, under either name, the owner was not the individual who signed the ballot, therefore, the original ballot submitted is valid.

- The board rejected the ballots of unit owners for having a different last name on the deed or failure to use their full legal name. Respondent submitted subsequently executed ballots on behalf of each owner where each signed their full name as on the deed. However, failure of an owner to sign their complete legal name where there is no allegation that the ballot was signed by someone other than the owner is not a sufficient reason for a board to invalidate a ballot. In the case at hand, the name signed by each owner was sufficiently unique and the signatures significantly similar for the board to reasonably assume the signor of the ballot was the owner identified on the deed.

- The board rejected a ballot for the signatory's failure to indicate his status as "trustee" on the ballot. Where the unit is owned by a trust and the trustee fails to sign the voting certificate or ballot as "Trustee", the ballot will not be rejected on this technical error.

Ro-Mont South Condominium, M, Inc. v. Unit Owners Voting for Recall,
Case No. 2007-06-2245 (Earl / Summary Final Order / December 26, 2007)

- The written recall agreement consisted of two ballots similar to the Division's form recall agreement/ballot listing directors subject to the recall with the recall boxes checked and listed the "Ro-Mont South Executive Council" as the replacement board member. In the name and signature block the ballots stated, "See Attached Documents". Attached to the ballots was a cover letter from unknown "concerned owners" addressed to "All Unit Owners Building M Ro-Mont South" stating that there would be a special meeting on October 17 at the clubhouse for all unit owners to remove the board of directors and appoint the Executive Council, Inc. to take temporary responsibility for building M. Also attached were two signature pages titled "Petition, Demand, Notice Special Meeting of Ro-Mont South Condominium M, Inc." and containing 19 signatures. The written recall agreement was found fatally flawed on its face as it failed to provide each unit owner the independent opportunity to recall or retain each director as required by rule 61B-23.0028(1)(b), Fla. Admin. Code, so that the person executing the agreement could indicate whether that individual board member should be recalled or retained. To extent that the recall was intended be by unit owner meeting, it failed since there is no indication that if a recall by owner meeting occurred, it complied with rule 61B-23.0027, Fla. Admin. Code.

- Where respondent filed an additional 17 new ballots with the arbitrator subsequent to filing of the recall petition the new ballots were rejected since Rule 61B-23.0028(5)(a), Fla. Admin. Code, provides that any additional unit owner votes received in regard to the recall after service of the written recall agreement on the board shall be ineffective.

Bleau Grotto Condominium Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-03-0362, (Grubbs / Summary Final Order / July 8, 2008)

- Because the unit owner representative may not be aware of rescissions given to the board prior to service of the recall agreement, a recall agreement that clearly does not

have a majority of unit owner signatures, due to the rescissions, could be served on the board. This process costs the association time and money, which could be avoided if the unit owner representative had been aware of the rescissions. Therefore, before a recall agreement is served on the board, especially one using the many of the same ballots as used in a prior recall attempt, the representative should request that the board provide him or her with access to any rescissions that the board may have received relative to the recall agreement, and this request should be honored by the board immediately.

Coco Wood Condo. Ass'n, Inc. v. Unit Owners Voting For Recall,
Case No. 2008-03-4859 (Earl / Summary Final Order / August 8, 2008)

- Board improperly rejected ballots for which rescissions were received by the association after service of the written recall agreement on the association.

L'Hermitage II Condominium Association, Inc. v. Unit Owners Voting For Recall,
Case No. 2008-04-1770 (Campbell / Final Order / August 18, 2008)

- Association had received 10 rescissions of written agreements more than two weeks before recall by written agreement was served on the board. Unit owners objected that such rescissions should not be counted because the association had not notified anyone when the rescissions were received. Unit owner has a personal right to rescind a recall vote by delivering the rescission to any board member. Rescission will not be invalidated because the association does not announce its receipt, but rescissions must be provided in response to official records request pursuant to section 718.111(12)(c), F.S.

