

# **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**

**July 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 July 1, 2005, through July 31, 2005. The final order summaries are organized by subject matter. Final orders entered on or after August 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. 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***

[Town Park Plaza North Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-4119 (Grubbs / Summary Final Order on Petition for Recall Arbitration / July 25, 2005)

- The petitioner's apparent excuse for filing the recall petition a day late was that petitioner was trying to comply with the pre-arbitration notice requirement of Section 718.1255(4)(b), F.S., which requires that notice be given prior to filing a petition for arbitration. Section 718.1255(4)(b), F.S., does not apply in a recall case. In a recall case, "advance written notice of the nature of the dispute" is not necessary. Further, there is nothing in Section 718.1255(4)(b), F.S., that would exempt petitioner from the time requirements of Section 718.112(2)(j), F.S., even if it did apply.

***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***

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

Case No. 2005-02-4102 (Grubbs / Summary Final Order / July 21, 2005)

- Where the association membership consisted of the unit owners in three different condominiums, and three board members were elected from each of the three condominiums, only the voting interests in the condominium that elected the particular board members could recall those board members. Therefore, the association correctly treated the written recall agreement signed by the majority of the members of the association, which sought to recall eight out of the nine board members, as three separate recall agreements, notwithstanding the fact that other decisions are made by the majority of unit owners regardless of the condominium in which they live.
- Section 718.112(2)(j), F.S., does not suggest that the majority of the members in a multi-condominium association can vote to recall any or all of the board members regardless of whether the board members are elected by only the unit owners in each

separate condominium. Pursuant to Section 718.103(30), F.S., the term "voting interests" as used in Section 718.112(2)(j), F.S., means the voting rights distributed to the unit owners in each separate condominium.

- An association cannot ignore its own historical treatment of an association-owned unit as a non-voting unit when a recall agreement is served on the board. When an association-owned unit has never filed a voting certificate, which is required to be eligible to vote; when it is the only unit not to have a designated voter out of the three condominiums the association operates; when it has never been treated as any other unit; and when it has never been treated as a voting interest, the association-owned unit cannot be treated as a voting interest for the purpose of determining whether a majority of the voting interests in that condominium recalled their board members.

***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***

***Power of attorney***

[Harbourtowne at Country Woods Condo. Assn., Inc. v. Unit Owners Voting for Recall](#),  
Case No. 2005-02-9267 (Scheuerman / Summary Final Order / July 22, 2005)

- Where an unrecorded copy of a durable power of attorney was served on the board to initiate a recall, the power of attorney was not invalid because it was not recorded.

**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-23.0028***

**Recall / Retain lines**

**Written agreement held to be defective**

**Written agreement held to substantially comply**

**Class Voting**

**Conflict of Interest**

**Corporations / Chapter 617, Florida Statutes**

**Developer**

[Harbourtowne at Country Woods Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)  
Case No. 2005-02-9267 (Scheuerman / Summary Final Order / July 22, 2005)

- A subsequent developer which acquired all or most of the inventory of units from the prior subsequent developer is entitled to recall the representative of the prior subsequent developer regardless of whether the recall or re-appointment was negotiated in an assignment of developer rights. Along with the transfer of the units came the voting rights appurtenant to the units, and the subsequent developer became imbued with the voting (and recall) rights of the prior developer.

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

[Lakeview Condo. Owner's Assn., Inc. v. Unit Owners Voting for Recall,](#)  
Case No. 2005-03-2327 (Earl / Final Order of Dismissal / July 27, 2005)

- Where members of the board subject to the written recall agreement are removed when the board certifies a second recall agreement removing them during the pendency of the original recall proceedings, the original petition for recall was dismissed as moot.

**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)**[Town Park Plaza North Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-4119 (Grubbs / Summary Final Order on Petition for Recall Arbitration / July 25, 2005)

- The petitioner's apparent excuse for filing the recall petition a day late was that petitioner was trying to comply with the pre-arbitration notice requirement of Section 718.1255(4)(b), F.S., which requires that notice be given prior to filing a petition for arbitration. Section 718.1255(4)(b), F.S., does not apply in a recall case. In a recall case, "advance written notice of the nature of the dispute" is not necessary. Further, there is nothing in Section 718.1255(4)(b), F.S., that would exempt petitioner from the time requirements of Section 718.112(2)(j), F.S., even if it did apply.

**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***[Parkview Villas Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-0673 (Mnookin / Summary Final Order / July 26, 2005)

- Where the board conducts a meeting to determine whether an attempted recall at a unit owner meeting should be certified and the meeting minutes fail to indicate how many votes or identify the specific votes that were declared invalid, the recall is certified for the board's failure to include specific reasons in its minutes for rejecting the recall effort, as required by Rules 61B-23.0027 and 61B-50.105, F.A.C.

[Town Park Plaza North Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-4119 (Grubbs / Summary Final Order on Petition for Recall Arbitration / July 25, 2005)

- Where the minutes contained a comment that some unit owners stated that their renters were not authorized to vote for the unit, but no assertion that any of the ballots were actually signed by renters rather than unit owners, and the minutes failed to

identify any specific ballots that the board found to be invalid, the minutes could not support the challenges to specific ballots identified in the petition for arbitration. The minutes of the board meeting must be specific, and any reason for rejecting a ballot set forth in the petition for arbitration that is not in the minutes may not be considered by the arbitrator.

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

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

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

[Unit Owners Voting for Recall v. Fountainview Assn., Inc. #4,](#)

Case No. 2005-01-8301 (Bembry / Summary Final Order / July 15, 2005)

- The recall effort was certified by the arbitrator where unit owners voting for recall filed petition for arbitration seeking review of written recall effort and the association failed to demonstrate a valid basis for rejecting any of the written recall ballots and did not provide any reason for failing to notice and timely convene the required recall board meeting.

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

[Town Park Plaza North Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-03-4119 (Grubbs / Summary Final Order on Petition for Recall Arbitration / July 25, 2005)

- The petitioner's apparent excuse for filing the recall petition a day late was that petitioner was trying to comply with the pre-arbitration notice requirement of Section 718.1255(4)(b), F.S., which requires that notice be given prior to filing a petition for arbitration. Section 718.1255(4)(b), F.S., does not apply in a recall case. In a recall case, "advance written notice of the nature of the dispute" is not necessary. Further, there is nothing in Section 718.1255(4)(b), F.S., that would exempt petitioner from the time requirements of Section 718.112(2)(j), F.S., even if it did apply.

***Generally***

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

***Ratification***

**Vacancies**