

# **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

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

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# **RECALL ARBITRATION SUBJECT MATTER INDEX**

**August 2005**

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 August 1, 2005, through August 31, 2005. The final order summaries are organized by subject matter. Final orders entered on or after September 1, 2005 will be reported in a subsequent publication. Volume One and Volume Two of the Recall Arbitration Subject Matter Index (available separately) summarize final orders entered from May 1, 1992, through May 31, 1997, and from June 1, 1997, through December 31, 2002. The June 2005 index summarizes final orders entered from July 1, 2004 through June 30, 2005, and the July 2005 index summarizes final orders entered during the month of July. Final orders pertaining to regular (non-recall) condominium arbitration cases are listed in separate indexes.

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## Arbitration Procedure

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

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

### ***Generally***

#### [Perez v. Las Palmas at Sand Lake Condo. Assn., Inc.](#)

Case No. 2005-03-3823 (Grubbs / Summary Final Order / August 24, 2005)

- Where the three member majority of the board of directors was "recalled" and replaced by the president who announced that a recall agreement had been received and a majority of the unit owners had recalled the directors, but the directors never saw the recall agreement and a board meeting to determine the validity of the agreement was never called, the petition for recall arbitration would be treated as a "reverse recall" -- an action brought by the board members in their capacity as unit owners pursuant to Section 718.1255, F.S., rather than a petition for recall arbitration pursuant to Section 718.112(2)(j)3, F.S.
- The president's action, announcing that three members of the board had been recalled and three new members were now on the board and refusing to allow the board to see the recall agreement to determine whether it should be certified, resembled a coup rather than the orderly democratic process contemplated by the rules.

#### [Regency Towers Condo. Owner's Assn., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 2005-03-5897 (Earl / Summary Final Order / August 11, 2005)

- Where the respondent fails to file an answer, it is presumed that the respondent does not dispute the facts alleged in the petition or the accuracy of the attached exhibits.

#### [Southeaster, Inc. v. Unit Owners Voting for Recall.](#)

Case No. 2005-02-9923 (Earl / Summary Final Order / August 2, 2005)

- Where the unit owner representative indicated that the respondent unit owners were not contesting the association's reason for not certifying the recall, the association's arguments and facts will be presumed true and valid.

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

#### [9<sup>th</sup> Fairway Condo. At Green Dolphin Park, Inc. v. Unit Owners Voting for Recall.](#)

Case No. 2005-03-6537 (Bembry / Final Order of Dismissal / August 15, 2005)

- Final order dismissing the association's petition for recall arbitration was entered after the association filed a notice of mootness in which it represented that the board

members who were the subject of the recall effort had been successfully recalled in a subsequent recall effort.

**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*

**Generally**

*Illegible or incorrect signatures / Failure to print name*

*Misleading information given to voters / Fraud*

**Proxy**

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

**Representative**

*Unit owner delinquent in assessment*

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

**Generally**

**Presiding officer**

**quorum**

***Vote cast by unauthorized person***

[Regency Towers Condo. Owner's Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-5897 (Earl / Summary Final Order / August 11, 2005)

- Where the unit owner did not present any defense to the association's allegation that two ballots were not signed by the unit owner or the designated voter for the unit, the ballots were properly rejected.

**Power of attorney**

**Proxy**

**Trusts / Trustee**

**Voting certificate**

***Vote cast improperly***

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

[Regency Towers Condo. Owner's Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-5897 (Earl / Summary Final Order / August 11, 2005)

- Board properly rejected ballots that were rescinded prior to service of the written recall agreement on the board.

[Sweetwater Oaks II Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-1667 (Bembry / Order Vacating Order Setting Aside Summary Final Order / August 25, 2005)

- Recall of board member was certified where the written recall agreement was hand delivered to board prior to the board's receipt of written rescissions.

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

[Emerald Isles Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-5536 (Grubbs/ Summary Final Order / August 24, 2005)

- A written recall agreement consisting of one sheet of paper containing 21 signatures beneath a statement that the unit owners "elect to immediately and permanently remove all present board members" is not in substantial compliance with Rule 61B-23.0028(1), F.A.C., in that it failed to comply with any of the requirements of that rule, except perhaps service. Among other things, it did not list by name the board members sought to be recalled, it did not provide recall/retain spaces next to each board members name wherein the unit owner could chose to recall or retain each board member individually, and there were no replacement candidates listed, even though the agreement sought to recall the entire board.

**Recall / Retain lines**

[Perez v. Las Palmas at Sand Lake Condo. Assn., Inc.,](#)

Case No. 2005-03-3823 (Grubbs / Summary Final Order / August 24, 2005)

- Because the recall agreement was pre-marked with computer generated "X"s in the recall boxes, unit owners were not afforded the opportunity to mark their own ballots and decide for themselves who should be recalled and who would be retained.

- A ballot containing computer generated, pre-marked spaces is fatally flawed and void ab initio.

**Written agreement held to be defective**

**Written agreement held to substantially comply**

**Class Voting**

**Conflict of Interest**

**Corporations / Chapter 617, Florida Statutes**

**Developer**

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

**Effect of Recall**

**Jurisdiction**

**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***

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

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

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

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

**[Holiday Travel Park Co-op, Inc. v. Unit Owners Voting for Recall,](#)**

Case No. 2005-02-9277 (Bembry / Summary Final Order / August 9, 2005)

- The recall of a board member was certified where the recall agreement substantially complied with the statute and rules and where the board failed to timely hold its recall meeting and where the association failed to timely file its recall petition. Recall was deemed effective by operation of law.

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

[Holiday Travel Park Co-op, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-9277 (Bembry / Summary Final Order / August 9, 2005)

- The recall of a board member was certified where the recall agreement substantially complied with the statute and rules and where the board failed to timely hold its recall meeting and where the association failed to timely file its recall petition. Recall was deemed effective by operation of law.

***Generally***

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

***Ratification***

**Vacancies**