Written agreement form did not substantially comply with 61B-23.0028

Inlet House Condo. Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-0128, (Grubbs / Summary Final Order / July 3, 2008)

- Where a board member asserted in writing that she had received a written recall agreement, the board acted properly in attempting to obtain the agreement and by ultimately voting to reject the alleged recall agreement because they had never seen it. The erroneous notice the former board member delivered to the board, combined with her failure to explain the situation, caused the association to expend time, effort and money needlessly.

Recall / Retain lines

Ro-Mont South Condominium, M, Inc. v. Unit Owners Voting for Recall,
Case No. 2007-06-2245 (Earl / Summary Final Order / December 26, 2007)

- The written recall agreement consisted of two ballots similar to the Division's form recall agreement/ballot listing directors subject to the recall with the recall boxes checked and listed the "Ro-Mont South Executive Council" as the replacement board member. In the name and signature block the ballots stated, "See Attached Documents". Attached to the ballots was a cover letter from unknown "concerned owners" addressed to "All Unit Owners Building M Ro-Mont South" stating that there would be a special meeting on October 17 at the clubhouse for all unit owners to remove the board of directors and appoint the Executive Council, Inc. to take temporary responsibility for building M. Also attached were two signature pages titled "Petition, Demand, Notice Special Meeting of Ro-Mont South Condominium M, Inc." and containing 19 signatures. The written recall agreement was found fatally flawed on its face as it failed to provide each unit owner the independent opportunity to recall or retain each director as required by rule 61B-23.0028(1)(b), Fla. Admin. Code, so that the person executing the agreement could indicate whether that individual board member should be recalled or retained. To extent that the recall was intended be by unit owner meeting, it failed since there is no indication that if a recall by owner meeting occurred, it complied with rule 61B-23.0027, Fla. Admin. Code

Les Chateaux Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2008-01-5349 (Campbell / Final Order / April 1, 2008)

- Board declined to certify because half of the ballots were pre-marked to indicate recall prior to being submitted to unit owners. Inspection of 52 ballots showed they were marked with distinctive "x"'s in recall boxes, apparently marked by the same person but with a different writing utensil or density of application than the signature. The ballots included marks made, or altered, by someone other than voter who signed ballot. Based on irregularities on the face of the ballots, board's rejection of those ballots and decision not to certify affirmed.

Murano at Hampton Park No. 8 Condominium Association, Inc. v. Unit Owners Voting for Recall,
Case No 2007-06-7978 (Golen / Final Order / January 28, 2008)

- Recall petition made up of several pages on which unit owners signed names did not provide space to indicate whether signer was in favor of the recall or not, did not name individual board members and did not contain the word "recall". Board's decision to not certify the recall affirmed because such a signature list could not be considered a written recall agreement

Quail Run Condominium Association of Hillsborough County, Inc., v. Unit Owners Voting For Recall,
Case No. 2008-03-2467 (Campbell / Final Order / July 2, 2008)

- Petition for recall was in the form of lists of signatures on pages with text, including names of four directors, typed at the top. Each page provided lines for seven unit owners to provide name, address, lot number, date and signature. The printed portion

of the petition did not provide recall/retain lines, and requested that the association certify the recall as to the board members listed. Lack of recall or retain lines for each director is a fatal defect and the agreement is void *ab initio*.

Stonebridge Gardens, Section One, Condominium Ass'n v. Unit Owners Voting for Recall,
Case No. 2008-03-0317, (Grubbs / Summary Final Order / July 11, 2008)

- Where the ballots had computer-generated checkmarks in the recall boxes next to the names of two of the board members and computer-generated checkmarks in the retain box next to the names of two other board members, the ballots were "pre-marked" and invalid. A ballot is "pre-marked" when the person or group initiating the recall places a mark in the recall space for each board member on the ballot they wish to recall before giving the ballots to the unit owners. Pre-marked ballots do not comply with rule 61B-23.0028(1)(b), Fla. Admin. Code.

Lake and Tennis Villas Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-02-8195, (Grubbs / Recall Final Order / September 4, 2008)

- Board rejected 46 of the 58 ballots as being pre-marked because they all contained hand-written, relatively long, slash mark (/) diagonally across the box where the unit owner is to place a check mark to recall the board member. Although the number of ballots with similar mark might call into question whether each unit owner made his own marks or whether the ballots were pre-marked or marked after the fact by the same person, the testimony at the hearing on the issue was insufficient to support a finding that the ballots were pre-marked or post-marked.

Written agreement held to be defective

Coastal Bay Homeowners Ass'n, Inc. v. Homeowners Voting for Recall,
Case No. 2008-04-5182, (Grubbs / Summary Final Order / September 19, 2008)

- The problem with the petition-style written agreement was that a person signing it may have thought that they were signing the petition to support any one of the numerous things the petition addressed. The agreement was not clearly limited to the recall of the board member. Therefore, the written agreement could not be certified.

Written agreement held to substantially comply

The Lands of the President Condominium Association, Inc. v. Unit Owners Voting for Recall,
Case No. 2007-06-2014 (Chavis / Summary Final Order / January 10, 2008)

- Because the number of ballots served on the board by the respondent totals less than a majority, the recall was properly rejected by the board.

Westland Gardens Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-03-8977, (Grubbs / Summary Final Order / August 7, 2008)

- The use of a homeowners' association recall ballot form is not a legitimate reason to reject a recall agreement served on a condominium association board. In all important aspects, the form for the condominium recall and the form for the homeowners' recall are identical.

Class Voting

Harbourtowne at Country Woods Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-04-5646 (Campbell / Summary Final Order / November 15, 2007)

- After period of control of board by unit owners, a single owner acquired title to a majority of the units. This new "developer" initially was not barred by statute from electing a controlling interest of the board because the developer did not hold out any units for sale in the ordinary course of business. The developer changed its business practice to hold some units out for sale and then sought to elect a majority of the board. In annual election of January 2007, the sitting board refused to recognize the change, and refused to count the developer's ballots as to all seats on the board. Despite this result, the Association did not designate specific positions on the board as either "unit owner seats" or "developer" seats. The developer then served a written recall agreement casting all its votes to recall certain directors that the developer had not appointed or elected. Decision not to certify recall affirmed because votes for a developer's units may not be counted for a recall of board members not chosen by the developer. Recall procedures cannot be used to present election dispute such as disagreement as to the right of different classes of owners to elect a majority of the board members.

Conflict of Interest

Corporations / Chapter 617, Florida Statutes

Developer

Harbourtowne at Country Woods Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-04-5646 (Campbell / Summary Final Order / November 15, 2007)

- After period of control of board by unit owners, a single owner acquired title to a majority of the units. This new "developer" initially was not barred by statute from electing a controlling interest of the board because the developer did not hold out any units for sale in the ordinary course of business. The developer changed its business practice to hold some units out for sale and then sought to elect a majority of the board. In annual election of January 2007, the sitting board refused to recognize the change, and refused to count the developer's ballots as to all seats on the board. Despite this result, association did not designate specific positions on the board as either "unit owner

seats" or "developer" seats. The developer then served a written recall agreement casting all its votes to recall certain directors that the developer had not appointed or elected. Decision not to certify recall affirmed because votes for a developer's units may not be counted for a recall of board members not chosen by the developer. Recall procedures cannot be used to present election dispute such as disagreement as to the right of different classes of owners to elect a majority of the board members.

Dispute Moot (For example, election held after recall, recalled director resigns, etc.)

Greenway Village South Ass'n, No. 4 Inc. v. Unit Owners Voting For Recall,
Case No. 2007-04-9817 (Earl / Final Order of Dismissal / January 24, 2008).

- Intervening election for all the seats on association's board of directors rendered recall dispute moot.

Sweetwater Creek Homeowners Condo. Ass'n, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-06-8559 (Earl / Final Order of Dismissal / January 28, 2008).

- When the association certified a subsequent recall removing the board members subject to the recall in the instant case, case was dismissed as moot.

Effect of Recall

Jurisdiction

Harbourtowne at Country Woods Condominium Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-04-5646 (Campbell / Summary Final Order / November 15, 2007)

- After period of control of board by unit owners, a single owner acquired title to a majority of the units. This new "developer" initially was not barred by statute from electing a controlling interest of the board because the developer did not hold out any units for sale in the ordinary course of business. The developer changed its business practice to hold some units out for sale and then sought to elect a majority of the board. In annual election of January 2007, the sitting board refused to recognize the change, and refused to count the developer's ballots as to all seats on the board. Despite this result, association did not designate specific positions on the board as either "unit owner seats" or "developer" seats. The developer then served a written recall agreement casting all its votes to recall certain directors that the developer had not appointed or elected. Decision not to certify recall affirmed because votes for a developer's units may not be counted for a recall of board members not chosen by the developer. Recall procedures cannot be used to present election dispute such as disagreement as to the right of different classes of owners to elect a majority of the board members.

Fountains Professional Center Condo. Ass'n, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-06-2204 (Earl / Final Order of Dismissal / December 13, 2007)

- Arbitrator lacked jurisdiction over recall involving only non-residential units.

Power of Attorney

Proxy

Reconsideration / Rehearing

Replacement Candidates (*see also,* Board's Failure to Certify Recall)

Standing

Time Limits / Legitimate Justification (*see also,* Unit Owners Defenses – Failure to timely file petition)

Unit Owner Defenses to Petition for Arbitration

Division advice

Failure of association to previously enforce voting certificate requirement

Lake and Tennis Villas Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-02-8195, (Grubbs / Recall Final Order / September 4, 2008)

- An association cannot reject a unit owner's ballot for not having a voting certificate on file unless the association has enforced the voting certificate requirement in past elections and unit owner votes. Association's evidence, notice of annual meetings stating that certain unit owners had to have a voting certificate on file, was insufficient evidence that the voting certificate requirement had ever been enforced previously, especially when none of the twenty-four certificates introduced into evidence, which constituted all of the voting certificates on file, were valid.

Failure of minutes to include specific reasons for not certifying

Westland Gardens Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2008-03-8977, (Grubbs / Summary Final Order / August 7, 2008)

- The minutes of the board meeting at which the recall agreement was rejected were not included as an exhibit to the petition. Without the minutes of the board meeting, the board's decision not to certify the recall could not properly be reviewed and the recall would have to be certified. When the minutes were filed, none of the ballots specified in the petition were mentioned. The minutes provided general grounds for the rejection of unidentified ballots. Therefore, the only grounds for rejection of the recall that could be considered by the arbitrator were those grounds related to all of the ballots submitted.

- A petition for arbitration cannot include any reasons for rejecting a recall that were not considered by the board. The board cannot list a group of generic reasons for the rejection of the recall and have an attorney find ballots that may fit the generic description to list in the petition for arbitration. If a specific ballot is to be rejected, that specific ballot must be rejected by the board at its meeting and it must be identified in the minutes.

- The board may have attorneys or board members review all of the ballots before the meeting and present their findings to the board, and the board may chose to accept all or some of their specific findings and may even attach to the minutes those findings that have been approved by the board. But the board must decide whether it will accept or reject a specific ballot or vote, and it must state the reason for the rejection. Those decisions of the board must be reflected in the minutes.

Fontainebleau Gardens Condo. Ass'n., Inc. v. Unit Owners Voting for Recall,
Case No. 2007-03-5089 (Lang / Summary Final Order / September 12, 2007)

- Ballot rejected in the minutes for not being that of record owner. Evidence showed that ballot rejected in minutes actually was that of record owner. Association then sought to submit "corrected" minutes that substituted a ballot included in the petition for the misstated ballot in the minutes. Association is bound by the minutes submitted with the petition. To rule otherwise would allow an association to correct its minutes at any time to cure misstatements made therein.

Arlen House Condo. Ass'n, Inc. v. Unit Owners,
Case No. 2007-03-8044 (Earl / Summary Final Order / September 20, 2007)

- Except for allegations as to general defects in the form of the ballot, the minutes must specifically identify the ballots rejected. Therefore, where the minutes indicated that numerous ballots were rejected, but failed to identify the ballots, specifically, the minutes were found to be deficient.

Waterway at Hollywood Beach Condo. Ass'n, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-05-8870 (Earl / Final Order / February 1, 2008)

- The association submitted two sets of minutes for the board meeting at which the recall agreement was considered. Both sets of minutes were insufficient as they did not indicate the specific ballots rejected and reasons for rejection. The association contended that the recall was void on its face because total number of ballots served on it was insufficient to recall any of the directors. The unit owners argued the that written recall agreement served on the association contained more ballots than claimed by the association, and, therefore was sufficient to recall the directors. After a formal hearing, evidence established that the written recall agreement consisted of the number of ballots alleged by the unit owners and any difference alleged by association was likely due to a mishandling error by association.

Fountain Park Village Homes Condominium Ass'n, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-04-6240 (Golen / Summary Final Order / October 2, 2007)

- The minutes failed to specify which individual ballots were rejected. Unless the board has indicated the specific ballots rejected or cited a reason for rejection that is clear from the face of the individual ballots, the rejection of a ballot is invalid.

Town Park Plaza North Condominium Ass'n, Inc., v. Unit Owners Voting For Recall,
Case No. 2008-03-0365 (Campbell, June 25, 2008)

- Minutes of board meeting at which board rejected recall do not indicate any reasons why the board did not certify the recall. Therefore, rule 61B-50.105(5)(h), F.A.C. requires arbitrator to disregard reasons alleged by the petition for recall arbitration. At that point, review is limited to whether the ballot form is facially valid and whether the recall effort obtained votes of more than 50% of unit owners.

The Senate Condo. Ass'n., Inc. v. Unit Owners Voting for Recall,
Case No. 2008-02-5935 (Lang / Summary Final Order / July 7, 2008)

- After minutes of the board meeting were filed with petition, board sought to amend petition to reject a ballot alleging board had later learned unit owner who submitted a recall ballot had conveyed title to the unit to another in an unrecorded quitclaim deed. The arbitration cases interpreting the rules do not provide an exception for some later discovered reason for rejecting a recall ballot advanced in a motion to supplement the petition where the reason was not stated in the minutes.

Daytona Beach Ocean Towers v. Unit Owners Voting for Recall,
Case No. 2008-04-0022 (Campbell / Final Order / August 25, 2008)

- Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. Rule 61B-50.105(5)(h), Florida Administrative Code.

- Where minutes reported that meeting only lasted five minutes with discussion limited to general allegations of inconsistencies in verification of signatures and suspected fraud, arbitrator must certify recall unless ballots are fatally defective or the recall lacks a majority of unit owners.

Failure to give proper notice of board meeting

Bayview Condominium Clearwater Association, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-03-1208 (Chavis / Amended Summary Final Order / September 10, 2007)

- The board's failure to notice and conduct its recall meeting within five full business days after service of the agreement, as required by section 718.112(2)(j)4., F.S., and rule 61B-23.0028(3)(b), F.A.C., results in a determination that the recall of the subject board members is effective by operation of law. However, automatic certification of a recall may not always result from a board's failure to timely hold a recall meeting or file a recall petition. Nevertheless, the failure of a board to timely hold a recall meeting or file a recall petition cannot be used to validate an otherwise invalid recall agreement. In the case at hand, the recall effort was not void *ab initio*, the recall agreements are valid on their face, and there were sufficient number of votes to recall the listed board members.

The Senate Condo. Assn., Inc. v. Unit Owners Voting for Recall,
Case No. 2008-02-5935 (Lang / Summary Final Order / July 7, 2008)

- Where the notice for the meeting to consider the recall failed to specify the location within the condominium or another location where the meeting was to be held, the notice was defective and the recall was certified.

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

Bayview Condominium Clearwater Association, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-03-1208 (Chavis / Summary Final Order / August 21, 2007)

- Automatic certification of a recall may not always result from the board's failure to timely hold a recall meeting or file a petition for recall arbitration. However, when recall effort is not void *ab initio*, and there is sufficient number of votes to recall the listed board members, the recall will be certified.

- The association's position that it would not accept the written recall agreement because there was a prior recall petition under consideration by the division is without merit, as subsequent recalls are clearly contemplated pursuant to rule 61B-50.105(6).

Bayview Condominium Clearwater Association, Inc. v. Unit Owners Voting For Recall,

Case No. 2007-03-1208 (Chavis / Amended Summary Final Order / September 10, 2007)

- The board's failure to notice and conduct its recall meeting within five full business days after service of the agreement, as required by section 718.112(2)(j)4., F.S., and rule 61B-23.0028(3)(b), F.A.C., results in a determination that the recall of the subject board members is effective by operation of law. However, the automatic certification of a recall may not always result from a board's failure to timely hold a recall meeting or file a recall petition. Nevertheless, the subsequent failure of a board to timely hold a recall meeting or file a recall petition cannot be used to validate an otherwise invalid recall agreement. In the case at hand, the recall effort was not void *ab initio*, the recall agreements are valid on their face, and there were sufficient number of votes to recall the listed board members.

Shadybrook Village Owners Association, Inc., v. Unit Owners Voting For Recall,
Case No. 2007-06-1596 (Campbell / Summary Final Order / November 28, 2007)

- Petition for recall consist of list of signatures on pages with text typed at the top: "We the undersigned request that action be taken by the members of Shady Brook Village Owners' Association, Inc. to recall the entire Board of Directors that are now in office." Each of the lists also had inscribed, in handwriting, the names of the six sitting directors. Board ignored service on treasurer/director, which is sufficient to require board action within 5 days under statute. Board held meeting 14 days after service and voted not to certify. Exception to automatic certification under 718.112(j)(4), because form of recall did not comply with 63B-23.0028, by failing to provide recall/retain line. Board's action not to certify was affirmed.

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

Generally

The Senate Condo. Assn., Inc. v. Unit Owners Voting for Recall,
Case No. 2008-02-5935 (Lang / Summary Final Order / July 7, 2008)

- Board sought to amend petition to reject ballot after filing minutes of board meeting, alleging board had later learned a unit owner who voted for recall had conveyed title to the unit to another in an unrecorded quitclaim deed. Irrespective of the rules and cases barring consideration of any reasons for rejecting ballots not raised in the minutes of the board meeting, the association's unrecorded deed reason failed, because an unrecorded deed does not, under the law, vest an absolute estate. Under the recording statutes, the absolute title rests with the grantor in abeyance and does not irrevocably pass to the grantee until the deed is recorded.

No Legitimate Reasons for Failing to Certify

Camp-A-Wyle Condominium Association, Inc. v. Unit Owners Voting For Recall,
Case No. 2007-05-1327 (Campbell / Summary Final Order / October 31, 2007)

- Petition for Recall Arbitration did not list reasons why board voted not to certify the recall of one board member out of five. Petition also did not provide copy of minutes of board meeting at which it voted not to certify, or of written recall agreements. Answer provided copies of agreements that were sufficient in number and substantially complied with law and rules. Because of failure to comply with Rule 61B-50.105(5), F. A. C., the arbitrator required to certify the recall.

Ratification

Vacancies